

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (the “Agreement”) is being entered into by LONNIE LEVINE (“Plaintiff”) on behalf of himself, the State of California and all allegedly “Aggrieved Employees” (as defined below), on the one hand, and SUPERIOR HERBAL HEALTH, LLC (“Defendant” or “SHH”), on the other hand (collectively, the “Parties”), and is made with knowledge of the facts as set forth in Paragraphs 1 through 9 below.

FACTUAL RECITALS

1. **Definitions.** For purposes of this Agreement, the following terms will be defined as follows:

a. “Action” shall refer to Case No. 20STCV41808 the Superior Court of the State of California, for the County of Los Angeles, entitled *Lonnie Levine, an individual, Plaintiff v. Superior Herbal Health, LLC., a California Limited Liability Company; and DOES 1-50 inclusive, Defendants.*

b. “Administrator” shall refer to Phoenix Settlement Administrators.

c. “Aggrieved Employees” shall refer to all current and former non-exempt employees who worked for SHH during the PAGA Covered Period.

d. “Approval Date” shall refer to the date that the Court issues its Approval Order.

e. “Approval Order” shall refer to an order from the Court approving the PAGA Settlement as described in the Agreement and entering judgment dismissing the Action with prejudice.

f. “Complaint” shall refer to the Complaint filed in the Action by Plaintiff against SHH on or about October 30, 2020, alleging claims for violation of the California Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2690, *et seq.*)

g. “Court” shall refer to the California Superior Court for the County of Los Angeles.

h. “Gross Settlement Amount” (or the “GSA”) shall refer to the Fifty Thousand Dollars (\$50,000) to be paid by Defendant to resolve all Released PAGA Claims by Plaintiff, the State of California, and the Aggrieved Employees.

i. “Individual Claims” shall refer to Mr. Levine’s individual claims for wage and hour violations and wrongful termination against SHH.

j. “LWDA” shall refer to the California Labor and Workforce Development Agency.

k. “Net Settlement Amount” (or the “NSA”) shall refer to the remainder of the GSA after the following monies are deducted from it: (i) Administrator’s fees and expenses; (ii) Plaintiff’s Attorneys’ fees; (iii) Plaintiff’s Attorneys’ costs; and (iv) an Enhancement Award in the amount of Two Thousand Five Hundred Dollars and Zero Cents (\$2,500.00) for the PAGA Representative.

l. “PAGA” shall refer to the California Labor Code Private Attorneys General Act of 2004, and all its Sections (California Labor Code Sections 2698-2699.5).

m. “PAGA Covered Period” shall refer to the period from August 13, 2019, to January 14, 2021.

n. “PAGA Notice” shall refer to the notice sent by Plaintiff, by and through counsel, on or about August 13, 2020, to the LWDA and to Defendant, alleging that Defendant engaged in violations of the California Labor Code and California Wage Orders.

o. The “PAGA Representative” shall refer to Plaintiff.

p. “PAGA Settlement” shall refer to the resolution of Plaintiff’s, the State of California’s, and the Aggrieved Employees’ Released PAGA Claims.

q. “Released PAGA Claims” shall refer to any and all claims for civil penalties pursuant to PAGA alleged in the Action or which could have been alleged in the Action based on the facts and allegations therein and/or the PAGA Notice, whether expressly asserted in the Complaint, or arising from, or derivative of, the claims or allegations asserted in the Complaint, broadly construed, including, but not limited to, claims for civil penalties based on or arising from alleged violation by any Releasee of California Labor Code Sections 201, 202, 203, 204, 210, 216, 218.5, 223, 225.5, 226, 226.3, 226.6, 226.7, 256, 510, 512, 558, 1174, 1174.5, 1182, 1182.12, 1194, 1197, 1197.1, 1198, 1199, 2698 *et seq.*, and the California Wage Orders, whether known or unknown, suspected or unsuspected, concealed or hidden, which Plaintiff, the State of California, and any Aggrieved Employee have or had at any time during the PAGA Covered Period, against any of the Releasees.

r. “Releasees” shall refer to Defendant, its divisions, subsidiaries, partnerships, parents, affiliated corporations, trusts, or other related entities, past and

present, and each of them, as well as its and their directors, officers, investors, shareholders, partners, members, representatives, executors, trustees, administrators, beneficiaries, assignees, successors, business managers, agents, contractors, insurers, attorneys, and employees, past and present, and each of them and their marital community.

