

Bruce Kokozyan, Esq. (SBN 195723)

Alex DiBona, Esq. (SBN 265744)

KOKOZIAN LAW FIRM, APC

10940 Wilshire Blvd., Ste. 1200

Los Angeles, CA 90024

Telephone (323) 857-5900

Fax (310) 275-6301

bkokozyan@kokozyanlawfirm.com

dibona@kokozyanlawfirm.com

Joshua Rios, individually and on behalf of others

similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES, SPRING STREET COURTHOUSE

JOSHUA RIOS, an Individual, on behalf of
himself and all others similarly situated

Plaintiffs,

v.

BONSAI TRADING COMPANY, a
California corporation; and DOES 1 through
100, Inclusive

Defendants.

CASE NO.: 20STCV37231

[Assigned for all purposes to the Honorable
Yvette M. Palazuelos - SSC Dept. "9"]

CLASS ACTION

**AMENDED JOINT STIPULATION AND
SETTLEMENT OF CLASS ACTION AND
PRIVATE ATTORNEYS GENERAL ACT
CLAIMS**

Complaint Filed: September 29, 2020

Trial Date: None yet

Subject to final approval by the Court, which counsel and parties agree to pursue and recommend in good faith, Plaintiff JOSHUA RIOS individually ("Named Plaintiff") and on behalf of all employees similarly situated, on the one hand, and Defendant BONSAI TRADING COMPANY (hereinafter collectively "Defendant") hereby agree to the following binding settlement of the class action and Private Attorneys General Act ("PAGA") case of *Joshua Rios v. Bonsai Trading Company* ("Action") Los Angeles Superior Court Case No. 20STCV37231.

1. "Action" means, and refers to, the case captioned *Joshua Rios v. Bonsai Trading Company* in the California Superior Court for the County of Los Angeles, Case No. 20STCV37231.

2. "Agreement," "Settlement," or "Stipulation" mean, and refer to, this Joint Stipulation and Settlement of Class Action and PAGA Claims.

3. "Aggrieved Employees" means and refers to all current and former employees of Defendant Bonsai Trading Company who were employed in California, as a non-exempt hourly paid employee during the PAGA Period of January 11, 2020, through the date of preliminary approval.

3. "Aggregate Workweek Number" means, and refers to, the sum of all of the Participating Class Members' Total Workweeks which will be used to calculate the Weekly Settlement Amounts of the Participating Class Members' Individual Settlement Payments.

4. "Attorneys' Fees and Cost Award" means, and refers to, the amount authorized by the Court to be paid to Class Counsel for the services they have rendered, and expenses they have incurred, in prosecuting the Action. As set forth *infra* in Section III, Paragraph 8, Class Counsel shall request, and Defendant will not oppose, an award of attorneys' fees of Thirty Four Thousand Eight Hundred Dollars (\$34,800) which is Thirty Three and One Third percent (33⅓%) of the Gross Fund Value and a Cost Award of up to Twelve Thousand Dollars (\$12,000). The Attorneys' Fees and Cost Award shall come out of the Gross Fund Value and will not increase the amount of the Gross Fund Value. Class Counsel will be issued IRS Form 1099 for the Attorneys' Fees and Cost Award.

5. "Settlement Administrator" means, and refers to, Simpluris, Inc. or another settlement administration provider upon which the Named Plaintiff, Class Counsel, Defendant, and Defendant's Counsel mutually agree.

6. "Settlement Administration Costs" means, and refers to, the amount that will be paid to the Settlement Administrator, and includes all costs incurred in administering the Settlement, which will be paid from the Gross Fund Value, as defined in Section I, Paragraph 36, *infra*. The Parties agree to work in good faith to minimize, as much as possible, the Settlement Administration Costs. Defendant will not object to an application for approval of the Settlement Administration Costs, provided the Settlement Administration Costs are paid out of the Gross Fund Value and will not increase the Gross Fund Value.

1 7. “Class” and “Class Member” means, and refers to, a member of the class
2 conditionally certified for settlement purposes only during the applicable Class Period, consisting
3 of all current and former employees of Defendant Bonsai Trading Company who were employed in
4 California, as a non-exempt hourly paid employee during the Class Period of September 29, 2016
5 through the date of preliminary approval.

6 8. “Class Counsel” and “Plaintiff’s Counsel” means and refers to Kokozyan Law Firm,
7 APC.

8 9. “Class List and Data Report” means a list of Class Members that Defendant will
9 diligently and in good faith compile from its Human Resources, and/or Payroll employee
10 information database. The Class List and Data Report shall be in excel format, and shall include
11 each Class Member’s full name; employee ID while employed with Defendant if any; dates of
12 employment during which they were employed by Defendant; last known home address; and the
13 last four digits of their Social Security number.

14 10. “Class Period” means, and refers to, the period from September 29, 2016 through the
15 date of preliminary approval.

16 11. “Complaint” means, and refers to, all of the operative complaints filed by the Named
17 Plaintiff in this Action titled *Joshua Rios v. Bonsai Trading Company*, LASC Case No.
18 20STCV37231.

19 12. “Court” means, and refers to, the Superior Court of the State of California for the
20 County of Los Angeles.

21 13. “Defendant” means, and refers to, BONSAI TRADING COMPANY.

22 14. “Defendant’s Counsel” or “Defense Counsel” shall mean Nannina Angioni of
23 Kaedian LLP.

24 15. “Effective Date” means the following: (a) if no one objects to the Settlement, then
25 the Effective Date will be the date of Final Approval, as defined in Section I, Paragraph 18, *infra*;
26 (b) if a Class Member timely objects to the Settlement and is overruled, and if an appeal is not timely
27 sought from the Final Order and Judgment, then the Effective Date will be sixty five (65) days after
28 service of the Final Order and Judgment by Plaintiff on Defendant and any Objectors; or (c) if a

1 Class Member timely objects to the settlement and if a timely appeal is sought from the Final Order
2 and Judgment, then the Effective Date shall be twenty (20) days after the applicable appellate court
3 has rendered a final decision or opinion affirming the trial court's final approval, and the applicable
4 date for seeking further appellate review has passed, or twenty (20) days after any such Appeal has
5 been either dismissed or withdrawn by the appellant or the time for filing an appeal expires.

6 16. "Excluded Class Members" means, and refers to, all Class Members who timely and
7 validly submit a written request to be excluded from the Class on or before the Objection/Exclusion
8 Deadline Date, as defined in Section I, Paragraph 24, *infra*.

9 17. "Final Approval" means, and refers to, the Court's order granting final approval of
10 the Settlement.

11 18. "Final Approval Date" means, and refers to, the date on which the Court's Final
12 Approval Order is entered.

13 19. "Final Approval Hearing/Settlement Fairness Hearing" means, and refers to, the
14 hearing at which the Court considers whether to approve the Settlement and to enter the Final
15 Approval Order.

16 20. "Individual Settlement Payment" means, and refers to, the amount to be paid to each
17 individual Participating Class Member from the Net Fund Value. The estimated Individual
18 Settlement amount shall be indicated on the Notice. Individual Settlement Payment for each
19 individual Participating Class Member will result from the calculations set forth in Section III,
20 paragraph 12, *infra*, less all applicable state and federal withholding taxes, including FICA, FUTA
21 and SDI contributions and any other applicable payroll deductions required by law as a result of the
22 payment of the amount allocated to such Participating Class Member under the terms of this
23 Stipulation.

24 21. "Named Plaintiff" means Joshua Rios.

