

SETTLEMENT AGREEMENT AND RELEASE OF PAGA CLAIM

This Settlement Agreement and Release of PAGA Claim ("Settlement Agreement") is made by and between Plaintiff Mark Morrison, on behalf of himself and as a representative for the California Labor Workforce Development Agency ("LWDA"), and Defendant Fair Restoration, Inc. ("Fair Restoration") who may collectively be referred to herein as the "Parties," and each may be individually referred to as a "Party."

A. Definitions

The following terms, when used in this settlement agreement, shall have the following meanings:

1. "Action" or "Lawsuit" means and refers to *Mark Morrison v. Fair Restoration, Inc., et al.*, Orange County Superior Court Case Number 30-2020-01144774-CU-OE-CXC.
2. "Agreement," "Stipulation," or "Settlement Agreement," shall mean this Settlement Agreement and Release of PAGA Claim, including any attached Exhibits.
3. "Attorneys' Fees and Costs" means the amount of \$26,667.00 (one-third of the Settlement Amount) which shall be allocated to Plaintiff's Counsel for attorneys' fees, and actual costs in the amount of \$3,592.53, all of which shall be paid out of the Settlement Amount. This Settlement is not conditioned on approval of the Attorneys' Fees and Costs; in other words, this Settlement shall remain in full force and effect if the Court awards less than the requested Attorneys' Fees and Costs. If less than \$26,667.00 is awarded for Attorneys' Fees and Costs, the difference shall return to the Net Settlement Amount.
4. "Court" (or "Judge") means the Orange County Superior Court, Civil Complex, the Honorable Glenda Sanders, presiding.
5. "Defendant" means Fair Restoration, Inc.
6. "Default Award" means the amount of \$80,000.00, minus any portion of the Gross Settlement Amount already paid by Defendant, which Plaintiff shall be entitled to recover against Defendant in accordance with Section F(3)(b) *infra*, in the event Defendant fails to make the Installment Payments as required under the terms of this Settlement.
7. "Defendant's Counsel" means Everett Dorey LLP.
8. "Effective Date" means the date that the Court enters the Final Judgment and Order approving the PAGA settlement.
9. "Eligible Pay Period" means any pay period worked by a PAGA Employee during the PAGA Release Period.
10. "Final Approval Date" means the date that the Court enters the Final Order.

11. “Final Judgment and Order” means the Court’s order approving this Private Attorneys General Act of 2004 (“PAGA”) Settlement. The Final Judgment and Order will be submitted, substantially in the form attached hereto as **Exhibit 1**, in connection with the Stipulation for Approval of this Settlement.
12. “Gross Settlement Amount” means the maximum settlement amount that Defendant will pay in connection with this Settlement, which is \$80,000.00. This is a non-reversionary Settlement, where no portion of the Gross Settlement Amount will return to Defendant unless the Settlement Agreement is not approved by the Court.
13. “Installment Payment” or “Installment Payments” means the twenty-five (25) separate payments that Defendant shall issue to the Settlement Administrator according the timeline and schedule set forth in Section F(3) *infra*, and which collectively equal the Gross Settlement Amount.
14. “LWDA Settlement Proceeds” means the seventy-five percent (75%) of the Net Settlement Amount that shall be paid to the Labor Workforce and Development Agency (“LWDA”).
15. “Net Settlement Amount” is the amount that remains after deducting Plaintiff’s Counsel’s Attorneys’ Fees and Costs, and the Settlement Administrator’s fees and costs, and the Service Award, including all applicable taxes, deductions, and withholdings, which shall be allocated as civil penalties in accordance with California Labor Code section 2699(i). Seventy-five percent (75%) of the Net Settlement Amount shall constitute LWDA Settlement Proceeds, and the remaining twenty-five percent (25%) of the Net Settlement Amount will be paid out to the PAGA Employees (“PAGA Employees Settlement Proceeds Fund”) in accordance with Section C(2)(d) *infra*.
16. “Notice” means the notice that will be sent to the PAGA Employees with payment after the Final Order is entered by the Court. The Notice will be sent to PAGA Employees substantially in the form attached hereto as **Exhibit 2**. The Notice will be sent to the PAGA Employees in English and Spanish.
17. “Operative Complaint” means the Complaint filed by Plaintiff which only asserts a PAGA cause of action against Defendant.
18. “PAGA Employees” means all current and former non-exempt employees employed by Defendant in California at any time between April 21, 2019 through the Final Approval Date.
19. “PAGA Employees Settlement Proceeds Fund” means the twenty-five percent (25%) of the Net Settlement Amount that shall be paid to the PAGA Employees.
20. “PAGA Representative Claims” means Plaintiff’s PAGA claims under California Labor Code § 2698 *et. seq.* based on alleged predicate violations of the California Labor Code and all applicable sections of the applicable Industrial Welfare Commission Wage Order alleged in the Operative Complaint.
21. “PAGA Settlement” or “Settlement” means the settlement of the Action as memorialized in this Agreement.

