

BIBIYAN LAW GROUP, P.C.
David D. Bibiyan (SBN 287811)
david@tomorrowlaw.com
Diego Aviles (SBN 315533)
diego@tomorrowlaw.com
Sara Ehsani-Nia (SBN 326501)
sara@tomorrowlaw.com
8484 Wilshire Boulevard, Suite 500
Beverly Hills, California 90211
Tel: (310) 438-5555; Fax: (310) 300-1705

Attorneys for Plaintiff, ALBINO NUNEZ,
on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

ALBINO NUNEZ, on behalf of himself and
all others aggrieved,

Plaintiff,

vs.

2751 WEST COAST ACQUISITION
COMPANY, LLC, a California limited
liability company; and DOES 1 through 100,
inclusive,

Defendant.

CASE NO.: 30-2020-01145215-CU-
OE-CXC

[Assigned to the Hon. Randall J. Sherman
in Dept. CX105]

CLASS ACTION

**JOINT STIPULATION RE: CLASS
ACTION AND REPRESENTATIVE
ACTION SETTLEMENT**

Action Filed: May 26, 2020
Trial Date: None Set

This Joint Stipulation re: Class Action and Representative Action Settlement (“Settlement” or “Agreement” or “Settlement Agreement”) is made by, between and among plaintiff Albino Nunez (“Plaintiff”), individually and on behalf of the Settlement Class, as defined below, on the one hand; and defendant 2751 West Coast Acquisition Company, LLC (“West Coast” or “Defendant”), on the other hand, in the lawsuit entitled *Albino Nunez v. 2751 West Coast Acquisition Company, LLC* filed in Orange County Superior Court, Case No. 30-2020-01145215-CU-OE-CXC (the “Action”). Plaintiff and Defendant shall be, at times, collectively referred to as the “Parties.” This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge and settle the claims as set forth herein, based upon and subject to the terms and conditions of this Agreement.

1 **1. DEFINITIONS**

2 **A. “Action”** means *Albino Nunez v. 2751 West Coast Acquisition Company, LLC*
3 filed in Orange County Superior Court, Case No. 30-2020-01145215-CU-OE-CXC.

4 **B. “Aggrieved Employees”** means Class Members (defined below) working for
5 Defendant during the PAGA Period.

6 **C. “Class Counsel”** means: David Bibiyan, Esq., Diego Aviles, Esq., and Sara
7 Ehsani-Nia, Esq., of Bibiyan Law Group, P.C. The term “Class Counsel” shall be used
8 synonymously with the term “Plaintiff’s Counsel.”

9 **D. “Class Period”** means the period from March 4, 2016 through and including May
10 2, 2021.

11 **E. “Court”** means the Superior Court of the State of California for the County of
12 Orange.

13 **F. “Defendant”** shall refer to Defendant 2751 West Coast Acquisition Company,
14 LLC.

15 **G. “Employer Taxes”** means employer-funded taxes and contributions imposed on
16 the wage portions of the Individual Settlement Payments (defined below) under the Federal
17 Insurance Contributions Act, the Federal Unemployment Tax Act, and any similar state and
18 federal taxes and contributions required of employers, such as for unemployment insurance.

19 **H. “Final Approval Date”** means the later of: (1) the date the Court signs an Order
20 granting final approval of this Settlement (“Final Approval”) and Judgment; (2) if there is an
21 objector, 60 days from the date the Final Approval and Judgment; or (3) to the extent any appeals
22 have been filed, the date on which they have been resolved or exhausted.

23 **I. “First Amended Complaint”** means the First Amended Complaint filed with the
24 Court in the Action.

25 **J. “General Release”** means the general release of claims by Plaintiff, which is in
26 addition to his limited release of claims as a Participating Class Member.

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1 **K. “Gross Settlement Amount”** means a non-reversionary fund in the sum of Two
2 Hundred and Sixty-Two Thousand, Five Hundred Dollars and Zero Cents (\$262,500.00),¹ which
3 shall be paid by Defendant, from which all payments for the Individual Settlement Payments and
4 PAGA Payments to Participating Class Members and the Court-approved amounts for attorneys’
5 fees and reimbursement of litigation costs and expenses to Class Counsel, Settlement
6 Administration Costs, a Service Award to Plaintiff, and the payment made to the Labor and
7 Workforce Development Agency (“LWDA”) for resolution of Plaintiff’s cause of action for civil
8 penalties under the Labor Code Private Attorneys’ General Act, codified at Labor Code Section
9 2698, *et seq.* (“PAGA”), interest and certain taxes shall be paid. It expressly excludes Employer
10 Taxes, which shall be paid by Defendant separate and apart from the Gross Settlement Amount.

11 **L. “Individual Settlement Payment”** means a payment to a Participating Class
12 Member of his or her net share of the Net Settlement Amount, excluding any PAGA Payment to
13 which he or she may be entitled if he or she is also an Aggrieved Employee.

14 **M. “Individual Settlement Share”** means the gross amount of the Net Settlement
15 Amount that a Settlement Class Member is eligible to receive based on the number of Workweeks
16 that he or she worked as a Settlement Class Member during the Class Period if he or she does not
17 submit a timely and valid Request for Exclusion, excluding any PAGA Payment to which he or
18 she may be entitled if he or she is also an Aggrieved Employee.

19 **N. “LWDA Payment”** means the payment to the LWDA for its seventy-five percent
20 (75%) share of the total amount allocated toward penalties under the PAGA, which is to be paid
21 from the Gross Settlement Amount. The Parties have agreed that Ten Thousand Dollars and
22 Zero Cents (\$10,000.00) shall be allocated toward PAGA penalties (“PAGA Payment”), of which
23 Seven Thousand, Five Hundred Dollars and Zero Cents (\$7,500.00) will be paid to the LWDA
24 (*i.e.*, the LWDA Payment) and Two Thousand, Five Hundred Dollars and Zero Cents (\$2,500.00)
25 will remain a part of the Net Settlement Amount for payment to Participating Class Members on
26 a *pro rata* basis.