25 22. "Net Fund Value" or "NFV" means, and refers to, the funds available to be
26 distributed to Participating Class Members from the Gross Fund Value after payment of any
27 Attorneys' Fees and Cost Awards, Service Award, Settlement Administration Costs. For the
28 avoidance of doubt, the Net Fund Value does not include the PAGA Payment as defined below.

23. "Notice" means and refers to the "Notice of Class Action Settlement" that the Court directs to be sent via regular mail to all Class Members (substantially in the form annexed hereto as Exhibit A).

24. "Objection/Exclusion Deadline" means and refers to the date no later than forty-five (45) calendar days after the date the Class Notices are mailed (judged by the postmark date) to Class Members by the Settlement Administrator, on or before which a Class Member, may (1) validly submit a Notice of Objection, (2) submit a Request for Exclusion, or (3) challenge with documentary evidence his or her Total Workweeks.

25. "PAGA Payment" means and refers to the total sum of Three Thousand Four Hundred dollars and 00/100 (\$3,400) of the Gross Fund Value, which constitutes penalties pursuant to California's Private Attorneys General Act of 2004 (California Labor Code § 2699 et seq., or "PAGA,") and pursuant to Labor Code Section 2699(i), which will be distributed as follows: 25% to the Aggrieved Employees and 75% to the California Labor and Workforce Development Agency, which shall be the total gross sum of Two Thousand Five Hundred Fifty Dollars and 00/100 (\$2,550). For the avoidance of doubt, only the Aggrieved Employees as defined above shall receive this payment.

26. "PAGA Period" means and refers to January 11, 2020, through the date of preliminary approval.

27. "PAGA Release" is defined as follows: Upon Defendant fully funding the PAGA Payment, the Aggrieved Employees for the PAGA Period shall fully and finally release and discharge any and all claims pursuant to the California Labor Code and/or the Private Attorneys General Act of which were asserted in Plaintiff's notice to the LWDA or could have been asserted based on the facts alleged in Plaintiff's notice to the LWDA, and arising during the PAGA Period, including but not limited to those claims based on the following categories of allegations as set forth in Plaintiff's notice to the LWDA: (a) all claims for unpaid overtime wages; (b) all claims for unpaid minimum wages; (c) all claims for failure to pay overtime wages at the legal overtime pay rate; (d) all claims for failure to provide meal periods; (e) all claims for failure to authorize and permit rest periods; (f) all claims for the failure to promptly pay all wages due and owing at the time of an

1 employee's termination or discharge including claims for penalties under Labor Code section 203;
2 and (g) all claims for the failure to issue timely and properly itemized wage statements. Any
3 Aggrieved Employee is subject to the PAGA Release upon the Effective Date and upon Defendant
4 fully funding the PAGA Payment even if they are also a Class Member and they request exclusion
5 from the class, so they are not a participating class member. For the avoidance of doubt, Aggrieved
6 Employees have no right to opt out of the PAGA Release.

7 28. "Participating Class Member" means and refers to any and all Class Members who
8 are not Excluded Class Members.

9 29. "Parties" means, and refers to Defendant, the Named Plaintiff, and the Class
10 Members.

11 30. "Preliminary Approval Order" means, and refers to, the Order issued by the Court
12 preliminarily approving the terms of the Settlement.

13 31. "Preliminary Approval Date" means and refers to the date that the Court enters the
14 Preliminary Approval Order.

15 32. "Preliminary Approval Hearing" means and refers to the hearing on Named
16 Plaintiff's Motion for Preliminary Approval, as discussed in Section III, Paragraph 10, *infra*.

17 33. "Qualified Settlement Fund" means and refers to the fund to be established by the
18 Settlement Administrator pursuant to Internal Revenue Code Section 1.468B-1.

19 34. "Released Claims" is defined as follows: Upon the Effective Date and upon
20 Defendant fully funding the Settlement, Participating Class Members for the Class Period shall fully
21 and finally release and discharge the Released Parties of only the following: all claims, rights,
22 demands, liabilities, damages, attorneys' fees, costs, and causes of action of every nature and
23 description arising from any and all claims which were asserted in the operative First Amended
24 Complaint or could have been asserted based on claims arising out of the facts alleged in the
25 operative First Amended Complaint, and arising during the Class Period of this settlement, including
26 statutory, constitutional or common law claims for wages, damages, unpaid costs, liquidated
27 damages, penalties, interest, attorneys' fees, litigation costs, restitution, equitable relief, or other
28 relief under California Business & Professions Code §17200, et seq. based on the following

categories of allegations as set forth in the operative First Amended Complaint: (a) all claims for unpaid overtime wages; (b) all claims for unpaid minimum wages; (c) all claims for failure to pay overtime wages at the legal overtime pay rate; (d) all claims for failure to provide meal periods; (e) all claims for failure to authorize and permit rest periods; (f) all claims for the failure to issue timely and properly itemized wage statements; (g) all claims for the failure to promptly pay all wages due and owing at the time of an employee's termination or discharge including claims for penalties under Labor Code section 203; and (h) all claims for Unfair Competition or Business Practices under California's Business and Professions Code based on the preceding claims.

35. "Released Parties" means and refers to Defendant Bonsai Trading Company and its successors in interest, past, present, or future parents, subsidiaries and related or affiliated corporations, and their past, present, or future officers, directors, shareholders, employees, agents, principals, owners, operators, heirs, joint employers, staffing agencies, representatives, accountants, auditors, attorneys, consultants, insurers, and reinsurers, and each of their respective successors and predecessors in interest, subsidiaries, affiliates, parents, and each of their company-sponsored employee benefit plans, and all of their respective officers, directors, owners, employees, administrators, fiduciaries, trustees, and agents.

36. "Service Award" means and refers to the amount that the Court authorizes to be paid to the Named Plaintiff over and above his Individual Settlement Payment, in recognition of Named Plaintiff's efforts in assisting with the prosecution of the Action on behalf of the Class Members and in return for executing a General Release of all Claims against Released Parties. Named Plaintiff will request, and Defendant will not oppose, a Service Award up to Five Thousand Dollars (\$5,000). Named Plaintiff will be issued an IRS Form 1099 in connection with his Service Award.

37. "Settlement Award" means, and refers to, the total portion of the Net Fund Value payable to each Class Member after deduction of all applicable state and federal employment withholding taxes, FICA and FUTA contributions and any other applicable payroll deductions required by applicable law.

38. "Gross Fund Value" means, and refers to, the total amount that Defendant will be required to pay by this Settlement. The Gross Fund Value consists of the Attorneys' Fees and Costs

Award, the Service Award, the Settlement Administration Costs, the PAGA Payment and the Net Fund Value. The Gross Fund Value is equal to the total gross sum of One Hundred Four Thousand Four Hundred Dollars and 00/100 (\$104,400). In addition, Defendant must also pay the employer side share of payroll taxes due under applicable law on the portion of the Settlement Award payable as wages to each Participating Class Member, as described herein.

39. "Workweek" is any calendar week during the Class Period in which a Class Member was employed by Defendant.

40. "Total Workweeks" means and refers to the sum of all the Workweeks a Class Member was employed during the Class Period.

II. RECITALS

This Stipulation is made by the Named Plaintiff on behalf of himself and each of the other Class Members, on the one hand, and the Defendant, on the other hand, in this Action, and is subject to the approval of the Court.

A. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY

At or about the time that the Named Plaintiff files his motion for preliminary approval of this Settlement Agreement, the Named Plaintiff shall request certification of the Class for settlement purposes only.

Limitation on Effect of Certification.