22. "PAGA Release Period" means April 21, 2019 through the Final Approval Date.
23. "Parties" means Plaintiff and Defendant collectively.
24. "Plaintiff" means Mark Morrison.
25. "Plaintiff's Counsel" means Scott E. Wheeler of the Law Office of Scott E. Wheeler and Aubry Wand of The Wand Law Firm, P.C.
26. "Released Parties" means Defendant Fair Restoration, Inc. and its related entities, parents, subsidiaries, predecessors, successors, assigns, owners, officers, directors, employees and agents only.
27. "Settlement" means the collective settlement of the PAGA Representative Claims as memorialized in this Agreement.
28. "Settlement Administrator" means Simpluris, Inc. The Settlement Administrator will agree to enter into a confidentiality agreement by which it agrees to maintain as confidential the information so designated by Defendant and not to disseminate any designated information without the written approval of Defendant. The Settlement Administrator will be responsible for, *inter alia*, sending Notice and payments to PAGA Employees and the LWDA and distributing other payments as set forth in this Agreement.
29. "Settlement Administration Costs" means the amount of \$3,000.00 which shall be paid to the Settlement Administrator for performing the duties provided under the Settlement. If less than \$3,000.00 is approved for Settlement Administration costs to Simpluris, Inc., the difference shall return to the Net Settlement Amount.
30. "Service Award" means the amount of \$5,000.00 which shall be allocated to Plaintiff Mark Morrison, subject to Court approval, in recognition for his efforts in prosecuting the case, obtaining the benefit of the Settlement, and as consideration for Plaintiff's released claims, which include a broad general release, against Defendant. The Service Award shall be paid from the Settlement Amount. This Settlement is not conditioned on approval of the Service Award; in other words, this Settlement shall remain in full force and effect if the Court awards less than the requested \$5,000.00. If less than \$5,000.00 is awarded to Plaintiff, the difference shall return to the Net Settlement Amount.
31. "Stipulated Amended PAGA Judgment" means the Judgement in the amount of \$80,000.00, minus any portion of the Gross Settlement Amount already paid by Defendant, that Defendant agrees that Plaintiff may immediately file without the necessity of filing a motion, and which Defendant shall not oppose or contest, in the event that Defendant fails to make the Installment Payments as required under the Settlement. Plaintiff's counsel shall also be entitled to recover their reasonable attorneys' fees and costs incurred in having to file and enforce the Stipulated Amended PAGA Judgment. The Stipulated Amended PAGA Judgment is attached hereto as **Exhibit 3**. The Stipulated PAGA Judgment shall be apportioned to PAGA Employees and the LWDA consistent with California Labor Code section 2699(i) and any attorneys' fees and costs awarded will be paid to Plaintiff's counsel.

B. General

1. On June 24, 2020, Plaintiff filed the Action in the Orange County Superior Court, entitled *Mark Morrison v. Fair Restoration, Inc.*, Orange County Superior Court Case Number 30-2020-01144774-CU-OE-CXC, Plaintiff filed a Complaint which only asserts a PAGA cause of action for civil penalties and an award of reasonable Attorneys' Fees and Costs, pursuant to PAGA which is the Operative Complaint.

2. Defendant denies all of the allegations and claims asserted in the Lawsuit and deny that they have committed any misconduct, statutory or regulatory violation, wrongdoing, or any other actionable conduct of any kind.

3. The Parties have conducted a thorough investigation into the facts of the Action. This included conducting extensive informal discovery, which included the exchange of information and documents relating to the PAGA Representative Claims and Plaintiff's individual claims, attending a full day of mediation and subsequent negotiations. Based on the foregoing data and on their own independent investigation and evaluation, Plaintiff's Counsel is of the opinion that the settlement with Defendant for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the LWDA and PAGA Employees in light of all known facts and circumstances, including the risk of significant delay, uncertainty associated with litigation, various defenses asserted by Defendant, and numerous potential appellate issues. Defendant and counsel for Defendant also agree that the settlement is fair and reasonable.

