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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

**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. “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.

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

1 through the date of preliminary approval.

2 8. “Class Counsel” and “Plaintiff’s Counsel” means and refers to Kokozian Law Firm,
3 APC.

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

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

12 11. “Complaint” means, and refers to, all of the operative complaints filed by the Named
13 Plaintiff in this Action titled *Joshua Rios v. Bonsai Trading Company*, LASC Case No.
14 20STCV37231.

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

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

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

20 15. “Effective Date” means the following: (a) if no one objects to the Settlement, then
21 the Effective Date will be the date of Final Approval, as defined in Section I, Paragraph 18, *infra*;
22 (b) if a Class Member timely objects to the Settlement and is overruled, and if an appeal is not timely
23 sought from the Final Order and Judgment, then the Effective Date will be sixty five (65) days after
24 service of the Final Order and Judgment by Plaintiff on Defendant and any Objectors; or (c) if a
25 Class Member timely objects to the settlement and if a timely appeal is sought from the Final Order
26 and Judgment, then the Effective Date shall be twenty (20) days after the applicable appellate court
27 has rendered a final decision or opinion affirming the trial court’s final approval, and the applicable
28 date for seeking further appellate review has passed, or twenty (20) days after any such Appeal has

1 been either dismissed or withdrawn by the appellant or the time for filing an appeal expires.

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

5 17. “Final Approval” means, and refers to, the Court’s order granting final approval of
6 the Settlement.

7 18. “Final Approval Date” means, and refers to, the date on which the Court’s Final
8 Approval Order is entered.

9 19. “Final Approval Hearing/Settlement Fairness Hearing” means, and refers to, the
10 hearing at which the Court considers whether to approve the Settlement and to enter the Final
11 Approval Order.

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

20 21. “Named Plaintiff” means Joshua Rios.

21 22. “Net Fund Value” or “NFV” means, and refers to, the funds available to be
22 distributed to Participating Class Members from the Gross Fund Value after payment of any
23 Attorneys’ Fees and Cost Awards, Service Award, Settlement Administration Costs, and the 75%
24 portion of the PAGA Payment distributed to the California Labor and Workforce Development
25 Agency.

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

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

6 25. “PAGA Payment” means and refers to the total sum of Three Thousand Four
7 Hundred dollars and 00/100 (\$3,400) of the Gross Fund Value, which constitutes penalties pursuant
8 to California’s Private Attorneys General Act of 2004 (California Labor Code § 2699 et seq., or
9 “PAGA,”) and pursuant to Labor Code Section 2699(i), which will be distributed as follows: 25%
10 to the Participating Class Members and 75% to the California Labor and Workforce Development
11 Agency, which shall be the total gross sum of Two Thousand Five Hundred Fifty Dollars and 00/100
12 (\$2,550). The 25% portion of the PAGA Payment that shall be paid to the Participating Class
13 Members shall remain within the Net Fund Value so that it is available to be included within the
14 calculation of the Participating Class Members’ Individual Settlement Payments.

15 26. “Participating Class Member” means and refers to any and all Class Members who
16 are not Excluded Class Members.

17 27. “Parties” means, and refers to Defendant, the Named Plaintiff, and the Class
18 Members.

19 28. “Preliminary Approval Order” means, and refers to, the Order issued by the Court
20 preliminarily approving the terms of the Settlement.

21 29. “Preliminary Approval Date” means and refers to the date that the Court enters the
22 Preliminary Approval Order.

23 30. “Preliminary Approval Hearing” means and refers to the hearing on Named
24 Plaintiff’s Motion for Preliminary Approval, as discussed in Section III, Paragraph 10, *infra*.

25 31. “Qualified Settlement Fund” means and refers to the fund to be established by the
26 Settlement Administrator pursuant to Internal Revenue Code Section 1.468B-1.

27 32. “Released Claims” is defined as follows: Upon the Effective Date and upon
28

1 Defendant fully funding the Settlement, Participating Class Members for the Class Period shall fully
2 and finally release and discharge the Released Parties of all claims, rights, demands, liabilities,
3 damages, attorneys' fees, costs, and causes of action of every nature and description arising from
4 any and all claims which were asserted in the Action or could have been asserted based on the facts
5 alleged in the Action, and arising during the Class Period of this settlement, including statutory,
6 constitutional or common law claims for wages, damages, unpaid costs, liquidated damages,
7 penalties, interest, attorneys' fees, litigation costs, restitution, equitable relief, or other relief under
8 California Business & Professions Code §17200, et seq. based on the following categories of
9 allegations as set forth in the Complaint: (a) all claims for unpaid overtime wages; (b) all claims for
10 unpaid minimum wages; (c) all claims for failure to pay overtime wages at the legal overtime pay
11 rate; (d) all claims for failure to provide meal periods; (e) all claims for failure to authorize and
12 permit rest periods; (f) all claims for the failure to promptly pay all wages due and owing at the time
13 of an employee's termination or discharge including claims for penalties under Labor Code section
14 203; (g) all claims for the failure to issue timely and properly itemized wage statements; (h) all
15 claims for Unfair Competition or Business Practices under California's Business and Professions
16 Code based on the preceding claims; (i) all claims for any and all penalties pursuant to the California
17 Labor Code and/or the Private Attorneys General Act of 2004 based on the preceding claims.