The certification of the Class – for settlement purposes only – shall not constitute, in this or any other proceeding, an admission of any kind by Defendant, including without limitation, that certification of a class or collective action for trial purposes is appropriate or proper or that Named Plaintiff could establish any of the requisite elements for class or collective treatment of any of the claims in the Action. In the event that the Settlement is not finally approved, or the Settlement is otherwise terminated or rendered null and void, the certification of the Class shall be automatically vacated and shall not constitute evidence or a binding determination that the requirements for certification of a class or collective action for trial purposes in this Action or in any other actions are satisfied. In such circumstances, Defendant expressly reserves all rights to challenge the Class certification for any purpose other than settlement purposes in this Action or in any other action on

1 all available grounds as if no class had been certified for settlement purposes in the Action, and no
2 reference to the prior certification of this class, or any documents related thereto, shall be made
3 available for any purpose. Additionally, the Parties stipulate that to further the certification for
4 settlement purposes only, and for no other purpose or effect, and which shall not constitute evidence
5 or a binding admission, the Named Plaintiff is typical of other Class Members and can represent the
6 Class.

7 **B. INVESTIGATION IN THE CLASS ACTION**

8 The Parties have conducted significant investigation of the facts and law during the
9 prosecution of this Action. Discovery and investigation included: the exchange of discovery
10 between Plaintiff and Defendant including the production by Plaintiff of all documents related to
11 Plaintiff's employment with Defendant, the production of documents by Defendant including
12 Defendant's employee handbooks, policies and procedures regarding the payment of wages, time
13 keeping, overtime, meal and rest periods and the production of detailed voluminous class-wide
14 payroll and time punch data by Defendant. Plaintiff's counsel retained an expert to review
15 timekeeping records and payroll records and to assist in the preparation of a damage analysis for
16 this litigation. Also there were numerous conferences between representatives of the Parties and a
17 full day-long mediation session with Henry Bongiovi, Esq. an experienced mediator of wage-and-
18 hour class actions, on January 4, 2022.

19 **C. BENEFITS OF SETTLEMENT TO CLASS MEMBERS**

20 Named Plaintiff and Class Counsel recognize the expense and length of continued
21 proceedings necessary to litigate their disputes through trial and through any possible appeals.
22 Named Plaintiff has also taken into account the uncertainty and risk of the outcome of further
23 litigation, and the difficulties and delays inherent in such litigation. Named Plaintiff and Class
24 Counsel are also aware of the burdens of proof necessary to establish liability for the claims asserted
25 in the Action, both generally and in response to Defendant's defenses thereto (many of which have
26 been shared at the mediation and in settlement discussions). Named Plaintiff and Class Counsel
27 have also taken into account the extensive settlement negotiations conducted. Named Plaintiff and
28 Class Counsel have also taken into account Defendant's agreement to enter into a settlement that

1 confers substantial relief upon the Class Members. Based on the foregoing, Named Plaintiff and
2 Class Counsel have determined that the Settlement set forth in this Agreement is a fair, adequate
3 and a reasonable settlement, and is in the best interests of the Class Members.

4 **D. DEFENDANT'S REASONS FOR SETTLEMENT**

5 Defendant has concluded that any further defense of this litigation would be protracted and
6 expensive for all Parties. Substantial amounts of Defendant's time, energy and resources have been
7 and, unless this Settlement is made, will continue to be devoted to the defense of the Claims asserted
8 by the Class. Defendant has also taken into account the risks of further litigation in reaching its
9 decision to enter into this Settlement. Defendant has, therefore, agreed to settle in the manner and
10 upon the terms set forth in this Agreement to put to rest the Claims as set forth in the Action.

11 **E. DEFENDANT'S DENIAL OF WRONGDOING**

12 Defendant does not admit any wrongdoing and contends that it fully complied with the law
13 at all times in all respects. Whether the Settlement is finally approved, neither this Settlement, nor
14 any terms, document, statement, proceeding or conduct related to settlement, nor any reports or
15 accounts thereof, shall in any event be (a) construed as, offered or admitted in evidence as, received
16 as, or deemed to be evidence for any purpose, including, but not limited to, evidence of a
17 presumption, concession, indication, or admission by Defendant of any fault, wrongdoing, liability
18 and/or unlawful activity whatsoever or any effort to certify a class or collective action; or (b)
19 disclosed, referred to, or offered or received in evidence, in any further proceeding in this action, or
20 any other civil, criminal or administrative action or proceeding, except for purposes of settling this
21 Action or enforcing this Settlement, or as a defense to any claims released by the Settlement.

22 **F. NAMED PLAINTIFF'S CLAIMS**

23 Named Plaintiff has claimed and continues to claim that the Released Claims and PAGA
24 Released Claims have merit and give rise to liability on the part of Defendant. This Agreement is a
25 compromise of disputed claims. Nothing contained in this Agreement and no documents referred
26 to herein and no action taken to carry out this Agreement may be construed or used as an admission
27 by or against the Named Plaintiff or Class Counsel as to the merits or lack thereof of the Claims
28 asserted.

1 **III. STIPULATION AND AGREEMENT**

2 ***NOW, THEREFORE, IT IS HEREBY STIPULATED***, by and among the Named Plaintiff
3 on behalf of the Class Members on the one hand, and Defendant on the other hand, and subject to
4 the approval of the Court, that the Action is hereby being compromised and settled pursuant to the
5 terms and conditions set forth in this Agreement, subject to the definitions and recitals set forth in
6 Sections I and II, *supra*, which by this reference become an integral part of this Agreement, and
7 subject to the following terms and conditions:

8 1. Full Investigation. Named Plaintiff and Class Counsel have fully investigated the
9 factual and legal bases for the causes of action asserted in the Action.

10 2. Release As To All Participating Class Members. Upon the Effective Date and upon
11 Defendant fully funding the Settlement, the Participating Class Members, including the Named
12 Plaintiff, release the Released Parties for the Released Claims for the Class Period.

13 3. Release as To All Aggrieved Employees. Upon the Effective Date and upon
14 Defendant fully funding the PAGA Payment, the Aggrieved Employees, including the Named
15 Plaintiff, release the Released Parties for the PAGA Released Claims for the PAGA Period.

16 4. General Release By Named Plaintiff Only. In addition to the releases made by the
17 Participating Class Members as set forth in Section I, Paragraphs 32 *supra*, Named Plaintiff, in
18 exchange for the Service Award as requested or as otherwise authorized by the Court, will, as of the
19 Effective Date, make the additional following General Release of all his Claims, known or unknown,
20 in exchange and consideration of the sum set forth in Section I, Paragraph 34, *supra*. As of the
21 Effective Date and upon Defendant fully funding the Settlement, Named Plaintiff only for himself
22 agrees to the General Release of the Released Parties. Named Plaintiff as of the Effective Date also
23 agrees to release all wage and hour Claims, including, but not limited to, all claims set forth in the
24 Complaint, overtime wages, expense reimbursement, meal and rest period violations and penalties,
25 payment of wages at the time of termination, wage statement violations, unfair business practices,
26 penalties under the Private Attorneys General Act, and all other Released Claims. Also, without
27 limiting the generality of the foregoing: NAMED PLAINTIFF ONLY ALSO SPECIFICALLY
28 AGREES AND ACKNOWLEDGES WAIVER AND RELEASE OF ANY AND ALL RIGHTS

TO RECOVERY ARISING OUT OF HIS EMPLOYMENT WITH DEFENDANT INCLUDING BUT NOT LIMITED TO THOSE BASED ON STATE OR FEDERAL SEX, GENDER, CITIZENSHIP, RACE, COLOR, NATIONAL ORIGIN, MARITAL STATUS, RELIGION, VETERAN STATUS, DISABILITY, SEXUAL ORIENTATION, MEDICAL CONDITION, ALL PROTECTED CATEGORIES, AND/OR OTHER ANTI-DISCRIMINATION LAWS, INCLUDING, WITHOUT LIMITATION, TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, THE AMERICANS WITH DISABILITIES ACT, AND THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT, OR BASED ON THE FAMILY AND MEDICAL LEAVE ACT, THE EMPLOYEE RETIREMENT INCOME SECURITY ACT, THE WORKER ADJUSTMENT AND RETRAINING ACT, THE FAIR LABOR STANDARDS ACT AND THE CALIFORNIA LABOR CODE, ALL AS AMENDED, WHETHER SUCH CLAIM BE BASED UPON AN ACTION FILED BY EMPLOYEES, PLAINTIFF, OR BY A GOVERNMENTAL AGENCY.

