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5 Attorneys for Plaintiffs,
LEONOR ANGUIANO and GAUDENCIO
6 ALVARADO GARCIA, on behalf of themselves and
all others similarly situated
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF KERN**
10

11 LEONOR ANGUIANO and GAUDENCIO
ALVARADO GARCIA, on behalf of themselves
12 and all others similarly situated,

13 Plaintiffs,

14 vs.

15 EARLY MORNING LLC, a Delaware limited
liability company, doing business as, WEEKS
16 ROSES; H&R LABOR CONTRACTING, LLC,
a California limited liability company; and
17 DOES 1 through 100, Inclusive

18 Defendants.
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CASE NO.: BCV-19-102171

**PAGA AND INDIVIDUAL SETTLEMENT
AGREEMENT**

1 This PAGA and Individual Settlement Agreement ("Stipulation") is made and entered into
2 by and between plaintiff Gaudencio Alvarado Garcia ("Plaintiff"), as an individual and as a
3 representative of other individuals and the State of California, and defendant H&R Labor
4 Contracting, LLC, ("Defendant") (Plaintiff and Defendant shall be referred to collectively as the
5 "Parties"):

6 **I. DEFINITIONS**

7 The following definitions are applicable to this Stipulation. Definitions contained
8 elsewhere in this Stipulation will also be effective.

9 1. **"Action"** means the action entitled Leonor Anguiano, et al. v. Early Morning LLC,
10 et al, Kern County Superior Court Case No. BCV-19-102171.

11 2. **"Aggrieved Employees"** means all individuals who worked for Defendant as a non-
12 exempt hourly employee and were assigned to work at Early Morning LLC locations within the
13 State of California during the PAGA Period.

14 3. **"Aggrieved Employee List"** means a complete list of all Aggrieved Employees that
15 Defendant will diligently and in good faith compile from its records and provide to the Settlement
16 Administrator within seven (7) calendar days after the Effective Date. The Aggrieved Employee
17 List will be formatted as a Microsoft Office Excel spreadsheet and will include each Aggrieved
18 Employee's: (a) full name, (b) last known address, (c) last known telephone number, (d) Social
19 Security number, and (e) the number of Pay Periods worked as a non-exempt hourly employee for
20 Defendant and assigned to work at Early Morning LLC locations in California during the PAGA
21 Period, to the extent Defendant maintains such information in the normal course of business.

22 4. **"Attorneys' Fees and Costs"** means attorneys' fees agreed upon by the Parties and
23 approved by the Court for Plaintiff's Counsel's litigation and resolution of the Action, and all costs
24 incurred and to be incurred by Plaintiff's Counsel in the Action, including, but not limited to, fees
25 and costs associated with court filings, documenting the Settlement, securing the Court's approval
26 of the Settlement, and obtaining entry of the Judgment terminating the Action. Plaintiff's Counsel
27 will request attorneys' fees from the Court in an amount not to exceed 35% of the Maximum
28 Settlement Amount, or Seventeen Thousand Five Hundred Dollars (\$17,500), subject to the

1 Court's approval. Plaintiff's Counsel will also request reimbursement of costs incurred by
2 Plaintiff's Counsel's litigation and resolution of the Action in an amount up to Ten Thousand
3 Dollars (\$10,000), subject to the Court's approval.

4 5. "Court" means the Superior Court of the State of California for the County of Kern
5 or any other court taking jurisdiction of the Action.

6 6. "Defendant" mean H&R Labor Contracting, LLC.

7 7. "Effective Date" means when all of the following events have occurred: (i) this
8 Settlement has been executed by all Parties and by counsel for Plaintiff and Defendant; and (ii) the
9 Court approves the Settlement and enters Order and Judgment Approving PAGA Settlement; and
10 (iii) the later of the following events: (a) when the period for filing any appeal, writ or other
11 appellate proceeding opposing the Settlement has elapsed without any appeal, writ or other
12 appellate proceeding having been filed, i.e., 60 days from the date the Court signs the Order and
13 Judgment Approving PAGA Settlement; or (b) any appeal, writ or other appellate proceeding
14 opposing the Settlement has been dismissed finally and conclusively with no right to pursue further
15 remedies or relief; or (c) any appeal, writ or other appellate proceeding has upheld the Court's final
16 order with no right to pursue further remedies or relief. In the event there is a timely filed motion to
17 set aside judgment or to intervene, the expiration of the period for filing any appeal, writ, or other
18 appellate proceeding opposing the Settlement will be based on the later of the court's entry of order
19 on any such motion or entry of final order and judgment approving this Settlement. It is the
20 intention of the Parties that the Settlement shall not become effective until the Court's order
21 approving the Settlement is completely final, and there is no further recourse by an appellant or
22 intervenor who seeks to contest the Settlement.

23 8. "Incentive Payment" shall mean a payment of \$2,500 to Plaintiff Gaudencio
24 Alvarado Garcia for bringing the instant action. The Incentive Payment is in addition to Plaintiff's
25 share of the Individual Settlement Payment and Plaintiff's Wage Claims Release Payment.

26 9. "Individual Settlement Payment" means the pro rata amount payable to each
27 Aggrieved Employee from the 25% portion of the Net Settlement Amount allocated to payments to
28 the Aggrieved Employees.

1 10. **“Order and Judgment Approving PAGA Settlement”** means the Court’s
2 Judgment approving the Settlement, substantially in the form attached hereto as Exhibit 2,
3 including any revisions required by the Court.

