

STIPULATION AND SETTLEMENT AGREEMENT

This Settlement Agreement (this “Settlement” or “Agreement”) is made by and between David Jimenez (“Plaintiff”) and Joseph J. Albanese, Inc., (“Defendant”). Plaintiff and Defendant collectively are referred to in this Agreement as the “Parties,” and each as a “Party.”

I. DEFINITIONS

In addition to other terms defined in this Agreement, the terms below have the following meaning in this Agreement:

- A. “Action” means the civil action titled “*Jimenez v. Joseph J. Albanese, Inc.*,” Case No. 20CV366581, pending in Santa Clara County Superior Court (the “Superior Court”) and the underlying PAGA notice sent to the California Labor Workforce Development Agency (“LWDA”) on behalf of Edgar Hernandez on May 13, 2020.
- B. “Agreement” shall refer to this document.
- C. “Aggrieved Employee” means the named Plaintiff in this Action and any California hourly non-exempt Laborers International Union of North America (LIUNA) employee who worked for Defendant during the “PAGA Period”, as defined below (collectively the “PAGA Aggrieved Employees”). The PAGA Aggrieved Employees do not include any individuals who already have resolved the claims asserted in the Action, whether by settlement or adjudication.
- D. “Class Counsel” means Marcus J. Bradley, Esq. of Bradley/Grombacher LLP.
- E. “Class Counsel Fees and Expenses Payment” means the amount awarded to Class Counsel by the Superior Court to compensate them for their fees and litigation expenses in connection with the Action, including their pre-filing investigation, their commencement of the Action and all related litigation activities, this Settlement, and all post-Settlement compliance procedures.
- F. “Class Member” means the named Plaintiff in this Action and any California hourly non-exempt Laborers International Union of North America (LIUNA) employee who worked for Defendant during the Settlement Class Period, as defined below, (collectively the “Settlement Class”). The Settlement Class does not include any individuals who already have resolved the claims asserted in the Action, whether by settlement or adjudication. “Class Member” includes all Aggrieved Employees, as defined herein.
- G. “Class Notice” means the court-approved Notice of Proposed Settlement, Conditional Certification of Settlement Class, Preliminary Approval of Settlement, and Hearing Date for Final Court Approval.
- H. “Class Notice Packet” means the Class Notice and the Individual Class Member Verification Form.
- I. “Class Representative Payment” means the payment made, in addition to his respective settlement share, to Plaintiff in his capacity as Class Representative to

compensate him for pursuing the Action, undertaking the risk of liability for attorneys' fees and litigation costs in the event he was unsuccessful in the prosecution of the Action, and granting the general release under the Settlement.

- J. "Defendant's Counsel" means Kurt E. Wilson, Roger M. Mason, and Rachael E. Brown of Sweeney Mason LLP.
- K. "Effective Date" means: (a) if no Class Member files and serves any timely and valid objections to the Settlement, then the date upon which the Superior Court grants Final Approval of the Settlement; (b) if any Class Member files and serves a timely and valid objection but it is subsequently withdrawn, then the date upon which the Superior Court grants Final Approval of the Settlement; or (c) if any Class Member files and serves a valid and timely objection, then the date which is sixty-five (65) days after (i) service of notice of entry of the Final Approval Order and Judgment on the Parties to the Action and all objectors to the Settlement, if any, without appeals or requests for review being taken, or (ii) order affirming the Final Approval Order and Judgment or denying review after exhaustion of all appellate remedies, if appeals or requests for review have been taken
- L. "Employer Payroll Contributions" shall mean those payroll taxes and other monetary contributions required by state and federal law to be made by an employer on wage payments, including but not limited to FICA, Medicare, FUTA, and SUTA, and any federal and state unemployment taxes, payable with respect to amounts treated as wages under this Agreement.
- M. "Final Approval Hearing" means the hearing to be conducted by the Superior Court to determine whether to finally approve and implement the terms of this Agreement.
- N. "Individual Class Member Verification Form" means the form in the Class Notice Packet that details the number of workweeks worked by each individual Class Member for Settlement Class Period.
- O. "Judgment" means the Order Granting Final Approval of Class Action Settlement and Entering Final Judgment entered by the Superior Court.
- P. "Gross Settlement Amount" ("GSA") means the maximum amount to be paid by Defendant as provided by this Agreement. The Gross Settlement Amount does not include Employer Payroll Contributions on the wage portion of Class Settlement Shares, which Defendant shall pay separately, and there shall be no reversion to the Defendant.
- Q. "Net Class Settlement Amount" means the Gross Settlement Amount, less (as approved by the Superior Court) (1) the Class Representative Payment; (2) the Class Counsel Fees and Expenses Payment (which includes all attorneys' fees and expenses incurred to date and to be incurred in documenting the Settlement, securing court approval of the Settlement, attending to the administration of the Settlement, and obtaining dismissal of the Action); (3) the PAGA Payment; and (4) the Settlement Administrator's reasonable fees and expenses incurred in administering the Settlement.