The General Release as to Named Plaintiff includes a complete release of any and all unknown Claims that Named Plaintiff does not know or suspect to exist in his favor at the time of the General Release, which, if known by him, might have affected his settlement with, and release of, the Released Parties or might have affected his decision not to object to this Settlement or the General Release.

With respect to his General Release, Named Plaintiff stipulates and agrees that, upon the Effective Date, Named Plaintiff shall be deemed to have, and by operation of the Final Judgment shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which provides:

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

Named Plaintiff may hereafter discover facts in addition to or different from those he now

1 knows or believes to be true with respect to the subject matter of the General Release, but Named
2 Plaintiff upon the Effective Date shall be deemed to have, and by operation of the Final Judgment
3 shall have, fully, finally, and forever settled and released any and all of the claims released pursuant
4 to the General Release whether known or unknown, suspected or unsuspected, contingent or non-
5 contingent, which now exist, or heretofore have existed upon any theory of law or equity now
6 existing or coming into existence in the future, including, but not limited to, conduct that is
7 negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard
8 to the subsequent discovery or existence of such different or additional facts.

9 5. Service Award. Subject to Court approval, and expressly in exchange for the release
10 of all Released Claims and for his time and effort in bringing and prosecuting this matter, Named
11 Plaintiff shall be paid a Service Award up to a total of Five Thousand Dollars (\$5,000), or such other
12 distribution or lower amount as the Court may order. The Service Award shall be paid from the
13 Gross Fund Value and shall not increase the Gross Fund Value. The Service Award shall be paid to
14 the Named Plaintiff by the Settlement Administrator no later than ten (10) business days after
15 Defendant delivers the Gross Fund Value to the Settlement Administrator for deposit into the
16 Qualified Settlement Fund. The Parties agree that a decision by the Court to award Named Plaintiff
17 an amount less than the amount stated above shall not be a basis for Class Counsel to void this
18 Stipulation. The Settlement Administrator shall issue Named Plaintiff an IRS Form 1099 for the
19 Service Award. Any amount awarded for service payments to the Named Plaintiff less than the
20 requested amount will result in the non-awarded funds to be awarded to Participating Class
21 Members on a proportionate basis to the amount of their Individual Settlement Payment. The Named
22 Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on this payment.
23 The Service Award shall be paid in addition to the Named Plaintiff's share of the Settlement Amount
24 as a Participating Class Member.

25 6. Tax Liability. Defendant makes no representations as to the tax treatment or legal
26 effect of the payments called for hereunder, and Named Plaintiff and Participating Class Members
27 are not relying on any statement or representation by Defendant in this regard. Named Plaintiff and
28 Participating Class Members understand and agree that except for Defendant's payment of the

1 employer's portion of any payroll taxes, they will be solely responsible for the payment of any and
2 all taxes and penalties assessed on the payments described herein.

3 7. CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS AGREEMENT (FOR
4 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO
5 THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER
6 PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
7 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR
8 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS
9 INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE
10 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE
11 MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART
12 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY
13 UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE
14 (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT
15 ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY
16 OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS
17 NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
18 ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT
19 MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR
20 ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS
21 THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX
22 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING)
23 UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR
24 TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION
25 CONTEMPLATED BY THIS AGREEMENT.

26 8. Creation Of The Qualified Settlement Fund And Administration Of The Settlement.

27 Within thirty (30) days after the Effective Date, Defendant shall deliver the Gross Fund
28 Value of One Hundred Four Thousand Four Hundred Dollars and 00/100 (\$104,400) as required by

1 this Stipulation into the Qualified Settlement Fund created by the Settlement Administrator.
2 Defendant shall also simultaneously deliver to the Settlement Administrator, Defendant's
3 (Employer) share of payroll taxes, including but not limited to, FICA, FUTA and SDI contributions.
4 In addition to the employer's portion of payroll taxes, payments from the Qualified Settlement Fund
5 shall be made (1) for the Service Award to the Named Plaintiff, as specified in this Agreement and
6 approved by the Court; (2) the Attorneys' Fees and Cost Award to be paid to Class Counsel, as
7 specified in this Agreement and approved by the Court; (3) the Settlement Administration Costs;
8 and (4) the amount allocated to PAGA penalties to be paid to the California Labor Workforce and
9 Development Agency. The balance remaining shall constitute the Net Fund Value from which
10 Individual Settlement Payments shall be made to Participating Class Members, less applicable taxes
11 and withholdings.

12 9. Attorneys' Fees And Cost Award. Defendant agrees not to oppose or impede any
13 application or motion by Class Counsel for attorneys' fees in the amount of Thirty Four Thousand
14 Eight Hundred Dollars and 00/100 (\$34,800) or Thirty-Three and One Third percent (33⅓%) of the
15 Gross Fund Value. Defendant further agrees not to oppose any application or motion by Class
16 Counsel for the reimbursement of any actual costs associated with Class Counsel's prosecution of
17 this matter not in excess of Twelve Thousand Dollars and 00/100 (\$12,000). Class Counsel will
18 provide verification of the cost amount that it is seeking to be reimbursed. Any amount awarded for
19 attorneys' fees and costs to Class Counsel less than Thirty Four Thousand Eight Hundred Dollars
20 and 00/100 (\$34,800) and Twelve Thousand Dollars and 00/100 (\$12,000), respectively, will result
21 in the non-awarded amounts to be awarded to Participating Class Members on a proportionate basis
22 to the amount of their Individual Settlement Payments. Class Counsel shall be paid any Court-
23 approved fees and costs no later than ten (10) business days after Defendant delivers the required
24 funds to the Settlement Administrator for deposit into the Qualified Settlement Fund. Class Counsel
25 shall be solely and legally responsible to pay all applicable taxes on the payment made to Class
26 Counsel. Forms 1099 – MISC, Box 14 shall be provided to Class Counsel for the payments made,
27 and Class Counsel shall provide, before the Effective Date, properly completed Forms W-9.

28 10. Settlement Administrator. The Settlement Administrator shall be paid for the costs

1 of administration of the Settlement out of the Gross Fund Value as deposited in the Qualified
2 Settlement Fund. The estimate of such costs of administration for the disbursement of the Gross
3 Fund Value is no more than Six Thousand Dollars and 00/100 (\$6,000.) Any amount awarded for
4 costs of administration to Settlement Administrator, or such other entity upon whom the Parties
5 mutually agree, less than Six Thousand Dollars and 00/100 (\$6,000) will result in the non-awarded
6 amount to be awarded to Participating Class Members on a proportionate basis to the amount of
7 their Individual Settlement Payments. This estimate includes all tasks required of the Settlement
8 Administrator by this Agreement including the issuance of the Notice, the issuance of settlement
9 checks, the required tax reporting on the settlement amounts, including the issuing of W2 and 1099
10 forms (if any), the handling of Class Member questions and disputes and the calculation of employee
11 withholding taxes and the employer payroll taxes, which will be remitted to the tax authorities by
12 the Claims Administrator. At least sixteen (16) court days prior to the Final Approval Hearing, the
13 Settlement Administrator shall provide the Court and all counsel for the Parties with a statement
14 detailing the costs of administration of the Gross Fund Value and the breakdown of the Gross Fund
15 Value.