4 11. **“LWDA”** means the California Labor and Workforce Development Agency.

5 12. **“Maximum Settlement Amount”** is the settlement amount of Fifty Thousand
6 Dollars (\$50,000), which Defendant shall pay to resolve the Action, subject to the terms of this
7 Settlement. The Maximum Settlement Amount includes: (a) the payment to the LWDA; (b) all
8 Individual Settlement Payments to Aggrieved Employees; (c) Plaintiff’s Counsel’s Attorneys’ Fees
9 and Costs; (d) the Incentive Payment to Plaintiff in the amount of \$2,500 (e) Plaintiff’s Wage
10 Claims Release Payment in the amount of \$5,000; and (f) Settlement Administration Costs.

11 13. **“Net Settlement Amount”** means the total amount that will be paid to the LWDA
12 and the Aggrieved Employees pursuant to Paragraphs 34 and 35. The Net Settlement Amount is
13 equivalent to the Maximum Settlement Amount less deductions for the Court-approved (a)
14 Plaintiff’s Counsel’s Attorneys’ Fees and Costs; (b) Incentive Payment to Plaintiff; (c) Plaintiff’s
15 Wage Claim Release Payment; and (d) Settlement Administration Costs.

16 14. **“PAGA Period”** means the period of time beginning on August 28, 2019 until
17 February 13, 2022.

18 15. **“PAGA”** means the Labor Code Private Attorneys General Act of 2004, California
19 Labor Code §§ 2698, et seq.

20 16. **“PAGA Payment Letter”** means a letter that the Settlement Administrator will
21 send to each Aggrieved Employee with his or her Individual Settlement Payment, which explains
22 the reason for the Individual Settlement Payment, substantially in the form attached hereto as
23 Exhibit 1, including any revisions required by the Court.

24 17. **“Parties”** means Plaintiff and Defendant, collectively.

25 18. **“Pay Period”** means a pay period in which an Aggrieved Employee worked for
26 Defendant and was assigned to work at Early Morning LLC locations in the State of California
27 during the PAGA Period in a non-exempt hourly role.

28 19. **“Plaintiff”** means plaintiff Gaudencio Alvarado Garcia.

1 20. **“Plaintiff’s Counsel”** means Michael Nourmand, Esq. and James A. De Sario, Esq.
2 of The Nourmand Law Firm, APC located at 8822 West Olympic Boulevard, Beverly Hills,
3 California 90211.

4 21. **“Plaintiff’s Wage Claims Release Payment”** is the amount to be paid to Plaintiff,
5 in the amount of \$5,000, in exchange for a release of Plaintiff’s individual wage claims as set forth
6 herein and Plaintiff’s Individual Settlement Agreement.

7 22. **“Plaintiff’s Individual Settlement Agreement”** means the terms of Plaintiff’s
8 individual settlement, which is dependent on the Court’s approval of the PAGA settlement.

9 23. **“Released Claims”** means any and all claims, rights, or causes of action seeking
10 civil penalties under PAGA [Cal. Lab. Code §§ 2699, *et seq.*] predicated on the claims, allegations,
11 contentions, or representations asserted in the Action or the PAGA notice submitted to the LWDA,
12 dated August 28, 2020, during the PAGA Period, against Defendant, including, but not limited to,
13 Labor Code sections 200, 201, 202, 203, 226, 226.7, 510, 512, 558, 1194, 1194.2, 1197, 2698, and
14 2699) and the applicable IWC Orders that were alleged, or reasonably could have been alleged,
15 based on the facts in the Second Amended Complaint, including all attorneys’ fees and costs
16 related thereto that arose during the PAGA Period.

17 24. **“Released Parties”** means H&R Labor Contracting, LLC all of their current or
18 former parent companies, subsidiary companies and/or related companies, partnerships, joint
19 ventures, and, with respect to each of them, all of their and/or such related entities’ predecessors
20 and successors, and, with respect to each such entity, all of its past, present, and future employees,
21 officers, partners, principals, directors, stockholders, owners, representatives, assigns, attorneys,
22 agents, insurers, and any other persons acting by, through, under, or in concert with any of the
23 persons or entities listed herein and their successors and any individual or entity who could be
24 liable for any of the Released Claims.

25 25. **“Settlement Administration Costs”** means the costs payable from the Maximum
26 Settlement Amount to the Settlement Administrator for administering this Settlement. The
27 Settlement Administration Costs are currently estimated to be no more than Three Thousand Nine
28 Hundred Ninety-Five Dollars (\$3,995.00).

1 26. **“Settlement Administrator”** means Simpluris Class Action Settlement
2 Administration or any other settlement administrator agreed to by the Parties and approved by the
3 Court.

4 27. **“Settlement”** shall mean the settlement between the Parties that is memorialized in
5 this Stipulation and subject to Court approval.

6 28. **“Stipulation”** means this PAGA and Individual Settlement Agreement and its
7 exhibits, attached hereto and incorporated herein, including all subsequent amendments agreed to
8 in writing by the Parties and any exhibits to such amendments.

9 **II. RECITALS**

10 29. **PAGA Notice Letter To The LWDA.** On or about August 28, 2020, Plaintiff sent
11 a Notice of Labor Code Violations and PAGA Penalties to the LWDA and Defendant, advising that
12 Plaintiff intended to seek civil penalties pursuant to PAGA, on behalf of himself and other current
13 and former non-exempt hourly employees of Defendant who were assigned to work at Early
14 Morning LLC locations in California, identifying alleged violations of and penalties under
15 California Labor Code §§ 200, 201, 202, 203, 226, 226.7, 510, 512, 558, 1194, 1194.2 1197, 2698,
16 and 2699.