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¹ As the same may be increased in accordance with Paragraph 16, below.

1 **O. “Net Settlement Amount”** means the portion of the Gross Settlement Amount
2 that is available for distribution to Participating Class Members after deductions for the Court-
3 approved allocations for Settlement Administration Costs, a Service Award to Plaintiff, an award
4 of attorneys’ fees, reimbursement of litigation costs and expenses to Class Counsel, and the
5 LWDA Payment.

6 **P. “PAGA Payment”** is the payment made to Aggrieved Employees in addition to
7 their Individual Settlement Share.

8 **Q. “PAGA Period”** means the period from March 4, 2019 through and including
9 May 2, 2021.

10 **R. “Participating Class Members”** means all Settlement Class Members who do
11 not submit a timely and valid Request for Exclusion.

12 **S. “Parties”** shall refer to Plaintiff and Defendant.

13 **T. “Plaintiff”** shall refer to Plaintiff Albino Nunez.

14 **U. “Preliminary Approval Date”** means the date on which the Court enters an
15 Order granting preliminary approval of the Settlement.

16 **V. “Released Parties”** shall mean Defendant and each of its past, present, and future
17 respective affiliates, parents, subsidiaries, predecessors, successors, divisions, joint ventures and
18 assigns, and each of these entities’ past or present directors, officers, employees, partners,
19 members, principals, agents, insurers, co-insurers, re-insurers, shareholders, attorneys, and
20 personal or legal representatives.

21 **W. “Response Deadline”** means the deadline for Settlement Class Members to mail
22 any Requests for Exclusion, Objections, or Workweek Disputes to the Settlement Administrator,
23 which is forty-five (45) calendar days from the date that the Class Notice is first mailed in English
24 and Spanish by the Settlement Administrator. The date of the postmark shall be the exclusive
25 means for determining whether a Request for Exclusion, Objection, or Workweek Dispute was
26 submitted by the Response Deadline.

27 **X. “Request for Exclusion”** means a written request to be excluded from the
28 Settlement Class pursuant to Section 9.C below.

1 **Y. “Service Award”** means monetary amount to be paid to Plaintiff of up to Seven
2 Thousand, Five Hundred Dollars and Zero Cents (\$7,500) which, subject to Court approval, will
3 be paid out of the Gross Settlement Amount.

4 **Z. “Settlement Administration Costs”** means all costs incurred by the Settlement
5 Administrator in administration of the Settlement, including, but not limited to, translating the
6 Class Notice to Spanish, the distribution of the Class Notice to the Settlement Class in English
7 and Spanish, calculating Individual Settlement Shares and Individual Settlement Payments and
8 associated taxes and withholdings, providing declarations, generating Individual Settlement
9 Payment checks and related tax reporting forms, doing administrative work related to unclaimed
10 checks, transmitting payment to Class Counsel for the Court-approved amounts for attorneys’
11 fees and reimbursement of litigation costs and expenses, to Plaintiff for his Service Award, and
12 to the LWDA from the LWDA Payment, providing weekly reports of opt-outs, objections and
13 related information, and any other actions of the Settlement Administrator as set forth in this
14 Agreement, all pursuant to the terms of this Agreement. The Settlement Administration Costs
15 are estimated not to exceed \$10,000. If the actual amount of the Settlement Administration Costs
16 is less than \$10,000, the difference between \$10,000 and the actual Settlement Administration
17 Costs shall be a part of the Net Settlement Amount. If the Settlement Administration Costs
18 exceed \$10,000 then such excess will be paid solely from the Gross Settlement Amount and
19 Defendant will not be responsible for paying any additional funds in order to pay these additional
20 costs.

21 **AA. “Settlement Administrator”** means the Third-Party Administrator chosen by
22 Plaintiff that will be responsible for the administration of the Settlement including, without
23 limitation, translating the Class Notice in Spanish, the distribution of the Individual Settlement
24 Payments to be made by Defendant from the Gross Settlement Amount and related matters under
25 this Agreement.

26 **BB. “Settlement Class”, “Settlement Class Members” or “Class Members”** means
27 all current and former non-exempt, hourly paid employees who worked in California for
28 Defendant at any time during the Class Period.

1 **CC.** “**Workweeks**” means the number of workweeks that a Settlement Class Member
2 was employed by Defendant in a non-exempt, hourly position during the Class Period. If a
3 Settlement Class Member disputes his/her Individual Settlement Share, it shall be termed a
4 “Workweek Dispute.”

5 **2. BACKGROUND**

6 **A.** On March 4, 2020, Plaintiff filed a putative wage-and-hour class action against
7 Defendant and Cannery Seafood of the Pacific, LLC in the Superior Court of California for the
8 County of Orange, Case Number 30-2020-01136520-CU-OE-CXC (the “Cannery Action”).
9 Plaintiff alleged that during the Class Period, with respect to himself and the Settlement Class
10 Members, Defendant and Cannery, *inter alia*, failed to pay the Settlement Class Members’
11 overtime wages and minimum wages for all hours under Defendants’ control, and/or for which
12 they were suffered or permitted to work. He further alleged that Defendant and Cannery failed
13 to provide compliant meal and rest periods and associated premium payments; failed to issue
14 compliant and accurate itemized wage statements; failed to timely pay all wages due and owing
15 at the time of termination or resignation; failed to reimburse business expenses; (g) failed to
16 return deposits and accrued interest on deposits; and engaged in unfair competition due to the
17 alleged Labor Code Violations.