2. **Plaintiff's Employment at SHH.** Plaintiff was employed by Defendant from on or about June of 2019, through on or about May of 2020. Plaintiff and Defendant acknowledge that any employment or contractual relationship between them terminated in or about May 2020.

3. **Filing of PAGA Notice.** On August 13, 2020, Plaintiff filed the PAGA Notice electronically with the LWDA seeking to recover civil penalties on behalf of himself, a non-exempt employee, and other Aggrieved Employees for alleged violations of the California Labor Code (the "Labor Code") pursuant to the PAGA.

4. **Filing of Complaint.** On October 30, 2020, Plaintiff filed the Complaint in Court.

5. **Mediation.** On January 14, 2021, the Parties attended a private mediation with Mark A. Lemke, Esq., Lemke Mediation, an experienced mediator who frequently handles PAGA cases. On that date, the Parties agreed on a resolution of the Action.

6. **Denial of Liability.** Defendant denies all allegations in the Action and further denies any liability or wrongdoing of any kind associated with the claims being released herein. Defendant contends, among other things, that it has complied at all times with all applicable laws and regulations and asserts that Plaintiff and all Aggrieved Employees were properly compensated for all time worked, and were otherwise treated at all times in compliance with all applicable laws and regulations.

7. **Desire to Resolve All Claims.** The Parties desire to resolve all pending and potential actions and issues raised in the Action, as well as any other potential actions and issues, without the further expenditure of time or expense of litigation and, for that reason, have entered into this Agreement. The Parties agree that this Agreement sets forth the terms and conditions of the resolution of the PAGA Settlement. This Agreement is a full release and settlement of all claims asserted or which could have been asserted by Plaintiff, the LWDA, or any of the Aggrieved Employees, including, without limitation, all claims contained in the Action, including Plaintiff's individual claims and the Released PAGA Claims.

8. **No Tax Advice.** Defendant has not made any representation to Plaintiff or any Aggrieved Employee regarding the legal or tax consequences of any funds received pursuant to this Agreement.

9. **Appointment of the Administrator.** The Parties agree to use Phoenix Settlement Administrators to administer the PAGA Settlement payments to the Aggrieved Employees, which Administrator shall be vested with those duties and responsibilities as set forth at Paragraph 20.

Now, therefore, with full knowledge and agreement as to the facts set forth above, the Parties to this Agreement hereby agree as follows:

10. **Approval of Settlement by the Court.** The Parties agree to cooperate in obtaining the Approval Order from the Court, based upon a Motion drafted and filed by Plaintiff's counsel explaining the settlement terms. The Parties agree to use their best efforts to expedite the preparation of, and submission to, the Court and LWDA within thirty (30) business days of the Parties' execution of this Agreement of the proposed Approval Order and supporting Motion. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed with the Court, and shall take all steps that may be requested by the Court relating to or that are otherwise necessary to the approval and implementation of this Agreement.

11. **Contingency on Court Approval.** Because the PAGA Settlement requires approval by the Court, the Parties enter into this Agreement on a conditional basis. This Agreement is expressly contingent upon the Court's approval of the PAGA Settlement pursuant to the terms and conditions set forth in this Agreement.

12. **Pre-requisites for Distribution of Payments.** The Parties agree that prior to any payment being issued in accordance with this Agreement, and in order for this Agreement to become effective, the following must be completed:

- a. Execution and non-revocation of this Agreement by Plaintiff and Plaintiff's counsel and delivery of same to Defendant's counsel;
- b. Plaintiff filing a brief in support of its Motion For Court Approval of the PAGA Settlement with the Court and concurrently electronically submitting the proposed settlement to the LWDA, both to occur within 30 business days of the Parties' execution and non-revocation of this Agreement; and
- c. The Court's entry of the Approval Order; and
- d. The Court's Approval Order becoming final and enforceable after any appeal period has passed or, should an appeal be filed, such appeal being denied by any appellate court.

The date on which all of the above items, a through d of Paragraph 12, have been completed shall be referred to as the “Effective Date.”