4. The Parties understand, acknowledge, and agree that this Agreement constitutes a compromise of Plaintiff's PAGA Representative Claims and that it is the desire and intention of the Parties to affect a final and complete resolution of the Action, including the PAGA Representative Claims, against Defendant. The Parties further acknowledge that this Agreement is a compromise of disputed claims and that nothing in this Agreement shall be construed as an admission of liability by Defendant.

5. Under California Law, the State may assess and collect civil penalties from employers for violations of certain provisions of the California Labor Code. (*See Cal. Lab. Code §§ 2698 et seq.*) Under PAGA, however, if an "aggrieved employee" "give[s] written notice by certified mail to the [State] and the employer of the specific provision of the [Labor Code] alleged to have been violated," and the State thereafter decides not to investigate, as was the case here, or does investigate and determines that a citation against the employer should not issue, the employee may, "as an alternative" to enforcement by the State, act as a proxy or agent of the state's labor law enforcement agencies and bring a civil action under PAGA to recover civil penalties "on behalf of himself or herself and other current or former employees." *Id.* "[C]ivil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the state and 25 percent to the aggrieved employees." *Id.*

6. California Labor Code § 2699(1)(2) provides that the trial court shall "review and approve any settlement of any civil action filed pursuant to this part." Plaintiff will submit this Settlement Agreement to the LWDA concurrently with the filing of Plaintiff's Motion for Approval of the PAGA Settlement.

7. In consideration of the promises and agreements contained herein, the Parties agree and covenant as follows:

C. Terms of Settlement

1. Subject to the Court's approval of the Settlement pursuant to California Labor Code § 2699(l)(2), which counsel and the Parties agree to recommend in good faith to the Court, the Parties agree to the following binding settlement of the Action.

2. The Gross Settlement Amount will be distributed in the following manner:

- a. **Settlement Administration Costs:** The costs associated with settlement administration (e.g. preparing and mailing payments to LWDA and PAGA Employees, tax documentation, etc.) shall be paid from the Settlement Amount and shall not exceed \$3,000.00. The Parties agree to use Simpluris, Inc. as the Settlement Administrator. The Parties and their counsel represent that they do not have any involvement in the governance or work of the Settlement Administrator.
- b. **Attorneys' Fees and Costs:** The Parties agree that, subject to the Court's review and approval, Plaintiff's Counsel will be paid one-third of the Gross Settlement Amount as attorneys' fees (\$26,667.00), plus actual litigation costs not to exceed \$3,592.53 incurred in connection with work performed to litigate the Action and obtain Court approval of the Settlement, which will be paid from the Settlement Amount.
- c. **Service Award to Plaintiff.** The Parties agree that, subject to the Court's review and approval, Plaintiff will be paid a service award of \$5,000.00, which will be paid from the Gross Settlement Amount.
- d. **Net Settlement Amount:** After deducting Settlement Administration Costs, Attorneys' Fees and Costs, and the Service Award from the Gross Settlement Amount, the remainder forms the Net Settlement Amount (which totals approximately \$41,740.47 if the amounts set forth above are approved by the Court). The Net Settlement Amount shall be allocated seventy-five percent (75%) to the California Labor & Workforce Development Agency ("LWDA Settlement Proceeds"), which is estimated to total approximately \$31,305.35. The remaining twenty-five percent (25%) of the Net Settlement Amount, which is estimated to total approximately \$10,435.12 shall be paid to the PAGA Employees on a *pro rata* basis ("PAGA Employees Settlement Proceeds Fund"), which shall be determined based on the number of Eligible Pay Periods that he or she worked for Defendant during the PAGA Release Period and shall be calculated as follows:

The PAGA Employees Settlement Proceeds Fund will be divided by the total number of Eligible Pay Periods worked by all PAGA Employees during the PAGA Release Period, and the resulting figure will be referred to as the "Multiplier." Each PAGA Employee's *pro rata* share of the PAGA Employees Settlement Proceeds Fund will be determined by multiplying the Eligible Pay Periods that the PAGA Employee worked by the Multiplier.

That amount shall be referred to as the PAGA Employee's "Individual Share." There are approximately 107 Eligible Pay Period worked by the PAGA Employees during the PAGA Release Period.

- e. **Taxes and Reporting:** The PAGA Employees' Individual Share will be treated as non-wage income and reported by the Settlement Administrator on IRS Form 1099 (if applicable) to the respective PAGA Employee and applicable governmental authorities.