- R. “Net PAGA Payment” means the “PAGA Payment”, less the portion paid to the LWDA.
- S. “PAGA Payment” means the payment made for civil penalties in the total amount of \$20,000, of which \$15,000 is to be paid to the LWDA and \$5,000 is to be distributed to the Aggrieved Employees from the GSA to settle claims pursuant to the Private Attorneys General Act, Cal. Lab. Code section 2698, *et seq.*
- T. “PAGA Period” means the period from May 13, 2019 through sixty (60) days from the date of the signing of the fully executed settlement agreement or preliminary approval of the settlement, whichever comes first.
- U. “Participating Class Member” means each individual Class Member, as defined herein, who does not submit a valid and timely request to be excluded from the Settlement.
- V. “Preliminary Approval of the Settlement” means the Superior Court’s preliminary approval of the Settlement without material change, or with material changes to the Settlement to which the Parties agree.
- W. “Settlement” means the terms and conditions set forth in this Agreement meant to resolve the Action.
- X. “Settlement Administrator” means the administrator proposed by the Parties and appointed by the Superior Court to administer the Settlement.
- Y. “Settlement Class Period” means the period from May 15, 2016 through sixty (60) days from the date of the signing of the fully executed settlement agreement or preliminary approval of the settlement, whichever comes first.
- Z. “Class Settlement Share” means the total gross amount each Participating Class Member will receive as their respective portion of the Net Class Settlement Amount.
- AA. “PAGA Settlement Share” means the total gross amount each Aggrieved Employee will receive as their respective portion of the Net PAGA Payment.

II. RECITALS

- A. On May 15, 2020, the Action was commenced in the Superior Court for the County of Santa Clara.
- B. In the Action, Plaintiff alleges the following claims: (1) failure to pay for all hours worked by paying according to a schedule that did not capture substantial portions of the workday, including time spent working at the yard at the start and end of shifts, compensable travel between the first place where workers were required to report and the project site, reporting time wages (defined in Wage Order 16 as show-up time as well as compensable travel), and work time automatically deducted for lunch not taken or lasting less than 30 minutes; (2) failure to provide accurate itemized wage statements; (3) failure to maintain accurate payroll records; (4) failure to pay all wages owed upon termination of the employment relationship giving rise to waiting time penalties; (5) failure to reimburse expenses associated with the use of the employees’ personal cell phones for

required work reasons, and (6) failure to provide rest breaks and meal periods or premium wages in lieu thereof. Based on these allegations, Plaintiff asserts claims under the California Labor Code, California Industrial Welfare Commission Wage Orders, and the California Business & Professions Code section 17200 et seq. Based on these claims, Plaintiff seeks the recovery of wages, including minimum wages, statutory and civil penalties (including PAGA penalties), waiting-time penalties, reimbursement of expenses, prejudgment interest, and attorneys' fees and costs.

- C. Shortly after the complaint was filed, the parties agreed to exchange discovery informally and engage in early mediation. On October 14, 2021, the Parties participated in a mediation over Zoom presided over by Michael Dickstein. During the mediation, each side, represented by its respective counsel, recognized the substantial risk of an adverse result in the Action and agreed to settle the Action, and all other matters covered by this Agreement pursuant to the terms and conditions of this Agreement. This Agreement replaces and supersedes the "Memorandum of Understanding" entered into at the mediation and any other agreements, understandings, or representations between the Parties.

