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Attorneys for Plaintiff,
KARINA MOSQUEDA, on behalf of herself and all similarly situated employees

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

KARINA MOSQUEDA, on behalf of
herself and all similarly aggrieved
employees,

Plaintiff,

v.

SANSEI GARDENS, INC.; NEW IMAGE
LANDSCAPE COMPANY; and DOES 1
through 50, inclusive,

Defendants.

Case No. 21CV000325

(Assigned to the Hon. Thomas W. Wills, Dept.
15)

**DECLARATION OF MAX W. GAVRON
IN SUPPORT OF PLAINTIFF'S MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: February 10, 2023

Time: 8:30 A.M.

Dept.: 15

Complaint Filed: February 3, 2021

FAC Filed: September 27, 2022

Trial Date: Not Set

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1 4. Since the initiation of the lawsuit, the Parties have engaged in formal and
2 informal discovery. My co-counsel and I have reviewed Defendants' production of their
3 relevant policies and practices, as well as sample payroll data and punch data records. This
4 investigation enabled Plaintiff to perform an analysis of the putative class and Defendants'
5 liability.

6 5. On August 9, 2022, the Parties engaged in private mediation with experienced
7 wage and hour neutral Russ Wunderli, Esq. After thorough investigation and evaluation of the
8 facts and claims, as well as arm's length negotiation, the Parties reached an agreement in
9 principle and entered into a memorandum of understanding. After further negotiation, the
10 Parties entered the proposed settlement presented to the Court for preliminary approval now.

11 6. The Joint Stipulation and Settlement of PAGA and Class Action Claims
12 ("Stipulation" or "Settlement Agreement"). A true and correct copy of the Stipulation is
13 attached herewith as **Exhibit A**.

14 **SUMMARY OF THE SETTLEMENT TERMS**

15 7. The Stipulation provides for a Gross Settlement Amount of One Million Dollars
16 (\$1,000,000.00). Stipulation ¶ 46. The Net Settlement Amount (calculated after deduction of
17 Attorneys' Fees (up to \$333,333.33), Attorneys' Costs (up to \$25,000.00), Class
18 Representative Enhancement Award (up to \$5,000.00), PAGA Award (\$75,000.00), and
19 Settlement Administration Costs (up to \$15,000.00)) is estimated to be approximately
20 \$546,666.67. See Stipulation ¶¶ 3, 4, 14, 16, 20, 23, 32. Each Class Member that does not
21 opt-out of the Settlement will be awarded a portion of the Net Settlement Amount on a pro-
22 rata basis, based upon the total number of workweeks he or she worked during the Class
23 Period. Stipulation ¶ 49.a.

24 8. On a raw average, each Class Member potentially may recover approximately
25 \$399.32.

26 **POTENTIAL STATUTORY AND CIVIL PENALTIES**

27 9. I was able to estimate the potential damages and penalties based on the data and
28 documents provided by Defendants. Based on the class data provided by Defendants, Plaintiff

1 estimated that Defendants would face potential maximum liability of up to approximately \$10
2 million for Plaintiff's class claims, if Plaintiff was successful in all of her claims and obtained
3 certification. Plaintiff calculated this amount based on the following approximate breakdowns
4 for each class claim:

- 5 • \$1.7 million for meal period violations (50% violation rate (~180,000 shifts x .5) x
6 \$19.00 (average rate of pay));
- 7 • \$1.7 million for rest period violations (50% violation rate (~180,000 shifts x .5) x
8 \$19.00 (average rate of pay));
- 9 • \$850,000 for unpaid wages, including minimum, overtime, and prevailing (~180,000
10 shifts x ((.1 (6 minutes) x \$19.00) + (.1 (6 minutes) x \$28.50));
- 11 • \$950,000 for Labor Code § 226(e) penalties (~9,663 pay periods x \$100 penalty);
- 12 • \$180,000 for unreimbursed business expenses (36,122 workweeks x \$5.00); and
- 13 • \$4.5 million in waiting time penalties (~1,000 former employees x (30 days x 8
14 hours x \$19.00)).

15 10. Each of Plaintiff's putative class claims faced unique challenges from
16 Defendants. For one, Defendants would have argued that the waiting time penalties, which
17 comprise a significant portion of the estimated damages, are subject to a complete defense.
18 Defendants would have argued that a good faith dispute exists as to whether the allegedly
19 underpaid wages were due to Plaintiff and the class members considering Defendants' legally
20 compliant policies. If Defendants were successful on their good faith defense, the Court may
21 not have awarded waiting time penalties at all, reducing the exposure by \$4.5 million. *Hill v.*
22 *Walmart, Inc.*, 32 F. 4th 811 (9th Cir. 2022) (upholding good faith defense because defendant
23 reasonably believed wages were not due and owing at time of separation of employment);
24 *Chavez v. Converse, Inc.*, 2020 WL 1233919, at *1 (N.D. Cal. 2020) (holding that an
25 employer's failure to pay is not willful where there is uncertainty in the law or a "good faith
26 mistaken belief that wages are not owed").