D. Release as to the Aggrieved Employees And PAGA Representative Claims

1. Upon the Effective Date, Plaintiff, as the representative for the State of California, and each PAGA Employee, releases the Released Parties, from any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, action or causes of action contingent or accrued for, during the time period of April 21, 2019 through the date that the Court grants approval of the settlement, arising out of the PAGA claim asserted in the Operative Complaint based upon the following: 1) failure to provide meal periods; 2) failure to provide rest periods, 3) failure to pay overtime wages, 4) failure to timely pay wages, 5) failure to pay all wages due to discharged and quitting employees, 6) failure to furnish accurate itemized wage statements, 7) failure to maintain records, 8) failure to reimburse for necessary business expenses and 9) failure to provide sick leave.

2. In accordance with *Arias v. Superior Court* (2009) 46 Cal.4th 969, 985, a judgment in "a representative action brought by an aggrieved employee under the Labor Code Private Attorneys General Act of 2004 is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding," which the Final Order shall so reflect. The Final Order shall not bind nor release the PAGA Employees of any individual wage claims (or other individual claims). However, in accordance with *Arias*, supra, the Final Order shall be binding on the PAGA Employees as to the Released Claims, including the PAGA Representative Claims. A statement to this effect shall be included in the Notice sent to the PAGA Employees.

E. Release by Named Plaintiff Only

1. Release and Covenant Not to Sue

- a. In consideration for the terms and provisions of the Agreement, Plaintiff, for himself, and for his heirs, assigns, partners, executors, conservators, administrators, agents, employees, attorneys, past and present (collectively, "Plaintiff Affiliates"), hereby fully and without limitation releases, covenants not to sue, and forever discharges Defendant, its subsidiaries, divisions, affiliated companies, affiliated partnerships, trustees, directors, officers, supervisors, shareholders, partners, agents, designees, employees, legal and equitable owners, members, associates, representatives, consultants, insurers, reinsurers, attorneys, heirs, assigns, executors, beneficiaries, and administrators, predecessors and successors, past and present, (collectively "Defendant's Releasees"), both individually and collectively, from any and all rights, claims, contracts, agreements, debts, demands, liabilities, actions, and causes of action, whether in law or in equity, suits, damages, liabilities, losses, attorneys' fees, costs, and expenses, of whatever nature whatsoever, known or unknown, fixed or contingent, suspected or unsuspected ("Claims"), that Plaintiff

or the Plaintiff Affiliates now have, or may ever have, against Defendant, or any of Defendant's Releasees, for any matter, occurring on or before the Effective Date of this Agreement. Plaintiff represents that he is unaware of any liens pending against him at this time.

- b. Without limiting the generality of the foregoing, Plaintiff acknowledges that the foregoing general release applies to any and all claims he or the Plaintiff Affiliates now have, or may ever have, against Defendant, or any of Defendant's Releasees, that arise out of or are in any way related to any alleged violation of any federal or state law that regulates any aspect of the employer-employee relationship, including any claims for any alleged violations of any federal or state employment discrimination, harassment, and retaliation laws, including the California Fair Employment and Housing Act (which prohibits discrimination, harassment, and retaliation based upon one's actual or perceived ancestry, race, religion, sex, sexual orientation, gender, gender identity, gender expression, age, color, national origin, disability, medical condition, military or veteran status and marital status), the California Family Rights Act, Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, and the Family Medical Leave Act; as well as the Equal Pay Act; the Fair Labor Standards Act, the Employee Retirement Income Security Act of 1974, the California Business and Professions Code, the California Labor Code, and the California wage orders; as well as any claims for any alleged violation of public policy or retaliation; any claims for wages, hours, unpaid overtime, failure to pay minimum wage, failure to pay for downtime or waiting time, failure to provide meal or rest breaks or pay one hour's wages in lieu thereof, failure to indemnify for all work related expenditures and losses, and all related statutory claims, including but not limited to, alleged violation of California Labor Code Sections 201-204, 208, 210, 215-216, 218.5, 225.5, 226, 226.3, 226.6, 226.7, 450, 500, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, 2926, 2927, California Business and Professions Code Sections 17000 and 17200 et. seq., the relevant Wage Orders issued by the Industrial Welfare Commission, Civil Code sections 52 and 52.1, or any other claim for any statutory penalty that could have been asserted under California law that arise from the allegations as described, any claims concerning or related to meal and/or rest breaks, inaccurate wage statements, any other employment-related claims under any federal, state, or local law, statute, regulation, or ordinance; and any and all common-law causes of action, including breach of contract, breach of implied contract, breach of the covenant of good faith and fair dealing, fraud, misrepresentation, unfair competition, unfair business practices, false advertising, negligence, defamation, infliction of emotional distress, invasion of privacy, and wrongful termination, which arise from any and all events occurring on or before the Effective Date of this Agreement, including without limitation, all claims arising from action or inaction by Defendant, or any of Defendant's Releasees.
- c. **Promise Not to Prosecute:** Plaintiff agrees that neither he nor any of his agents or representatives shall, at any time hereafter, commence, maintain or prosecute any action, suit, proceeding, investigation, complaint, claim, grievance, or charge with any court, arbitrator, or any other body or person, whether Federal, State, contractual or otherwise, on her behalf, except in response to governmental agency or court inquiries or as compelled by legal process, against Defendant or any Defendant's Releasees, based in whole or in