Based on these Recitals, the Parties agree as follows:

III. SETTLEMENT TERMS AND CONDITIONS

A. Gross Settlement Amount.

1. Subject to the terms and conditions of this Agreement, including but not limited to sections III.A.2. and III.E.6., the Gross Settlement Amount that Defendant may be obligated to pay in connection with the Settlement of the Action is \$500,000.00. This amount will cover (as approved by the Superior Court) (1) all Class Settlement Shares paid to Participating Class Members; (2) the Class Representative Payment; (3) the Class Counsel Fees and Expenses Payment; (4) the PAGA Payments to the LWDA and to the Aggrieved Employees; and (5) the Settlement Administrator's fees and expenses. The Gross Settlement Amount does not include required Employer Payroll Contributions on the wage portion of Class Settlement Shares, which Defendant shall pay separately, and there shall be no reversion to the Defendant.
2. This Agreement is based on Defendant's representation that there are six hundred twenty-six (626) Class Members, including the named Plaintiff in this Action, who worked a total of 64,492 workweeks. The Parties agree that Defendant will not be required to make any payment in excess of the GSA if the number of total workweeks does not exceed $64,492 + 10\%$ through the date of the Settlement Class Period. However, should the confirmatory discovery produced pursuant to this Agreement reveal that the number of covered workweeks exceeds $64,492 + 10\%$, the Settlement shall be increased on a pro rata basis ("Escalator Payment") to account for the additional workweeks.

B. Class Settlement Shares. Subject to the terms and conditions of this Agreement, the Settlement Administrator will allocate Class Settlement Shares from the Net Class Settlement Amount to Participating Class Members as follows:

1. **Calculation.** A Participating Class Member's Class Settlement Share will equal the Net Class Settlement Amount times the ratio of the number of workweeks worked by the Participating Class Member for Defendant during the Settlement Class Period on a "checks cashed" basis to the total number of workweeks worked by all Participating Class Members during this period. The Plaintiff's service award will be in addition to his allocated portion of the Net Class Settlement Amount.
2. **Treatment.**
 - a. Eighty percent (80%) of each Class Settlement Share (the "Non-Wage Portion") will be treated as a payment in settlement of the Participating Class Member's claims for statutory and civil penalties, and interest, and will not be reduced by payroll tax withholding and deductions; instead, the Settlement Administrator will issue to the Class Member a Form 1099 when required with respect to the Non-Wage Portion.
 - b. Twenty percent (20%) of each Class Settlement Share (the "Wage Portion") will be treated as a payment in settlement of the Participating Class Member's claims for unpaid wages. Accordingly, the Wage Portion will be reduced by applicable payroll tax withholding and deductions, and the Settlement Administrator will issue to the Class Member a Form W-2 with respect to the Wage Portion.
3. **Class Members Are Not Required to Submit a Claim Form to Receive a Share of the Settlement.** Class Members will be provided with an individual Class Member Verification Form during the class notice process that states the total number of work weeks attributed to that Class Member by Defendant's records. If the Participating Class Member does not dispute the number of workweeks set forth on the verification form, then the Settlement Administrator will mail that Class Member's individual settlement payment within thirty (30) days after the Court grants Final Approval of the Settlement.
4. **Effect of Class Members Who Request to Be Excluded from the Settlement.** A Class Member who elects not to participate in the Settlement will not share in any Settlement proceeds or be bound by the Settlement; that Class Member's workweeks will not be included in the calculations of Class Settlement Shares for those Class Members who do not request exclusion; and the Class Settlement Share that otherwise would have been payable to such Class Member will be retained in the Net Class Settlement Amount for distribution to all other Participating Class Members who do not request to be excluded from the Settlement.

C. **Payments to Plaintiff, Class Counsel, and Settlement Administrator.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will make the following payments out of the Gross Settlement Amount as follows:

1. **To Plaintiff:** In addition to his Class Settlement Share and PAGA Settlement Share, Plaintiff will apply to the Superior Court for an award of not more than \$7,500.00 as a Class Representative Payment in consideration for maintaining the Action, undertaking the risk of liability for attorneys' fees, expenses and litigation costs in the event he was unsuccessful in the prosecution of the Action, and granting the general release as part of the Settlement. Defendant will not oppose Plaintiff's request for a Class Representative Payment of up to \$7,500.00. The Settlement Administrator will pay the Class Representative Payment approved by the Superior Court (but not more than \$7,500.00 total) out of the Gross Settlement Amount. If the Superior Court approves Class Representative Payment of less than \$7,500.00 total, the remainder will be retained in the Net Class Settlement Amount. Tax deductions and withholdings will not be taken from the Class Representative Payment, and instead a Form 1099 will be issued to the Plaintiff with respect to this payment.
2. **To Class Counsel:** Class Counsel will apply to the Superior Court for an award of attorneys' fees of not more than thirty-three and 1/3 percent (33 & 1/3%) of the Gross Settlement Amount (or \$166,666.67) and (b) litigation costs not to exceed \$20,000.00 incurred in this action by Class Counsel. Defendant will not oppose Class Counsel's request for a Class Counsel Fees and Expenses Payment of these amounts. The Settlement Administrator will pay the amount approved by the Superior Court out of the Gross Settlement Amount. Tax deductions and withholdings will not be taken from the Class Counsel Fees and Expenses Payment, and instead a Form 1099 will be issued to Class Counsel.
3. **To the Settlement Administrator.** The Settlement Administrator will pay to itself out of the Gross Settlement Amount its reasonable fees and expenses as approved by the Superior Court.

D. **PAGA Payment.** Twenty thousand Dollar (\$20,000) of the Gross Settlement Amount is allocated to settle claims for civil penalties under Private Attorneys General Act, Cal. Lab. Code section 2698, *et seq.* Seventy-five percent (75%) of the PAGA Payment (\$15,000) shall be paid to the LWDA as required by PAGA. The \$5,000 remainder of the PAGA Payment shall become part of the Net PAGA Payment and distributed to Aggrieved Employees in settlement of the PAGA cause of action.

E. **PAGA Settlement Shares.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will allocate PAGA Settlement Shares from the Net PAGA Payment as follows:

1. **Calculation.** An Aggrieved Employee's PAGA Settlement Share will equal the Net PAGA Payment times the ratio of the number of workweeks

worked by the Aggrieved Employee for Defendant during the PAGA Period on a “checks cashed” basis to the total number of workweeks worked by all Aggrieved Employees during this period. The Plaintiff’s service award will be in addition to his allocated portion of the Net PAGA Payment.

2. **Treatment.** The Participating Aggrieved Employee’s PAGA Settlement Share will be treated as a payment in settlement of the Aggrieved Employee’s claim for civil penalties under PAGA, and will not be reduced by payroll tax withholding and deductions; instead, the Settlement Administrator will issue to the Aggrieved Employee a Form 1099 when required with respect to this PAGA Payment.
 3. **Aggrieved Employees Are Not Required to Submit a Claim Form to Receive a Share of the Settlement.** Aggrieved Employees will be provided with an individual Class Member Verification Form during the class notice process that states the total number of work weeks attributed to that Aggrieved Employee by Defendant’s records. If the Participating Aggrieved Employee does not dispute the number of workweeks set forth on the verification form, then the Settlement Administrator will mail that Aggrieved Employee’s individual settlement payment within thirty (30) days after the Court grants Final Approval of the Settlement.
 4. **Effect of Aggrieved Employees Who Request to Be Excluded from the Settlement.** An Aggrieved Employee who elects not to participate in the Settlement will still receive their portion of the Net PAGA Payment; that Aggrieved Employee’s workweeks will be included in the calculations of PAGA Settlement Shares .
- F. **Appointment of Settlement Administrator.** The Parties will ask the Superior Court to appoint a mutually acceptable Settlement Administrator, which, as a condition of appointment, will agree to be bound by this Agreement with respect to the performance of its duties and its compensation. The Settlement Administrator’s duties will include preparing, printing, and mailing to all Class Members the Class Notice Packet; translating the Class Notice Packet from English to Spanish; conducting a National Change of Address search and using Accurant and other reasonable and cost-effective skip trace methods to locate any Class Member whose Class Notice Packet was returned by the U.S. Postal Service as non-deliverable, and re-mailing the Class Notice Packet to the Class Member’s new address; setting up a toll-free telephone number to field calls from Class Members in English and Spanish; receiving requests for exclusion in Settlement; providing the Parties with weekly status reports about the delivery of Class Notice Packets and receipt of requests for exclusions; calculating Class Settlement Shares and PAGA Settlement Shares; issuing the checks to effectuate the payments due under the Settlement; and otherwise administering the Settlement pursuant to this Agreement. The Settlement Administrator will have the final authority to resolve all disputes concerning the calculation of Class Settlement Shares and PAGA Settlement Shares, subject to the dollar limitations set forth in this Agreement. The Settlement Administrator’s reasonable fees and expenses, including the cost

of printing and mailing the Class Notice Packet, will be paid out of the Gross Settlement Amount.

