

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is made by and between Mario Aguilera-Lopez (“Plaintiff”), on behalf of the State of California, on the one hand, and Whole Wood, Inc. (“Whole Wood”), Shieny Chung, and Victor Chung (collectively, “Defendants”), on the other hand. Lopez, Whole Wood, Shieny Chung, and Victor Chung are collectively referred to herein as “Parties.” This Agreement is based on the following facts:

A. **Whereas**, on September 22, 2020, Plaintiff filed a Complaint against Whole Wood and Does 1 through 10 San Mateo Superior Court (“Court”), No. 20-CIV-04087 (“Action”).

B. **Whereas**, Plaintiff’s Complaint in the Action alleges that he is a former employee of Whole Wood and Does 1 through 10, and that Whole Wood and Does 1 through 10 are liable to Plaintiff for wage-and-hour violations of the California Labor Code.

C. **Whereas**, on October 22, 2020, Plaintiff filed a First Amended Complaint against Whole Wood and Does 1 through 10 in the Action, adding a cause of action for civil penalties under the Labor Code Private Attorneys General Act (“PAGA”). The PAGA cause of action alleges that Defendants are liable for civil penalties for a failure to provide proper meal and rest periods to non-exempt employees who worked at the Whole Wood showroom/warehouse in San Carlos, California (based on a theory that those employees were required to keep walkie-talkies or cell phones powered on during their breaks), and for a failure to provide proper wage statements to all employees who worked at the Whole Wood showroom/warehouse (based on a theory that Defendants’ wage statements failed to list the employer’s city, state, and zip code).

D. **Whereas**, on November 20, 2020, Whole Wood filed an Answer to the First Amended Complaint in the Action, denying all the allegations asserted by Plaintiff in the First Amended Complaint.

E. **Whereas**, on March 3, 2021, Plaintiff filed two Amendments to the First Amended Complaint, substituting Shieny Chung and Victor Chung for Does 1 and 2.

F. **Whereas**, the Parties respectively deny all of the allegations made against one another in the Action, and deny having committed any misconduct, statutory or regulatory violation, wrongdoing, or any other actionable conduct.

G. **Whereas**, on April 9, 2021, the Parties attended a full-day mediation session with Claudia Viera, Esq., a well-respected mediator who specializes in employment matters, including wage-and-hour issues. Although the Parties did not resolve the Action during the mediation, they continued discussing possible settlement with the assistance of Ms. Viera. Ultimately, with the assistance of Ms. Viera, the Parties were able to reach a conditional settlement in principle of the entire Action, including of the PAGA cause of action. The within Agreement covers only the PAGA cause of action; Plaintiff’s other causes of action for his individual claims (including causes of action seeking unpaid-overtime compensation, premium wages for the failure to provide proper meal periods and rest periods, statutory waiting-time damages for the failure to timely pay all wages upon the termination of employment, statutory damages for the failure to provide proper

wage statements, and statutory damages for the failure to comply with Plaintiff's employee-records request) are addressed by a separate settlement agreement.

H. **Whereas**, the Parties understand, acknowledge, and agree that this Agreement constitutes a compromise of the PAGA cause of action, that it is the desire and intention of the Parties to effect a final and complete resolution of that cause of action, and that the settlement of the PAGA cause of action is subject to the Court's approval. The Parties further acknowledge that this Agreement is a compromise of disputed claims, and that nothing in this Agreement shall be construed as an admission of liability by the Parties.

I. **Whereas**, the Parties believe and agree that this Agreement provides a fair, adequate, and reasonable resolution of the PAGA cause of action, and that they have arrived at the settlement embodied in this Agreement through arms' length negotiations, taking into account all relevant factors, present and potential.

J. **Whereas**, California law provides that the California Labor and Workforce Development Agency ("LWDA") may assess and collect civil penalties from "employers" for violations of certain provisions of the Labor Code. *See* Cal. Lab. Code § 2699(a). California law also provides that, if an "aggrieved employee" duly complies with certain administrative-exhaustion requirements, the employee may, "as an alternative" to enforcement by the LWDA, bring a civil action under PAGA to recover civil penalties for the benefit of the LWDA. *See id.* "[C]ivil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the [State] . . . and 25 percent to the aggrieved employees." *Id.* § 2699(i).

K. **Whereas**, California Labor Code section 2699(l) requires court approval of any settlement of any PAGA claim.

L. **Whereas**, because any settlement of Plaintiff's PAGA cause of action in the Action must be reviewed and approved by the Court, the Parties understand, acknowledge, and agree that this Agreement is conditioned on judicial approval thereof.

Therefore, in consideration of the promises and agreements contained herein, and in order to resolve Plaintiff's alleged PAGA cause of action in the Action, and for no other purpose, the Parties agree and covenant as follows:

1. **SETTLEMENT SUM.**

In exchange for the limited release set forth in section 3 of this Agreement, Defendants agree to pay the total sum of \$3,000.00 (three-thousand dollars and zero cents) ("PAGA Fund") to the State of California and to Defendants' employees who worked at the Whole Wood showroom/warehouse in San Carlos, California, at any time since April 6, 2019 ("Aggrieved Employees"), through the date that this Agreement is fully executed, on the other hand. April 6, 2019, is one year before the date that Plaintiff provided written notice to the LWDA of his PAGA theories, plus the period of time during which Plaintiff's PAGA cause of action was tolled by the Judicial Council of California's Emergency Rules Related to COVID-19. Defendants agree to pay the PAGA Fund only after both of the following conditions have been met: (1) the Parties have

signed this Agreement, and (2) the Court has granted approval of this Agreement.