16 11. Preliminary Settlement Hearing/Alterations to this Agreement. As part of this
17 Settlement, the Parties agree to the following procedures for obtaining preliminary Court approval
18 of the Settlement:

19 a. Plaintiff shall file a Motion for Preliminary Approval and request a hearing before
20 the Court to request preliminary approval of the Settlement and to request the entry of the
21 Preliminary Approval Order.

22 b. Simultaneous with and/or included in the filing of the Motion for Preliminary
23 Approval, and solely for purposes of this Settlement, Named Plaintiff will request the Court to enter
24 the Preliminary Approval Order, preliminarily approving the proposed Settlement, conditionally
25 certifying the Class, and setting a date for a Final Approval Hearing.

26 c. In conjunction with the Motion for Preliminary Approval, Named Plaintiff will
27 submit this Stipulation and Settlement of Class Action and PAGA Agreement, which sets forth the
28 terms of this Settlement Agreement, and will include proposed forms of all notices and other

documents as attached hereto necessary to implement the Settlement. The Order shall provide for Notice of the Settlement to be sent to Class Members as specified herein.

d. In the event any provision of the Settlement is rejected by the Court, the Parties will work in good faith to negotiate alteration of the rejected term. The Parties agree to use the services of a mediator if informal efforts to negotiate alteration have been exhausted.

e. If, following the Parties' good faith efforts and mediation, the Parties cannot agree on alterations, or if ultimately the Court does not grant preliminary or final approval of the Settlement in its entirety, or if the Court's final approval of the Settlement agreement is reversed or materially modified on appellate review, then this Settlement will become null and void. In such case, the Settlement shall not be used, referenced, or be admissible in any subsequent proceedings, either in this Action, in this Court, or in any other Court or forum.

12. Settlement Administration/Management. The Individual Settlement Payments shall be managed and administered as follows:

a. Claims administrator, Simpluris, Inc., or such other entity upon whom the Parties mutually agree, shall be retained to serve as Settlement Administrator. The Parties each represent they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

b. Defendant shall provide the Settlement Administrator the Class List and Data Report within fourteen (14) days of the Preliminary Approval Date.

c. Within twenty one (21) days of receipt of the Class List and Data Report, the Settlement Administrator shall mail the Class Notice to each Class Member in accordance with Section III, Paragraph 13, *infra*.

d. Participating Class Members will be eligible to receive an Individual Settlement Payment, calculated in accordance with Section III, Paragraph 12, *infra*.

e. The Settlement Administrator shall provide Defendant's Counsel and Class Counsel a weekly report showing the names and number of Class Members who have objected to or requested exclusion from the Settlement (if any). Sixteen (16) court days prior to the Final Approval Hearing, the Settlement Administrator shall provide Defendant's Counsel and Class Counsel a final report

1 showing the names and number of Class Members who have objected to or requested exclusion
2 from the Settlement.

3 f. The Parties agree to cooperate in the settlement administration process and to make
4 all reasonable efforts to control and minimize the costs and expenses incurred in administration of
5 the Settlement.

6 g. The Settlement Administrator shall be responsible for: printing and mailing the
7 Notices as directed by the Court; receiving and reporting the objections/requests for exclusion and
8 challenges to the Individual Settlement Payments submitted by Class Members; mailing Individual
9 Settlement Payments to Participating Settlement Class Members; mailing the payment to the Labor
10 Workforce Development Agency; and other tasks as the Parties mutually agree or the Court orders
11 the Settlement Administrator to perform (including the calculation and remittance of employer taxes
12 which will be paid by Defendant in addition to Gross Fund Value.) The Settlement Administrator
13 shall keep Defendant, Defendant's Counsel and Class Counsel timely apprised of the performance
14 of all Settlement Administrator responsibilities.

15 h. The Settlement Administrator, on Defendant's behalf, shall have the authority and
16 obligation to make payments, credits and disbursements, including payments and credits in the
17 manner set forth herein to Participating Class Members, calculated in accordance with the
18 methodology set out in this Agreement and orders of the Court.

19 i. Any tax return filing required by this Agreement shall be made by the Settlement
20 Administrator. Any expenses incurred in connection with such filing shall be a cost of administration
21 of the Settlement and shall not increase the Gross Fund Value.

22 j. No person shall have any claim against Defendant or Defendant's Counsel, the
23 Named Plaintiff, Class Members, the Class, Class Counsel or the Settlement Administrator based
24 on distributions and payments made in accordance with this Agreement.

25 k. The Claims Administrator will provide to Defendant, as soon as practicable, but no
26 later than sixty (60) days after Preliminary Approval is granted, a fully-executed IRS W-9 form and
27 a completed Supplier Profile and ACH Enrollment Form which Defendant requires to process and
28 issue any payment.

1 13. Calculation Of Individual Settlement Payments. The Individual Settlement Payments
2 will be calculated as follows:

3 a. The Settlement Administrator will be provided each Class Member's Total
4 Workweeks as defined in Section I, Paragraph 38, supra, based on the Class List and Data Report,
5 which shall be presumed to be correct. A Class Member's workweek is defined as any calendar
6 week during the Class Period in which a Class Member was employed by Defendant. If a Class
7 Member disagrees with his or her Total Workweeks, which shall be set forth in the Notice he or she
8 may challenge the Total Workweeks in the manner set forth in Section III, Paragraph 14(c), infra.

9 b. The Settlement Administrator will calculate the Aggregate Workweek Number by
10 adding the sum of all of the Participating Class Members' Total Workweeks.

11 c. The Settlement Administrator will divide the Net Fund Value by the Aggregate
12 Workweek Number to calculate the weekly settlement amount.

13 d. The Settlement Administrator will calculate each Class Members' Individual
14 Settlement Award by multiplying his or her Total Workweeks times the Weekly Settlement Amount.
15 Each Class Members' estimated Individual Settlement Award will be indicated on the Notice.

16 e. The Weekly Settlement Amount and Individual Settlement Award estimates
17 indicated on the Notice are subject to change, depending on factors including: (i) how many Class
18 Members become Excluded Class Members (resulting in their Total Workweeks being removed
19 from the final Aggregate Workweek Number, thereby increasing the final weekly settlement
20 amount); (ii) any changes to the Total Workweeks resulting from challenges to Total Workweeks
21 submitted by Class Members resulting in workweek adjustments, which may increase or decrease
22 the final Aggregate Workweek Number and the final weekly settlement amount; and (iii) any
23 increases or reductions in the Net Fund Value which may result from, inter alia, changes to the actual
24 amount of PAGA Payment, and/or Settlement Administration Costs approved by the Court.

25 f. Each Participating Class Member's Individual Settlement Payment will be allocated
26 as follows: (a) 10% as wages; and (b) 90% as interest and penalties. The portion allocated to wages
27 ("Wage Component") shall be reported on an IRS Form W-2 and the portions allocated to interest
28 and penalties (the "Non-Wage Component") shall be reported on an IRS Form-1099 by the Claims
Administrator.

1 g. The employee's portion of employment taxes, including payroll deductions for state
2 and federal withholding taxes, and any other applicable payroll deductions, shall be made from each
3 Participating Class Members Wage Component, resulting in a "Net Wage Component." The Claims
4 Administrator will issue a W-2 for the Wage Component.