27 11. Similarly, on Plaintiff's wage statement claim, Plaintiff would face the
28 additional burden of demonstrating that any alleged omission of information from the wage

1 statements was a “knowing and intentional failure” by Defendants to comply with Labor Code
2 § 226(a). *See Harris v. Vector Mktg. Corp.*, 656 F. Supp. 2d 1128, 1145-46 (N.D. Cal. 2009)
3 (granting summary judgment in favor of employer and finding its conduct was not “knowing
4 and intentional”); Defendant also would have argued that penalties under Section 226 are
5 subject to a similar “good faith” defense as articulated above in the context of Plaintiffs’
6 claims for waiting time penalties. *See, e.g., Apodaca v. Costco Wholesale Corp.*, 2014 WL
7 2533427, at *3 (C.D. Cal. June 5, 2014) (“Where an employer has a good faith belief that it is
8 not in violation of Section 226, any violation is not knowing and intentional.”); *Wright v.*
9 *Adventures Rolling Cross Country, Inc.*, 2013 WL 1758815, at *9 (N.D. Cal. Apr. 24, 2013)
10 (same); *Ricaldai v. U.S. Investigations Servs., LLC*, 878 F. Supp. 2d 1038, 1047 (N.D. Cal.
11 2012) (same); *Dalton v. Lee Publ’ns, Inc.*, 2011 WL 1045107, at *5 (S.D. Cal. Mar. 22, 2011)
12 (same).

13 12. Defendants also would have argued that Plaintiff could not demonstrate an
14 underlying violation of the Labor Code to support her meal and rest period claims. *See*
15 *Brinker Rest. Corp. v. Superior Ct.*, 53 Cal. 4th 1004, 1040, 273 P.3d 513, 537 (2012) (“On
16 the other hand, the employer is not obligated to police meal breaks and ensure no work
17 thereafter is performed.”). Defendants would have argued that their legally compliant written
18 policies satisfied Brinker and that any failure to take a legally compliant meal or rest period by
19 employees was the result of individual choice and thus not capable of class resolution.

20 13. Defendants also contended that they paid employees all minimum, overtime, and
21 prevailing wages. Defendants argued that any work performed off the clock was unauthorized
22 and not subject to a uniform policy and thus would not be susceptible of class resolution.
23 Similarly, Defendants could have argued that because not all of their projects were subject to a
24 prevailing wage requirement, Plaintiff’s claims were not suitable to the class vehicle.

25 14. On Plaintiff’s reimbursement claim, Defendants argued that employees were not
26 required to use personal cell phones to communicate for purposes of employment. While
27 Plaintiff contended she was required to use her phone, Defendants would have argued that any
28 decision to use her cell phone for work purposes of voluntary and/or unique to her.

1 15. Plaintiff calculated Defendants' potential maximum exposure under the PAGA
2 as approximately \$950,000 (9,663 pay periods x \$100 penalty). This assumes complete
3 victory at trial and that the Court would award the maximum penalty of \$100 per pay period,
4 which is far from certain as discussed above. Further, while the PAGA provides for a
5 heightened penalty for a "subsequent violation," courts are hesitant to award the heightened
6 penalty absent a showing of a prior violation. *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th
7 1157, 1209 (2008); *accord Amalgamated Transit Union Local 1309 v. Laidlaw Transit*
8 *Service, Inc.* 2009 WL 2448430, at *9 (S.D. Cal. Aug. 10, 2009) ("[u]nder California law,
9 courts have held that employers are not subject to heightened penalties for subsequent
10 violations unless and until a court or commissioner notifies the employer that it is in violation
11 of the Labor Code"); *see also Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127, 1144 (9th Cir. 2021)
12 (holding no subsequent penalty unless prior citation or court ruling).