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

26 34. "Service Award" means and refers to the amount that the Court authorizes to be paid
27 to the Named Plaintiff over and above his Individual Settlement Payment, in recognition of Named
28 Plaintiff's efforts in assisting with the prosecution of the Action on behalf of the Class Members

1 and in return for executing a General Release of all Claims against Released Parties. Named Plaintiff
2 will request, and Defendant will not oppose, a Service Award up to Five Thousand Dollars (\$5,000).
3 Named Plaintiff will be issued an IRS Form 1099 in connection with his Service Award.

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

8 36. "Gross Fund Value" means, and refers to, the total amount that Defendant will be
9 required to pay by this Settlement. The Gross Fund Value consists of the Attorneys' Fees and Costs
10 Award, the Service Award, the Settlement Administration Costs, the PAGA Payment and the Net
11 Fund Value. The Gross Fund Value is equal to the total gross sum of One Hundred Four Thousand
12 Four Hundred Dollars and 00/100 (\$104,400). In addition, Defendant must also pay the employer
13 side share of payroll taxes due under applicable law on the portion of the Settlement Award payable
14 as wages to each Participating Class Member, as described herein.

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

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

19 II. RECITALS

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

23 A. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY

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

27 Limitation on Effect of Certification.

28 The certification of the Class – for settlement purposes only – shall not constitute, in this or

1 any other proceeding, an admission of any kind by Defendant, including without limitation, that
2 certification of a class or collective action for trial purposes is appropriate or proper or that Named
3 Plaintiff could establish any of the requisite elements for class or collective treatment of any of the
4 claims in the Action. In the event that the Settlement is not finally approved, or the Settlement is
5 otherwise terminated or rendered null and void, the certification of the Class shall be automatically
6 vacated and shall not constitute evidence or a binding determination that the requirements for
7 certification of a class or collective action for trial purposes in this Action or in any other actions
8 are satisfied. In such circumstances, Defendant expressly reserves all rights to challenge the Class
9 certification for any purpose other than settlement purposes in this Action or in any other action on
10 all available grounds as if no class had been certified for settlement purposes in the Action, and no
11 reference to the prior certification of this class, or any documents related thereto, shall be made
12 available for any purpose. Additionally, the Parties stipulate that to further the certification for
13 settlement purposes only, and for no other purpose or effect, and which shall not constitute evidence
14 or a binding admission, the Named Plaintiff is typical of other Class Members and can represent the
15 Class.

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

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

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

1 Named Plaintiff and Class Counsel recognize the expense and length of continued
2 proceedings necessary to litigate their disputes through trial and through any possible appeals.
3 Named Plaintiff has also taken into account the uncertainty and risk of the outcome of further
4 litigation, and the difficulties and delays inherent in such litigation. Named Plaintiff and Class
5 Counsel are also aware of the burdens of proof necessary to establish liability for the claims asserted
6 in the Action, both generally and in response to Defendant's defenses thereto (many of which have
7 been shared at the mediation and in settlement discussions). Named Plaintiff and Class Counsel
8 have also taken into account the extensive settlement negotiations conducted. Named Plaintiff and
9 Class Counsel have also taken into account Defendant's agreement to enter into a settlement that
10 confers substantial relief upon the Class Members. Based on the foregoing, Named Plaintiff and
11 Class Counsel have determined that the Settlement set forth in this Agreement is a fair, adequate
12 and a reasonable settlement, and is in the best interests of the Class Members.

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

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

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

21 Defendant does not admit any wrongdoing and contends that it fully complied with the law
22 at all times in all respects. Whether the Settlement is finally approved, neither this Settlement, nor
23 any terms, document, statement, proceeding or conduct related to settlement, nor any reports or
24 accounts thereof, shall in any event be (a) construed as, offered or admitted in evidence as, received
25 as, or deemed to be evidence for any purpose, including, but not limited to, evidence of a
26 presumption, concession, indication, or admission by Defendant of any fault, wrongdoing, liability
27 and/or unlawful activity whatsoever or any effort to certify a class or collective action; or (b)
28 disclosed, referred to, or offered or received in evidence, in any further proceeding in this action, or

1 any other civil, criminal or administrative action or proceeding, except for purposes of settling this
2 Action or enforcing this Settlement, or as a defense to any claims released by the Settlement.