5 (1) No withholding shall be made on the Non-Wage Component of the settlement.
6 The Claims Administrator will issue an IRS Form 1099 for the Non-Wage Component.

7 (2) The Net Wage Component shall be added to the Non-Wage Component, resulting
8 in each Participating Class Members Individual Settlement Payment.

9 h. The PAGA Payment shall be managed and administered as follows:

10 (1) Defendant shall provide the Settlement Administrator the number of Aggrieved
11 Employees and the amount of the Aggrieved Employees pay periods within fourteen (14) days of
12 the Preliminary Approval Date.

13 (2) Within twenty-one (21) days of receipt of the number of Aggrieved Employees
14 and the amount of the aggrieved employees pay periods, the Settlement Administrator shall mail the
15 Notice to each Aggrieved Employee in accordance with Section III, Paragraph 13, *infra*.

16 (3) The Settlement Administrator shall pay \$2,550 (75% of the PAGA payment) to
17 the LWDA.

18 (4) Calculation Of Individual PAGA Payments to the Aggrieved Employees. The
19 PAGA Payment to the Aggrieved Employees shall be calculated as follows:

20 i. The Settlement Administrator will determine the number of aggrieved
21 employees and the amount of the aggrieved employees pay periods, which shall be presumed to be
22 correct.

23 ii. The Settlement Administrator will divide the \$850 (25% of the total PAGA
24 payment) by the amount of pay periods to obtain the amount per pay period owed.

25 iii. The Settlement Administrator will calculate each Aggrieved Employee's
26 individual PAGA payment by multiplying their total pay periods by the amount owed per pay
27 period. Each Aggrieved Employee's estimated Individual PAGA payment will be indicated on the
28 Notice.

 iv. The PAGA Payment is subject to Court approval and may change on this

1 basis only.

2 v. Each Aggrieved Employees' Individual PAGA Payment will be allocated
3 as 100% penalties and shall be reported on an IRS Form-1099 by the Settlement Administrator. The
4 Settlement Administrator, on Defendant's and Class Counsel's collective behalf, shall have the
5 authority and obligation to make payments, credits and disbursements, including payments and
6 credits in the manner set forth herein, to Class Members calculated in accordance with the
7 methodology set out in this Agreement and orders of the Court. The Settlement Administrator shall
8 be responsible for calculating and withholding all required state and federal taxes.

9 i. No person shall have any claim against Defendant, Defendant's Counsel, the Named
10 Plaintiffs, Plaintiffs, the Class, Class Counsel, or the Settlement Administrator based on any errors
11 or omissions in the distributions and payments that are required to be made in accordance with the
12 terms of this Agreement.

13 14. Notice To Class Members and Aggrieved Employees. Notice of the Settlement shall
14 be provided to all Class Members and Aggrieved Employees using the following procedures:

15 a. Notice By First-Class Mail. Within twenty-one (21) days after receipt of the Class
16 List and Data Report, the Claims Administrator shall mail the Class Notice, which has been mutually
17 approved by counsel for the Parties, to the Class Members via first-class regular U.S. Mail. The
18 Class Notice is substantially in the form annexed hereto as Exhibit A. Prior to mailing, the Claims
19 Administrator will perform a search based on the National Change of Address Database information
20 to update and correct for any known or identifiable address changes. If a new address is obtained by
21 a way of a returned Class Notice, then the Claims Administrator shall promptly forward the original
22 Class Notice to the updated address via first-class regular U.S. mail indicating on the original Class
23 Notice the date of such re-mailing.

24 b. No Requirement for a Claim Form. Class Members shall not be required to submit
25 a Claim Form to receive an Individual Settlement Payment.

26 c. Objection/Exclusion Deadline Date and Deadline to Challenge Total Workweeks:
27 Class Members will have forty-five (45) calendar days from the mailing of the Class Notice to
28 submit an objection and/or request for exclusion from the Settlement, or challenge the Total

1 Workweeks indicated on their Class Notice. Class Members to whom Class Notices are resent after
2 having been returned undeliverable to the Administrator per the paragraph below shall have an
3 additional 14 calendar days beyond the Objection/ Exclusion Deadline Date.

4 d. Procedure For Undeliverable Notices. Any Class Notices returned to the Settlement
5 Administrator as non-delivered on or before the Objection/Exclusion Deadline Date shall be sent to
6 the forwarding address affixed thereto within five (5) business days. If no forwarding address is
7 provided, then the Settlement Administrator shall promptly attempt to determine a correct address
8 using a single skip-trace, computer or other search using the name and address of the individual
9 involved, and shall then perform a single re-mailing within five (5) business days. In the event the
10 procedures in this paragraph are followed and the intended recipient of a Notice still does not receive
11 the Notice, the Class Member shall be bound by all terms of the Settlement and any Final Judgment
12 entered by the Court if the Settlement is approved by the Court.

13 e. No later than sixteen (16) court days prior to the Final Approval Hearing, the
14 Settlement Administrator shall provide Defendant's Counsel and Class Counsel: (i) the names and
15 contact information of the Class Members objecting to or requesting exclusion from the Settlement;
16 and (ii) the amount owed to each Participating Class Member.

17 15. Procedure For Objecting To or Requesting Exclusion From The Class Action
18 Settlement, or Challenging Total Workweeks. The Class Members shall submit objections to the
19 Settlement and/or request exclusion from the Settlement and/or submit a challenge to their Total
20 Workweeks using the following procedures:

21 a. Procedure For Objecting. The Class Notice shall provide that those Class Members
22 who wish to object to the Settlement shall mail a written statement of objection ("Notice of
23 Objection") to the Settlement Administrator, no later than the Objection/Exclusion Deadline Date.
24 The postmark date of the mailing shall be deemed the exclusive means for determining if a Notice
25 of Objection is timely. The Notice of Objection must contain the Class Member's name, the last
26 four digits of his/her social security number, dates of employment, current contact information, a
27 statement providing the basis for the Class Member's objections, a statement advising if the
28 objecting Class Member plans to address the Court at the Settlement Fairness Hearing, and any legal

1 briefs, papers or memoranda the objecting Class Member proposes to submit to the Court. Class
2 Members regardless of whether or not they submit a written objection to the Claims Administrator
3 will have the right to appear at the Final Approval Hearing in order to have their objections heard
4 by the Court. No later than sixteen (16) court days before the Settlement Fairness Hearing, the
5 Claims Administrator shall provide counsel for the Parties with complete copies of all objections
6 received, including the postmark dates for each objection. Class Counsel and Counsel for Defendant
7 shall file any responses to any written objections submitted to the Court in accordance with this
8 Settlement Agreement at least five (5) days before the Fairness Settlement Hearing.

9 b. Procedure For Requesting Exclusion. The Notice shall provide that Class Members
10 who wish to exclude themselves from the Class must submit a written request to be excluded
11 (“Request for Exclusion”) from the Class on or before the Objection/Exclusion Deadline Date. Such
12 Request for Exclusion: (1) must contain the name, address, telephone number and the last four
13 digits of the Social Security number of the person requesting exclusion; (2) must be signed by the
14 person requesting exclusion; (3) must be returned by mail to the Settlement Administrator at the
15 specified address; (4) and must be postmarked on or before the Objection/Exclusion Deadline
16 Date. The date of the postmark on the return mailing envelope shall be the exclusive means used to
17 determine whether a request for exclusion has been timely submitted. Any Class Member who
18 requests an exclusion from the Class will not be entitled to any recovery under the Settlement and
19 will not be bound by the Settlement or have any right to object, appeal or comment thereon. Class
20 Members who fail to submit valid and timely a Request for Exclusion on or before the
21 Objection/Exclusion Deadline Date shall be Participating Class Members and shall be bound by all
22 terms of the Settlement and any Final Judgment entered in this Class Action if the Settlement is
23 approved by the Superior Court. No later than sixteen (16) court days before the Settlement Fairness
24 Hearing, the Settlement Administrator shall provide counsel for the Parties with a complete list of
25 all members of the Settlement Class who have timely requested exclusion from the Settlement. At
26 no time shall any of the Parties or their counsel seek to solicit or otherwise encourage members of
27 the Settlement Class to submit a Request for Exclusion from the Settlement.