13 16. Even assuming Plaintiff ultimately prevailed on her PAGA claims, the Court still
14 has discretion to reduce any PAGA penalties. Pursuant to Labor Code § 2699(e)(2), the Court
15 can decline to award PAGA penalties where "if, based on the facts and circumstances of the
16 particular case, to do otherwise, would result in an award that is unjust, arbitrary and
17 oppressive, or confiscatory." Indeed, as shown in the Court of Appeal's decision in
18 *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), while the plaintiff prevailed on
19 his PAGA claim upon trial, the trial court reduced the maximum PAGA penalty amount by
20 90%, citing the employer's good faith attempt at complying with the law. *Id.* at p. 517. Upon
21 review, the Court of Appeal found such reduction to be proper. *Id.* at p. 539. Thus, even if
22 Plaintiff was to successfully prove her claims at trial, there is a possibility that the Court may
23 only award a small percentage of PAGA penalties, as the Court has discretion to do so.

24 17. While Plaintiff believes in the merits of the alleged claims, Plaintiff is aware that
25 Defendants may raise some of the defenses to the claims addressed above that could persuade
26 the Court to reduce the PAGA penalties. The Gross Settlement Amount was premised with
27 these risks in mind, associated with the possibility of the Court significantly reducing
28 Plaintiff's PAGA penalties, along with other attendant risks.

1 18. Although Plaintiff believes that a class can be certified, Plaintiff also believes in
2 the fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff
3 involved in not prevailing on one or more of the causes of action or theories alleged in the
4 operative Complaint, the possibility of non-certification, and the potential for appeals. *See*
5 *Duran v. U.S. Bank Nat'l Ass'n*, 59 Cal. 4th 1 (2014).

6 **THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE**

7 19. Based on my own independent investigation and evaluation, I am of the opinion
8 that settlement for the consideration and on the terms set forth in the Joint Stipulation and
9 Settlement of PAGA and Class Action Claims is fair, reasonable, and adequate and is in the
10 best interests of the Class and Defendants in light of all known facts and circumstances, and
11 the uncertainty and risks to Plaintiff involved in not prevailing on one or more of the causes of
12 action or theories alleged in the operative Complaint, the possibility of non-certification, and
13 the potential for appeals.

14 20. From the inception of the case, Class Counsel have zealously represented the
15 interests of the Class. The settlement was obtained for the benefit of the Class, as opposed to
16 the individual Class Representative. Further, Class Counsel have been approved as class
17 counsel on a number of prior cases, have litigated numerous other class action cases, and are
18 competent to represent the Class.

19 21. Both Plaintiff's and Defendants' counsel have a great deal of experience in wage
20 and hour class action litigation. Plaintiff's counsel has been approved as class counsel in a
21 number of wage and hour class action and have extensive litigation experience.

22 22. Each side has apprised the other of their respective factual contentions, legal
23 theories, and defenses, resulting in negotiations taking place between the Parties.

24 23. The Parties recognize the risk, expense, and delay in continuing litigation with
25 the class and PAGA claims, and believe the Settlement to be fair, reasonable, and adequate.

26 24. My office was retained based upon a contingency fee arrangement wherein
27 Plaintiff's counsel agreed to advance all costs and receive no fee unless a recovery was
28 accomplished. Specifically, had Plaintiff failed to prevail on these cases, counsel for Plaintiff

1 would have spent a significant amount of time, money and other resources without any benefit
2 or return. In addition, had Plaintiff also failed to prevail in the present cases, Defendants
3 would have been able to seek costs in connection with their defense of the case.

4 25. I have spent significant time researching and pursuing the claims that have been
5 alleged in this action. The Parties engaged in formal and informal discovery, with the
6 production of documents and payroll information.

7 **ATTORNEY EXPERIENCE**

8 26. I am one of the primary attorneys on this matter. My qualifications are as
9 follows: I received a full-tuition scholarship, and graduated from Southwestern Law School in
10 2013, magna cum laude. I was in the top 5% of my class. During my time at Southwestern, I
11 was a Notes and Comments Editor on the Southwestern Law Review. I also received awards
12 for achieving the highest grade in my class in several courses. In 2012, I was a full-time
13 extern, at the United States District Court for the Central District. Immediately after law
14 school, I taught several courses at Southwestern, including Principles of Legal Analysis and
15 Legal Methods. I taught those courses for approximately four years.

16 27. I practiced civil litigation at Haight Brown & Bonesteel LLP from
17 approximately September 2013, through January 2016. I was third-chair in a federal court jury
18 trial that resulted in a defense verdict in our client's favor on a \$21 million commercial breach
19 of contract dispute. I also regularly litigated cases across the civil litigation spectrum,
20 including employment matters.

21 28. From February 2016, through Fall 2017, I practiced at the international law firm
22 of Arnold & Porter, which had recently merged with Kaye Scholer, LLP. I defended Fortune
23 50 companies in Multi-District Litigation primarily in the product liability sphere. I also
24 successfully drafted an appellate brief in the Ninth Circuit resulting in the reversal of a
25 summary judgment decision regarding trade secret issues, in addition to working in several
26 other practice groups. *See Experian Info. Solutions v. Nationwide Marketing Servs. Inc.*, 893
27 F.3d 1176 (9th Cir. 2018).