Pursuant to section 2699 of the Labor Code, a total of \$2,250.00 (two-thousand, two-hundred and fifty dollars and zero cents, *i.e.*, seventy-five percent (75%)) of the PAGA Fund shall be paid to the LWDA ("LWDA PAGA Payment"). Defendants shall pay the LWDA PAGA Payment from the PAGA Fund within seven (7) calendar days after the date that the Court approves this Agreement. Also pursuant to section 2699, the remaining \$750.00 (seven-hundred and fifty dollars and zero cents, *i.e.*, twenty-five percent (25%)) of the PAGA Fund shall be paid to the Aggrieved Employees ("Worker PAGA Payment"). Defendants shall pay the Worker PAGA Payment by check to the Aggrieved Employees, including Plaintiff.

The entire Worker PAGA Payment shall be divided equally among the Aggrieved Employees, including Plaintiff. Since the PAGA Fund constitutes civil penalties, the amounts paid from the Worker PAGA Payment shall be issued via an IRS Form 1099. Defendants estimate that there are six (6) Aggrieved Employees. Since no attorney's fees or costs will be deducted from the PAGA Fund, each Aggrieved Employee's net share of the Worker PAGA Payment is \$125.00 (one-hundred and twenty-five dollars and zero cents).

Within fourteen (14) calendar days of the Court's approval of this Agreement, Defendants shall mail settlement checks for the Worker PAGA Payment to the Aggrieved Employees, using the information in Defendants' possession, custody, or control with respect to each Aggrieved Employee's name, last-known address, Social Security number, and last-known telephone number ("Aggrieved Employee Data"). Prior to mailing, Defendants shall verify the Aggrieved Employee Data by contacting each Aggrieved Employee by telephone. Any mailed checks that are returned as non-delivered shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, Defendants shall retain the services of a third-party administrator that has been mutually agreed to by the Parties, and the third-party administrator shall use the United States Postal Service National Change of Address List to locate updated addresses for each such Aggrieved Employee. If settlement checks to such Aggrieved Employees are still returned as non-delivered, or if there is no updated address in the United States Postal Service National Change of Address List, then the third-party administrator shall promptly determine a correct address by lawful use of a robust skip-tracing procedure or other search. Defendants shall bear all costs necessary to effectuate the mailing of the Worker PAGA Payment to the Aggrieved Employees, including all costs of the third-party administrator, and no such costs shall be deducted from the PAGA Fund.

Alternatively, within fourteen (14) calendar days of the Court's approval of this Agreement, Defendants shall provide the Aggrieved Employee Data to a third-party administrator that has been mutually agreed to by the Parties. Within fourteen (14) calendar days of receiving the Aggrieved Employee Data, the third-party administrator shall use the United States Postal Service National Change of Address List to locate updated addresses for each Aggrieved Employee. Any mailed checks that are returned as non-delivered shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the third-party administrator shall promptly attempt to determine a correct address by lawful use of a robust skip-tracing procedure or other search. Defendants shall bear all costs of the third-party administrator, and no such costs shall be deducted from the PAGA Fund.

Notwithstanding the foregoing, the check for the Worker PAGA Payment to Plaintiff shall be sent via U.S. Mail to a mailing address provided by counsel for Plaintiff to counsel for Defendants within fourteen (14) calendar days of the Court's approval of this Agreement.

A letter substantially in the form of **Exhibit 1** hereto will be included with each Aggrieved Employee's check for his or her share of the Worker PAGA Payment.

Within sixty (60) calendar days of initial mailing of the Worker PAGA Payment to the Aggrieved Employees, Defendants shall provide a declaration to Plaintiff's counsel, signed under penalty of perjury, explaining how it has complied with the procedures for delivering the Worker PAGA Payment to the Aggrieved Employees.

Settlement checks issued to the Aggrieved Employees will expire one-hundred and eighty (180) calendar days from the date that they are issued. Any unclaimed funds after that period shall be remitted by Defendants to the LWDA.

2. NO ATTORNEY'S FEES OR COSTS.

Other than as set forth in the settlement agreement addressing Plaintiff's individual claims, the Parties agree that they shall bear all of their respective attorney's fees and costs in connection with the Action, including, but not limited to, the negotiation and execution of this Agreement, and that neither side is a prevailing party in this Action, including, but not limited to, under any statute.

3. LIMITED RELEASE.

Upon the date that the Court grants approval of this Agreement, Plaintiff and the State of California shall be deemed to have fully released and forever discharged any and all claims seeking civil penalties under PAGA against Defendants and their respective officers, directors, managers, employees, partners, shareholders, and agents for the failure to provide proper meal or rest periods based on a theory that employees were required to keep walkie-talkies or cell phones powered on during their breaks, or for the failure to provide proper wage statements based on a theory that their wage statements failed to list the employer's city, state, or zip code. It is expressly understood and agreed that this release does not absolve Defendants from liability, if any, to the Aggrieved Employees for any claims they may assert against Defendants other than those seeking civil penalties through PAGA under the two theories articulated in the preceding sentence.

4. COURT APPROVAL.

Should the Court not approve this Agreement, Defendants shall have no obligation to pay the PAGA Fund.