17 30. **Complaint Filed In Kern County Superior Court.** On or about November 2,
18 2020, Plaintiff filed a Second Amended Class Action Complaint in Kern County Superior Court,
19 alleging individual and putative class claims against Defendant for (1) Failure to pay overtime
20 wages, (2) Failure to pay minimum wages; (3) Failure to provide meal periods; (4) Failure to
21 provide rest periods; (5) Failure to provide accurate wage statements; (6) Failure to pay all wages
22 upon termination; (7) Unfair business practices; and (8) Civil Penalties pursuant to PAGA.

23 31. **Case Compelled to Arbitration.** On or about April 28, 2021, the Court ordered the
24 Parties to arbitrate their dispute, with the exception of Plaintiff’s Eighth Cause of Action for Civil
25 Penalties pursuant to Labor Code section 2699(a). The Court stayed the Eighth Cause of Action
26 pending resolution of Plaintiff’s claims in the arbitral forum.

27 32. **Mediation And Settlement.** On December 15, 2021, the Parties and their counsel
28 participated in a full-day mediation with Michael Loeb, Esq., a well-respected mediator with

considerable experience mediating wage-and-hour class and PAGA actions. At the conclusion of the mediation session, the Parties reached an agreement to resolve the Action. This Stipulation formalizes the agreement reached by the Parties.

III. TERMS OF SETTLEMENT

A. Conditional Nature Of The Settlement

33. **All Terms Subject To Court Approval.** California Labor Code § 2699(l)(2) requires that the Court review and approve any penalties sought as part of a proposed settlement agreement pursuant to PAGA. All amounts and procedures described in this Stipulation are subject to the Court's approval. If for any reason the Court does not approve this Settlement in the form agreed to by the Parties or the approval of the Settlement and judgment is reversed, modified, or declared or rendered void, none of the related negotiations or proceedings shall be of any force or effect and all Parties to this Settlement shall stand in the same position, without prejudice, as if this Settlement had never been entered into or filed with the Court. Nonetheless, if the Court does not issue an order approving the Agreement under the specific terms requested, the Parties agree to meet and confer to address the Court's concerns in good faith and determine whether resolution of the claims encompassed by the Agreement can be obtained in a manner consistent with the Court's concerns. The Parties expressly acknowledge that the Court's approval of this Agreement is a condition precedent to any payments described in this Agreement and, in the event the Court does not enter an order granting approval of this Settlement or the conditions precedent are not met for any reason, this Stipulation is void and of no force or effect whatsoever.

B. Settlement Consideration and Distributions

34. **Maximum Settlement Amount.** Within ten (10) days of the Effective Date, Defendant shall pay the Maximum Settlement Amount of Fifty Thousand Dollars (\$50,000) to settle this Action. The Maximum Settlement Amount will be used to satisfy all of Defendant's liabilities arising from the Action. No portion of the Maximum Settlement Amount shall revert to Defendant or result in an unpaid residue.

35. **Deductions From The Maximum Settlement Amount.** Deductions from the Maximum Settlement Amount, all subject to Court approval, shall be made for the following:

1 a. **Plaintiff's Counsel's Attorneys' Fees And Costs.** Plaintiff's Counsel may
2 apply for an award of attorneys' fees and costs, with the fee portion not to exceed 35% of the
3 Maximum Settlement Amount—i.e., up to Seventeen Thousand Five Hundred Dollars (\$17,500)—
4 and the costs portion not to exceed Ten Thousand Dollars (\$10,000). Plaintiff's Counsel's
5 Attorneys' Fees and Costs will be paid from, and not in addition to, the Maximum Settlement
6 Amount. The amount of Attorneys' Fees and Costs shall include all past and future attorneys' fees
7 and costs to Plaintiff's Counsel—including, without limitation, all time and costs expended by
8 Plaintiff's Counsel in defending the Settlement and securing approval of the Settlement. Any
9 amounts not awarded by the Court under this provision shall be included in the Net Settlement
10 Amount. Defendant agrees not to oppose any such application which is consistent with this
11 paragraph; however, the Settlement is not contingent on Plaintiff recovering that or any particular
12 amount as Attorneys' Fees and Costs. Even in the event that the Court reduces or does not approve
13 the requested Attorneys' Fees and Costs, Plaintiff and Plaintiff's Counsel shall not have the right to
14 revoke this Stipulation or this Settlement, and it will remain binding.

15 b. **Settlement Administration Costs.** All Settlement Administration Costs
16 shall be paid from, and not in addition to, the Maximum Settlement Amount. The Settlement
17 Administration Costs include, but are not limited to, the required tax reporting on the Individual
18 Settlement Payments, the issuing of appropriate tax forms, as needed, confirming/auditing claims
19 for payments for compliance with the Settlement, calculating and distributing all payments to be
20 made pursuant to the Settlement, and providing reports and declarations. The amount of
21 Settlement Administration Costs is estimated not to exceed Three Thousand Nine Hundred Ninety-
22 Five Dollars (\$3,995.00). Defendant agrees not to oppose any application that is consistent with
23 this paragraph. If the actual Settlement Administration Costs are less than Three Thousand Nine
24 Hundred Ninety-Five Dollars (\$3,995.00), those amounts shall be included in the Net Settlement
25 Amount.