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

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

9 **III. STIPULATION AND AGREEMENT**

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

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

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

21 3. **General Release By Named Plaintiff Only.** In addition to the releases made by the
22 Participating Class Members as set forth in Section I, Paragraphs 32 *supra*, Named Plaintiff, in
23 exchange for the Service Award as requested or as otherwise authorized by the Court, will, as of the
24 Effective Date, make the additional following General Release of all his Claims, known or unknown,
25 in exchange and consideration of the sum set forth in Section I, Paragraph 34, *supra*. As of the
26 Effective Date and upon Defendant fully funding the Settlement, Named Plaintiff only for himself
27 agrees to the General Release of the Released Parties. Named Plaintiff as of the Effective Date also
28 agrees to release all wage and hour Claims, including, but not limited to, all claims set forth in the

1 Complaint, overtime wages, expense reimbursement, meal and rest period violations and penalties,
2 payment of wages at the time of termination, wage statement violations, unfair business practices,
3 penalties under the Private Attorneys General Act, and all other Released Claims. Also, without
4 limiting the generality of the foregoing: NAMED PLAINTIFF only ALSO SPECIFICALLY
5 AGREES AND ACKNOWLEDGES WAIVER AND RELEASE OF ANY AND ALL RIGHTS
6 TO RECOVERY ARISING OUT OF HIS EMPLOYMENT WITH DEFENDANT INCLUDING
7 BUT NOT LIMITED TO THOSE BASED ON STATE OR FEDERAL SEX, GENDER,
8 CITIZENSHIP, RACE, COLOR, NATIONAL ORIGIN, MARITAL STATUS, RELIGION,
9 VETERAN STATUS, DISABILITY, SEXUAL ORIENTATION, MEDICAL CONDITION, ALL
10 PROTECTED CATEGORIES, AND/OR OTHER ANTI-DISCRIMINATION LAWS,
11 INCLUDING, WITHOUT LIMITATION, TITLE VII OF THE CIVIL RIGHTS ACT OF 1964,
12 THE AMERICANS WITH DISABILITIES ACT, AND THE CALIFORNIA FAIR
13 EMPLOYMENT AND HOUSING ACT, OR BASED ON THE FAMILY AND MEDICAL
14 LEAVE ACT, THE EMPLOYEE RETIREMENT INCOME SECURITY ACT, THE WORKER
15 ADJUSTMENT AND RETRAINING ACT, THE FAIR LABOR STANDARDS ACT AND THE
16 CALIFORNIA LABOR CODE, ALL AS AMENDED, WHETHER SUCH CLAIM BE BASED
17 UPON AN ACTION FILED BY EMPLOYEES, PLAINTIFF, OR BY A GOVERNMENTAL
18 AGENCY.

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

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

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

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

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

1 as a Participating Class Member.

2 5. Tax Liability. Defendant makes no representations as to the tax treatment or legal
3 effect of the payments called for hereunder, and Named Plaintiff and Participating Class Members
4 are not relying on any statement or representation by Defendant in this regard. Named Plaintiff and
5 Participating Class Members understand and agree that except for Defendant's payment of the
6 employer's portion of any payroll taxes, they will be solely responsible for the payment of any and
7 all taxes and penalties assessed on the payments described herein.

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

1 TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION
2 CONTEMPLATED BY THIS AGREEMENT.

3 7. Creation Of The Qualified Settlement Fund And Administration Of The Settlement.

4 Within thirty (30) days after the Effective Date, Defendant shall deliver the Gross Fund
5 Value of One Hundred Four Thousand Four Hundred Dollars and 00/100 (\$104,400) as required by
6 this Stipulation into the Qualified Settlement Fund created by the Settlement Administrator.
7 Defendant shall also simultaneously deliver to the Settlement Administrator, Defendant's
8 (Employer) share of payroll taxes, including but not limited to, FICA, FUTA and SDI contributions.
9 In addition to the employer's portion of payroll taxes, payments from the Qualified Settlement Fund
10 shall be made (1) for the Service Award to the Named Plaintiff, as specified in this Agreement and
11 approved by the Court; (2) the Attorneys' Fees and Cost Award to be paid to Class Counsel, as
12 specified in this Agreement and approved by the Court; (3) the Settlement Administration Costs;
13 and (4) the amount allocated to PAGA penalties to be paid to the California Labor Workforce and
14 Development Agency. The balance remaining shall constitute the Net Fund Value from which
15 Individual Settlement Payments shall be made to Participating Class Members, less applicable taxes
16 and withholdings.

17 8. Attorneys' Fees And Cost Award. Defendant agrees not to oppose or impede any
18 application or motion by Class Counsel for attorneys' fees in the amount of Thirty Four Thousand
19 Eight Hundred Dollars and 00/100 (\$34,800) or Thirty-Three and One Third percent (33⅓%) of the
20 Gross Fund Value. Defendant further agrees not to oppose any application or motion by Class
21 Counsel for the reimbursement of any actual costs associated with Class Counsel's prosecution of
22 this matter not in excess of Twelve Thousand Dollars and 00/100 (\$12,000). Class Counsel will
23 provide verification of the cost amount that it is seeking to be reimbursed. Any amount awarded for
24 attorneys' fees and costs to Class Counsel less than Thirty Four Thousand Eight Hundred Dollars
25 and 00/100 (\$34,800) and Twelve Thousand Dollars and 00/100 (\$12,000), respectively, will result
26 in the non-awarded amounts to be awarded to Participating Class Members on a proportionate basis
27 to the amount of their Individual Settlement Payments. Class Counsel shall be paid any Court-
28 approved fees and costs no later than ten (10) business days after Defendant delivers the required

1 funds to the Settlement Administrator for deposit into the Qualified Settlement Fund. Class Counsel
2 shall be solely and legally responsible to pay all applicable taxes on the payment made to Class
3 Counsel. Forms 1099 – MISC, Box 14 shall be provided to Class Counsel for the payments made,
4 and Class Counsel shall provide, before the Effective Date, properly completed Forms W-9.