In connection with requesting the Court's approval of this Agreement, the Parties shall file a stipulation and proposed order for approval of this Agreement, with the proposed order substantially in the form attached hereto as **Exhibit 2**, within fourteen (14) calendar days after full

execution of this Agreement. Thereafter, the Parties shall file a joint request for dismissal of the Action with prejudice, substantially in the form attached hereto as **Exhibit 3**.

5. **REPRESENTATIONS AND WARRANTIES.** The Parties represent and warrant that they each have the sole right and exclusive authority to execute this Agreement, and that they have not sold, assigned, transferred, conveyed, pledged, or otherwise disposed of any claim, interest, demand, or legal right that is the subject of this Agreement. Each Party also represents and warrants as follows:

a. Each Party has carefully read, and knows and understands, the full contents of this Agreement, and is voluntarily entering this Agreement after having the opportunity to receive independent legal advice from his or its attorneys with respect to the advisability of executing this Agreement.

b. Each Party to this Agreement has investigated the facts relevant to this settlement and this Agreement, and all matters pertaining thereto, to the full extent that each Party deems necessary.

6. **ENFORCEMENT OF AGREEMENT.** The rights and obligations of the Parties and of the Aggrieved Employees under this Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of California. California law shall govern the interpretation of this Agreement even if a choice-of-law analysis under state or federal law would dictate that another forum's law be applied.

In addition, the Parties agree that the state and federal courts located in California shall have exclusive jurisdiction over the Parties for all purposes relating to the implementation and effectuation of this Agreement, and that the Court shall retain jurisdiction over the Action, the Parties, and the Aggrieved Employees for purposes of supervising, implementing, enforcing, construing, administering, and interpreting this Agreement, as well as any matters related or ancillary to the foregoing, including under California Code of Civil Procedure section 664.6 and all federal equivalents. Any Party prevailing in any action to enforce the terms of this Agreement shall be entitled to such Party's reasonable attorney's fees and costs.

7. **COOPERATION.** The Parties, respectively on behalf of themselves and their respective business entities, heirs, executors, and assigns, agree that they will abide by this Agreement and will do all such acts—including preparing, executing, and delivering all such documents—as may be reasonably required to carry out this Agreement.

8. **SEVERANCE.** If any provision of this Agreement is held to be invalid by a court of competent jurisdiction, that provision shall be deemed severed and deleted from this Agreement, and neither that provision nor its severance and deletion shall affect the validity of the remaining provisions. Notwithstanding the foregoing, no portion of any release contained herein may be deemed severed or deleted from this Agreement, except upon waiver in writing by the affected Released Party.

9. **NON-ADMISSION OF WRONGDOING.** The Parties agree that this Agreement

does not constitute an admission by any of them of any wrongdoing. Nothing in this Agreement shall be construed to be, or shall be, admissible in any proceeding as evidence of liability or wrongdoing by the Parties or any of their respective parents, subsidiaries, divisions, affiliated corporations, trustees, directors, officers, shareholders, agents, contractors, attorneys, insurers, or employees. However, this Agreement may be offered and received in evidence for purposes of enforcing the Agreement and the settlement contemplated therein.

In the event that approval of the Agreement is not obtained, the Parties shall be returned to their respective positions as to the PAGA cause of action asserted in the Action. Furthermore, nothing said or represented in connection with obtaining approval by the Court with respect to this Agreement shall be admissible for any purpose other than to obtain approval by the Court of this Agreement, and to interpret or enforce the terms of this Agreement.

10. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement between the Parties with respect to the matters set forth herein, and it supersedes any prior agreements or understandings among them. The Parties acknowledge that they have not relied on any representations, promises, or agreements of any kind made to them in connection with their decision to accept the terms of this Agreement, except for the representations, promises, and agreements herein.

11. **ADDITIONAL TERMS.**

a. This Agreement is binding upon, and shall inure to the benefit of, the Parties hereto and their respective agents, employees, contractors, representatives, officers, directors, parents, subsidiaries, assigns, heirs, executors, administrators, insurers, and successors in interest.

b. Given that all Parties have had the opportunity to draft, review, and edit the language of this Agreement, no presumption for or against any Party arising out of drafting all or any part of this Agreement may be applied in any action relating to, connected to, or involving this Agreement. Accordingly, the Parties hereby waive the benefit of any legal principle or rule providing that, in cases of uncertainty, the language of a contract should be interpreted against the Party who caused the uncertainty to exist.

c. This Agreement may be executed in counterparts. A signature by way of facsimile or .pdf shall serve as an original for all purposes.

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d. Headings in this Agreement are included solely for convenience and shall not control the meaning or interpretation of any provision of this Agreement.

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

Dated: 05/27/2021



Mario Aguilera-Lopez

Dated: _____

Whole Wood, Inc.

By: _____

Its: _____

Dated: _____

Shieny Chung

Dated: _____

Victor Chung

Approved as to form:

Dated: _____

ZELENSKI LAW, PC
David Zelenski
Abigail Zelenski
Attorneys for Plaintiff

Dated: _____

NARAYAN TRAVELSTEAD P.C.
Tim Travelstead
Scott Ku
Attorneys for Defendants

d. Headings in this Agreement are included solely for convenience and shall not control the meaning or interpretation of any provision of this Agreement.