18 **B.** On March 4, 2020, Plaintiff filed with the LWDA and served on Defendant a
19 notice under Labor Code section 2699.3 (the “PAGA Notice”) stating Plaintiff intended to serve
20 as a proxy of the LWDA to recover civil penalties for Aggrieved Employees. The PAGA Notice
21 includes violations of law pled in the Class Action, in addition to a request for penalties for failure
22 to comply with Labor Code sections 204, 246, 432, 1174, 1198.5, and 2810.5.

23 **C.** On May 26, 2020, when 65 days passed without any communication from the
24 LWDA, Plaintiff filed the PAGA Action in the Superior Court of California for the County of
25 Orange, Case Number 30-2020-01145215-CU-OE-CXC (the “Action”) for penalties under
26 Labor Code sections 210, 226.3, 558, 1197.1 and 2699, on behalf of himself and all other
27 Aggrieved Employees in the PAGA Period as a proxy of the LWDA to recover civil penalties
28 for the Labor Code violations set out in the PAGA Notice.

1 **D.** Thereafter, Plaintiff dismissed his class allegations from the Cannery Action
2 without prejudice and filed a First Amended Complaint in this Action effectively consolidating
3 the class allegations against Defendant with the PAGA allegations against Defendant.

4 **E.** Shortly after the filing of this Action, the Parties agreed to exchange informal
5 discovery and attend an early mediation. Prior to mediation, Class Counsel was provided with,
6 among other things: (1) the number of workweeks and Class Members during the Class Period;
7 (2) the number of Class Members separated from employment from March 4, 2017 through
8 mediation for the purpose of calculating waiting time penalties; (3) the number of Class Members
9 working from March 4, 2019 through mediation for the purpose of calculating wage statement
10 violations and PAGA penalties; (4) a sampling of time records and pay records for 49 out of 244
11 Class Members (*i.e.*, 20%); (5) Defendant's 2018 employee handbook; (6) Defendant's 2020
12 employee handbook; (7) Defendant's written meal period exemplar and an estimate of the
13 number of Class Members that signed the waiver; (8) a purported arbitration agreement between
14 Defendant and Plaintiff and an estimate of the number of Class Members that signed one; and
15 (9) a separation agreement between Defendant and Plaintiff.

16 **F.** On January 18, 2021, the Parties participated in a mediation before mediator Marc
17 J. Feder, Esq., a well-regarded mediator experienced in mediating complex civil disputes. With
18 the aid of the mediator's evaluation, the Parties reached the Settlement to resolve the Action.

19 **G.** Class Counsel has conducted significant investigation of the law and facts relating
20 to the claims asserted in the Action and has concluded that that the Settlement set forth herein is
21 fair, reasonable, adequate, and in the best interests of the Settlement Class, taking into account
22 the sharply contested issues involved, the expense and time necessary to litigate the Action
23 through trial and any appeals, the risks and costs of further litigation of the Action, the risk of an
24 adverse outcome, the uncertainties of complex litigation, the information learned through
25 informal discovery regarding Plaintiff's allegations, and the substantial benefits to be received
26 by the Settlement Class Members.

27 **H.** Defendant has concluded that, because of the substantial expense of defending
28 against the Action, the length of time necessary to resolve the issues presented herein, the

1 inconvenience involved, and the concomitant disruption to their business operations, it is in their
2 best interest to accept the terms of this Agreement. Defendant denies each of the allegations and
3 claims asserted against them in the Action. However, Defendant nevertheless desires to settle
4 the Action for the purpose of avoiding the burden, expense and uncertainty of continuing
5 litigation and for the purpose of putting to rest the controversies engendered by the Action.

6 **I.** This Agreement is intended to and does effectuate the full, final, and complete
7 resolution of all Released Claims of Plaintiff and Settlement Class Members, other than those
8 Settlement Class Members who submit a timely and valid Request for Exclusion.

9 **3. JURISDICTION**

10 The Court has jurisdiction over the Parties and the subject matter of the Action. The
11 Action includes claims that, if proven, would authorize the Court to grant relief pursuant to the
12 applicable statutes. After the Court has granted Final Approval of the Settlement and entered
13 judgment, the Court shall retain jurisdiction over the Parties to enforce the terms of the judgment
14 pursuant to California Rule of Court, rule 3.769, subdivision (h).

15 **4. STIPULATION OF CLASS CERTIFICATION**

16 The Parties stipulate to the certification of the Settlement Class under this Agreement for
17 purposes of settlement only.

18 **5. MOTION FOR PRELIMINARY APPROVAL AND DECLARATION OF**
19 **FINANCIAL STRAIN**

20 Plaintiff will move for an order granting preliminary approval of the Settlement,
21 approving and directing the mailing of the proposed Notice of Class Action Settlement (“Class
22 Notice”) attached hereto as Exhibit “A”, conditionally certifying the Settlement Class for
23 settlement purposes only, and approving the deadlines proposed by the Parties for the submission
24 of Requests for Exclusion, Workweek Disputes, and Objections, the papers in support of Final
25 Approval of the Settlement, and any responses to Objections or opposition papers to the Motion
26 for Final Approval. In support of a motion for preliminary approval of the Settlement, Defendant
27 shall concurrently file a declaration relating to the financial strain of Defendant with the Court.

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1 **6. STATEMENT OF NO ADMISSION**

2 Defendant denies any wrongdoing of any sort and further denies any liability to Plaintiff
3 and the Settlement Class with respect to any claims or allegations asserted in the Action. This
4 Agreement shall not be deemed an admission by Defendant of any claims or allegations asserted
5 in the Action. Except as set forth elsewhere herein, in the event that this Agreement is not
6 approved by the Court, or any appellate court, is terminated, or otherwise fails to be enforceable,
7 Plaintiff will not be deemed to have waived, limited or affected in any way any claims, rights or
8 remedies, or defenses in the Action, and Defendant will not be deemed to have waived, limited,
9 or affected in any way any of its objections or defenses in the Action. The Parties shall be
10 restored to their respective positions in the Action prior to the entry of this Settlement.