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

21 10. Preliminary Settlement Hearing/Alterations to this Agreement. As part of this
22 Settlement, the Parties agree to the following procedures for obtaining preliminary Court approval
23 of the Settlement:

24 a. Plaintiff shall file a Motion for Preliminary Approval and request a hearing before
25 the Court to request preliminary approval of the Settlement and to request the entry of the
26 Preliminary Approval Order.

27 b. Simultaneous with and/or included in the filing of the Motion for Preliminary
28 Approval, and solely for purposes of this Settlement, Named Plaintiff will request the Court to enter

1 the Preliminary Approval Order, preliminarily approving the proposed Settlement, conditionally
2 certifying the Class, and setting a date for a Final Approval Hearing.

3 c. In conjunction with the Motion for Preliminary Approval, Named Plaintiff will
4 submit this Stipulation and Settlement of Class Action and PAGA Agreement, which sets forth the
5 terms of this Settlement Agreement, and will include proposed forms of all notices and other
6 documents as attached hereto necessary to implement the Settlement. The Order shall provide for
7 Notice of the Settlement to be sent to Class Members as specified herein.

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

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

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

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

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

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

28 d. Participating Class Members will be eligible to receive an Individual Settlement

1 Payment, calculated in accordance with Section III, Paragraph 12, infra.

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

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

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

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

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

27 j. No person shall have any claim against Defendant or Defendant's Counsel, the
28 Named Plaintiff, Class Members, the Class, Class Counsel or the Settlement Administrator based

1 on distributions and payments made in accordance with this Agreement.

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

6 12. Calculation Of Individual Settlement Payments. The Individual Settlement Payments
7 will be calculated as follows:

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

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

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

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

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

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

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

10 i. No withholding shall be made on the Non-Wage Component of the settlement.
11 The Claims Administrator will issue an IRS Form 1099 for the Non-Wage Component.

12 ii. The Net Wage Component shall be added to the Non-Wage Component, resulting
13 in each Participating Class Members Individual Settlement Payment.

14 h. The Settlement Administrator, on Defendant's and Class Counsel's collective behalf,
15 shall have the authority and obligation to make payments, credits and disbursements, including
16 payments and credits in the manner set forth herein, to Class Members calculated in accordance
17 with the methodology set out in this Agreement and orders of the Court. The Settlement
18 Administrator shall be responsible for calculating and withholding all required state and federal
19 taxes.

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

24 13. Notice To Class Members. Notice of the Settlement shall be provided to all Class
25 Members using the following procedures:

26 a. Notice By First-Class Mail. Within twenty-one (21) days after receipt of the Class
27 List and Data Report, the Claims Administrator shall mail the Class Notice, which has been mutually
28 approved by counsel for the Parties, to the Class Members via first-class regular U.S. Mail. The
Class Notice is substantially in the form annexed hereto as Exhibit A. Prior to mailing, the Claims

1 Administrator will perform a search based on the National Change of Address Database information
2 to update and correct for any known or identifiable address changes. If a new address is obtained by
3 a way of a returned Class Notice, then the Claims Administrator shall promptly forward the original
4 Class Notice to the updated address via first-class regular U.S. mail indicating on the original Class
5 Notice the date of such re-mailing.

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

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

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

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

25 14. Procedure For Objecting To or Requesting Exclusion From The Class Action
26 Settlement, or Challenging Total Workweeks. The Class Members shall submit objections to the
27 Settlement and/or request exclusion from the Settlement and/or submit a challenge to their Total
28 Workweeks using the following procedures:

- 1 a. Procedure For Objecting. The Class Notice shall provide that those Class Members
2 who wish to object to the Settlement shall mail a written statement of objection
3 (“Notice of Objection”) to the Settlement Administrator, no later than the
4 Objection/Exclusion Deadline Date. The postmark date of the mailing shall be
5 deemed the exclusive means for determining if a Notice of Objection is timely. The
6 Notice of Objection must contain the Class Member’s name, the last four digits of
7 his/her social security number, dates of employment, current contact information, a
8 statement providing the basis for the Class Member’s objections, a statement
9 advising if the objecting Class Member plans to address the Court at the Settlement
10 Fairness Hearing, and any legal briefs, papers or memoranda the objecting Class
11 Member proposes to submit to the Court. Class Members regardless of whether or
12 not they submit a written objection to the Claims Administrator will have the right
13 to appear at the Final Approval Hearing in order to have their objections heard by
14 the Court. No later than sixteen (16) court days before the Settlement Fairness
15 Hearing, the Claims Administrator shall provide counsel for the Parties with
16 complete copies of all objections received, including the postmark dates for each
17 objection. Class Counsel and Counsel for Defendant shall file any responses to any
18 written objections submitted to the Court in accordance with this Settlement
19 Agreement at least five (5) days before the Fairness Settlement Hearing.
- 20 b. Procedure For Requesting Exclusion. The Notice shall provide that Class Members
21 who wish to exclude themselves from the Class must submit a written request to be
22 excluded (“Request for Exclusion”) from the Class on or before the
23 Objection/Exclusion Deadline Date. Such Request for Exclusion: (1) must contain
24 the name, address, telephone number and the last four digits of the Social Security
25 number of the person requesting exclusion; (2) must be signed by the person
26 requesting exclusion; (3) must be returned by mail to the Settlement Administrator
27 at the specified address; (4) and must be postmarked on or before the
28 Objection/Exclusion Deadline Date. The date of the postmark on the return mailing
envelope shall be the exclusive means used to determine whether a request for

1 exclusion has been timely submitted. Any Class Member who requests an exclusion
2 from the Class will not be entitled to any recovery under the Settlement and will not
3 be bound by the Settlement or have any right to object, appeal or comment
4 thereon. Class Members who fail to submit valid and timely a Request for Exclusion
5 on or before the Objection/Exclusion Deadline Date shall be Participating Class
6 Members and shall be bound by all terms of the Settlement and any Final Judgment
7 entered in this Class Action if the Settlement is approved by the Superior Court. No
8 later than sixteen (16) court days before the Settlement Fairness Hearing, the
9 Settlement Administrator shall provide counsel for the Parties with a complete list of
10 all members of the Settlement Class who have timely requested exclusion from the
11 Settlement. At no time shall any of the Parties or their counsel seek to solicit or
12 otherwise encourage members of the Settlement Class to submit a Request for
13 Exclusion from the Settlement.

- 14 c. Procedure for Contesting Individual Settlement Payment: Each Class Members will
15 have the opportunity, should he/she disagree with Defendant's records regarding
16 his/her Total Workweeks as presented in his/her Class Notice, to provide
17 documentation to show contrary employment dates. To do so, Class Members must
18 contact the Settlement Administrator, along with all applicable documentary
19 evidence to support his/her dispute regarding his/her Total Workweeks prior to the
20 Objection/Exclusion Deadline. Moreover, an individual can only dispute his/her
21 number of Total Workweeks if he/she does not exclude himself/herself from the
22 Settlement. If there is a dispute, the Settlement Administrator will consult with the
23 Parties to determine whether a workweek adjustment is warranted. Class Counsel
24 and Defendant's Counsel shall meet and confer in an attempt to reach an agreement
25 regarding whether a workweek adjustment is warranted based on the documentary
26 evidence submitted by the Class Member to challenge his/her Total Workweeks. If
27 they cannot agree, the Settlement Administrator shall make the final determination
28 of whether or not a workweek adjustment is warranted and that determination shall
be conclusive, final and binding on all Parties, including all Class Members. In the

1 event that a workweek adjustment is warranted, the additional amount owed to said
2 Class Member, if any, shall be paid as part of that Participating Class Member's
3 Individual Settlement Payment and no adjustment will result in an increase to the
4 Gross Fund Value.

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

9 15. Procedure For Payment Of Individual Settlement Payments:

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

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

16 c. Should any question arise regarding the determination of eligibility for, or the
17 amounts of, any Individual Settlement Payment under the terms of this Agreement, Class Counsel
18 and Defendant's Counsel shall meet and confer in an attempt to reach agreement and shall utilize
19 the services of a mediator if they cannot reach an agreement informally. If they cannot agree, the
20 Settlement Administrator shall make the final determination, and that determination shall be
21 conclusive, final and binding on all Parties, including all Class Members.

22 d. Any checks issued by the Settlement Administrator to Participating Class Members
23 shall be negotiable for one hundred and eighty (180) calendar days. Those funds represented by
24 Settlement checks returned as undeliverable and those Settlement checks remaining uncashed for
25 more than one hundred and eighty (180) days after issuance (collectively, "Uncashed Settlement
26 Checks") shall be distributed to the Controller of the State of California to be held pursuant to the
27 Unclaimed Property Law, California Code of Civil Procedure Section 1500 et seq. for the benefits
28 of those Settlement Class Members who did not cash their checks until such time they claim their
property. The Parties agree that this disposition results in no "unpaid residue" under California Civil

1 Procedure Code Section 384, as the entire Net Fund Value (NFV) will be paid out to Settlement
2 Class Members, whether or not they all cash their settlement checks.