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

Dated: _____

Mario Aguilera-Lopez

Dated: _____

Whole Wood, Inc.

By: _____

Its: _____

Dated: _____

Shieny Chung

Dated: _____

Victor Chung

Approved as to form:

Dated: May 28, 2021

David Zelenski

ZELENSKI LAW, PC
David Zelenski
Abigail Zelenski
Attorneys for Plaintiff

Dated: _____

NARAYAN TRAVELSTEAD P.C.
Tim Travelstead
Scott Ku
Attorneys for Defendants

d. Headings in this Agreement are included solely for convenience and shall not control the meaning or interpretation of any provision of this Agreement.

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

Dated: 05/27/2021



Mario Aguilera-Lopez

Dated: 6/9/2021

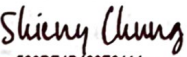
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Whole Wood, Inc.

By: Shieny chung

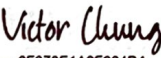
Its: Secretary

Dated: 6/9/2021

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Shieny Chung

Dated: 6/9/2021

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0E378E1A9F884DA...
Victor Chung

Approved as to form:

Dated: _____

ZELENSKI LAW, PC
David Zelenski
Abigail Zelenski
Attorneys for Plaintiff

Dated: 6/10/2021



NARAYAN TRAVELSTEAD P.C.
Tim Travelstead
Scott Ku
Attorneys for Defendants

EXHIBIT 1

Name
Street Address
City, State, and Zip Code

Insert Employee's Name:

On _____, 2021, the San Mateo Superior Court granted approval of a settlement of a representative claim for civil penalties brought in a lawsuit by Mario Aguilera-Lopez against Whole Wood, Inc. ("Whole Wood"), Shieny Chung, and Victor Chung. The lawsuit is titled *Mario Aguilera-Lopez v. Whole Wood et al.*, San Mateo Superior Court Case No. 20-CIV-04087.

In the lawsuit, Mr. Aguilera-Lopez contends that individuals who were employed at Whole Wood's showroom/warehouse in San Carlos, California, at any time from April 6, 2019, through _____, 2021, are entitled to a portion of civil penalties owed under the Private Attorneys General Act ("PAGA"), section 2698 *et seq.* of the California Labor Code, for an alleged failure to provide proper meal and rest periods (based on a theory that employees were required to keep walkie-talkies or cell phones powered on during their breaks), and for a failure to provide proper wage statements (based on a theory that Defendants' wage statements failed to list the employer's city, state, and zip code).

The Court has not made a determination about the merits of Mr. Aguilera-Lopez's civil-penalties claim, and Defendants deny any liability or wrongdoing. Instead, Mr. Aguilera-Lopez, on the one hand, and Whole Wood, Shieny Chung, and Victor Chung, on the other hand, have agreed to settle the lawsuit. In connection with that settlement, Whole Wood, Shieny Chung, and Victor Chung have agreed to establish a settlement fund to pay civil-penalty amounts allegedly owed to the State of California, a portion of which is to be shared under PAGA by the employees who worked at Whole Wood's San Carlos showroom/warehouse at any time from April 6, 2019, through _____, 2021. You are receiving this letter because, according to Whole Wood's records, you worked at Whole Wood's San Carlos showroom/warehouse at some point during that period of time.

Please note that you are NOT being sued in the lawsuit. Instead, you are receiving this letter because you are entitled to a portion of the settlement fund described in the preceding paragraph. Enclosed with this letter is a check in the amount of \$ _____, which represents your share of the settlement fund.

EXHIBIT 2

1 ZELENSKI LAW, PC
2 Abigail A. Zelenski (SBN 228610)
3 abigail@zelenskilaw.com
4 David Zelenski (SBN 231768)
5 david@zelenskilaw.com
6 595 Lincoln Avenue, Suite 200
7 Pasadena, California 91103
8 Telephone: (323) 426-9076

9 *Attorneys for Plaintiff Mario Aguilera-Lopez*

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
SAN MATEO COUNTY

MARIO AGUILERA-LOPEZ,

Plaintiff,

v.

WHOLE WOOD, INC., a California corporation;
SHIENY CHUNG; VICTOR CHUNG; and
DOES 3–10, inclusive,

Defendants.

Case No. 20-CIV-04087

**STIPULATION FOR APPROVAL OF THE
PARTIES' CONDITIONAL SETTLEMENT
AGREEMENT AND RELEASE UNDER THE
LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT**

*Assigned for all purposes to the Honorable Marie
S. Weiner, Department 2*

Complaint Filed: September 22, 2020

First Amended Complaint Filed: October 22, 2020

Plaintiff Mario Aguilera-Lopez ("Plaintiff") on the one hand, and Defendants Whole Wood, Inc., Shieny Chung, and Victor Chung (collectively, "Defendants"), on the other hand, submit this Stipulation for Approval of the Parties' Conditional Settlement Agreement and Release Under the Labor Code Private Attorneys General Act. The Stipulation is based on the following facts:

1. On September 22, 2020, Plaintiff filed a Complaint against Whole Wood and Does 1 through 10.

2. Plaintiff's Complaint alleges that he is a former employee of Whole Wood and Does 1 through 10, and that Whole Wood and Does 1 through 10 are liable to Plaintiff for wage-and-hour violations of the California Labor Code.