28 29. From September 2017, through September 2018, I served as a law clerk to a

1 Judge sitting on the United States District Court, Central District of California. I regularly
2 prepared bench memoranda, on cases involving all types of civil litigation, including regularly
3 working on wage and hour class actions.

4 30. I am currently an associate at the law firm Diversity Law Group, P.C., an
5 employment law firm that has handled numerous wage and hour class and individual actions,
6 on both plaintiff and defense sides. My current practice focuses on employment matters
7 involving both class actions, and single plaintiffs. The firm currently has cases in courts
8 throughout the State of California, including but not limited to the Los Angeles Superior
9 Court, Orange County Superior Court, San Diego County Superior Courts, Santa Clara County
10 Superior Court, and the United States District Courts for the Central, Northern, and Eastern
11 Districts of California. I am currently handling, or have handled, numerous wage and hour
12 class action lawsuits with the firm, including, but not limited to: *Agar v. Sensient Natural*
13 *Ingredients, LLC* (Case No. CV-19-001906, Stanislaus County Superior Court); *Heredia v.*
14 *Eddie Bauer LLC* (Case No. 16CV300475, United States District Court, Northern District of
15 California); *Martin v. Streetplus Company, LLC* (Case No. 19STCV15522, Los Angeles
16 County Superior Court); *Parsons v. Estenson Logistics, LLC* (Case No. 34-2019-00252929,
17 Sacramento County Superior Court), *Pevey v. Lumber City Corp.* (Case No. CIVDS2010240,
18 San Bernardino County Superior Court), and *Weybrew v. BEI Construction, Inc.* (Case No.
19 FCS055658, Solano County Superior Court), among many others.

20 31. On June 14, 2019, I argued two related cases in front of the Ninth Circuit Court
21 of Appeals. One of them was *Rodriguez v Nike Retail Service Inc.*, Case No. 17-16866. On
22 June 28, 2019, the Ninth Circuit issued a published decision, reversing and remanding in favor
23 of our clients. *Rodriguez v. Nike Retail Servs., Inc.*, 928 F.3d 810 (9th Cir. 2019).

24 32. I have also assisted the firm in numerous wage and hour class action mediations.

25 33. My co-counsel and I will adequately represent the Class Members in this action.
26 Plaintiff's counsel have and will zealously represent Plaintiff and the Class and pursue this
27 lawsuit to its conclusion.

28 34. I do not have any conflict of interest with the proposed *cy pres* recipient, the

1 Watsonville Law Center.

2 35. In conjunction with the filing of this Motion, my office uploaded the settlement
3 agreement and Motion to the Labor and Workforce Development Agency.

4 I declare under penalty of perjury under the laws of the State of California that the
5 foregoing is true and correct.

6 Executed on this 19th day of January 2023, at Los Angeles, California.

7 
8 _____
Max W. Gavron

EXHIBIT A

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 SANSEI GARDENS, INC. and NEW IMAGE LANDSCAPE COMPANY

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

KARINA MOSQUEDA, on behalf of
 herself and all similarly aggrieved
 employees,

Plaintiff,

v.

SANSEI GARDENS, INC.; NEW IMAGE
 LANDSCAPE COMPANY; and DOES 1
 through 50, inclusive,

Defendants.

Case No. 21CV000325

(Assigned to the Hon. Thomas W. Wills, Dept.
 15)

JOINT STIPULATION AND SETTLEMENT OF PAGA AND CLASS ACTION CLAIMS

Complaint Filed:	February 3, 2021
FAC Filed:	September 27, 2022
Trial Date:	Not Set

1 This Joint Stipulation and Settlement Agreement of Class Action Claims (“Stipulation”
2 or “Settlement”) is made and entered into by and between Plaintiff Karina Mosqueda
3 (“Plaintiff” or “Class Representative”), individually and on behalf of all others similarly
4 situated, and Defendants Sansei Gardens, Inc. and New Image Landscaping Company
5 (together, “Defendants”) (Plaintiff and Defendants shall collectively be referred to as the
6 “Parties”).

7 The Parties stipulate and agree as follows:

8 **DEFINITIONS**

9 1. “Action” shall mean the lawsuit filed against Defendants on or about February 3,
10 2021, captioned *Karina Mosqueda, on behalf of herself and all similarly aggrieved employees,*
11 *Plaintiff v. Sansei Gardens, Inc.; New Image Landscape Company; and Does 1 through 50,*
12 *inclusive, Defendants,* in the Superior Court of the State of California for the County of
13 Monterey, Case No. 21CV000325, as amended.