part upon, or arising out of or in any way connected with, any of the Released Claims. Plaintiff further agrees that neither he nor any of his agents or representatives, including any of his attorneys, shall, at any time hereafter, aid, represent, or otherwise assist others in prosecuting such action, suit, proceeding, investigation, complaint, claim, grievance, or charge on his behalf, except for the PAGA claim, and except in response to governmental agency or court inquiries or as compelled by legal process, against Defendant or the Defendant's Releasees, based in whole or in part upon, or arising out of or in any way connected with, any of the Released Claims, including, but not limited to, serving as a class representative or participating in a class action against Defendant under the California Labor Code. Plaintiff further agrees to indemnify and hold Defendant and Defendant's Releasees harmless from and against any and all claims, demands, causes of action, damages or liability of any kind, including the cost of defense and reasonable attorneys' fees arising out of or in connection with, any action, suit, proceeding, investigation, complaint, claim, grievance, or charge commenced, maintained, or prosecuted by him contrary to the terms of this Agreement.

- d. Notwithstanding the generality of the foregoing, Plaintiff also understands and agrees that he is not waiving any right or claim that cannot be waived as a matter of law, such as the right to file a charge with or participate in an investigation by a governmental administrative agency; provided, however, that Plaintiff hereby waives any right to receive any individual monetary award resulting from such a charge or investigation, including Worker's Compensation benefits and unemployment benefits.

2. In addition to the Release of the PAGA Representative Claims, Plaintiff Mark Morrison agrees to release all known and unknown claims, including a release under Civil Code Section 1542. To effect a full and complete general release as described above, Plaintiff expressly waives and relinquishes all rights and benefits of section 1542 of the Civil Code of the State of California and does so understanding and acknowledging the significance and consequence of specifically waiving section 1542. Section 1542 of the Civil Code of the State of California states as follows:

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

Thus, notwithstanding the provisions of section 1542, and to implement a full and complete release and discharge of the Released Parties, Plaintiff expressly acknowledges this release is intended to include in its effect, without limitation, all claims Plaintiff does not know or suspect to exist in Plaintiff's favor at the time of signing this Agreement, and Plaintiff expressly acknowledges that this Agreement contemplates the extinguishment of any such claims. Plaintiff warrants Plaintiff has read this Agreement, including this waiver of California Civil Code section 1542, and that Plaintiff has consulted with or had the opportunity to consult with counsel of Plaintiff's choosing about this Agreement and specifically about the waiver of section 1542, and Plaintiff warrants that Plaintiff understands this Agreement and the section 1542 waiver, and Plaintiff freely and knowingly enters into this Agreement. Plaintiff further acknowledges that Plaintiff later may discover facts different from or in addition to those Plaintiff now knows or believes to be true regarding the matters released or described in this Agreement, and even so Plaintiff agrees that the release contained in this

Agreement shall remain effective in all respects notwithstanding any later discovery of any different or additional facts. Plaintiff expressly assumes any and all risk of any mistake in connection with the true facts involved in the matters, disputes or controversies released or described in this Agreement or with regard to any facts now unknown to Plaintiff relating thereto.

The Parties further agree that the Court shall retain jurisdiction to enforce the Settlement Agreement pursuant to Code of Civil Procedure §664.2.

Plaintiff's general release shall become effective on the Effective Date. The general release set forth in Paragraph E of this Agreement applies only to Plaintiff Mark Morrison and it does not apply to any PAGA Employees.

F. Settlement Approval and Implementation Procedures

1. Pursuant to California Labor Code § 2699(l)(2), or otherwise for the purposes of obtaining court approval of the Settlement, Plaintiff will file a Motion for Approval of the PAGA settlement, a separate declaration advocating that the Settlement is fair, adequate, and reasonable, and any other documents required to be submitted in support of approval of the Settlement. Defendant shall not oppose the filing of Plaintiff's Motion for Approval of the PAGA settlement and any related documents.