3. On October 22, 2020, Plaintiff filed a First Amended Complaint against Whole Wood

1 and Does 1 through 10, adding a cause of action for civil penalties under the Labor Code Private
2 Attorneys General Act (“PAGA”). The PAGA cause of action alleges that Defendants are liable for
3 civil penalties for a failure to provide proper meal and rest periods to non-exempt employees who
4 worked at the Whole Wood showroom/warehouse in San Carlos, California, based on a theory that those
5 employees were required to keep walkie-talkies or cell phones powered on during their breaks. The
6 PAGA cause of action also alleges that Defendants are liable for civil penalties for a failure to provide
7 proper wage statements to all employees who worked at the Whole Wood showroom/warehouse, based
8 on a theory that Defendants’ wage statements failed to list the employer’s city, state, and zip code.

9 4. On March 3, 2021, Plaintiff filed two Amendments to the First Amended Complaint,
10 substituting Shieny Chung and Victor Chung for Does 1 and 2.

11 5. The Parties respectively deny all of the allegations made against one another in the
12 Action, and deny having committed any misconduct, statutory or regulatory violation, wrongdoing, or
13 any other actionable conduct.

14 6. On April 9, 2021, the Parties attended a full-day mediation session with Claudia Viera,
15 Esq., a well-respected mediator who specializes in employment matters, including wage-and-hour
16 issues. Although the Parties did not resolve Plaintiff’s claims during the mediation, the Parties
17 continued discussing possible settlement with the assistance of Ms. Viera. Ultimately, with the
18 assistance of Ms. Viera, the Parties were able to reach a conditional settlement in principle of Plaintiff’s
19 claims, including of the PAGA cause of action. A copy of the Settlement Agreement and Release
20 (“Agreement”) concerning the PAGA cause of action is attached hereto as **Exhibit 1**.

21 7. The Parties believe and agree that the Agreement provides a fair, adequate, and
22 reasonable resolution of the PAGA cause of action, and that they have arrived at the settlement
23 embodied in the Agreement through arms’ length negotiations, taking into account all relevant factors,
24 present and potential.

25 8. California law provides that the California Labor and Workforce Development Agency
26 (“LWDA”) may assess and collect civil penalties from “employers” for violations of certain provisions
27 of the Labor Code. *See* Cal. Lab. Code § 2699(a). California law also provides that, if an “aggrieved
28 employee” duly complies with certain administrative-exhaustion requirements, the employee may, “as

1 an alternative” to enforcement by the LWDA, bring a civil action under PAGA to recover civil penalties
2 for the benefit of the LWDA. *See id.* “[C]ivil penalties recovered by aggrieved employees shall be
3 distributed as follows: 75 percent to the [State] . . . and 25 percent to the aggrieved employees.”
4 *Id.* § 2699(i).

5 9. California Labor Code section 2699 requires court approval of any settlement of any
6 PAGA claim. *See id.* § 2699(l)(2). Section 2699 also provides that, even if a PAGA claim is not settled
7 and instead proceeds to a judgment against an employer, the court has discretion to “award a lesser
8 amount than the maximum civil penalty.” *Id.* § 2699(e)(2).

9 10. The Agreement provides as follows:

10 a. In exchange for the limited release set forth in the Agreement, Defendants agree
11 to pay the total sum of \$3,000.00 (“PAGA Fund”) to the State of California, on the one hand, and to
12 Defendants’ employees who worked at the Whole Wood showroom/warehouse in San Carlos,
13 California, at any time since April 6, 2019 (“Aggrieved Employees”), through the date of full execution
14 of the Agreement, on the other hand. April 6, 2019, is one year before the date that Plaintiff provided
15 written notice to the LWDA of his PAGA theories (*see* First Am. Compl. Ex. 1), plus the period of time
16 during which Plaintiff contends his PAGA cause of action was tolled by the Judicial Council of
17 California’s Emergency Rules Related to COVID-19, *see* Cal. R Ct., Emergency Rs. Related to COVID-
18 19, R. 9(a).

19 b. Pursuant to section 2699 of the Labor Code, a total of \$2,250.00 (*i.e.*, 75%) of the
20 PAGA Fund shall be paid to the LWDA (“LWDA PAGA Payment”). Defendants shall pay the LWDA
21 PAGA Payment from the PAGA Fund within seven calendar days after the date that the Court approves
22 the Agreement. Also pursuant to section 2699, the remaining \$750.00 (*i.e.*, 25%) of the PAGA Fund
23 shall be paid to the Aggrieved Employees (“Worker PAGA Payment”). Defendants shall pay the
24 Worker PAGA Payment by check to the Aggrieved Employees, including Plaintiff. Based on the
25 evidence provided by Defendants’ counsel to Plaintiff, the Parties estimate that there are only six
26 Aggrieved Employees.