14 2. “Aggrieved Employees” shall mean all individuals who are or were employed as
15 hourly, non-exempt employees by Defendants during the PAGA Period, who have not signed
16 Defendants’ December 2020 Arbitration Agreement.

17 3. “Attorneys’ Fees” means one third of the Gross Settlement Amount, or Three
18 Hundred Thirty-Three Thousand Three Hundred and Thirty-Three Dollars and Thirty-Three
19 Cents (\$333,333.33), which is the amount of attorneys’ fees allocated to Class Counsel and
20 subject to Court approval.

21 4. “Attorneys’ Costs” means up to Twenty-Five Thousand Dollars (\$25,000.00),
22 which is the amount of costs allocated to Class Counsel and subject to Court approval.

23 5. “Class” or “Class Members” shall mean all individuals who are or were
24 employed as hourly, non-exempt employees by Defendants during the Class Period, who have
25 not signed Defendants’ December 2020 Arbitration Agreement.

26 6. “Class Counsel” shall mean B. James Fitzpatrick and Laura L. Franklin of
27 Fitzpatrick & Swanston; and Larry W. Lee and Max W. Gavron of Diversity Law Group, P.C.

28 7. “Class Period” or “Class Release Period” means February 3, 2017, through the

1 date the Court grants preliminary approval of this Settlement, subject to the escalator provision
2 set forth in Paragraph 47.

3 8. "Class Representative" or "Plaintiff" shall mean Plaintiff Karina Mosqueda.

4 9. "Class Workweeks" means any pay period during which a Class Member
5 performed work for Defendants during the Class Period.

6 10. "Court" means the Superior Court of the State of California for the County of
7 Monterey.

8 11. "Court's Final Order and Judgment" means the Final Order Approving Class
9 Action Settlement and Judgment in a form to be agreed upon by the Parties and approved by
10 the Court.

11 12. "Defendants' Counsel" shall mean Cook Brown, LLP.

12 13. "Effective Date" shall mean the date that the Court has held a formal fairness
13 hearing and entered the Court's Final Order approving this Joint Stipulation and Settlement of
14 PAGA and Class Action Claims, unless there are written or oral objections which are not later
15 withdrawn, or timely intervention filed by a party with standing, in which case the Effective
16 Date is the later of the following events: (A) when the period for filing any appeal, writ, or
17 other appellate proceeding opposing the Settlement has elapsed without any appeal, writ, or
18 other appellate proceeding having been filed; (B) when any appeal, writ, or other appellate
19 proceeding opposing the Settlement has been dismissed finally and conclusively with no right
20 to pursue further remedies or relief; or (C) when any appeal, writ, or other appellate
21 proceeding has upheld the Court's Final Order and Judgment with no right to pursue further
22 remedies or relief..

23 14. "Enhancement Award" shall mean the service payment made to Plaintiff in her
24 capacity as Class Representative, which sum is over and above her pro-rata share as a Class
25 Member.

26 15. "Final Approval Hearing" shall mean the hearing whereat the Court shall
27 consider, without limitations, any timely objections to the Settlement from Class Members,
28 testimony from the Parties or their counsel, declarations regarding the claims process from the

1 Settlement Administrator, and otherwise make a final determination regarding the fairness of
2 the Settlement as set forth herein.

3 16. "Gross Settlement Amount" means the amount of One Million Dollars
4 (\$1,000,000.00), which is the maximum amount that Defendants will pay pursuant to this
5 Settlement, subject to the escalator provision set forth in Paragraph 47, excluding Defendants'
6 share of payroll taxes, which shall be paid by Defendants separately and in addition to the
7 Gross Settlement Amount.

8 17. "Individual PAGA Payment" will be the portion of the Gross Settlement
9 Amount allocated to PAGA penalties and payable to any Aggrieved Employee.

10 18. "Individual Settlement Payment" will be the portion of the Net Settlement
11 Amount payable to any Settlement Class Member.

12 19. "LWDA Payment" is Fifty-Six Thousand Two Hundred and Fifty Dollars
13 (\$56,250.00), which is the portion of the PAGA Award allocated to the Labor and Workforce
14 Development Agency ("LWDA") under the PAGA.

15 20. "Net Settlement Amount" shall mean the Gross Settlement Amount less the
16 deduction of the PAGA Award, Attorneys' Fees, Attorneys' Costs, Enhancement Award, and
17 Settlement Administrator Costs.