G. Procedure for Approving Settlement.

1. Motion for Preliminary Approval.

- a. The Parties jointly will file a motion (the “Motion for Preliminary Approval”) with the Superior Court for an order granting Preliminary Approval of the Settlement, conditionally certifying the Class, setting a date for the Final Approval Hearing, appointing Plaintiff as Class Representative and his counsel of record in the Action as Class Counsel, and approving the Class Notice.
- b. At the hearing on the Motion for Preliminary Approval, the Parties will jointly appear, support the granting of the motion, and submit an order granting the motion.
- c. Should the Superior Court decline to preliminarily approve all material aspects of the Settlement, or order material changes to the Settlement to which the Parties do not agree, the Settlement will be null and void and the Parties will have no further obligations under it.

2. Notice to Class Members, including Aggrieved Employees. After the Superior Court enters its order granting Preliminary Approval of the Settlement, every Class Member will be provided with the Class Notice Packet (which will include the Class Notice completed to reflect the order granting Preliminary Approval of the Settlement and an Individual Class Member Verification Form stating the total number of work weeks attributed to that Class Member by Defendant’s records) in English and Spanish:

- a. Within 7 days after the Superior Court enters its order granting Preliminary Approval of the Settlement, Defendant Joseph J. Albanese, Inc. will provide to the Settlement Administrator with Class Member Data, preferably in electronic form for the Class Members containing, for each Class Member, the Class Member’s name, employee identification number, last known address, and Social Security number, the end date for each Class Member’s employment, and the number of workweeks worked by the Class Member for Defendant. If any or all of the Class Members’ Data are unavailable to Defendant, Defendant will use best efforts to deduce or reconstruct the Class Members’ Data prior to when it must be submitted to the Settlement Administrator. At the time Defendant transmits the Class Member Data to the Settlement Administrator, it shall also provide to Class Counsel a signed verification confirming the accuracy of the number of Class Members.
- b. Within 7 days after receiving the Class Members’ Data, the Settlement Administrator will mail the Class Notice Packets (in English and Spanish) to all identified Class Members via first-class regular U.S.

Mail using the mailing address information provided by Defendant, unless modified by any updated address information that the Settlement Administrator obtains in the course of administration of the Settlement.

- c. If a Class Notice Packet is returned because of an incorrect address, the Settlement Administrator will promptly, and not later than 7 days from receipt of the returned packet, search for a more current address for the Class Member using Accurant and other reasonable and cost-effective skip trace methods, and re-mail the Class Notice Packet to the Class Member. The Settlement Administrator will use the Class Members' Data and otherwise work with Defendant to find a more current address. The Settlement Administrator will be responsible for taking reasonable steps, consistent with its agreed-upon job parameters, court orders, and fee, as agreed to with Class Counsel and according to the following deadlines, to trace the mailing address of any Class Member for whom a Class Notice Packet is returned by the U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to Class Members for whom new addresses are found. If the Class Notice Packet is re-mailed, the Settlement Administrator will note for its own records and notify Class Counsel and Defendant's Counsel of the date and address of each such re-mailing as part of a weekly status report provided to the Parties. Class Counsel and Defendant's Counsel will be entitled to receive from the Settlement Administrator any updated address information about a Class Member as the Settlement Administrator obtains such information.
- d. Each week, the Settlement Administrator will provide to Class Counsel and Defendant's Counsel a report showing whether any Class Notice Packets have been returned and re-mailed and the receipt of any requests for exclusion.
- e. Not later than sixteen (16) court days prior to the Final Approval Hearing, the Settlement Administrator will serve on the Parties and file with the Superior Court a declaration of due diligence setting forth its compliance with its obligations under this Agreement. Prior to the Final Approval Hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

3. Objections to Settlement; Disputing the Number of Workweeks; Requests for Exclusion.

- a. **Objection to Settlement.** A Class Member who wishes to object to any term of the Settlement must file with the Superior Court and serve on counsel for the Parties not later than 30 days after the Settlement

Administrator mails the Class Notice a written objection to the Settlement setting forth the grounds for the objection. The objection must also indicate whether the Class Member intends to appear at the Final Approval Hearing; the failure to do so will constitute a waiver of the right to appear at the hearing. Class Members who do not file and serve written objections in the manner and by the deadlines specified in the Class Notice will be deemed to have waived any objections and will be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement or other related matters. Class Counsel and Defendant's counsel will file a response to any objection within 7 days before the Final Approval Hearing.