27 c. The entire Worker PAGA Payment shall be divided equally among the Aggrieved
28 Employees, including Plaintiff. Since the PAGA Fund constitutes civil penalties, the amounts paid from

1 the Worker PAGA Payment shall be issued via an IRS Form 1099. In addition, since it is estimated that
2 there are only six Aggrieved Employees, and since (as explained below) no attorney's fees or costs, on
3 the one hand, or settlement-administration fees or expenses, on the other hand, will be deducted from the
4 PAGA Fund, each Aggrieved Employee's net share of the Worker PAGA Payment will be \$125.00.
5 This is considerably more than what aggrieved employees in other PAGA settlements receive. *See, e.g.,*
6 *Turner v. Motel 6 Operating L.P.*, No. CV 17-2544 PSG (SSx), 2018 WL 6977474, at *1, 7 (C.D. Cal.
7 Nov. 6, 2018) (approving a \$20,000.00 PAGA payment from a \$1.36 million class-wide settlement, with
8 \$5,000.00 of the PAGA payment going to the 2,780 class members, resulting in an average civil-penalty
9 payment to aggrieved employees of \$1.80); *Emmons v. Quest Diagnostics Clinical Labs., Inc.*, No. 1:13-
10 cv-00474-DAD-BAM, 2017 WL 749018, at *5, 9 (E.D. Cal. Feb. 27, 2017) (approving a \$20,000.00
11 PAGA payment from a \$2.35 million class-wide settlement, with \$5,000.00 of the PAGA payment
12 going to the 2,730 class members, resulting in an average civil-penalty payment to aggrieved employees
13 of \$1.83).

14 d. Within fourteen calendar days of the Court's approval of the Agreement,
15 Defendants shall mail settlement checks for the Worker PAGA Payment to the Aggrieved Employees,
16 using the information in Defendants' possession, custody, or control with respect to each Aggrieved
17 Employee's name, last-known address, Social Security number, and last-known telephone number
18 ("Aggrieved Employee Data"). Prior to mailing, Defendants shall verify the Aggrieved Employee Data
19 by contacting each Aggrieved Employee by telephone. Any mailed checks that are returned as non-
20 delivered shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is
21 provided, Defendants shall retain the services of a third-party administrator that has been mutually
22 agreed to by the Parties, and the third-party administrator shall use the United States Postal Service
23 National Change of Address List to locate updated addresses for each such Aggrieved Employee. If
24 settlement checks to such Aggrieved Employees are still returned as non-delivered, or if there is no
25 updated address in the United States Postal Service National Change of Address List, then the third-
26 party administrator shall promptly determine a correct address by lawful use of a robust skip-tracing
27 procedure or other search. Defendants shall bear all costs necessary to effectuate the mailing of the
28 Worker PAGA Payment to the Aggrieved Employees, including all costs of the third-party

1 administrator, and no such costs shall be deducted from the PAGA Fund.

2 e. Alternatively, within fourteen calendar days of the Court's approval of the
3 Agreement, Defendants shall provide the Aggrieved Employee Data to a third-party administrator that
4 has been mutually agreed to by the Parties. Within fourteen calendar days of receiving the Aggrieved
5 Employee Data, the third-party administrator shall use the United States Postal Service National Change
6 of Address List to locate updated addresses for each Aggrieved Employee. Any mailed checks that are
7 returned as non-delivered shall be re-mailed to the forwarding address affixed thereto. If no forwarding
8 address is provided, the third-party administrator shall promptly attempt to determine a correct address
9 by lawful use of a robust skip-tracing procedure or other search. Defendants shall bear all costs of the
10 third-party administrator, and no such costs shall be deducted from the PAGA Fund.

11 f. A letter jointly drafted by respective counsel for Plaintiff and Defendants that
12 explains what the Worker PAGA Payment is for will be included with each Aggrieved Employee's
13 check for his or her share of the Worker PAGA Payment.

14 g. Within sixty calendar days of the initial mailing of the Worker PAGA Payment to
15 the Aggrieved Employees, Defendants shall provide a declaration to Plaintiff's counsel, signed under
16 penalty of perjury, explaining how it has complied with the procedures for delivering the Worker PAGA
17 Payment to the Aggrieved Employees.

18 h. Settlement checks issued to the Aggrieved Employees will expire one-hundred
19 and eighty calendar days from the date that they are issued. Any unclaimed funds after that period shall
20 be remitted by Defendants to the LWDA. In other words, none of the PAGA Fund shall revert to
21 Defendants.

22 i. No deductions from the PAGA Fund will be taken on account of Plaintiff's
23 attorney's fees and costs.

24 j. Upon the date that the Court grants approval of the Agreement, Plaintiff and the
25 State of California shall be deemed to have fully released and forever discharged any and all claims
26 seeking civil penalties under PAGA against Defendants and their respective officers, directors,
27 managers, employees, partners, shareholders, and agents for the failure to provide proper meal or rest
28 periods based on a theory that employees were required to keep walkie-talkies or cell phones powered

1 on during their breaks, or for the failure to provide proper wage statements based on a theory that their
2 wage statements failed to list the employer's city, state, or zip code. The Agreement recites that it is
3 expressly understood and agreed that this release does not absolve Defendants from liability, if any, to
4 the Aggrieved Employees for any claims they may assert against Defendants other than those seeking
5 civil penalties through PAGA under the two theories articulated in the preceding sentence. In other
6 words, the Agreement's release is limited specifically to civil-penalty claims—and then to only those
7 claims based on the specific theories asserted in Plaintiff's First Amended Complaint.

8 11. On [REDACTED], 2021, Plaintiff provided a copy of the Agreement to the LWDA. As of
9 the execution of this Stipulation, neither Plaintiff's counsel nor Defendant's counsel has received any
10 objection from the LWDA to the terms of the Agreement.

11 Based on the foregoing, Plaintiff and Defendants **HEREBY STIPULATE** that the Court
12 execute the Proposed Order Granting Approval of the Parties' Conditional Settlement Agreement and
13 Release Under the Labor Code Private Attorneys General Act, a copy of which is being lodged
14 concurrently with the filing of this Stipulation.