18 21. "Notice of Proposed Settlement" or "Notice" means the Notice of Pendency of
19 Class Action, including a Spanish translation thereof, in substantially the form attached hereto
20 as **Exhibit A**, and as approved by the Court.

21 22. "PAGA" shall mean the Private Attorneys General Act of 2004, California
22 Labor Code § 2698, *et seq.*

23 23. "PAGA Award" shall mean Seventy-Five Thousand Dollars (\$75,000.00), which
24 is the amount the Parties agree shall be allocated to PAGA penalties and divided between the
25 State of California (75% (\$56,250.00) shall be distributed to the State of California) and the
26 Aggrieved Employees (25% (\$18,750.00) shall be distributed to the Aggrieved Employees).

27 24. "PAGA Period" or "PAGA Release Period" means October 22, 2019, through
28 the date the Court grants preliminary approval of this Settlement, subject to the escalator

1 provision set forth in Paragraph 47.

2 25. "PAGA Workweeks" means any pay period during the PAGA Period that an
3 Aggrieved Employee performed work for Defendants.

4 26. "Parties" shall refer to the Plaintiff and Defendants, each of whom is a Party.

5 27. "Released Parties" means Defendants and all of their subsidiaries, affiliates,
6 shareholders, members, agents, predecessors, successors, and assigns, and their current and
7 former officers, directors, employees and representatives.

8 28. "Released PAGA Claims" means all potential and/or actual claims that were or
9 may have been raised in the Action or that are reasonably related to the factual allegations in
10 the Action, including all claims for civil penalties under Labor Code §§ 2698, 2699, 2699.3,
11 and 2699.5 for any alleged violations of Labor Code §§ 201, 202, 203, 204, 207, 208, 209,
12 210, 216, 218, 218.5, 218.6, 223, 225.5, 226, 226.3, 226.7, 246, 510, 512, 558, 1770, *et seq.*,
13 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800, and 2802, California Industrial Welfare
14 Commission Wage Orders, Cal. Code Regs., tit. 8, § 11040, *et seq.*, and all meal or rest period
15 claims, meal or rest period premium payment claims, claims for unpaid wages, overtime,
16 minimum wages, including but not limited to claims for failing to properly calculate the
17 regular rate of pay for purposes of paying overtime, sick pay, and meal and rest period
18 premium payments, failing to pay all minimum and overtime wages for hours worked, failure
19 to pay all wages owed upon separation of employment, and failing to provide accurate
20 itemized wage statements and complete payments of wages at separation or termination,
21 failure to provide accurate and itemized wage statements, claims for waiting time penalties,
22 interest, fees, costs, and any other claims that may have been raised in the PAGA Action or
23 that reasonably relate to the allegations therein during the PAGA Period.

24 29. "Released Class Claims" means all potential and/or actual claims that were or
25 may have been raised in the Action or that are reasonably related to the factual allegations in
26 the Action, including claims under Labor Code §§ 201, 202, 203, 204, 207, 208, 209, 210,
27 216, 218, 218.5, 218.6, 223, 225.5, 226, 226.3, 226.7, 246, 510, 512, 558, 1770, *et seq.*, 1174,
28 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800, 2802, 2698, 2699, 2699.3, and 2699.5,

1 California Industrial Welfare Commission Wage Orders, Cal. Code Regs., tit. 8, § 11040, *et*
2 *seq.*, California Business and Professions Code § 17200, *et seq.*, and all meal or rest period
3 claims, meal or rest period premium payment claims, claims for unpaid wages, overtime,
4 minimum wages, including but not limited to claims for failing to properly calculate the
5 regular rate of pay for purposes of paying overtime, sick pay, and meal and rest period
6 premium payments, failing to pay all minimum and overtime wages for hours worked, failure
7 to pay all wages owed upon separation of employment, and failing to provide accurate
8 itemized wage statements and complete payments of wages at separation or termination,
9 failure to provide accurate and itemized wage statements, unfair competition based on the
10 foregoing, unlawful business practices based on the foregoing, fraudulent business practices
11 based on the foregoing, claims for waiting time penalties, civil penalties based on the
12 foregoing, interest, fees, costs, and any other claims that may have been raised in the Action or
13 that reasonably relate to the allegations therein during the Class Period.

14 30. “Settlement” or “Stipulation” means this Joint Stipulation and Settlement of
15 Class Action Claims.

16 31. “Settlement Administrator” means Phoenix Settlement Administrators.

17 32. “Settlement Administrator Costs” means up to Fifteen Thousand Dollars
18 (\$15,000.000), which is the amount allocated to the Settlement Administrator to administer the
19 Settlement, subject to Court approval.