28 c. Procedure for Contesting Individual Settlement Payment: Each Class Members will
have the opportunity, should he/she disagree with Defendant’s records regarding his/her Total

1 Workweeks as presented in his/her Class Notice, to provide documentation to show contrary
2 employment dates. To do so, Class Members must contact the Settlement Administrator, along with
3 all applicable documentary evidence to support his/her dispute regarding his/her Total Workweeks
4 prior to the Objection/Exclusion Deadline. Moreover, an individual can only dispute his/her number
5 of Total Workweeks if he/she does not exclude himself/herself from the Settlement. If there is a
6 dispute, the Settlement Administrator will consult with the Parties to determine whether a workweek
7 adjustment is warranted. Class Counsel and Defendant's Counsel shall meet and confer in an attempt
8 to reach an agreement regarding whether a workweek adjustment is warranted based on the
9 documentary evidence submitted by the Class Member to challenge his/her Total Workweeks. If
10 they cannot agree, the Settlement Administrator shall make the final determination of whether or
11 not a workweek adjustment is warranted and that determination shall be conclusive, final and
12 binding on all Parties, including all Class Members. In the event that a workweek adjustment is
13 warranted, the additional amount owed to said Class Member, if any, shall be paid as part of that
14 Participating Class Member's Individual Settlement Payment and no adjustment will result in an
15 increase to the Gross Fund Value.

16 d. No Solicitation Of Settlement Objections. The Parties agree to use their best efforts
17 to carry out the terms of this Settlement. At no time shall any of the Parties or their counsel seek to
18 solicit or otherwise encourage Class Members to submit written objections to the Settlement or
19 appeal from the Order and Final Judgment.

20 16. Procedure For Payment Of Individual Settlement Payments:

21 a. Except for Excluded Class Members, all Participating Class Members will receive
22 an Individual Settlement Payment.

23 b. Individual Settlement Payments for Class Members shall be paid exclusively from
24 the Qualified Settlement Fund, pursuant to the settlement formula set forth herein, and shall be
25 mailed within ten (10) business days after Defendant delivers the required funds to the Settlement
26 Administrator for deposit into the Qualified Settlement Fund.

27 c. Should any question arise regarding the determination of eligibility for, or the
28 amounts of, any Individual Settlement Payment under the terms of this Agreement, Class Counsel
and Defendant's Counsel shall meet and confer in an attempt to reach agreement and shall utilize

1 the services of a mediator if they cannot reach an agreement informally. If they cannot agree, the
2 Settlement Administrator shall make the final determination, and that determination shall be
3 conclusive, final and binding on all Parties, including all Class Members.

4 d. Any checks issued by the Settlement Administrator to Participating Class Members
5 shall be negotiable for one hundred and eighty (180) calendar days. Those funds represented by
6 Settlement checks returned as undeliverable and those Settlement checks remaining uncashed for
7 more than one hundred and eighty (180) days after issuance (collectively, "Uncashed Settlement
8 Checks") shall be distributed to the Controller of the State of California to be held pursuant to the
9 Unclaimed Property Law, California Code of Civil Procedure Section 1500 et seq. for the benefits
10 of those Settlement Class Members who did not cash their checks until such time they claim their
11 property. The Parties agree that this disposition results in no "unpaid residue" under California Civil
12 Procedure Code Section 384, as the entire Net Fund Value (NFV) will be paid out to Settlement
13 Class Members, whether or not they all cash their settlement checks.

14 e. Although Participating Class Members who do not timely cash their Individual
15 Settlement Payments shall not immediately receive the monies from those checks, such persons
16 shall nonetheless be Participating Class Members and will be bound by all terms of the Settlement
17 and any Final Judgment entered in this Class Action if the Settlement is approved by the Superior
18 Court, including the release of the Released Claims, unless they timely file a valid request for
19 exclusion as set forth herein.

20 17. Claims Deemed Waived. Any Class Member who does not request exclusion as set
21 forth above is deemed to be a Participating Class Member and thereby is deemed to have released
22 the Released Claims against Released Parties as set forth herein, regardless of whether or not they
23 timely cash their Individual Settlement Payment.

24 18. Certification By Settlement Administrator. Upon completion of administration of the
25 distributions, the Settlement Administrator shall provide written certification of such completion to
26 the Court and counsel for all Parties.

27 19. Final Approval Hearing And Entry Of Final Judgment. Upon expiration of the
28 Objection/Exclusion Deadline Date, with the Court's permission, a Final Fairness Hearing shall be
conducted to determine final approval of the Settlement along with the amount properly payable for

(i) the Attorneys' Fees and Cost Award, (ii) any Service Awards, and (iii) Settlement Administration Costs. The Final Fairness Hearing shall not be held earlier than twenty-five (25) calendar days from Objection/Exclusion Deadline Date. Upon final approval of the Settlement by the Court, Class Counsel shall prepare and the Parties shall present the Final Approval Order and Judgment, in a form agreed to in advance by the Parties, for the Court's approval. After entry of the Final Approval Order and Judgment, the Court shall have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement; (ii) Settlement administration matters; and (iii) such post-Final Judgment matters as may be appropriate under court rules or as set forth in this Agreement.

20. Defendant shall discharge its obligations to the Class Members through the remittance of the Settlement Award to the Class Members by the Settlement Administrator as set forth hereinabove, regardless of whether checks representing individual settlement sums are actually received and/or negotiated by Participating Class Members. Once Defendant has complied with the obligations set forth in this Joint Stipulation and Settlement of Class Action Claims, it will be deemed to have satisfied all terms and conditions under this Settlement Agreement and shall have no further obligations under the terms of the Settlement Agreement regardless of what occurs with respect to those sums.

21. Nullification Of Settlement Agreement. In the event: (i) the Court does not finally approve the Settlement as provided herein; or (ii) the Court does not enter a Final Approval Order as provided herein, which becomes final as a result of the occurrence of the Effective Date, this Settlement Agreement shall be null and void and any order or judgment entered by the Court in furtherance of this Settlement shall be treated as void from the beginning. In such a case, the Parties and any funds to be awarded under this Settlement shall be returned to their respective statuses as of the date and time immediately prior to the execution of this Agreement, and the Parties shall proceed in all respects as if this Settlement Agreement had not been executed. In the event an appeal is filed from the Court's Final Judgment, or any other appellate review is sought prior to the Effective Date, administration of the Settlement shall be stayed pending final resolution of the appeal or other appellate review, as well as any fees incurred by the Settlement Administrator prior to it being notified of the filing of an appeal from the Court's Final Judgment, or any other appellate

1 review.