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

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

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

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

28 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

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

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

20 22. No Effect On Employee Benefits. Neither the Individual Settlement Payments nor
21 the Service Award to Named Plaintiff shall be deemed to be pensionable earning and shall not have
22 any effect on the eligibility for, or calculation of, any of the employee benefits (e.g., vacations,
23 holiday pay, retirement plans, etc.) of the respective Named Plaintiff or Participating Class
24 Members. The Parties agree that any Individual Settlement Payments to Participating Class
25 Members under the terms of this Agreement do not represent any modification of the Participating
26 Class Members' previously credited hours of service or other eligibility criteria under any employee
27 pension benefit plan or employee welfare benefit plan sponsored by Defendant. Further, any
28 Individual Settlement Payment, or Service Award hereunder shall not be considered
"compensation" in any year for purposes of determining eligibility for, or benefit accrual within, an

1 employee pension benefit plan or employee welfare benefit plan sponsored by Defendant. Neither
2 Defendant nor Named Plaintiff are opining on the terms of any such Plan, each of which speaks for
3 itself.

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

- 7 a. If the Named Plaintiff or Class Counsel, on behalf of the Named Plaintiff or any
8 Class Member, or the Defendant at any time believes that the other Party has
9 breached or acted contrary to the Agreement, that Party shall notify the other Party
10 in writing of the alleged violation.
- 11 b. Upon receiving notice of the alleged violation or dispute, the responding Party shall
12 have ten (10) calendar days to correct the alleged violation and/or respond to the
13 initiating Party with the reasons why the Party disputes all or part of the allegation.
- 14 c. If the response does not address the alleged violation to the initiating Party's
15 satisfaction, the Parties shall negotiate in good faith for up to ten (10) calendar days
16 to resolve their differences.
- 17 d. If Class Counsel and Defense counsel are unable to resolve their respective parties'
18 differences after twenty (20) calendar days referenced in Section III, Paragraph
19 23(a)-(c), supra, either Party may elect to file (1) an appropriate Code of Civil
20 Procedure section 664.6 motion for enforcement with the Court, or (2) take any other
21 legal action to enforce this Settlement Agreement.
- 22 e. In the event that the Court does not agree to adopt the above dispute resolution
23 procedure as part of its Order granting final approval to the Settlement, then the
24 above provisions for Dispute Resolution (Section III, paragraph 23(a)-(d)) are null
25 and void, the remainder of the settlement is unaffected, and the parties shall remain
26 free to submit disputes and/or motions for enforcement of the settlement via
27 appropriate noticed motion or ex parte application as though Section III, paragraph
28 23 was not included herein.

24. No Retaliation. Defendant shall not take any adverse action against any Class

1 Member because of the existence of, and/or participation in, the Settlement, or because they choose
2 to benefit from the Settlement or to object to or opt out from the Settlement. Defendant shall not
3 take action to discourage Class Members from participating in the Settlement.

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

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

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

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

20 29. Authorization To Enter Into Settlement Agreement. Counsel for all Parties warrant
21 and represent they are expressly authorized by the Parties whom they represent to negotiate this
22 Agreement and to take all appropriate action required or permitted to be taken by such Parties
23 pursuant to this Agreement to effectuate its terms, and to execute any other documents required to
24 effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other
25 and use their best efforts to effect the implementation of the Settlement. In the event the Parties are
26 unable to reach agreement on the form or content of any document needed to implement the
27 Settlement, or on any supplemental provisions that may become necessary to effectuate the terms
28 of this Settlement, the Parties may seek the assistance of the Court and/or the mediator to resolve
such disagreement. The persons signing this Agreement on behalf of Defendant represents and

1 warrants that they are authorized to sign this Agreement on behalf of Defendant.

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

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

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

21 33. Counterparts. This Agreement may be executed in one or more counterparts. All
22 executed counterparts and each of them shall be deemed to be one and the same instrument provided
23 that counsel for the Parties to this Agreement shall exchange among themselves original signed
24 counterparts.

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

 35. Jurisdiction Of The Court. The Court shall retain jurisdiction, pursuant to Code of

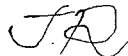
1 Civil Procedure Section 664.6 or otherwise, with respect to the interpretation, implementation and
 2 enforcement of the terms of this Agreement and all orders and judgments entered in connection
 3 therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes
 4 of interpreting, implementing and enforcing the settlement embodied in this Agreement and all
 5 orders and judgments entered in connection therewith.