2. No later than thirty (30) calendar days after the Final Approval Date, Defendant will send to the Settlement Administrator a list of all PAGA Employees including each PAGA Employee's: (1) full name; (2) last known address; (3) social security number; and (4) the numbers of Eligible Pay Periods he or she worked as a non-exempt employee of Defendant in the State of California during the PAGA Release Period (the "PAGA Employees List"). This information shall be treated as and remain confidential and shall be used solely to manage the notice and payment process described herein, and it shall not be disclosed to anyone other than the Settlement Administrator, except to applicable taxing authorities, or pursuant to express written authorization of Defendant, the individual in question, or by order of the Court.

3. The Settlement of \$80,000 shall be funded Defendant over the course of twenty-five (25) separate installment payments. The first payment of \$10,000 towards the Gross Settlement Amount is due on or before June 1, 2021, with the remaining balance of the Gross Settlement Amount to be paid in equal installments of \$2,916.67 over twenty-four (24) months starting on July 1, 2021. Defendant shall transmit each of these installment payments by wire transfer to the Settlement Administrator at least three (3) calendar days before the Installment Payment due date. The Settlement Administrator will make distributions within fourteen (14) calendar days of receipt of the final installment as provided at paragraph 5 below.

a. If an Installment Payment is not received within three (3) calendar days of the first of the month or there are any other issues with the Installment Payment (e.g., the wire transfer is not made), the Settlement Administrator shall immediately provide written notice to Counsel for Plaintiff and Defendant. Defendant shall have five (5) calendar days from the date written notice is sent to cure any defect in payment. Should Defendant fail to cure any defect in payment within five (5) calendar days of written notice of the defect, Defendant shall be considered in default ("Default") and in express breach of the terms of this Settlement Agreement. In the event of default, Plaintiff shall be entitled to a judgment in the amount of \$80,000.00, less any amounts already paid by Defendant pursuant to the Settlement Agreement ("Default Award").

b. In the event of a Default, Defendant agrees that Plaintiff may promptly file the Stipulated PAGA Judgment for the Default Award without the necessity of filing a motion, and which Defendant shall not oppose or contest, in the event that Defendant fails to make the Installment Payments as required under the Settlement. Defendant further recognize and agree that they are both jointly and severally responsible for satisfaction of the Default Award. Plaintiff's counsel shall also be entitled to recover their reasonable attorneys' fees and costs incurred in having to file and enforce the Stipulated PAGA Judgment.

4. The Settlement Administrator will perform all settlement administration duties, including (i) performing a National Change of Address ("NCOA") search to update the addresses of the PAGA Employees, (ii) issuing the Notice and payments to the PAGA Employees, (iii) issuing any required IRS forms, and (iv) issuing payment to the LWDA and Plaintiff's Counsel subject to two (2) installment payments based upon the terms of the Settlement.

5. The Settlement Administrator shall make distribution upon receipt of all of the installment payments as follows: 1) issue Notice and payment of the 25% payments to the PAGA Employees along with required IRS forms; 2) issue 75% payment to the LWDA for PAGA penalties; 3) issue Court approved Attorney's Fees and Costs to the Law Office of Scott E. Wheeler and the Wand Law Firm, P.C.; 4) issue the Court approved service award to Plaintiff, Mark Morrison; and 5) issue payment of the capped settlement administrator costs to Simpluris in the amount of \$3,000.00, no later than fourteen (14) calendar days after it receives the second installment.

6. PAGA Employees shall have one hundred and twenty (120) calendar days after the mailing to cash their settlement checks. If any PAGA Employee's check is not cashed within that period, the check will be voided and a stop-payment will be issued. Any funds in the Settlement Administrator's account as a result of a failure to timely cash a settlement check shall be paid Legal Aid at Work, a nonprofit organization which, among other things, operates Workers' Rights Clinics at sites across California. The Parties represent that they do not have an interest in the governance or work of Legal Aid at Work. Should a conflict of interest or other issue lead to the disapproval of Legal Aid at Work as a *cy pres* recipient, the Parties will meet and confer as to a suitable replacement *cy pres* recipient. Neither Defendant, Defendant's Counsel, Plaintiff's Counsel nor Plaintiff will have any liability for lost or stolen settlement checks, forged signatures on settlement checks, unauthorized negotiation of settlement checks or failure to timely cash a settlement check within the 120 day period.

7. Upon the Effective Date, the Parties will: (i) be bound by the terms and conditions of this Agreement, and the releases set forth therein; and (ii) be deemed to have waived all objections and oppositions to the fairness, reasonableness, and adequacy of the settlement and the Court's Final Judgment and Order.