15
16 Dated: May __, 2021

ZELENSKI LAW, PC

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19 _____
Abigail A. Zelenski
David Zelenski
Attorneys for Plaintiff

20
21 Dated: May __, 2021

NARAYAN TRAVELSTEAD P.C.

22
23
24 _____
Tim Travelstead
Scott Ku
Attorneys for Defendants

PROOF OF SERVICE

I am employed in the County of Los Angeles; I am over the age of eighteen years and am not a party to the within action; and my business address is 595 Lincoln Avenue, Suite 200, Pasadena, California 91103.

On May __, 2021, I served the document(s) described as **STIPULATION FOR APPROVAL OF THE PARTIES' CONDITIONAL SETTLEMENT AGREEMENT AND RELEASE UNDER THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT** on the party(ies) in this action by delivering a true copy(ies) addressed as follows:

Tim Travelstead
Scott Ku
t.travelstead@narayantravelstead.com
s.ku@narayantravelstead.com
NARAYAN TRAVELSTEAD P.C.
7901 Stoneridge Drive, Suite 230
Pleasanton, California 94588

Attorneys for Defendants

- ☐ **BY U.S. MAIL:** I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, an envelope(s) containing the document(s) would be deposited with the U.S. Postal Service on that same day, with postage thereon fully prepaid, at Los Angeles, California in the ordinary course of business. I am aware that, on motion of the party served, service is presumed invalid if the postal-cancellation date or postage-meter date is more than one day after the date of deposit for mailing.
- ☐ **BY OVERNIGHT DELIVERY OR EXPRESS MAIL:** I enclosed the document(s) in an envelope(s) or package(s) allowed by an overnight-delivery carrier and/or by the U.S. Post Office for express mail, and addressed to the person(s) at the address(es) above. I placed the envelope(s) or package(s) for collection and overnight delivery or express mail at an office or a regularly utilized drop-box of the overnight-delivery carrier, or I dropped it off at the U.S. Post Office.
- ☐ **BY HAND DELIVERY:** I caused the document(s) to be delivered by hand to at least one of the individuals listed above.
- XXX **BY ELECTRONIC SERVICE:** I caused the document(s) to be delivered by e-mail to the individuals listed above, and, to my knowledge, the transmission was reported as complete and without error.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct. Executed on May __, 2021, at Los Angeles, California.

David Zelenski

1 ZELENSKI LAW, PC
2 Abigail A. Zelenski (SBN 228610)
3 abigail@zelenskilaw.com
4 David Zelenski (SBN 231768)
5 david@zelenskilaw.com
6 595 Lincoln Avenue, Suite 200
7 Pasadena, California 91103
8 Telephone: (323) 426-9076

9 *Attorneys for Plaintiff Mario Aguilera-Lopez*

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
SAN MATEO COUNTY

MARIO AGUILERA-LOPEZ,

Plaintiff,

v.

WHOLE WOOD, INC., a California corporation;
SHIENY CHUNG; VICTOR CHUNG; and
DOES 3–10, inclusive,

Defendants.

Case No. 20-CIV-04087

**[PROPOSED] ORDER GRANTING
APPROVAL OF THE PARTIES'
CONDITIONAL SETTLEMENT
AGREEMENT AND RELEASE UNDER THE
LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT**

*Assigned for all purposes to the Honorable Marie
S. Weiner, Department 2*

Complaint Filed: September 22, 2020

First Amended Complaint Filed: October 22, 2020

Having reviewed the Stipulation for Approval of the Parties' Conditional Settlement Agreement and Release Under the Labor Code Private Attorneys General Act, and good cause appearing, **IT IS HEREBY ORDERED** that the PAGA Fund defined in the Settlement Agreement and Release, including all payments from the PAGA Fund that are described in that Agreement, represents a fair, reasonable, and adequate settlement of the civil-penalty cause of action asserted in the Action.¹

IT IS FURTHER ORDERED that the Court shall retain jurisdiction over the Action, the Parties, and the Aggrieved Employees for purposes of supervising, implementing, enforcing, construing,

¹ Capitalized terms used herein have the meanings set forth in the Settlement Agreement and Release attached as Exhibit 1 to the Stipulation for Approval of the Parties' Conditional Settlement Agreement and Release Under the Labor Code Private Attorneys General Act.

1 administering, and interpreting the Agreement and this Order, as well as any matters related or ancillary
2 to the foregoing, including under California Code of Civil Procedure section 664.6. In addition, **IT IS**
3 **ORDERED** that the Parties are to submit a copy of this Order to the California Labor and Workforce
4 Development Agency within ten calendar days after entry of this Order.

5
6
7 Dated: _____

Hon. Marie S. Weiner
San Mateo Superior Court Judge

PROOF OF SERVICE

I am employed in the County of Los Angeles; I am over the age of eighteen years and am not a party to the within action; and my business address is 595 Lincoln Avenue, Suite 200, Pasadena, California 91103.