26 c. **Incentive Payment To Plaintiff.** Plaintiff may apply for an Individual
27 Incentive Payment not to exceed Two Thousand Five Hundred Dollars (\$2,500). Plaintiff's
28 Incentive Payment will be paid from, and not in addition to, the Maximum Settlement Amount.

Any amounts not awarded by the Court under this provision shall be included in the Net Settlement Amount. Defendant agrees not to oppose any such application which is consistent with this paragraph; however, the Settlement is not contingent on Plaintiff recovering that or any particular amount as an Incentive Payment. Even in the event that the Court reduces or does not approve the requested Incentive Payment, Plaintiff shall not have the right to revoke this Stipulation or this Settlement, and it will remain binding.

d. **Plaintiff's Wage Claims Release Payment.** Defendant shall pay Plaintiff for a Wage Claims Release Payment not to exceed Five Thousand Dollars (\$5,000). Plaintiff's Wage Claims Release Payment will be paid from, and not in addition to, the Maximum Settlement Amount. In the event that the Court does not approve the Settlement, Defendant shall have no obligation to pay Plaintiff and the release of Plaintiff's wage claims shall have no effect and the Parties will proceed with their respective position as to Plaintiff's individual wage claims. Parties acknowledge and agree that the Wage Claims Release Payment will be reported by the Settlement Administrator as follows: 33% will be reported as wages on an IRS Form W-2 and shall be subject to withholding or deduction by Defendant, including, but not limited to FICA and FUTA; and 67% will be reported as penalties and interest on IRS Form 1099-MISC. Defendant will pay the employer's portion of payroll taxes on the portion of the Wage Claims Release Payment allocated as wages separately from the Maximum Settlement Amount. The Settlement Administrator will calculate the employer's portion of payroll taxes at least seven (7) days prior to the date Defendant is required to pay the Maximum Settlement Amount.

e. **Net Settlement Amount.** The Parties estimate the Net Settlement Amount as follows:

Maximum Settlement Amount:	\$50,000.00
Plaintiff's Counsel's Attorneys' Fees (estimated)	-\$17,500.00
Plaintiff's Counsel's Litigation Costs (estimated)	-\$10,000.00
Plaintiff's Incentive Payment	-\$ 2,500.00
Plaintiff's Wage Claims Release Payment	-\$ 5,000.00
Settlement Administration Costs	-\$3,995.00

1 Net Settlement Amount (estimated) \$11,005.00

2 36. **LWDA Payment.** Subject to Court approval, the Parties agree that an amount
3 equal to seventy-five percent (75%) of the Net Settlement Amount will be paid to the LWDA in
4 settlement of all representative claims alleged by or on behalf of Plaintiff and the Aggrieved
5 Employees.

6 37. **Individual Settlement Payments.** Subject to Court approval, the Parties agree that
7 an amount equal to twenty-five percent (25%) of the Net Settlement Amount (the “Aggrieved
8 Employee Portion”) will be paid to the Aggrieved Employees in settlement of the Released Claims.
9 Individual Settlement Payments will be calculated and apportioned from the Aggrieved Employee
10 Portion based on the number of Pay Periods an Aggrieved Employee worked during the PAGA
11 Period. The Settlement Administrator will determine the total number of Pay Periods worked by
12 each Aggrieved Employee during the PAGA Period based on the data provided by Defendant in
13 the Aggrieved Employee List and the aggregate number of Pay Periods worked by all Aggrieved
14 Employees during the PAGA Period. To determine each Aggrieved Employee’s Individual
15 Settlement Payment, the Settlement Administrator will use the following formula: The Aggrieved
16 Employee Portion will be divided by the aggregate number of Pay Periods worked by all
17 Aggrieved Employees during the PAGA Period, resulting in the “Pay Period Value.” Each
18 Aggrieved Employee’s Individual Settlement Payment will be calculated by multiplying each
19 individual Aggrieved Employee’s total number of Pay Periods by the Pay Period Value. The
20 Parties agree that the formula described herein is reasonable and that the payments are designed to
21 provide a fair settlement to each Aggrieved Employee in light of the uncertainties regarding the
22 penalties alleged to be owed and the calculation of such amounts.

23 38. **Tax Treatment Of Settlement Payments.** 100% of the Individual Settlement
24 Payments will be allocated to alleged civil penalties, and IRS Forms 1099-MISC will be issued as
25 necessary. The payment of Plaintiff’s Counsel’s Attorneys’ Fees and Costs will also be reported
26 on IRS Forms 1099-MISC. The Settlement Administrator will issue all such forms.

27 39. **Tax Liability.** Other than the reporting requirements set forth in Paragraphs 35, 38,
28 45, 47 and 52, the Aggrieved Employees, including Plaintiff, shall be responsible for the reporting

1 and payment of any federal, state, and/or local income or other tax or any other withholdings, if
2 any, on any of the payments made pursuant to this Stipulation. Defendant makes no
3 representations, and it is understood and agreed that Defendant has made no representations, as to
4 the taxability of any portions of the Individual Settlement Payments to any Aggrieved Employee,
5 the payment of any costs or an award of attorney fees, or any payments to Plaintiff. The PAGA
6 Payment Letter (Exhibit 1) will inform Aggrieved Employees of the opportunity to seek their own
7 tax advice in connection with their receipt of Individual Settlement Payments, and Plaintiff and
8 Plaintiff's Counsel agree that this is sufficient to alert Aggrieved Employees of their option to seek
9 tax advice.