- b. **Class Member Verification Form.** A Class Member who wishes to dispute the number of workweeks they worked outlined in the Class Member Verification Form sent to the Class Member as part of the Class Notice Packet, may do so by notifying the Settlement Administrator in writing by either FAX or mail postmarked no later than the time frame specified in the Class Member Verification Form. The Settlement Administrator will make the final determination as to the correct number of compensable workweeks for such a Class Member.
- c. **Requests for Exclusion.** A Class Member who wishes to exclude themselves from the Settlement must send the Settlement Administrator a written and signed request to be excluded no later than 30 days after the Settlement Administrator mails the Class Notice Packet. The request must contain the name, address, and telephone number of the Class Member requesting exclusion from the Settlement. If a question is raised about the authenticity of any request for exclusion, the Settlement Administrator will have the right to demand additional proof of the Class Member's identity. A Class Member who submits a timely request for exclusion will not participate in or be bound by the Settlement and the Judgment and will not receive a Settlement Share, but will retain the right, if any, they may have to pursue a claim against Defendant. Class Members who do not submit a timely request for exclusion in the manner and by the deadline specified in the Class Notice will automatically be bound by all terms and conditions of the Settlement, if the Settlement is approved by the Superior Court, and by the Judgment, regardless of whether they have objected to the Settlement.
- d. **Report.** Not later than five (5) days after the deadline to contest the Class Member Verification Form and request to be excluded from the Settlement, the Settlement Administrator will provide the Parties with a complete and accurate list of all Class Members who have contested the information on their Class Member Verification Form or requested to be excluded from the Settlement.

4. **No Solicitation of Objection, Appeal, or Election Not to Participate in Settlement.** Neither the Parties nor their respective counsel will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, appeal from the Judgment, or elect not to participate in the Settlement.
5. **Right of Defendant to Reject Settlement.** If five percent (5%) or more of Class Members, or a number of Class Members whose Settlement Shares would be worth five percent (5%) or more of the Net Class Settlement Amount requests to be excluded from the Settlement, Defendant will have the right, but not the obligation, to void the Settlement and the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount, or any amounts that otherwise would have been owed under this Agreement, except that Defendant will pay the Settlement Administrator's reasonable fees and expenses incurred as of the date that Defendant exercises its right to void the Settlement. Defendant will notify Class Counsel and the Superior Court whether it is exercising this right to void not later than 7 days after the Settlement Administrator notifies the Parties of the number of valid and timely requests to be excluded.
6. **Additional Briefing and Final Approval.**
 - a. Not later than sixteen (16) court days before the Final Approval Hearing, the Parties jointly will file with the Superior Court a motion for final approval of the Settlement and payment of the Settlement Administrator's reasonable fees and expenses, awards of the Class Representative Payment, the PAGA Payment, and the Class Counsel Fees and Expenses Payment pursuant to this Settlement.
 - b. Not later than five (5) court days before the Final Approval Hearing, the Parties jointly may file a reply in support of their motion for final approval of the Settlement and payment of the Settlement Administrator's reasonable fees and expenses to the extent that any opposition to the motion is filed; and Plaintiff and Class Counsel may file replies in support of their motions for the Class Representative Payment and the Class Counsel Fees and Expenses Payment.
 - c. If the Superior Court does not grant final approval of the Settlement or grants final approval conditioned on any material change to the Settlement to which the Parties do not agree, then either Party will have the right to void the Settlement; if that occurs, the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount, except that Defendant will pay the Settlement Administrator's reasonable fees and expenses incurred as of the date that the Party exercises the right to void the Settlement under this paragraph. However, an award by the Superior Court of a lesser amount than that sought by Plaintiff and Class Counsel for the Class Representative Payment or the Class

Counsel Fees and Expenses Payment will not constitute a material change to the Settlement within the meaning of this paragraph.