On **May __, 2021**, I served the document(s) described as **[PROPOSED] ORDER GRANTING APPROVAL OF THE PARTIES' CONDITIONAL SETTLEMENT AGREEMENT AND RELEASE UNDER THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT** on the party(ies) in this action by delivering a true copy(ies) addressed as follows:

Tim Travelstead
Scott Ku
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s.ku@narayantravelstead.com
NARAYAN TRAVELSTEAD P.C.
7901 Stoneridge Drive, Suite 230
Pleasanton, California 94588

Attorneys for Defendants

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- ☐ **BY HAND DELIVERY:** I caused the document(s) to be delivered by hand to at least one of the individuals listed above.
- XXX BY ELECTRONIC SERVICE:** I caused the document(s) to be delivered by e-mail to the individuals listed above, and, to my knowledge, the transmission was reported as complete and without error.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct. Executed on **May __, 2021**, at Los Angeles, California.

David Zelenski

EXHIBIT 3

1 ZELENSKI LAW, PC
2 Abigail A. Zelenski (SBN 228610)
3 abigail@zelenskilaw.com
4 David Zelenski (SBN 231768)
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7 Pasadena, California 91103
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9 *Attorneys for Plaintiff Mario Aguilera-Lopez*

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
SAN MATEO COUNTY

MARIO AGUILERA-LOPEZ,

Plaintiff,

v.

WHOLE WOOD, INC., a California corporation;
SHIENY CHUNG; VICTOR CHUNG; and
DOES 3–10, inclusive,

Defendants.

Case No. 20-CIV-04087

**STIPULATION TO DISMISS ENTIRE CASE
WITH PREJUDICE; [PROPOSED] ORDER**

*Assigned for all purposes to the Honorable Marie
S. Weiner, Department 2*

Complaint Filed: September 22, 2020

First Amended Complaint Filed: October 22, 2020

STIPULATION

WHEREAS, on September 22, 2020, Mario Aguilera-Lopez (“Plaintiff”) filed a Complaint against Defendant Whole Wood, Inc. and Does 1 through 10.

WHEREAS, Plaintiff’s Complaint alleges that he is a former employee of Whole Wood and Does 1 through 10, and that Whole Wood and Does 1 through 10 are liable to Plaintiff for wage-and-hour violations of the California Labor Code.

WHEREAS, on October 22, 2020, Plaintiff filed a First Amended Complaint against Whole Wood and Does 1 through 10, adding a cause of action for civil penalties under the Labor Code Private Attorneys General Act (“PAGA”).

WHEREAS, on March 3, 2021, Plaintiff filed two Amendments to the First Amended

1 Complaint, substituting Shieny Chung and Victor Chung for Does 1 and 2. Collectively, Whole Wood,
2 Shieny Chung, and Victor Chung are referred to herein as “Defendants,” and Plaintiff and Defendants
3 are collectively referred to herein as “Parties.”

4 **WHEREAS**, the Parties respectively deny all of the allegations made against one another in the
5 above-captioned action, and deny having committed any misconduct, statutory or regulatory violation,
6 wrongdoing, or any other actionable conduct.

7 **WHEREAS**, the Parties have executed a settlement agreement addressing the non-PAGA causes
8 of action asserted in this case, and a separate settlement agreement addressing the PAGA cause of action
9 asserted in this case.

10 **WHEREAS**, the Court granted approval of the PAGA settlement on _____, 2021.

11 **WHEREAS**, the Parties now desire to dismiss with prejudice all causes of action asserted in
12 Plaintiff’s First Amended Complaint, with all Parties to bear their own respective attorney’s fees and
13 costs, and with no Party to be adjudged a prevailing party.

14 Based on the foregoing recitals, Plaintiff and Defendants **HEREBY STIPULATE** that the entire
15 above-captioned action be dismissed with prejudice, with all Parties to bear their own respective
16 attorney’s fees and costs, and with no side to be adjudged a prevailing party.

17
18 Dated: May __, 2021

ZELENSKI LAW, PC

19
20
21 _____
22 Abigail A. Zelenski
David Zelenski
Attorneys for Plaintiff

23 Dated: May __, 2021

NARAYAN TRAVELSTEAD P.C.

24
25 _____
26 Tim Travelstead
Scott Ku
Attorneys for Defendants
27
28

1 ***[PROPOSED] ORDER***

2 Based on the foregoing Stipulation, the entire above-captioned action is dismissed with
3 prejudice, with all Parties to bear their own respective attorney's fees and costs, and with no side to be
4 adjudged a prevailing party.

5 IT IS SO ORDERED.

6
7 Dated: _____

8 Hon. Marie S. Weiner
9 *San Mateo Superior Court Judge*

PROOF OF SERVICE

I am employed in the County of Los Angeles; I am over the age of eighteen years and am not a party to the within action; and my business address is 595 Lincoln Avenue, Suite 200, Pasadena, California 91103.

On **May __, 2021**, I served the document(s) described as **STIPULATION TO DISMISS ENTIRE CASE WITH PREJUDICE; [PROPOSED] ORDER** on the party(ies) in this action by delivering a true copy(ies) addressed as follows:

Tim Travelstead
Scott Ku
t.travelstead@narayantravelstead.com
s.ku@narayantravelstead.com
NARAYAN TRAVELSTEAD P.C.
7901 Stoneridge Drive, Suite 230
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Attorneys for Defendants

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- XXX **BY ELECTRONIC SERVICE:** I caused the document(s) to be delivered by e-mail to the individuals listed above, and, to my knowledge, the transmission was reported as complete and without error.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct. Executed on **May __, 2021**, at Los Angeles, California.

David Zelenski