13. **Agreements by Defendant.** In consideration of the covenants undertaken and releases given herein by Plaintiff on behalf of himself, the State of California, and the Aggrieved Employees, Defendant agrees:

a. **Payment to Loeb & Loeb.** By March 1, 2021, to pay the sum of Fifty Thousand Dollars and Zero Cents (\$50,000.00) as the GSA, to Loeb & Loeb, which Loeb & Loeb shall hold in trust and disburse to the Administrator as provided in Paragraph 13.b.

b. **Payment To Administrator.** Within (10) calendar days of the Effective Date, to have Loeb & Loeb pay to the Administrator the GSA, which shall disburse same as follows:

i. The Administrator shall pay to the K2 Employment Law Group, LLC, Trust Account the amount of Twenty Thousand Dollars and Zero Cents (\$20,000.00) (Forty Percent (40%) of the GSA) as attorneys’ fees in prosecuting the PAGA claims in the Complaint; and

ii. The Administrator shall pay to the K2 Employment Law Group, LLC, Trust Account the amount up to Two Thousand Five Hundred Dollars and Zero Cents (\$2,500.00) as attorneys’ costs in prosecuting the PAGA claims in the Complaint; and

iii. The Administrator shall pay itself the amount of One Thousand Eight Hundred Fifty Dollars and No Cents (\$1,850.00) as administrator fees; and

iv. The Administrator shall pay to Plaintiff the amount of Two Thousand Five Hundred Dollars and Zero Cents (\$2,500.00) as an Enhancement Award in bringing the PAGA claims in the Complaint.

The payment of the GSA is non-reversionary, such as the total GSA will be disbursed.

c. **Information to Administrator.** Within (15) calendar days of the Effective Date, to provide to the Administrator the names, last known address and social security number of each Aggrieved Employee, along with the data depicting the number of pay periods each Aggrieved Employee worked during the PAGA Covered Period; and

d. **Payments from the NSA.** After the GSA has been distributed as set forth above in Paragraph 13.b., the balance of the funds shall be known as the NSA, and the Administrator shall disburse the NSA as follows, subject to Court approval:

i. To pay to the LWDA, as an agent for the State of California, the amount of Seventeen Thousand Three Hundred Sixty-Two Dollars and Fifty Cents (\$17,362.50), which represents 75% of the NSA; and

ii. To pay the remaining amount of the NSA, in the amount of Five Thousand Seven Hundred Eighty-Seven Dollars and Fifty Cents (\$5,787.50), which represents 25% of the NSA, to all Aggrieved Employees on a pro-rata basis determined by the number of pay periods each such Aggrieved Employee worked for SHH during the PAGA Covered Period divided by the aggregate number of pay periods as to all Aggrieved Employees during the PAGA Covered Period. The Administrator shall issue 1099s for these payments to the Aggrieved Employees.

14. **Appeal of Court's Approval Order.** In the event of an appeal of the Court's Approval Order, the Effective Date shall not be achieved and no payment will be made pursuant to this Agreement unless and until the PAGA Settlement is affirmed by the appellate court(s) and becomes final, at which time the Effective Date shall be deemed to have occurred. In addition, the Parties shall work together to defeat any appeal of the PAGA Settlement.

15. **Reallocation of Settlement Proceeds.** In the event the Court fails, on its first hearing, to approve this Agreement because the amount of this PAGA Settlement is not adequate, then the Parties shall cooperate in good faith to reallocate the total settlement proceeds, within this Agreement, in order to try to achieve Court approval of the Agreement upon any subsequent Court hearings.

16. **Agreement Rendered Null and Void.** If an Approval Order is not granted regarding this Agreement, or if an appellate court reverses the Court's Approval Order, then the Effective Date shall not be achieved and this Agreement shall be deemed null and void, shall be of no force or effect whatsoever, and shall not be referred to or used for any purpose whatsoever.