11 **7. RELEASE OF CLAIMS**

12 **A. Release by All Participating Class Members.**

13 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
14 of Judgment, and payment by Defendant to the Settlement Administrator of the full Gross
15 Settlement Amount and Employer's Taxes necessary to effectuate the Settlement, Plaintiff and
16 all Participating Class Members waive, release, and discharge the Released Parties all claims
17 against the Released Parties asserted in the First Amended Complaint filed in the Action, or any
18 and all claims that may be asserted against the Released Parties based on the factual allegations
19 in the First Amended Complaint filed in the Action, as follows: For the duration of the Class
20 Period, the release includes: (a) all claims for failure to pay overtime wages; (b) all claims for
21 failure to pay minimum wages; (c) all claims for failure to provide compliant meal and rest
22 periods and associated premium pay; (d) all claims for the failure to timely pay wages upon
23 termination; (e) all claims for non-compliant wage statements; (f) all claims for failure to
24 reimburse business expenses; (g) all claims for failure to return deposits and accrued interest on
25 deposits; (h) all claims for failure to maintain accurate records; and (i) all claims asserted through
26 California Business & Professions Code § 17200 *et seq.* arising out of the Labor Code violations
27 referenced in the First Amended Complaint. For Aggrieved Employees, the release includes, for
28 the duration of the PAGA Period, all claims released during the Class Period, as well as all claims

1 for civil penalties under PAGA arising out of Labor Code Sections 210, 226.3, 558, 1197.1, and
2 2699 based on the factual allegations and Labor Code sections alleged to have been violated in
3 the First Amended Complaint, which includes, without limitation, Labor Code sections 200, 201,
4 202, 203, 204, 226, 226.3, 246, 404, 432, 510, 558, 1174, 1194, 1197, 1197.1, 1198.5, 2699,
5 2802, and 2810.5.

6 **B. General Release.**

7 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
8 of Judgment, and payment by Defendant to the Settlement Administrator of the full Gross
9 Settlement Amount and Employers' Taxes necessary to effectuate the Settlement, in addition to
10 the Released Claims, Plaintiff makes the additional following General Release: Plaintiff releases
11 the Released Parties from all claims, demands, rights, liabilities and causes of action of every
12 nature and description whatsoever, known or unknown, asserted or that might have been asserted,
13 whether in tort, contract, or for violation of any state or federal statute, rule, law or regulation
14 arising out of, relating to, or in connection with any act or omission of the Released Parties
15 through the date of full execution of this Agreement in connection with his employment or the
16 termination thereof. With respect to the General Release, Plaintiff stipulates and agrees that,
17 through the Final Approval Date, Plaintiff shall be deemed to have, and by operation of the Final
18 Judgment and payment to the Settlement Administrator shall have, expressly waived and
19 relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section
20 1542 of the California Civil Code, or any other similar provision under federal or state law, which
21 provides:

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

27 **8. SETTLEMENT ADMINISTRATOR**

28 Plaintiff and Defendant, through their respective counsel, have selected ILYM Group,
Inc. to administer the Settlement, which includes but is not limited to translating the Class Notice
to Spanish, distributing and responding to inquiries about the Class Notice and calculating all

amounts to be paid from the Gross Settlement Amount. Charges and expenses of the Settlement Administrator, currently estimated to be \$10,000 will be paid from the Gross Settlement Amount. If the actual Settlement Administrator fees are less than \$10,000 the difference will remain a part of the Net Settlement Amount.

9. NOTICE, WORKWEEK DISPUTE, OBJECTION, AND EXCLUSION PROCESS

A. Notice to the Settlement Class Members.

(1) Within ten (10) calendar days after the Preliminary Approval Date, Defendant's Counsel shall provide the Settlement Administrator with information with respect to each Settlement Class Member, including his or her: (1) name, last known address(es) and last known telephone number(s) currently in Defendant's possession, custody, or control; (2) Social Security Number in Defendant's possession, custody, or control; and (3) the hire dates and termination dates for each Settlement Class Member ("Class List"). The Settlement Administrator shall perform an address search using the United States Postal Service National Change of Address ("NCOA") database and update the addresses contained on the Class List with the newly found addresses, if any. Within seven (7) calendar days of receiving the Class List from Defendant, the Settlement Administrator shall mail the Class Notice in English and Spanish to the Settlement Class Members via first-class regular U.S. Mail using the most current mailing address information available. The Settlement Administrator shall maintain a list with names and all addresses to which notice was given, and digital copies of all the Settlement Administrator's records evidencing the giving of notice to any Settlement Class Member, for at least four (4) years from the Final Approval Date. Such information shall be available to Class Counsel and Defendant's Counsel upon request.

(2) The Class Notice will set forth:

- (a) the Settlement Class Member's estimated payment and the basis for it;
- (b) the information required by California Rule of Court, rule 3.766, subdivision (d);
- (c) the material terms of the Settlement;

- (d) the proposed Settlement Administration Costs;
- (e) the definition of the Settlement Class;
- (f) a statement that the Court has preliminarily approved the Settlement;
- (g) how the Settlement Class Member can obtain additional information, including contact information for Class Counsel;
- (h) information regarding opt-out and objection procedures;
- (i) the date and location of the Final Approval Hearing; and
- (j) that the Settlement Class Member must notify the Settlement Administrator no later than the Response Deadline if the Settlement Class Member disputes the accuracy of the number of Workweeks as set forth on his or her Class Notice (“Workweek Dispute”). If a Settlement Class Member fails to timely dispute the number of Workweeks attributed to him or her in conformity with the instructions in the Class Notice, then he or she shall be deemed to have waived any objection to its accuracy and any claim to any additional settlement payment based on different data.