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

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

13 3/3/2022
 14 Dated: _____

PLAINTIFF



Joshua Rios
 Represented By:

17
 18 Dated: 3/3/22

KOKOZIAN LAW FIRM, APC

By: _____

Bruce Kokoziian, Esq.
 Attorney for Plaintiff

20
 21 Dated: _____

DEFENDANT BONSAI TRADING COMPANY

By: _____

Their: _____

Represented by :

25 **KAEDIAN LLP**

26 By: _____
 27 Dated: _____
 28 Nannina Angioni, Esq.
 Attorneys for Defendant

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: _____

Joshua Rios
Represented By:

KOKOZIAN LAW FIRM, APC

Dated: _____

By: _____
Bruce Kokozyan, Esq.
Attorney for Plaintiff

DEFENDANT BONSAI TRADING COMPANY

Dated: Mar 26, 2022

By:  _____
Daniel Abitboul (Mar 26, 2022 19:23 PDT)

Their: President

Represented by :

KAEDIAN LLP

Dated: March 28, 2022

By:  _____
Nannina Angioni, Esq.
Attorneys for Defendant

EXHIBIT A

NOTICE OF CLASS ACTION SETTLEMENT

If you are or were a non-exempt hourly paid employee of Bonsai Trading Company in California, anytime between September 29, 2016 through [Date of Preliminary Approval Order Entered], you may be entitled to receive money from a class action settlement.

A court approved this notice. This is not an advertisement.

You are not being sued. Your legal rights are affected whether you act or not.

PLEASE READ THIS NOTICE.

WHAT IS IN THIS NOTICE

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1. Why should you read this notice?

On September 29, 2020, Plaintiff Joshua Rios (“Plaintiff”) filed a putative class action complaint against his former employer Bonsai Trading Company (hereinafter “Bonsai”). This Notice describes the lawsuit and explains your rights in the settlement. You have received this Notice because records indicate that you are a Class Member. Class Members include all current and former non-exempt hourly paid employees who worked for Bonsai in California at any time from September 29, 2016 through [date of preliminary approval].

In March 2022, the Parties reached a class wide settlement as a compromise to resolve Plaintiff’s individual and representative claims, subject to Court approval. On [date], the Los Angeles County Superior Court preliminarily approved the class action settlement and has ordered that this Notice be provided to you. ***The court has not determined who is right or wrong in this lawsuit.***

2. What is the case about?

Plaintiff asserted claims against Bonsai on behalf of all current and former non-exempt hourly paid employees who worked for Defendant in California for: (a) unpaid overtime wages; (b) unpaid minimum wages; (c) failure to pay overtime wages at the legal overtime rate (d) failure to provide meal breaks; (e) failure to provide rest periods; (f) failure to promptly pay all wages due and owing at the time of an employee’s termination or discharge; (g) failure to issue properly itemized wage statements; (h) violations of California’s Business and Professions Code; and (i) violations of the Private Attorneys General Act of 2004.

Bonsai vehemently denies any and all wrongdoing and liability. Bonsai contends it conducted business and compensated employees consistent with the laws of the State of California. Bonsai contends it has no liability for any of claims under any statute, wage order, common law, or equitable

theory. The court has not ruled on the merits of Plaintiff's claims.

3. What does the settlement provide?

As part of the settlement terms, in exchange for a class release of the claims asserted by Plaintiff, Bonsai will pay \$104,400 (Gross Fund Value), which amount includes all attorneys' fees, costs, third-party settlement administrator costs, the class representative enhancement payment, payment to the California Labor and Workforce Development Agency, and payment to Participating Class Members. Plaintiff will request from the Gross Fund Value: (1) \$34,800 for attorneys' fees, (2) up to \$12,000 in costs, (3) up to \$6,000 for settlement administration costs to Simpluris, (4) up to \$5,000 as a service award to Class Representative Joshua Rios, and (5) a PAGA payment of \$3,400, of which \$850 will be distributed to Participating Class Members and \$2,550 will be paid to the California Labor and Workforce Development Agency. After deductions of all the preceding amounts, the remaining amount will be distributed as Settlement Awards to Participating Class Members (Net Fund Value). The Net Fund Value will be divided by the Aggregate Workweek Total worked by all Class Members to determine the approximate weekly settlement amount for Class Members. Defendant will provide the Settlement Administrator with each Class Members' Total Workweeks based on its records.

Bonsai records indicate that you were employed for _____ Total Workweeks during the Class Period of September 29, 2016 until [date of preliminary approval]

Based on this estimate and Bonsai records, your estimated Settlement Award is \$_____.

If you dispute your number of Total Workweeks, you must contact the Settlement Administrator and notify them in writing the number of workweeks you believe you were employed and provide any supporting documentation. If you do not provide documents, your settlement payment will be calculated according to the Defendant's records. The dispute must be sent to the Settlement Administrator's address listed in this notice and must be postmarked no later than [date]. It is also your responsibility to keep a current address on file with the Settlement Administrator to ensure receipt of your Settlement Award.

Subject to court approval, you do not need to take any further action to receive money from this settlement.

4. What is the Class Action Settlement?

In a class action lawsuit, one person called "Plaintiff" or "Class Representative" sues on behalf of other people who may have similar claims. In this case, the Plaintiff is Joshua Rios. The people on whose behalf the Plaintiff brings the lawsuit are a "Class" or "Class Members." The company he sued is called the Defendant. In this case, the Defendant is Bonsai. One court resolves the issues for everyone in the Class – except for those people who choose to exclude themselves from the Class. In this case, the court is the Los Angeles County Superior Court.