- d. Upon final approval of the Settlement by the Superior Court, the Parties will present to the Superior Court an Order for its approval and entry of Judgment. After entry of the Judgment, the Superior Court will have continuing jurisdiction over the Action and the Settlement solely for purposes of (1) enforcing this Agreement, (2) addressing settlement administration matters, and (3) addressing such post-judgment matters as may be appropriate under court rules or applicable law.
7. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the material terms of this Agreement, Plaintiff, Class Members who did not timely submit an objection to the Settlement, Aggrieved Employees, Defendant, and respective counsel hereby waive any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment, a motion for new trial, and any extraordinary writ, and the Judgment therefore will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings or post-judgment proceedings. This paragraph does not preclude Plaintiff or Class Counsel from appealing from a refusal by the Superior Court to award the full Class Representative Payment or the Class Counsel Fees and Expenses Payment sought by them, but not the approval of the Settlement otherwise. If an appeal is taken from the Judgment, the time for consummating the Settlement (including making payments to Class Members under the Settlement) will be suspended until such time as the appeal is finally resolved and the Judgment becomes Final, as defined in this Agreement.
8. **Vacation, Reversal, or Material Modification of Judgment on Appeal or Review.** If, after a notice of appeal or a petition for certiorari, or any other motion, petition, or application, the reviewing court vacates, reverses, or modifies the Judgment such that there is a material change to the Settlement, and that court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher court, then either Plaintiff or Defendant will have the right to void the Settlement, which the Party must do by giving written notice to the other Parties, the reviewing court, and the Superior Court not later than 30 days after the reviewing court's decision vacating, reversing, or materially modifying the Judgment becomes Final. A vacation, reversal, or modification of the Superior Court's award of the Class Representative Payment or the Class Counsel Fees and Expenses Payment will not constitute a vacating, reversal, or material modification of the Judgment within the meaning of this paragraph.

9. **Timing of Settlement Payments.** Within twenty-one (21) days after the Effective Date of the Settlement, as defined in this Agreement, Defendant will transfer to the Settlement Administrator the Gross Settlement Amount. Within 5 days after receipt of the Gross Settlement Amount, the Settlement Administrator will pay to Class Members their individual Class Settlement Shares; to Aggrieved Employees their individual PAGA Settlement Shares; to Plaintiff, the Class Representative Payment; to Class Counsel, the Class Counsel Fees and Expenses Payment; to the LWDA, the 75% portion of the PAGA Payment; and to the Settlement Administrator, its reasonable fees and expenses.
10. **Uncashed Settlement Share Checks.** A Class Member or Aggrieved Employee must cash his Settlement Share check within 180 calendar days after it is mailed to them. If a check is returned to the Settlement Administrator, the Settlement Administrator will make all reasonable efforts to re-mail it to the Class Member or Aggrieved Employee at their correct address. If any Class Member's or Aggrieved Employee's Settlement Share check is not cashed within 120 days after its last mailing to the Class Member or Aggrieved Employee, the Settlement Administrator will send the Class Member or Aggrieved Employee a letter or postcard informing them that unless the check is cashed in the next 60 days, it will expire and become non-negotiable, and offering to replace the check if it was lost or misplaced but not cashed. Any amounts from the settlement checks that remain uncashed and otherwise unclaimed after the one-hundred eighty (180) day period shall be distributed to the Legal Aid at Work or other approved *cy pres* recipient.

H. Release and Waiver of Claims.

1. **Plaintiff.** In consideration of his awarded Class Representative Payment, his Settlement Share, and the other terms and conditions of the Settlement, Plaintiff releases any and all claims against Defendant and its related persons and entities (including but not limited to all Defendant's Employers, past or present divisions, d/b/a's, officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and its respective successors and predecessors in interest, subsidiaries, affiliates, parent companies and attorneys, and/or any individual or entity which could be jointly liable with Defendant for the claims alleged), including but not limited to those raised in the Action; those released by Class Members as set forth below; and those arising from or related to his employment with Defendant (the "Plaintiff's Released Claims"). Plaintiff's Released Claims include all claims, whether known or unknown. Thus, even if Plaintiff discovers facts in addition to or different from those that he now knows or believes to be true with respect to the subject matter of Plaintiff's Released Claims, those claims will remain released and forever barred. Therefore, because Plaintiff is granting general release, he expressly waives and relinquishes the provisions, rights

and benefits of section 1542 of the California Civil Code, which reads:

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.