(3) If a Class Notice from the initial notice mailing is returned as undeliverable, the Settlement Administrator will attempt to obtain a current address for the Settlement Class Member to whom the returned Class Notice had been mailed, within five (5) calendar days of receipt of the returned Class Notice, by: (1) contacting the Settlement Class Member by phone, if possible, and (2) undertaking skip tracing. If the Settlement Administrator is successful in obtaining a new address, it will promptly re-mail the Class Notice to the Settlement Class Member. Further, any Class Notices that are returned to the Settlement Administrator with a forwarding address before the Response Deadline shall be promptly re-mailed to the forwarding address affixed thereto. Class Members who are re-mailed a Class Notice shall have an additional fifteen (15) calendar days to submit a Request for Exclusion, objection or to dispute estimated payments.

1 (4) No later than seven (7) calendar days from the Response Deadline, the
2 Settlement Administrator shall provide counsel for the Parties with a declaration attesting to the
3 completion of the notice process, including the number of attempts to obtain valid mailing
4 addresses for and re-sending of any returned Class Notices, as well as the identities, number of,
5 and copies of all Requests for Exclusion and objections/comments received by the Settlement
6 Administrator.

7 **B. Objections.**

8 Only Settlement Class Members who do not opt out of the Settlement (*i.e.*, Participating
9 Class Members) may object to the Settlement. In order for any Settlement Class Member to
10 object to this Settlement in writing, or any term of it, he or she must do so by mailing a written
11 objection to the Settlement Administrator at the address or phone number provided on the Class
12 Notice no later than the Response Deadline. The Settlement Administrator shall email a copy of
13 the Objection forthwith to Class Counsel and Defendant's counsel. Defendant's Counsel shall
14 lodge a copy of the Objection with the Court at least sixteen (16) court days before the hearing
15 on the Motion for Final Approval, along with any response(s) to the Objections. The Objection
16 should set forth in writing: (1) the objector's name and address, and (2) the reason(s) for the
17 Objection, along with whatever legal authority, if any, the objector asserts in support of the
18 Objection. If a Settlement Class Member objects to the Settlement, the Settlement Class Member
19 will remain a member of the Settlement Class and if the Court approves this Agreement, the
20 Settlement Class Member will be bound by the terms of the Settlement in the same way and to
21 the same extent as a Settlement Class Member who does not object. The date of mailing of the
22 Class Notice to the objecting Settlement Class Member shall be conclusively determined
23 according to the records of the Settlement Administrator. Settlement Class Members need not
24 object in writing to be heard at the Final Approval Hearing; they may object or comment in
25 person at the hearing at their own expense.

26 **C. Requesting Exclusion.**

27 Any Settlement Class Member may request exclusion from (*i.e.*, "opt out" of) the
28 Settlement by mailing a written request to be excluded from the Settlement ("Request for

Exclusion”) to the Settlement Administrator, postmarked on or before the Response Deadline. To be valid, a Request for Exclusion must include the Class Member’s name, social security number and signature and the following statement or something to its effect: “Please exclude me from the Settlement Class in the *Albino Nunez v. 2751 West Coast Acquisition Company, LLC* matter” or a statement of similar meaning. The Settlement Administrator shall immediately provide copies of all Requests for Exclusion to Class Counsel and Defendant’s Counsel and shall report the Requests for Exclusions that it receives, to the Court, in its declaration to be provided in advance of the Final Approval Hearing. Any Settlement Class Member who requests exclusion using this procedure will not be entitled to receive any payment from the Settlement and will not be bound by the Settlement Agreement or have any right to object to, appeal, or comment on the Settlement. Any Settlement Class Member who does not opt out of the Settlement by submitting a timely and valid Request for Exclusion will be bound by all terms of the Settlement, including those pertaining to the Released Claims, as well as any Judgment that may be entered by the Court if Final Approval of the Settlement is granted. A Settlement Class Member cannot submit both a Request for Exclusion and an objection. If a Settlement Class Member submits an objection and a Request for Exclusion, the Request for Exclusion will control and the Objection will be void. Settlement Class Members who submit a valid Request for Exclusion will still be deemed Aggrieved Employees (if applicable), will still receive their pro rata share of the PAGA Payment, and will be bound by any release of claims under PAGA related to the Released Claims.

D. Disputes Regarding Settlement Class Members’ Workweek Data.

Class Members will have an opportunity to dispute the information provided in their Class Notice. To the extent Class Members dispute the number of Workweeks to which they have been credited, Class Members may produce evidence to the Settlement Administrator showing that such information is inaccurate. Absent evidence rebutting Defendant’s records, Defendant’s records will be presumed determinative. However, if a Class Member produces evidence to the contrary, the Settlement Administrator will evaluate the evidence submitted by the Class Member

1 and will make the final decision as to the number of Workweeks that should be applied. All such
2 disputes are to be resolved not later than fourteen (14) calendar days after the Response Deadline.

3 **E. Right of Defendant to Reject Settlement**

4 If more than ten percent (10%) of Settlement Class members timely submit valid requests to
5 be excluded, Defendant will have the right, but not the obligation, to void the settlement and the
6 Parties will have no further obligations under the settlement, including any obligation by
7 Defendant to pay the Settlement Amount, or any amounts that otherwise would have been owed
8 under this Agreement, except that Defendant will pay the Settlement Administrator's reasonable
9 fees and expenses incurred as of the date that Defendant exercises its right to void the settlement.
10 Defendant will notify Class Counsel whether it is exercising this right to void not later than seven
11 (7) calendar days after the Settlement Administrator notifies the Parties of the final number of
12 valid requests to be excluded.