5. What are my rights? How will my rights be affected?

Participating in the Settlement

Under the settlement, you will **automatically** receive a settlement payment unless you opt out by following the opt-out procedure set forth below. If approved by the Court, the Settlement Agreement

and release (Joint Stipulation and Settlement of Class Action and Private Attorneys General Act Claims) will be binding on all Participating Class Members who do not timely opt out of the settlement.

If you are a current employee of Bonsai your decision about whether to participate in this settlement will not affect your employment with Bonsai.

Opting Out of the Settlement

If you wish to be excluded from participating in the Settlement, you must mail a written statement to the Settlement Administrator, at the address below, requesting to be excluded from the Settlement. To be considered valid, your request for exclusion must be in writing, signed by you, and contain your name, address, telephone number, and the last four digits of your Social Security number. Your request for exclusion also must clearly indicate that you desire to be excluded from the Settlement. To be considered timely, your request for exclusion must be mailed by First-Class Mail or equivalent and postmarked no later than [date]. The date of the postmark on the return mailing envelope shall be the exclusive means used to determine whether a request for exclusion has been timely submitted. Late requests for exclusion (opt-out requests) will not be considered.

If you file a timely and valid written request for exclusion, you will no longer be a member of the Class, and you will not be eligible to receive money under the Settlement or object to the terms of the Settlement, and you will not be bound by the terms of the Settlement.

Objecting to the Settlement

If you wish to Object to the Settlement, you may advise the Court about your objection stating why you object to the settlement. Your objection must state your full name, last four digits of your social security number, dates of employment, address, and telephone number, a statement providing the basis for your objections, a statement advising if you plan to address the Court at the Settlement Fairness Hearing, and any legal briefs, papers or memoranda you propose to submit to the Court. The objection must be mailed to Settlement Administrator, at the address below, and must be postmarked no later than [date].

You may also, if you wish, appear at the Settlement Fairness Hearing on [date] at [time] in Dept. 9 of the Los Angeles County Superior Court, Spring Street Courthouse to discuss your objections with the Court and the Parties regardless of whether you submitted a written objection to the Settlement Administrator. Class Members may appear remotely, if you wish, for the Final Approval Hearing and should contact the court clerk for Department 9 for instructions on how to appear remotely. The Settlement Fairness Hearing may be continued to another date without further notice. If you object to the settlement, you may still receive your share of the settlement amount if the court approves the settlement despite objections.

Effect of the Settlement on Your Rights

If the proposed settlement is approved by the Court, a Judgment will be entered by the Court and upon entry of Judgment all Participating Class Members for the Class Period will be deemed to have released the Released Claims. “Released Claims” is defined as follows: Upon the Effective Date and upon Defendant fully funding the Settlement, Participating Class Members for the Class Period shall fully and finally release and discharge the Released Parties of all claims, rights, demands, liabilities, damages, attorneys’ fees, costs, and causes of action of every nature and description arising from any and all claims which were asserted in the Action or could have been asserted based on the facts alleged in the Action, and arising during the Class Period of this settlement, including statutory, constitutional or common law claims for wages, damages, unpaid costs, liquidated damages, penalties, interest, attorneys’ fees, litigation costs, restitution, equitable relief, or other relief under California Business & Professions Code §17200, et seq. based on the following categories of allegations as set forth in the 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 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; (g) all claims for the failure to issue timely and properly itemized wage statements; (h) all claims for Unfair Competition or Business Practices under California's Business and Professions Code based on the preceding claims; (i) all claims for any and all penalties pursuant to the California Labor Code and/or the Private Attorneys General Act of 2004 based on the preceding claims.

If the Court finally approves the Settlement, settlement checks will be mailed to Class Members who have not opted out of the Settlement. Notice of the final judgment will be provided on the Settlement Administrator's website.

Those funds represented by Settlement checks returned as undeliverable and those Settlement checks remaining uncashed for more than 180 days after issuance (collectively, "Uncashed Settlement Checks") shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Code of Civil Procedure Section 1500 et seq. for the benefits of those Settlement Class Members who did not cash their checks until they claim their property.

6. *Who are the attorneys representing the parties?*

Class Counsel, appointed and approved by the Court for settlement only, will represent you. However, you may choose to be represented by your own counsel at your own cost.

Attorneys for Plaintiff & the Class are:

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7. *How will the attorneys for the class and costs be paid?*

Class Counsel is seeking an award from the Court for attorneys' fees of up to \$34,800 and documented litigation costs of up to \$12,000. Joshua Rios is seeking a service award from the Court of up to \$5,000. The actual amounts awarded will be determined by the Court.

If you need more information or have any questions, you may contact the Settlement Administrator at the telephone number listed below.

Rios v Bonsai Trading Company
c/o [Settlement Administrator]
[ADDRESS]
[PHONE]

**PLEASE DO NOT CONTACT THE COURT
FOR INFORMATION ABOUT THIS SETTLEMENT.**