G. Miscellaneous Provisions.

1. **Additional Aggrieved Employees:** As of the date that Defendant has executed this Agreement, there are approximately 22 PAGA Employees included in the Settlement. Defendant shall provide Plaintiff with a current list of the number of PAGA Employees at the time that Plaintiff files a motion or request for approval of this Settlement. If more than 22 Aggrieved Employees are identified up

to the date that Plaintiff files a Motion for Approval, the Gross Settlement Amount will be increased on a pro rata basis according to the number of additional compensable workweeks/pay periods worked by all Aggrieved Employees in excess of 31 (a 45% increase) with respect to the total number of workweeks/pay periods worked by all of the Aggrieved Employees.

2. **Voiding the Agreement:** The Settlement Agreement shall be voidable and unenforceable as to all Parties herein at the option of either Party if (a) the Court should for any reason fail to approve this Settlement in the form agreed to by the Parties, or (b) the Court should for any reason fail to enter a judgment, or (c) the approval of the Settlement and judgment is reversed, modified or declared or rendered void. In that event, then neither the Settlement nor any of the related negotiations or proceedings shall be of any force or effect, and all parties to the Settlement shall stand in the same position, without prejudice, as if the Settlement had been neither entered into nor filed with the Court. Any fees already incurred by the Settlement Administrator shall be paid by Defendant, with the exception that Plaintiff will pay for any expenses incurred by the Settlement Administrator as a result of having to create a qualified settlement account to receive the Installment Payments from Defendant. Notwithstanding the foregoing, the Parties shall attempt in good faith to cure any perceived defects in the Settlement to facilitate approval.

3. **Waiver:** The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

4. **Parties' Authority:** The signatories hereto represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.

5. **Mutual Full Cooperation:** The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement Agreement, Plaintiff's Counsel shall, with the assistance and cooperation of Defendant and Defendant's counsel, take all necessary steps to secure the Court's approval of the settlement, and the Final Order.

6. **No Prior Assignments:** The Parties hereto represent, covenant, and warrant that they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights released and discharged by this Settlement Agreement.

7. **No Admission:** Defendant denies any and all liability to Plaintiff and/or the PAGA Employees in this Lawsuit, as to any and all causes of action that were asserted or that might have been asserted in this Action. Nonetheless, Defendant desires to settle and compromise the matters at issue in the Operative Complaint to avoid further substantial expense and the inconvenience and distraction of protracted and burdensome litigation. Defendant also has taken into account the uncertainty and risks inherent in litigation and, without conceding any infirmity in the defenses that it has asserted or could assert against Plaintiff, have determined that it is desirable and beneficial that Plaintiff's claims be settled in the manner and upon the terms and conditions set forth in this Agreement.

8. **Confidentiality.** The events arising under and related to all claims in the Action and the terms of the Settlement Agreement are to remain confidential by the Parties and their counsel except Plaintiff is permitted to provide notice as to the terms of the Settlement Agreement to the LWDA and the Court for purposes for obtaining approval of this PAGA settlement. The Parties and their counsel and agree to keep confidential and not disclose to any third party the terms and conditions of this Settlement Agreement, the existence of this Settlement Agreement, or any of the negotiations and discussions that preceded its making. The Parties, and their counsel, agree that neither they nor their attorneys nor representatives shall reveal to anyone, other than for the purposes of satisfying liens related to the Settlement Agreement, for the purposes of a motion or action to enforce this Settlement Agreement, or as may be mutually agreed to in writing, any of the terms of this Settlement Agreement or any of the amounts, numbers, or terms and conditions of any sums payable hereunder, except as required by law or court order. The confidentiality obligations set forth above extend to text messages, e-mails, and all other forms of digital, internet, electronic or computer communication. No party shall make or post any comment, sound, photographic or visual depiction referencing the fact of this Settlement Agreement, or its terms, on any social media site, including, but not limited to, Facebook, Twitter, Instagram, Tumblr, Snapchat, Yelp, My Space or any other social media site. The Parties and their counsel acknowledge that any breach of the confidentiality obligations constitute a material breach of this Settlement Agreement. Plaintiffs' counsel may refer to this case in their CV's or other similar documents that are filed with a court or in another legal forum relating to counsel's prior experience and qualifications.