13 **10. INDIVIDUAL SETTLEMENT PAYMENTS TO PARTICIPATING CLASS**

14 **MEMBERS**

15 Individual Settlement Payments will be calculated and distributed to Participating Class
16 Members from the Net Settlement Amount on a *pro rata* basis, based on the Participating Class
17 Members' respective number of Workweeks during the Class Period. PAGA Payments to
18 Aggrieved Employees will be calculated and distributed to Aggrieved Employees from the
19 PAGA Payment on a *pro rata* basis based on Aggrieved Employees' respective number of
20 Workweeks during the PAGA Period. Specific calculations of the Individual Settlement
21 Shares and PAGA Payments to PAGA Aggrieved Employees will be made as follows:

22 **A.** The Settlement Administrator will determine the total number of Workweeks
23 worked by each Settlement Class Member during the Class Period ("Class Member's
24 Workweeks"), as well as the aggregate number of Workweeks worked by all Settlement Class
25 Members during the Class Period ("Class Workweeks"). Additionally, the Settlement
26 Administrator will determine the total number of Workweeks worked by each Aggrieved
27 Employee during the PAGA Period ("Aggrieved Employee's Workweeks"), as well as the
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1 aggregate number of Workweeks worked by all Aggrieved Employees during the PAGA Period
2 (“PAGA Workweeks”).

3 **B.** To determine each Settlement Class Member’s Individual Settlement Share, the
4 Settlement Administrator will use the following formula: Individual Settlement Share =
5 (Settlement Class Member’s Workweeks ÷ Class Workweeks) × Net Settlement Amount.

6 **C.** To determine each Participating Class Member’s Individual Settlement Share,
7 the Settlement Administrator will determine the aggregate number of Workweeks worked by
8 all Participating Class Members during the Class Period (“Participating Class Workweeks”)
9 and use the following formula: Individual Settlement Share = (Participating Class Member’s
10 Workweeks ÷ Participating Class Workweeks) × Net Settlement Amount.

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12 **D.** The net amount of the Individual Settlement Share is to be paid out to
13 Participating Class Members by way of check and is referred to as “Individual Settlement
14 Payment(s).

15 **E.** To determine each Aggrieved Employee’s PAGA Payment, the Settlement
16 Administrator will use the following formula: Aggrieved Employee’s PAGA Payment =
17 (Aggrieved Employee’s Workweeks ÷ PAGA Workweeks) x \$2,500.00 (the portion of the
18 PAGA Payment paid to PAGA Aggrieved Employees). This amount is to be paid out to
19 Aggrieved Employees by way of check.

20 **11. DISTRIBUTION OF PAYMENTS**

21 **A. Distribution of Individual Settlement Payments.**

22 Settlement Class Members who do not submit a timely and valid Request for Exclusion
23 (i.e., Participating Class Members) will receive an Individual Settlement Payment. All PAGA
24 Aggrieved Employees, regardless of whether they submit a valid Request for Exclusion or not,
25 will receive their portion of the PAGA Payment. Individual Settlement Payment checks and
26 checks to PAGA Aggrieved Employees for their portion of the PAGA Payment shall remain
27 valid and negotiable for one hundred and eighty (180) calendar days after the date of their
28 issuance. Within seven (7) calendar days after expiration of the 180-day period, checks for such

1 payments shall be canceled and funds associated with such checks shall be considered unpaid,
2 unclaimed or abandoned cash residue pursuant to Code of Civil Procedure section 384
3 (“Unpaid Residue”). The Unpaid Residue plus accrued interest, if any, as provided in Code of
4 Civil Procedure section 384, shall be transmitted as follows: to Legal Aid at Work, 180
5 Montgomery St., Suite 600, San Francisco, California 94104 for use in Orange County. The
6 Settlement Administrator shall prepare a report regarding the distribution plan pursuant to Code
7 of Civil Procedure section 384 and the report shall be presented to the Court by Class Counsel
8 along with a proposed amended judgment that is consistent with the provisions of Code of Civil
9 Procedure section 384.

10 **B. Funding of Settlement.**

11 Defendant shall make a payment of Two Hundred and Sixty-Two Thousand, Five
12 Hundred Dollars and Zero Cents (\$262,500.00), the Gross Settlement Amount, to the Settlement
13 Administrator. Defendant shall have thirty (30) calendar days from the Court granting final
14 approval of this Settlement Agreement to fund One Hundred and Thirty-One Thousand, Two
15 Hundred and Fifty Dollars and Zero Cents (\$131,250.00) to the Settlement Administrator and
16 one hundred twenty (120) calendar days from the date of final approval to fund the balance (*i.e.*,
17 One Hundred and Thirty-One Thousand, Two Hundred and Fifty Dollars and Zero Cents
18 (\$131,250.00) in addition to Employer’s Taxes). All amounts must be paid to the Settlement
19 Administrator pursuant to Internal Revenue Code section 1.468B-1 for deposit in an interest-
20 bearing qualified settlement account (“QSA”) with an FDIC insured banking institution, for
21 distribution in accordance with this Agreement and the Court’s Orders and subject to the
22 conditions described herein. All interest accrued in the QSA shall be in favor of Participating
23 Class Members. Individual Settlement Payments for Class Members shall be paid exclusively
24 from the QSA, pursuant to the settlement formula set forth herein.