10 40. **No Credit Towards Benefit Plans.** The Individual Settlement Payments made to
11 Aggrieved Employees under this Settlement will not be utilized to calculate any additional benefits
12 under any benefit plans for which any Aggrieved Employees may be eligible, including, but not
13 limited to: (i) profit-sharing plans, (ii) bonus plans, (iii) 401(k) plans, (iv) stock purchase plans, (v)
14 vacation plans, (vi) sick leave plans, (vii) PTO plans, and (viii) any other benefit plan. Rather, it is
15 the Parties' intention that this Stipulation will not affect any rights, contributions, or amounts to
16 which any Aggrieved Employees may be entitled under any benefit plans.

17 C. **Waiver and Releases**

18 41. **The PAGA Release.** Upon the Effective Date and when Defendant fully funds the
19 Maximum Settlement Amount, and only to the extent permissible by law, the LWDA and each
20 Aggrieved Employee, including Plaintiff (individually and on behalf of Plaintiff's heirs, executors,
21 administrators, representatives, agents, successors, and assigns, to the fullest extent allowable by
22 law), shall fully and finally release and forever discharge Defendant and the Released Parties from
23 the Released Claims. This Settlement effectively releases, precludes, and bars all Released Claims
24 against Defendant and the Released Parties during the PAGA Period by the Aggrieved Employees,
25 regardless of whether Plaintiff and/or the Aggrieved Employees cash their settlement award
26 checks, so long as the Settlement is administered and carried out according to this Settlement
27 Agreement. Beyond the Maximum Settlement Amount, Defendant shall not owe any further
28 monies to Plaintiff, the Aggrieved Employees, or to the State of California based upon any claim

1 asserted on behalf of the LWDA under PAGA relating to the Aggrieved Employees in the Action
2 or in any complaint filed therein.

3 42. **Employees Are Bound By The Settlement.** Because this is a PAGA action, based
4 on the Parties' understanding of the PAGA statutory scheme, the Parties agree that no Aggrieved
5 Employee can exclude himself or herself from the Settlement or object to the terms of this
6 Settlement Agreement. All Aggrieved Employees will be bound by this Settlement Agreement,
7 upon its approval by the Court, regardless of whether he or she negotiates his or her settlement
8 check.

9 43. **Release by Plaintiff.** Upon the date the Court enters an order granting approval of
10 the settlement and Defendant fully funds the Maximum Settlement Amount, in addition to the
11 claims being released by all Aggrieved Employees, Plaintiff will provide the following additional
12 general release ("General Release"): Plaintiff, on his own behalf and on behalf of his heirs,
13 spouses, executors, administrators, attorneys, agents and assigns, fully and finally, irrevocably and
14 unconditionally releases the Released Parties from all complaints, claims, demands, rights,
15 obligations, penalties, liabilities, damages, debts, expenses (including attorneys' fees and costs
16 actually incurred) and causes of action of every nature and description whatsoever, known or
17 unknown, asserted or that might have been asserted, whether in tort, contract, or for violation of
18 any state or federal statute, rule or regulation arising out of, relating to, or in connection with any
19 act or omission by or on the part of any of the Released Parties committed or omitted prior to the
20 execution of this Agreement, including but not limited to claims arising from the California
21 Constitution; Title VII of the Civil Rights Act of 1964 (42 U.S.C. §2000e); the California Fair
22 Employment and Housing Act (Cal. Govt. Code §12900 et seq.); the Americans with Disabilities
23 Act; the Age Discrimination in Employment Act (29 U.S.C. §§621-633a); the Older Workers'
24 Benefit Protection Act; the Private Attorneys General Act of 2004; and claims of intentional
25 infliction of emotional distress; defamation and/or libel, or any other damage to reputation claims;
26 breach of implied contract or for claims of a breach of the covenant of good faith and fair dealing,
27 as well as any other express or implied covenant; or any other statute or common law principle of
28 similar effect. This General Release includes any unknown claims Plaintiff does not know or

1 suspect to exist in his favor at the time of this General Release, which, if known by him, might
2 have affected her settlement with, and release of, the Released Parties or might have affected his
3 decision not to object to this Settlement or this Release. To the extent the foregoing releases are
4 releases to which Section 1542 of the California Civil Code or similar provisions of other
5 applicable law may apply, Plaintiff expressly waive any and all rights and benefits conferred upon
6 them by the provisions of Section 1542 of the California Civil Code or similar provisions of
7 applicable law which are as follows:

8 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
9 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT**
10 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE**
11 **RELEASE AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE**
12 **MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE**
13 **DEBTOR OR RELEASED PARTY.**

14 The significance of this release and waiver of Civil Code Section 1542 has been explained to
15 Plaintiff by his respective counsel. Release by Plaintiff expressly excludes any claims for
16 workers compensation against Defendant.

17 Plaintiff acknowledges and agrees that his individual claims for wages and penalties are
18 disputed, and that the Settlement Payment constitutes payment of all sums allegedly due to him.
19 Plaintiff acknowledges and agrees that California Labor Code section 206.5 is not applicable to
20 the Settlement Payment. That section provides in pertinent part as follows:

21 "An employer shall not require the execution of a release of a claim or right on
22 account of wages due, or to become due, or made as an advance on wages to be
23 earned, unless payment of those wages has been made."