2 22. No Effect On Employee Benefits. Neither the Individual Settlement Payments nor
3 the Service Award to Named Plaintiff shall be deemed to be pensionable earning and shall not have
4 any effect on the eligibility for, or calculation of, any of the employee benefits (e.g., vacations,
5 holiday pay, retirement plans, etc.) of the respective Named Plaintiff or Participating Class
6 Members. The Parties agree that any Individual Settlement Payments to Participating Class
7 Members under the terms of this Agreement do not represent any modification of the Participating
8 Class Members' previously credited hours of service or other eligibility criteria under any employee
9 pension benefit plan or employee welfare benefit plan sponsored by Defendant. Further, any
10 Individual Settlement Payment, or Service Award hereunder shall not be considered
11 "compensation" in any year for purposes of determining eligibility for, or benefit accrual within, an
12 employee pension benefit plan or employee welfare benefit plan sponsored by Defendant. Neither
13 Defendant nor Named Plaintiff are opining on the terms of any such Plan, each of which speaks for
14 itself.

15 23. Dispute Resolution. Except as otherwise set forth herein, all disputes concerning the
16 interpretation, calculation or payment of settlement claims, or other disputes regarding compliance
17 with this Agreement shall be resolved as follows:

18 a. If the Named Plaintiff or Class Counsel, on behalf of the Named Plaintiff or any
19 Class Member, or the Defendant at any time believes that the other Party has breached or acted
20 contrary to the Agreement, that Party shall notify the other Party in writing of the alleged violation.

21 b. Upon receiving notice of the alleged violation or dispute, the responding Party shall
22 have ten (10) calendar days to correct the alleged violation and/or respond to the initiating Party
23 with the reasons why the Party disputes all or part of the allegation.

24 c. If the response does not address the alleged violation to the initiating Party's
25 satisfaction, the Parties shall negotiate in good faith for up to ten (10) calendar days to resolve their
26 differences.

27 d. If Class Counsel and Defense counsel are unable to resolve their respective parties'
28 differences after twenty (20) calendar days referenced in Section III, Paragraph 23(a)-(c), supra,
either Party may elect to file (1) an appropriate Code of Civil Procedure section 664.6 motion for

1 enforcement with the Court, or (2) take any other legal action to enforce this Settlement Agreement.

2 e. In the event that the Court does not agree to adopt the above dispute resolution
3 procedure as part of its Order granting final approval to the Settlement, then the above provisions
4 for Dispute Resolution (Section III, paragraph 23(a)-(d)) are null and void, the remainder of the
5 settlement is unaffected, and the parties shall remain free to submit disputes and/or motions for
6 enforcement of the settlement via appropriate noticed motion or ex parte application as though
7 Section III, paragraph 23 was not included herein.

8 24. No Retaliation. Defendant shall not take any adverse action against any Class
9 Member because of the existence of, and/or participation in, the Settlement, or because they choose
10 to benefit from the Settlement or to object to or opt out from the Settlement. Defendant shall not
11 take action to discourage Class Members from participating in the Settlement.

12 25. Exhibits And Headings. The terms of this Agreement include the terms set forth in
13 any attached Exhibit A which is incorporated by this reference as though fully set forth herein. Any
14 exhibits to this Agreement are an integral part of the Settlement. The descriptive headings of any
15 paragraphs or sections of this Agreement are inserted for convenience of reference only and do not
16 constitute a part of this Agreement.

17 26. Interim Stay Of Proceedings. The Parties agree to hold all proceedings in the Action
18 including all discovery events and efforts, except such proceedings necessary to implement and
19 complete the Settlement, in abeyance pending the Settlement Hearing to be conducted by the Court.

20 27. Amendment Or Modification. This Agreement may be amended or modified only
21 by a written instrument signed by counsel for all Parties or their successors-in-interest.

22 28. Entire Agreement. This Agreement and any attached exhibits constitute the entire
23 agreement among these Parties, and no oral or written representations, warranties or inducements
24 have been made to any Party concerning this Agreement or its exhibits other than the
25 representations, warranties and covenants contained and memorialized in such documents.
26 Defendant shall not be required as part of the Settlement to modify or eliminate any of its personnel,
27 compensation or payroll practices, or adopt any new personnel, compensation or payroll practices.

28 29. Authorization To Enter Into Settlement Agreement. Counsel for all Parties warrant
and represent they are expressly authorized by the Parties whom they represent to negotiate this

1 Agreement and to take all appropriate action required or permitted to be taken by such Parties
2 pursuant to this Agreement to effectuate its terms, and to execute any other documents required to
3 effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other
4 and use their best efforts to effect the implementation of the Settlement. In the event the Parties are
5 unable to reach agreement on the form or content of any document needed to implement the
6 Settlement, or on any supplemental provisions that may become necessary to effectuate the terms
7 of this Settlement, the Parties may seek the assistance of the Court and/or the mediator to resolve
8 such disagreement. The persons signing this Agreement on behalf of Defendant represents and
9 warrants that they are authorized to sign this Agreement on behalf of Defendant.

10 30. Binding On Successors And Assigns. This Agreement shall be binding upon, and
11 inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

12 31. California Law Governs. All terms of this Agreement and the exhibits hereto shall
13 be governed by and interpreted according to the laws of the State of California.

14 32. No Public Disclosure prior to Preliminary Approval: Named Plaintiff, Defendant,
15 and Class Counsel will not make any public disclosure of the Settlement until after the filing of the
16 Application for Preliminary Approval of the Settlement. Named Plaintiff, Defendant, and Class
17 Counsel represent that they have not made any such disclosure. The foregoing shall not preclude
18 Named Plaintiff or Class Counsel from advising Class Members regarding this Settlement. This
19 section does not preclude Class Counsel or Named Plaintiff from performing their duties as Class
20 Counsel and/or Class Representative. This section does not preclude the posting of the Order and
21 Judgment of Final Approval on the Settlement Administrator's website. Notwithstanding the
22 foregoing, the Parties agree that Defendant may make such disclosures that in Defendant's judgment
23 are required in the ordinary course of business, except that Defendant and its counsel shall not
24 encourage Class Members to opt out. Thereafter, Class Counsel and Named Plaintiff agree not to
25 publicize the terms of this Settlement with the media or others, including but not limited to, any
26 newspaper, journal, magazine, website, and/or on-line reporter of settlements. Class Counsel may
27 also include references to this Settlement in their curriculum vitae, for purposes of presentations in
28 court filings only.

33. Counterparts. This Agreement may be executed in one or more counterparts. All

executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Agreement shall exchange among themselves original signed counterparts.

34. This Settlement Is Fair, Adequate And Reasonable. The Parties believe this Settlement is a fair, adequate and reasonable settlement of this Action and have arrived at this Settlement after extensive arms-length negotiations, taking into account all relevant factors, present and potential.

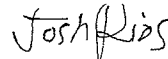
35. Jurisdiction Of The Court. The Court shall retain jurisdiction, pursuant to Code of Civil Procedure Section 664.6 or otherwise, with respect to the interpretation, implementation and enforcement of the terms of this Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing and enforcing the settlement embodied in this Agreement and all orders and judgments entered in connection therewith.

36. Cooperation And Drafting. Each of the Parties has cooperated in the drafting and preparation of this Agreement. Hence, in any construction made to this Agreement, the same shall not be construed against any of the Parties.

37. Invalidity Of Any Provision. Before declaring any provision of this Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable.

PLAINTIFF

Dated: 9/21/2022



Joshua Rios
Represented By:

KOKOZIAN LAW FIRM, APC

Dated: 9/21/22

By: 
Bruce Kokozian, Esq.
Attorney for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: Sep 20, 2022

DEFENDANT BONSAI TRADING COMPANY

By: 
Daniel Abitboul (Sep 20, 2022 21:27 PDT)

Their: President

Represented by:

KAEDIAN LLP

Dated: 09/21/2022

By: 
Nannina Angioni, Esq.
Attorneys for Defendant