25 Payments from the QSA shall be made for (1) the Service Award to Plaintiff as specified
26 in this Agreement and approved by the Court; (2) the Attorneys’ Fees and Cost Award to be paid
27 to Class Counsel, as specified in this Agreement and approved by the Court; (3) the Settlement
28 Administrator Costs, as specified in this Agreement and approved the Court; and (4) the LWDA

1 Payment, as specified in this Agreement and approved by the Court. The balance any and any
2 accrued interest thereon remaining shall constitute the Net Settlement Amount from which
3 Individual Settlement Payments and PAGA Payments shall be made to Participating Class
4 Members and Aggrieved Employees, less applicable taxes and withholdings. All interest accrued
5 shall be for the benefit of the Class Members and Aggrieved Employees and distributed in a pro-
6 rata basis.

7 **C. Time for Distribution.**

8 No more than fourteen (14) calendar days after payment of the full Gross Settlement
9 Amount by Defendant, as well as Employer Taxes, the Settlement Administrator shall distribute
10 all payments due under the Settlement, including the Individual Settlement Payments to
11 Participating Class Members and PAGA Payments to Aggrieved Employees, as well as the
12 Court-approved payments for the Service Award to Plaintiff, attorneys' fees and litigation costs
13 and expenses to Class Counsel, Administration Costs to the Settlement Administrator, and the
14 LWDA Payment.

15 **11. ATTORNEYS' FEES AND LITIGATION COSTS**

16 Class Counsel shall apply for, and Defendant shall not oppose, an award of attorneys'
17 fees of up to thirty-five percent (35%) of the Gross Settlement Amount, or Ninety-One Thousand,
18 Eight Hundred and Seventy-Five Dollars and Zero Cents (\$91,875.00). Class Counsel shall
19 further apply for, and Defendant shall not oppose, an application or motion by Class Counsel for
20 reimbursement of actual costs associated with Class Counsel's prosecution of this matter as set
21 forth by declaration testimony in an amount up to Twenty-Five Thousand Dollars and Zero Cents
22 (\$25,000.00). Awards of attorneys' fees and costs shall be paid out of the Gross Settlement
23 Amount, for all past and future attorneys' fees and costs necessary to prosecute, settle, and obtain
24 Final Approval of the settlement in the Action. The "future" aspect of the amounts stated herein
25 includes, without limitation, all time and expenses expended by Class Counsel (including any
26 appeals therein). There will be no additional charge of any kind to either the Settlement Class
27 Members or request for additional consideration from Defendant for such work. Should the
28 Court approve attorneys' fees and/or litigation costs and expenses in amounts that are less than

the amounts provided for herein, then the unapproved portion(s) shall be a part of the Net Settlement Amount.

12. SERVICE AWARD TO PLAINTIFF

Plaintiff shall seek, and Defendant shall not oppose, a Service Award in an amount not to exceed Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) for participation in and assistance with the Action. Any Service Award awarded to Plaintiff shall be paid from the Gross Settlement Amount and shall be reported on an IRS Form 1099. If the Court approves Service Awards to Plaintiff in less than the amounts sought herein, then the unapproved portion(s) shall be a part of the Net Settlement Amount.

13. TAXATION AND ALLOCATION

A. Each Individual Settlement Share shall be allocated as follows: 20% as wages (to be reported on an IRS Form W2); and 80% as interest, premiums, and penalties (to be reported on an IRS Form 1099). The PAGA Payments to the Aggrieved Employees shall be characterized as non-wages (to be reported on an IRS Form 1099). The Parties agree that the employee's share of taxes and withholdings with respect to the wage-portion of the Individual Settlement Share will be withheld from the Individual Settlement Share in order to yield the Individual Settlement Payment. The amount of federal income tax withholding will be based upon a flat withholding rate for supplemental wage payments in accordance with Treas. Reg. § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also be made pursuant to applicable state and/or local withholding codes or regulations.

B. Forms W-2 and/or Forms 1099 will be distributed by the Settlement Administrator at times and in the manner required by the Internal Revenue Code of 1986 (the "Code") and consistent with this Agreement. If the Code, the regulations promulgated thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes set forth in this Section may be modified in a manner to bring Defendant into compliance with any such changes.

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1 C. All Employer Taxes shall be paid by Defendant separate, apart and above from
2 the Gross Settlement Amount. Defendant shall remain liable to pay the employer's share of
3 payroll taxes as described above.

4 D. Neither Counsel for Plaintiff nor Defendant intend anything contained in this
5 Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Agreement
6 be relied upon as such within the meaning of United States Treasury Department Circular 230
7 (31 C.F.R. Part 10, as amended) or otherwise.

8 **14. PRIVATE ATTORNEYS' GENERAL ACT ALLOCATION**

9 The Parties agree to allocate Ten Thousand Dollars and Zero Cents (\$10,000.00) of the
10 Gross Settlement Amount toward PAGA penalties. Pursuant to the PAGA, seventy-five percent
11 (75%) of the amount allocated toward PAGA (\$7,500.00) will be paid to the LWDA (*i.e.*, the
12 LWDA Payment), and twenty-five percent (25%) will remain a part of the Net Settlement
13 Amount (\$2,500.00), to be distributed to Aggrieved Employees on a *pro rata* basis, based upon
14 their respective Workweeks in the PAGA Period.

15 **15. COURT APPROVAL**

16 This Agreement is contingent upon an order by the Court granting Final Approval of the
17 Settlement, and that the LWDA does not intervene and object to the Settlement. In the event it
18 becomes impossible to secure approval of the Settlement by the Court and the LWDA, the Parties
19 shall be restored to their respective positions in the Action prior to entry of this Settlement. If
20 this Settlement Agreement is voided, not approved by the Court or approval is reversed on appeal,
21 it shall have no force or effect and no Party shall be bound by its terms except to the extent: (a)
22 the Court reserves any authority to issue any appropriate orders when denying approval; and/or
23 (b) there are any terms and conditions in this Settlement Agreement specifically stated to survive
24 the Settlement Agreement being voided or not approved, and which control in such an event.