24 **44. Neutral Reference.** Defendant agrees that they will only provide a neutral
25 reference for Plaintiff should any prospective employers or anyone contact them regarding
26 Plaintiff's employment. Defendant shall only provide the dates of employment and Plaintiff's last
27 job title held with Defendant.

28 **D. Settlement Administration**

1 45. **Settlement Administrator's Duties In General.** The Settlement Administrator
2 shall be responsible for (a) processing the data provided by Defendant to be used in calculating the
3 Individual Settlement Payments; (b) preparing, printing, translating to Spanish, and mailing to the
4 Aggrieved Employees the PAGA Payment Letter in English or Spanish as appropriate (attached
5 hereto as Exhibit 1), as well as following up with reasonable skip tracing; (c) calculating and
6 mailing Individual Settlement Payments to Aggrieved Employees; (d) calculating tax withholdings
7 and payroll taxes, making related payment to federal and state tax authorities, and filing any
8 required federal and state tax forms and related agency reporting related to payments made under
9 the settlement; (e) filing any required reports with the Court; and (g) all other tasks described in
10 this Stipulation, as to which the Parties mutually agree, and/or which the Court orders the
11 Settlement Administrator to perform.

12 46. **Delivery Of The Aggrieved Employees List.** Within seven (7) calendar days after
13 the Effective Date, Defendant will provide the Aggrieved Employees List to the Settlement
14 Administrator. The Settlement Administrator shall not use the Aggrieved Employees List or any
15 information contained therein for any purpose other than to administer the Settlement in
16 accordance with this Settlement Agreement. The Aggrieved Employees List will not be provided
17 to Plaintiff's Counsel at any time or in any form. To the extent Plaintiff's Counsel possesses or
18 comes to possess the Aggrieved Employees List, Plaintiff's Counsel shall immediately return all
19 such information (including copies and data or information derived therefrom), shall not retain
20 copies of such information, and shall not maintain or use such information for any purpose.

21 47. **Funding Of The Maximum Settlement Amount.** Within ten (10) calendar days
22 after the Effective Date, Defendant will deposit the Maximum Settlement Amount in the amount of
23 Fifty Thousand Dollars (\$50,000) and the employer share of payroll taxes for the portion of
24 Plaintiff's Wage Claim Release Payment allocated as wages. The Settlement Administrator shall
25 deposit the installment payments into an interest-bearing trust account for the benefit of the
26 Aggrieved Employees.

27 48. **Distribution Of Settlement Payments.** Within seven (7) calendar days after
28 Defendant deposits the Maximum Settlement Amount into a settlement fund, the Settlement

1 Administrator will issue payments to: (a) the Aggrieved Employees; (b) the LWDA; (c) Plaintiff;
2 and (d) Plaintiff's Counsel. The Settlement Administrator will mail Individual Settlement
3 Payments to the Aggrieved Employees, along with the PAGA Payment Letter (attached as Exhibit
4 1), via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in
5 the Aggrieved Employees List. The Settlement Administrator will also issue a payment to itself for
6 Court-approved services performed in connection with the Settlement.

7 **49. Confirmation Of Contact Information.** Prior to mailing the Individual Settlement
8 Payments to the Aggrieved Employees, the Settlement Administrator will perform a search based
9 on the National Change of Address Database for information to update and correct for any known
10 or identifiable address changes. Any Individual Settlement Payments returned to the Settlement
11 Administrator as non-deliverable will be sent, along with the PAGA Payment Letter, promptly via
12 regular First-Class U.S. Mail, to the forwarding address affixed thereto. If no forwarding address
13 is provided, the Settlement Administrator will promptly attempt to determine the correct address by
14 lawful use of skip-tracing, or other search methods using the name, address, and/or Social Security
15 Number of the Aggrieved Employee involved and shall then perform a re-mailing if another
16 mailing address is identified. With regard to any Aggrieved Employee whose Individual
17 Settlement Payment is returned as non-deliverable, and for whom the Settlement Administrator is
18 unable to determine a reliable address using reasonable and customary methods, they shall
19 nevertheless remain bound by the Settlement and the release of the Released Claims contained
20 herein and his or her Individual Settlement Payment will escheat to the State of California, in the
21 name of and for the benefit of such Aggrieved Employee.

22 **50. Reports Regarding Settlement Administration.** The Settlement Administrator
23 will provide Defendant's Counsel and Plaintiff's Counsel reports regarding the administration of
24 the Settlement Agreement as needed or requested.

25 **51. Procedures For Uncashed Checks.** Checks for Individual Settlement Payments
26 shall be negotiable for one hundred eighty (180) calendar days from the date of their issuance. If a
27 check is returned to the Settlement Administrator as undeliverable during the 180-day period, the
28 Settlement Administrator shall take all reasonable efforts to identify the Aggrieved Employee's

1 correct address, including the performance of a “skip-trace.” If an updated address can be
2 identified, the Settlement Administrator shall issue another check to the Aggrieved Employee and
3 mail it to the Aggrieved Employee at his or her updated address. An Aggrieved Employee who
4 fails to negotiate or receive their Individual Settlement Payment check despite the procedures
5 described herein shall nevertheless remain bound by the Settlement and the release of the Released
6 Claims contained herein.