20 33. “Settlement Class Members” means individual Class Members who did not opt-
21 out of the Settlement by submitting a valid request for exclusion as described in Paragraph 62.

22 34. “Total Aggrieved Employee Payment” means Eighteen Thousand Seven
23 Hundred and Fifty Dollars (\$18,750.00), which is the portion of the PAGA Award allocated to
24 the Aggrieved Employees.

25 **RECITALS**

26 35. This Action was filed against Defendants on February 3, 2021. The complaint
27 was subsequently amended on September 27, 2022. The First Amended Complaint (“FAC”)
28 is the operative Complaint (“Complaint”). The operative Complaint alleges the following

1 causes of action: (1) violation of Labor Code §§ 226.7 and 1198 regarding meal periods and
2 premiums; (2) violation of Labor Code §§ 226.7 and 1198 regarding rest periods and
3 premiums; (3) violation of Labor Code §§ 1194 and 1198 regarding hourly and overtime
4 wages; (4) violation of Labor Code § 1770, *et seq.* regarding prevailing wages; (5) violation of
5 Labor Code §§ 226, 1174, and 1175 regarding itemized wage statements; (6) violation of
6 Labor Code §§ 201, 202, and 203 regarding timely payment of wages upon separation of
7 employment; (7) violation of Labor Code § 2802 regarding reimbursement of work-related
8 expenses; (8) violation of Business and Professions Code § 17200, *et seq.* for unfair business
9 practices; and (9) violation of Labor Code § 2698, *et seq.* Since the filing of the original
10 complaint, the Parties have engaged in formal and informal discovery, including written
11 discovery and the exchange of class data and sample time and pay records of Defendants'
12 employees.

13 36. The Parties also engaged in private mediation with Russ J. Wunderli, Esq.,
14 which ultimately led to this Settlement.

15 37. Defendants deny any liability or wrongdoing of any kind whatsoever associated
16 with the claims in the Action, and further deny that, for any purpose other than settling this
17 lawsuit, this Action is appropriate for class action or representative treatment.

18 38. It is the Parties' desire to fully, finally, and forever settle, compromise, and
19 discharge all disputes and claims arising from or related to the allegations of this Action.

20 39. It is the Parties' intention that this Stipulation shall constitute a full and complete
21 settlement and release of all Released Class Claims and all Released PAGA Claims against all
22 Released Parties.

23 40. It is the Parties' intention that this Settlement shall not become effective until the
24 Court's order approving the Settlement is final, and there is no further recourse by any Class
25 Member or other party with standing to contest or appeal the Settlement.

26 41. Class Counsel have conducted a thorough investigation into the facts of this
27 Action, including an extensive review of relevant documents and data, and have diligently
28

1 pursued an investigation of claims of the members of the Class and Aggrieved Employees
2 against Defendants. Based on their own independent investigation and evaluation, Class
3 Counsel are of the opinion that the Settlement with Defendants is fair, reasonable, and
4 adequate and is in the best interest of the Class Members in light of all known facts and
5 circumstances, including the risks of significant delay and the defenses asserted by
6 Defendants. Defendants and Defendants' Counsel also agree that the Settlement is fair and in
7 the best interests of the Class. Counsel for the Parties further agree that the Settlement is fair,
8 reasonable, and adequate with respect to civil penalties sought pursuant to PAGA.

9 42. The Parties agree to cooperate and take all steps necessary and appropriate to
10 consummate this settlement in accordance with the terms of this Stipulation.

11 **TERMS OF SETTLEMENT**

12 43. In consideration of the mutual covenants, promises, and agreements set forth
13 herein, the Parties agree, subject to the Court's approval, to the terms herein.

14 44. It is agreed by and between Plaintiff and Defendants that this case and any
15 claims, demands, liabilities, penalties, damages, or causes of action of any kind whatsoever
16 claimed by Plaintiff on behalf of herself, the Class, and/or Aggrieved Employees arising out of
17 the Released Class Claims and/or Released PAGA Claims, be settled and compromised,
18 subject to the terms and conditions set forth in this Stipulation and the Court's approval.

19 45. Effective Date: The Settlement embodied in this Stipulation shall become
20 effective only upon the Effective Date.