25 **16. INCREASE IN SHIFTS**

26 Defendant represents that there are no more than 53,854 shifts worked from the start of
27 the Class Period through January 18, 2021. In the event the actual total number of shifts worked
28 during the Class Period exceeds 59,239 shifts, then Defendant may elect to: (1) shorten the

1 Class Period to end on a date prior to May 2, 2021 which results in less than a 10% increase in
2 the total number of shifts; or (2) increase the Gross Settlement Amount by the Shift Value. The
3 Shift Value shall be calculated by dividing the Gross Settlement Amount (\$262,500.00) by
4 53,854, which amounts to a Shift Value of Four Dollars and Eighty-Seven Cents (\$4.87). Thus,
5 for example, should there be 60,000 shifts worked in the Class Period, then the Gross
6 Settlement Amount shall be increased by Three Thousand, Seven Hundred and Six Dollars and
7 Seven Cents (\$3,706.07). (60,000 shifts – 59,239 Workweeks x \$4.87/shift.)

8 **17. NOTICE OF JUDGMENT**

9 In addition to any duties set out herein, the Settlement Administrator shall provide
10 notice of the Final Judgment entered in the Action by posting the same on its website.

11 **18. MISCELLANEOUS PROVISIONS**

12 **A. Interpretation of the Agreement.**

13 This Agreement constitutes the entire agreement between Plaintiff and Defendant with
14 respect to its subject matter. Except as expressly provided herein, this Agreement has not been
15 executed in reliance upon any other written or oral representations or terms, and no such extrinsic
16 oral or written representations or terms shall modify, vary or contradict its terms. In entering
17 into this Agreement, the Parties agree that this Agreement is to be construed according to its
18 terms and may not be varied or contradicted by extrinsic evidence. The Agreement will be
19 interpreted and enforced under the laws of the State of California, both in its procedural and
20 substantive aspects, without regard to its conflict of law provisions. Any claim arising out of or
21 relating to the Agreement, or the subject matter hereof, will be resolved solely and exclusively
22 in the Superior Court of the State of California for the County of Orange, and Plaintiff and
23 Defendant hereby consent to the personal jurisdiction of the Court in the Action over it solely in
24 connection therewith. The foregoing is only limited to disputes concerning this Agreement and
25 in no way limits or negates the enforceability and effect of any underlying arbitration agreements
26 signed by employees of Defendant obligating them to arbitrate any and all claims on an individual
27 (and not on a class, collective, or representative) basis. Plaintiff, on Plaintiff's own behalf and
28 on behalf of the Settlement Class, and Defendant participated in the negotiation and drafting of

1 this Agreement and had available to them the advice and assistance of independent counsel. As
2 such, neither Plaintiff nor Defendant may claim that any ambiguity in this Agreement should be
3 construed against the other. The Agreement may be modified only by a writing signed by counsel
4 for the Parties and approved by the Court.

5 **B. Further Cooperation.**

6 Plaintiff, Defendant, and their respective attorneys shall proceed diligently to prepare and
7 execute all documents, to seek the necessary approvals from the Court, and to do all things
8 reasonably necessary to consummate the Settlement as expeditiously as possible.

9 **C. Counterparts.**

10 The Agreement may be executed in one or more actual or non-original counterparts, all
11 of which will be considered one and the same instrument and all of which will be considered
12 duplicate originals.

13 **D. Authority.**

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

16 **E. No Third-Party Beneficiaries.**

17 Plaintiff, Participating Class Members, Class Counsel, and Defendant are direct
18 beneficiaries of this Agreement, but there are no third-party beneficiaries.

19 **F. Deadlines Falling on Weekends or Holidays.**

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

22 **G. Severability.**

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

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1 **H. Confidentiality.**

2 The Parties hereby expressly agree that any settlement that occurs between the Parties,
3 including this Settlement Agreement, shall remain confidential until a stipulation for preliminary
4 approval is filed with the Court.

5 **IT IS SO AGREED:**

6
7 Dated: 4/14/2021, 2021

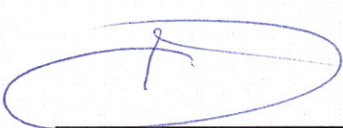
Albino Nunez
Albino Nunez (Apr 14, 2021 21:10 PDT)
ALBINO NUNEZ
Plaintiff and Class Representative

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11 Dated: _____, 2021

2751 WEST COAST ACQUISITION
COMPANY, LLC
Defendant
By:
Its:

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15 **AGREED AS TO FORM:**

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18 Dated: 4/15, 2021


DAVID D. BIBIYAN
Bibiyan Law Group, P.C.
Counsel for Plaintiff Albino Nunez

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23 Dated: _____, 2021

SPENCER WALDRON
Fisher & Phillips, LLP
Counsel for Defendant 2751 West Coast
Acquisition Company, LLC

H. Confidentiality.

The Parties hereby expressly agree that any settlement that occurs between the Parties, including this Settlement Agreement, shall remain confidential until a stipulation for preliminary approval is filed with the Court.

IT IS SO AGREED:

Dated: _____, 2021

ALBINO NUNEZ
Plaintiff and Class Representative

Dated: 4/12/2021, 2021

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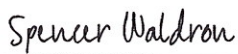
2751 WEST COAST ACQUISITION
COMPANY, LLC
Defendant
By: Jeffrey Best
Its: Manager

AGREED AS TO FORM:

Dated: _____, 2021

DAVID D. BIBIYAN
Bibiy Law Group, P.C.
Counsel for Plaintiff Albino Nunez

Dated: 4/12/2021, 2021

DocuSigned by:

SPENCER WALDRON
Fisher & Phillips, LLP
Counsel for Defendant 2751 West Coast
Acquisition Company, LLC

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