7 The funds represented by Individual Settlement Payment checks remaining uncashed for
8 more than 180 days after issuance (collectively, the “Uncashed Settlement Checks”) shall be
9 voided and then shall be transmitted to the Controller of the State of California to be held pursuant
10 to the Unclaimed Property Law, California Code of Civil Procedure § 1500, et seq. in the
11 respective names of those Aggrieved Employees who did not cash their settlement checks until
12 such time as they claim their property. After the expiration of the 180-day check cashing period, as
13 outlined above, the Settlement Administrator shall begin the process of transferring the funds in
14 accordance with California Code of Civil Procedure §§ 1500–1582 and the timing requirements set
15 forth by the Office of the State Controller.

16 52. **Administration Of Taxes By The Settlement Administrator.** The Settlement
17 Administrator will be responsible for issuing to the Aggrieved Employees and Plaintiff’s Counsel
18 any Form 1099, Form W-2, and/or other tax forms as may be required by law for all amounts paid
19 pursuant to this Settlement.

20 53. **Sending Settlement Agreement And Judgment To LWDA.** Before or concurrent
21 with Plaintiff’s filing of this stipulation for approval of the Settlement, Plaintiff’s Counsel will send
22 this stipulation to the LWDA pursuant to Section 2699(l)(2) of the California Labor Code. Within
23 ten (10) days after entry of a judgment or order approving, denying, or modifying the award of
24 civil penalties contemplated by this Settlement Agreement, Plaintiff’s Counsel will submit a copy
25 of the judgment or order to the LWDA pursuant to Section 2699(l)(3) of the California Labor
26 Code.

27 54. **Declaration Of Payment.** Within ten (10) calendar days after the date the
28 Settlement Administrator transfers the total amount of funds represented by the Uncashed

1 Settlement Checks consistent with the State's Unclaimed Property Law, the Settlement
2 Administrator will prepare a declaration stating: (i) that all payments required under the Settlement
3 have been made; (ii) the total amount of funds represented by the Uncashed Settlement Checks and
4 (iii) confirming that the procedures for the treatment of Uncashed Settlement Checks established
5 by this Stipulation have been followed. Plaintiff's Counsel shall file the Settlement
6 Administrator's declaration with the Court.

7 **E. Miscellaneous Provisions**

8 **55. Acknowledgement That The Settlement Is Fair, Adequate, And Reasonable.**

9 The Parties and their respective counsel believe that this Settlement is a fair, adequate, and
10 reasonable settlement of the Action, and they have arrived at this Settlement through arm's length
11 negotiations, taking into account all relevant factors, present and potential.

12 **56. Escalator Provision.** Defendant has represented that there are 2,266 Pay Periods
13 worked by Aggrieved Employees List during the PAGA Period. If the actual number of Pay
14 Periods provided by Defendant increases by more than 5 percent, i.e., 2,379 total Pay Periods by
15 the end of the PAGA Period, Defendant shall increase the Net Settlement Amount by the pay
16 period value determined off of 2,266 total pay period multiplied by the additional pay periods over
17 2,379. For example, if the pay period value is \$30.00 per pay period and the total pay periods are
18 2,400 by the end of the PAGA Period, Defendant shall increase the Net Settlement Amount by
19 \$600 (2,400 – 2,379 = 21 x \$30.00). Alternatively, in the event that this Escalator Provision is
20 triggered, then Defendant has the option to adjust the beginning and/or end dates of the applicable
21 release period so as to have a later start date or an earlier end date at the Defendant's discretion in
22 order to limit the amount of covered pay periods to 2,266 total pay periods.

23 **57. Mutual Cooperation.** The Parties and their counsel will cooperate with each other
24 and use their best efforts to effect the implementation of the Settlement. Such cooperation shall
25 include, but not be limited to, execution of such other documents and the taking of such other
26 actions as may reasonably be necessary to fulfill the terms of this Settlement. The Parties shall use
27 their best efforts, including all efforts contemplated by this Stipulation and any other efforts that
28 may become necessary by Court Order, or otherwise, to effectuate this Stipulation and the terms set

1 forth herein.

2 58. **No Admissions By The Parties.** This Agreement is a compromise of disputed
3 claims. Nothing contained in this Agreement and no documents referred to herein and no action
4 taken to carry out this Agreement may be construed or used as an admission by or against
5 Defendant, any of the Released Parties, Defendant's Counsel, Plaintiff, or Plaintiff's Counsel as to
6 the merits or lack thereof of the claims asserted. Neither this Stipulation nor any of its terms, nor
7 any statements or conduct in the negotiation or drafting of it, shall be offered or used as evidence
8 by Plaintiff, any of the Aggrieved Employees, Defendant, or its, her, his, or their respective
9 counsel, in the Action, except as is reasonably necessary to effectuate the Stipulation's purpose and
10 terms. This Stipulation may be used by Defendants and the Released Parties to prove or defend
11 against any claim released herein by any Aggrieved Employee in any judicial, quasi-judicial,
12 administrative, or governmental proceeding.

13 59. **Defendant Denies Liability and Wrongdoing.** This Stipulation represents a full
14 compromise and settlement of highly disputed claims. Defendant denies any liability and
15 wrongdoing of any kind associated with the alleged claims. Defendant contends that it has
16 complied at all times with California and Federal law and that its employees have been paid all
17 wages owed.

18 60. **No Attorneys Advertising.** By signing the below, Plaintiff's Counsel agrees that
19 his law firm will not specifically refer to this case, this settlement, or the names of Release Parties
20 on their website, or any social media platform, in any advertising or promotional material of any
21 kind, or in any other written or electronic communications of any kind or nature.

22 61. **Amendment Or Modification.** This Agreement, and any and all parts of it, may be
23 amended, modified, changed, or waived only by an express written instrument signed by all Parties
24 or their successors-in-interest.