17. **Release.** Upon Loeb & Loeb's payment of the GSA to Administrator as set forth in Paragraph 13.b., Plaintiff, on behalf of himself, the State of California, and all Aggrieved Employees, acknowledges full and complete satisfaction of and releases and discharges and covenants not to sue Defendant and any Releasee from and with respect to Plaintiff's Released PAGA Claims.

a. This Agreement is intended to be effective as a bar to all Released PAGA Claims, as to Plaintiff, the State of California and all Aggrieved Employees.

b. Accordingly, upon the Court's Approval and Defendant's payment to the Administrator by fully funding the GSA, Plaintiff, all Aggrieved Employees and the State of California shall be deemed to have knowingly and voluntarily released and forever discharged the Releasees to the full extent permitted by law of and from the Released PAGA Claims.

c. Levine and SHH have entered into a separate Confidential Settlement Agreement and Release of all Claims, a copy of which is attached hereto as Exhibit "A".

18. **No Admission of Liability.** While this Agreement resolves all issues between Defendant and Plaintiff, the LWDA, the State of California, and the Aggrieved Employees as to the Released PAGA Claims, as well as any future effects of any acts or omissions, it does not constitute an admission by Defendant of any of the matters alleged in the Action, nor of any violation of federal, state, or local law, ordinance or regulation, nor of any violation of Defendant's policies, procedures, or of any liability or wrongdoing whatsoever.

19. **Full and Complete Defense.** This Agreement may be pleaded by any Releasee as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding that has been or may be instituted, prosecuted or attempted, asserting any Released PAGA Claim.

20. **Administrator's Duties.** The Administrator's duties of administration shall include, without limitation, the following:

a. The Administrator shall receive the list of Aggrieved Employees to be produced by Defendant, printing and mailing the Court approved PAGA Notice, performing necessary additional skip traces on Notices and/or checks returned as undeliverable, calculating Aggrieved Employees' shares of the NSA, preparing and mailing of settlement checks and the court-approved notice related thereto, responding to Aggrieved Employees' inquiries as appropriate, preparing any appropriate tax forms in connection with the settlement payments and remitting those forms and all required payments to the appropriate governmental agencies, and generally performing all normal and customary duties associated with the administration of such settlements. All administration fees for the Administrator's services will be paid out of the GSA.

b. Within ten (10) business days of receipt of the list of Aggrieved Employees, the Administrator will send all checks to Aggrieved Employees to each Aggrieved Employee's last known address on file with Defendant and shall remain valid and negotiable for 180 days from the date of their issuance. If any checks are returned as undeliverable, the Administrator shall promptly attempt to locate an alternate, updated

address for the Aggrieved Employee at issue, by using an address refresher database and shall attempt one (1) re-mailing of Aggrieved Employee's payment. If any checks are not cashed within 180 days of mailing and remailing, those checks shall be cancelled, and thereafter, those residual funds shall be sent by the Administrator to the California State Controller Office's Unclaimed Property Fund in the name(s) and amount(s) of the PAGA Settlement Aggrieved Employees who did not cash his or her payment check(s). The payments made to Aggrieved Employees under this paragraph will be accompanied by the "Notice of PAGA Settlement and Release of Claims," which shall be submitted to the Court by Plaintiff as part of her Motion supporting the proposed Approval Order.

c. In addition, within ten (10) business days of the payment by Loeb & Loeb to the Administrator as provided in Paragraph 13.b., the Administrator will make the following payments from the GSA: the LWDA Payment paid to the LWDA as agent for the State of California; Plaintiff's Counsel Fees and Costs Payment paid to Plaintiff's Counsel; the Administrator's fees and expenses, and the Plaintiff's Enhancement Award.

21. **No Assignment.** Plaintiff warrants and represents that Plaintiff has not heretofore assigned or transferred to any person not a party to this Agreement any released matter or any part or portion thereof and Plaintiff shall defend, indemnify and hold harmless Releasees from and against any claim (including the payment of attorneys' fees and costs actually incurred whether or not litigation is commenced) based on or in connection with or arising out of any such assignment or transfer made, purported or claimed.

22. **Payment of Taxes.** Plaintiff and the Aggrieved Employees shall pay any federal or state taxes that may be required to be paid with respect to this Agreement, and Defendant and all Releasees shall have no liability as to Plaintiff's or the Aggrieved Employees' federal or state taxes with respect to any payments received as a result of this Agreement.