2. **Class Members.** In consideration of the Settlement, each Class Member who does not timely request to be excluded from the Settlement releases Defendant and its related persons and entities from any and all claims which were raised, or that could have been raised in the Action, based on the factual allegations made in the Action or otherwise based on or related to the allegations that that Defendant failed to pay all wages due, including minimum and overtime premium wages; failed to provide compliant rest breaks and meal periods; failed to reimburse for all necessary expenses or losses incurred; failed to pay all final wages upon termination; failed to pay the appropriate prevailing wage on public works; and failed to render accurate wage statements, for the period from May 15, 2016 through the date of preliminary approval of this Agreement by the Superior Court. Such claims include, but are not necessarily limited to, claims under the California Labor Code sections 200, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2698, 2800, and 2802; the California Labor Code Private Attorneys General Act (“PAGA”), Cal. Lab. Code § 2698 et seq.; California Business and Professions Code section 17200 et seq.; the California Industrial Welfare Commission Wage Order 16-2001; liquidated damages under California law; claims under any other associated federal, state or local statutory or regulatory law; and any associated claim for interest, attorneys’ fees, or costs (the “Class Members’ Released Claims”). The Class Members’ Released Claims include all such claims, whether known or unknown by the Class Members or any of them.

I. Miscellaneous Terms.

1. **Confirmatory Discovery.** Defendant agrees to provide Class Counsel with the following additional discovery to confirm the fairness and reasonableness of the Agreement and to facilitate court approval of the Settlement: timekeeping summaries showing the weeks worked by Class Members from May 15, 2016 to October 31, 2021.
2. **References.** Defendant agrees that any request for information or a reference related to Plaintiff’s employment with Defendant will be responded to with the release only Plaintiff’s dates of employment, position held, and his last rate of pay only.
3. **Non-Disparagement.** Plaintiff agrees that he will not make or publish any defamatory or disparaging communication about any Defendant. However, Plaintiff may respond accurately and fully to any request for

information to the extent required by legal process.

Defendant agrees to instruct any employee informed of this settlement agreement, that they are not to make or publish any defamatory communications about Plaintiff in this Action. Defendant may respond accurately and fully to any request for information to the extent required by legal process.

4. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement will constitute the entire agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any Party concerning this or other than the representations, warranties, covenants, and inducements expressly stated in this Agreement.
5. **Attorney Authorization.** Class Counsel and Defendant's Counsel warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Superior Court, and in all cases all such documents, supplemental provisions and assistance of the Superior Court will be consistent with this Agreement.
6. **Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their successors-in-interest.
7. **Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
8. **Applicable Law.** All terms and conditions of this Agreement will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.
9. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
10. **Fair Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arm's

length negotiations, taking into account all relevant factors, current and potential. In addition, Mediator Michael Dickstein may, at his discretion, execute a declaration supporting the Settlement and the reasonableness of this Settlement, and the Superior Court may, in its discretion, contact Mr. Dickstein to discuss the Settlement and whether or not the Settlement is fair and reasonable.

11. **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
12. **Notice.** All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by U.S. Mail, addressed as follows:

Class Counsel

Marcus J. Bradley
Bradley/Grombacher LLP
31365 Oak Crest Drive, Suite 240
Westlake Village, CA 91361
Tel: 805-270-7100
Fax 805-270-7589

Defendant's Counsel

Kurt Wilson
Roger Mason
Rachael Brown
Sweeney Mason LLP
983 University Avenue, Suite 104C
Los Gatos, CA 95032-7637
Tel: 408-356-3000
Fax: 408-354-8839

13. **Execution in Counterpart.** This Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile signatures will be accepted if the original signature is provided within seven days. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties hereby execute this Agreement.

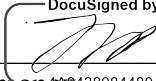
Dated: January 3, 2023



Joseph J. Albanese, Inc.

By: Daniel A. Dryden
Its: Chief Financial Officer

Dated: 1/2/2023

DocuSigned by:

David Jimenez