9. **Binding Settlement:** Nothing contained herein, nor the consummation of this Settlement Agreement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this Settlement Agreement with the intention of avoiding further disputes and litigation with the attendant inconvenience and expenses. This Settlement Agreement is a settlement document and shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be inadmissible in evidence in any proceeding, except an action or proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement.

10. **Enforcement Actions:** Except as otherwise provided in this Settlement Agreement, in the event that one or more of the Parties to this Settlement Agreement institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement Agreement or to declare rights and/or obligations under this Settlement Agreement, the successful Party or Parties shall be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs incurred in connection with any enforcement actions.

11. **Notices:** All notices shall be provided by United States mail and electronic mail. Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third calendar day after mailing by United States mail and electronic mail, addressed as follows:

To Plaintiff:

Scott E. Wheeler
Law Office of Scott E. Wheeler
250 West First Street, Suite 216
Claremont, California 91711
Tel: (909) 621-4988
Fax: (909) 621-4622
Email: sew@scottwheelerlawoffice.com

Aubry Wand
The Wand Law Firm, P.C.
400 Corporate Pointe, Suite 300
Culver City, California 90230
Tel: (310) 590-4503
Fax: (310) 590-4596
Email: awand@wandlawfirm.com

To Defendant:

Jason Gless, Esq.
Cecilia J. Hong, Esq.
Everett Dorey LLP
18300 Von Karman Avenue, Suite 900
Irvine, California 92612
Tel: (949) 774-2004
Fax: (949) 923-0814
Email: jgless@everettdorey.com
chong@everettdorey.com

12. **Construction:** The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his or its counsel participated in the drafting of this Settlement Agreement.

13. **Captions and Interpretations:** Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital.

14. **Modification:** This Settlement Agreement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by all of the Parties hereto.

15. **Choice of Law:** This Settlement Agreement shall be governed by and construed, enforced and administered in accordance with the laws of the State of California, without regard to its conflicts-of-law rules.

16. **Integration Clause:** This Settlement Agreement contains the entire agreement between the Parties relating to the settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

17. **Binding On Assigns:** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

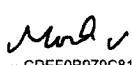
18. **Counterparts:** This Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully-signed Settlement Agreement, which shall be binding upon and effective as to all Parties. Electronic delivery shall be deemed an original.

19. **Entire Agreement:** This Agreement sets forth the entire agreement between the Parties hereto and fully supersedes any and all prior and/or supplemental understandings, whether written or oral, between the Parties concerning the subject matter of this Agreement. Any modification to this Agreement must be in writing and signed by Plaintiff and an authorized officer of Defendant, Fair Restoration.

IN WITNESS WHEREOF, the parties knowingly and voluntarily executed this Settlement Agreement and Release as of the date set forth below.

Dated: 5/18/2021
_____, 2021

PLAINTIFF MARK MORRISON

DocuSigned by:

CDEF0B070C8145F...

Mark Morrison

Dated: _____, 2021

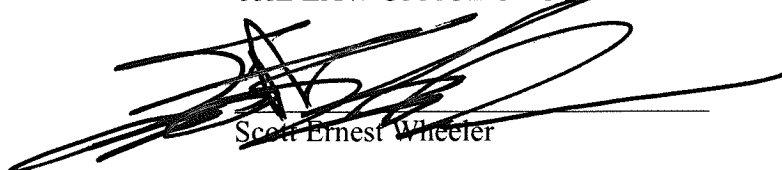
DEFENDANT FAIR RESTORATION, INC.

By: _____

APPROVED AS TO FORM:

Dated: 5/19, 2021

THE LAW OFFICE OF SCOTT E. WHEELER



Scott Ernest Wheeler

THE WAND LAW FIRM, P.C.
Aubry Wand

Attorneys for Plaintiff Mark Morrison

17. **Binding On Assigns:** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

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IN WITNESS WHEREOF, the parties knowingly and voluntarily executed this Settlement Agreement and Release as of the date set forth below.

Dated: _____, 2021

PLAINTIFF MARK MORRISON

Mark Morrison

Dated: May 19, 2021

DEFENDANT FAIR RESTORATION, INC.



By: Matt Puccio

APPROVED AS TO FORM:

Dated: _____, 2021

THE LAW OFFICE OF SCOTT E. WHEELER

Scott Ernest Wheeler

THE WAND LAW FIRM, P.C.
Aubry Wand

Attorneys for Plaintiff Mark Morrison

Dated: May 19, 2021

EVERETT DOREY LLP

A handwritten signature in black ink, appearing to read 'J. Gless', written over a horizontal line.

Jason Gless
Cecilia Hong

Attorney for Defendant Fair Restoration, Inc.