23. **Invalidity and Integrated Agreement.** If any provision of this Agreement or its application is held invalid, the invalidity shall not affect other provisions or applications of the Agreement which can be given effect without the invalid provisions or application and, therefore, the provisions of this Agreement are declared to be severable. This Agreement is an integrated agreement and is the entire agreement of the Parties. This Agreement, after the passage of the revocation period without revocation having occurred, supersedes all prior negotiations and all agreements, whether written or oral. This Agreement may be modified only by a writing signed by all of the Parties. This Agreement may be executed in counterparts. Any copy or facsimile of this Agreement shall be as effective as an original.

24. **Court Retains Jurisdiction.** The Parties agree that upon the entry of judgment of dismissal pursuant to the terms of this Agreement, that, pursuant to Code of Civil Procedure Section 664.6, the Court shall retain exclusive and continuing equity jurisdiction of this Action over all Parties to interpret, enforce, and effectuate the terms, conditions, intents and obligations of this Agreement.

25. **Enforceability.** Should any dispute(s) arise among the Parties or their respective counsel regarding the implementation or interpretation of this Agreement, the Parties agree to submit any such dispute(s) to the Court. To the extent any Party seeks to enforce any of the terms of this Agreement in Court or before the Court, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs. Pursuant to California Evidence Code Section 1123(a) and (b), in any action to enforce this Agreement, this Agreement is intended by the Parties to be, and shall be, enforceable, binding and admissible in a court of law.

26. **Non-Evidentiary Use.** Neither this Agreement nor any of its terms shall be offered or used as evidence by any of the Parties, or their respective counsel in the Action or in any other action or proceeding; provided, however, this shall not prevent this Agreement from being used, offered, or received in evidence in any proceeding to enforce, construe, or finalize this Agreement.

27. **No Waiver.** No waiver of any breach of any term or provision of this Agreement shall be construed to be, or shall be, a waiver of any other breach of this Agreement. No waiver shall be binding unless in writing and signed by the party waiving the breach.

28. **Cooperation.** All Parties agree to cooperate fully and to execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force to the basic terms and intent of this Agreement and which are not inconsistent with its terms.

29. **Headings Not Controlling.** The Headings in this Agreement are for ease of reference and are not to be deemed controlling under any circumstances.

30. **Acknowledgements.** The undersigned acknowledge that they have read this Agreement, that they have had opportunity to consult with an attorney, that they have had a reasonable amount of time to consider this Agreement, that they fully understand and appreciate its meaning, and that it includes a full and final release and settlement of all of Plaintiff's individual claims and Plaintiff's, the State of California, and the Aggrieved Employees' Released PAGA Claims, whether such claims are currently known or not, as of the date of signing that such parties they may have against Defendant, and Plaintiff voluntarily signs it in her individual and representative capacities.

31. **Governing Law.** This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California.

32. **Attorneys' Fees.** Except as expressly provided herein, Defendant and Plaintiff shall each bear their own attorney's fees and costs.

33. **Counterparts.** This Agreement, and any amendments hereto, may be executed in any number of counterparts and any Party and/or their respective counsel hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for any of the other counterparts.

34. **Binding.** This Agreement shall bind and inure to the benefit of the Parties hereto and to their respective successors, assigns, legatees, heirs, and personal representatives.

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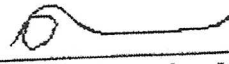
EXECUTED this 11th day of Feb., 2021, at Los Angeles County,
California.



Lonnie Levine, Individually and as a
putative representative for the Aggrieved
Employees

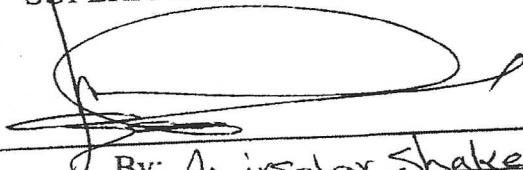
Approved as to form:
K2 EMPLOYMENT LAW GROUP, LLP

Douglas H. Hoang, Esq.

By 

Douglas H. Hoang, Esq.
Attorneys for Lonnie Levine and the
Aggrieved Employees

SUPERIOR HERBAL HEALTH, LLC

By: 

By: Amir Salar Shakeri (CEO)

Approved as to form:
Loeb & Loeb, LLP

By: 

Michelle La Mar