25 62. **Mutual Drafting Of Agreement.** The Parties agree that the terms of this
26 Stipulation and the accompanying exhibits are the result of substantial, arm's-length negotiations,
27 and that this Stipulation shall not be construed in favor of or against any of the Parties by reason of
28 the extent to which any of the Parties or their respective counsel participated in the drafting of this

1 Stipulation.

2 63. **Attorney Authorization.** Plaintiff's Counsel and Defendant's Counsel warrant and
3 represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate
4 action required or permitted to be taken by such Parties pursuant to this Settlement to effectuate its
5 terms, and to execute any other documents required to effectuate the terms of this Settlement.

6 64. **Binding On Successors And Assigns.** This Stipulation is binding upon, and inures
7 to the benefit of, the Parties' successors and assigns.

8 65. **Governing Law.** This Stipulation shall be governed by and interpreted according
9 to the laws of the State of California.

10 66. **Breach.** In the event of a breach of any provision of this Agreement, any Party
11 reserves the right to institute an action specifically to enforce any term of this Agreement or seek
12 damages for breach. In an action to enforce any term of this Agreement or to seek damages for
13 breach of this Agreement, the prevailing Party in that action shall be entitled to recover reasonable
14 attorneys' fees and statutory costs from the non-prevailing Party.

15 67. **Exhibits Incorporated By Reference.** The terms of this Stipulation include the
16 terms set forth in any attached exhibits, which are incorporated by this reference as though fully set
17 forth herein. Any exhibit to this Stipulation is an integral part of the Settlement.

18 68. **Invalidity Of Any Provision.** Before declaring any provision of this Stipulation
19 invalid, the Court shall first attempt to construe the provision(s) valid to the fullest extent possible
20 consistent with applicable precedents so as to define all provisions of this Settlement valid and
21 enforceable. If any provision, term, section, or paragraph of this Agreement shall be found to be
22 invalid, illegal or unenforceable, all remaining provisions, terms, sections, or paragraphs shall
23 continue in full force and effect and remain binding on all parties. If any provision, term, section or
24 paragraph of this Agreement is determined to be unenforceable, such provision, term, section or
25 paragraph shall be modified so that the unenforceable provision, terms, section or paragraph is
26 enforceable to the extent possible while maintaining the objective intent of the Agreement.
27
28

1 69. **Attorneys' Fees And Costs.** The Parties shall bear their own respective attorneys'
2 fees and costs incurred in and/or arising out of the Action, except as otherwise provided for in this
3 Stipulation and as later approved by the Court.

4 70. **Jurisdiction Of The Court.** The Parties agree that the Court shall retain
5 jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this
6 Agreement and all orders and judgments entered in connection therewith, and the Parties and their
7 respective counsel hereto submit to the jurisdiction of the Court for purposes of interpreting,
8 implementing, and enforcing the settlement embodied in this Agreement and all orders and
9 judgments entered in connection therewith.

10 71. **Waiver Of Certain Appeals.** The Parties agree to waive appeals; except, however,
11 that either party may appeal any court order that materially alters the Settlement Agreement's
12 terms.

13 72. **Binding Agreement.** The Parties intend that this Settlement shall be fully
14 enforceable and binding on all Parties, and that it shall be admissible and subject to disclosure in
15 any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that
16 otherwise might apply under federal or state law. This Stipulation is also binding upon, and inures
17 to the benefit of, the Parties' successors and assigns.

18 73. **Entire Agreement.** This Stipulation and any attached exhibits constitute the
19 entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral
20 agreements may be deemed binding on the Parties.

21 74. **Counterparts.** This Stipulation may be executed in one or more counterparts. All
22 executed counterparts and each of them, including facsimile, DocuSign, and scanned copies of the
23 signature page, will be deemed to be one and the same instrument provided that counsel for the
24 Parties to this Agreement exchange among themselves copies or originals of the signed
25 counterparts.

26 75. **Parties' Authority.** The signatories to this Stipulation, including any person
27
28

1 executing this Stipulation on behalf of a corporate signatory, warrant and represent that they are
2 fully authorized to enter into this Stipulation and to bind the Parties hereto to the terms and
3 conditions of the Stipulation.

4 IN WITNESS WHEREOF, the Parties and their counsel have executed this Stipulation on
5 the dates below. The date of the Stipulation shall be the date of the latest signature.
6

7 **APPROVED AS TO SUBSTANCE:**

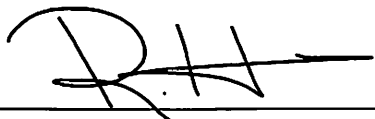
8
9 DATED: April 26th, 2022

By: Gaudencio A

Gaudencio Alvarado Garcia

10
11
12
13 DATED: April 19th, 2022

H&R Labor Contracting LLC

14
15 By: 

16 By: Robert Heredia, Managing Member
17
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19
20

21 **APPROVED AS TO FORM:**

22
23 DATED: April ____, 2022

THE NOURMAND LAW FIRM, APC

24
25 By: _____

26 Michael Nourmand

27 Attorneys for Plaintiff Gaudencio Alvarado Garcia
28

1
2 DATED: April 22, 2022

KLEIN, DENATALE, GOLDNER, COOPER,
ROSENLIB & KIMBALL, LLP

3
4 By:



5 Vanessa Franco Chavez

6 Attorneys for Defendant H&R Labor Contracting,
7 LLC