21 46. Gross Settlement Amount: To implement the terms of this Settlement,
22 Defendants agree to pay a maximum total payment of One Million Dollars and Zero Cents
23 (\$1,000,000.00) ("Gross Settlement Amount"), which includes payments to Class Members
24 (excluding any appropriate and lawfully required employer-side payroll taxes owed by
25 Defendants on such payments which Defendants shall be separately responsible for apart from
26 the Gross Settlement Amount), Enhancement Award to the Class Representative, payment of
27 the PAGA Award, Settlement Administrator Costs, Attorneys' Fees, Attorneys' Costs, and any
28 other payments provided by this Settlement. Except as otherwise specified herein, Defendants

1 shall not be required to pay any additional monies beyond the amount of the Gross Settlement
2 Amount. Further, under no circumstances whatsoever shall any portion of the Gross
3 Settlement Amount revert to Defendants, and any amount of the Gross Settlement Amount not
4 required to pay the above-referenced costs shall be paid to Settlement Class Members on a pro
5 rata basis according to the formula contained herein.

6 47. Escalation Clause: The Gross Settlement Amount was calculated with, and is
7 premised on, Defendants' representation that Class Members worked approximately 36,112
8 workweeks ("Class Workweeks") during the Class Period and Aggrieved Employees worked
9 approximately 9,663 pay periods ("PAGA Workweeks") during the PAGA Period. If the
10 final tally of Class Workweeks or PAGA Workweeks increases by more than 10%, then
11 Defendants may elect to either: (i) increase the Gross Settlement Amount by the same
12 percentage amount above the 10% increase (*e.g.*, if the Class/PAGA Workweek count is 11%
13 greater than the estimate, the Gross Settlement Amount will be increased by 1%), or (ii)
14 truncate the Class Period so that the Class Period runs from February 3, 2017, through either
15 (ii)(a) October 8, 2022 (which is 60 days from the date of mediation), or (ii)(b) August 9,
16 2022, the date of mediation.

17 48. Funding of Settlement Amount: Within thirty (30) calendar days after the
18 Effective Date, Defendant shall make a one-time deposit of the Gross Settlement Amount into
19 a Qualified Settlement Fund ("QSF") to be established by the Settlement Administrator. The
20 QSF shall be an interest-bearing account at a federally insured bank. The Parties agree that the
21 QSF is intended to be a "Qualified Settlement Fund" under Section 468B of the Internal
22 Revenue Code and Treas. Reg. § 1.468B-1, 26 C.F.R. § 1.468B-1, *et seq.*, and will be
23 administered by the Settlement Administrator as such. The Parties agree to cooperate with the
24 Settlement Administrator and one another to the extent reasonably necessary to carry out the
25 provisions of this Section.

26 49. Allocation of Individual Settlement Payments: The Parties agree the Net
27 Settlement Amount shall be allocated to the Settlement Class Members.

28 a. The Net Settlement Amount shall be divided among the Settlement Class

Members on a pro-rata basis, based upon the number of workweeks worked during the Class Period, or Class Workweeks. Each individual Class Member's Class Workweeks will be divided by the aggregate number of Class Workweeks worked by the entire Class during the Class Period, and then multiplied by the Net Settlement Amount, to obtain his or her respective Individual Settlement Payment amount.

b. The Parties agree that if any Settlement Class Member disputes the basis for determining their share of the Settlement, Defendants' records shall presumptively control unless the Settlement Class Member can produce evidence of other workweeks worked during the relevant time period (including partial weeks). Upon the submission of such evidence, the Settlement Administrator will make a determination as to any such dispute, which shall be final and binding.

c. Thirty-three percent (33%) of the Individual Settlement Payment shall be classified as wages, and the remaining sixty-seven percent (67%) shall be classified as penalties and interest.

d. Within ten (10) calendar days of the transfer to the Settlement Administrator of the Gross Settlement Amount, the Settlement Administrator shall issue to each Settlement Class Member his/her Individual Settlement Payment.

e. Settlement Class Members shall have one hundred eighty (180) days from the date of issuance of the Individual Settlement Payment to negotiate the check. Any Individual Settlement Payment not cashed within 180 days shall be paid to the following *cy pres* recipient in accordance with California Code of Civil Procedure § 384: Watsonville Law Center. Settlement Class Members will be bound by the Settlement regardless of whether they cash their Individual Settlement Payment.

50. Individual Settlement Payments Do Not Trigger Additional Benefits: All

1 Individual Settlement Payments shall be deemed to be income solely in the year in which such
2 payments are actually received by the Settlement Class Members. It is expressly understood
3 and agreed that the receipt of such Individual Settlement Payment will not entitle any
4 Settlement Class Member to additional compensation or benefits under any company bonus,
5 contest, or other compensation or benefit plan or agreement in place (including, but not limited
6 to, health and welfare benefits) during the period covered by the Settlement, nor will it entitle
7 any Settlement Class Member to any increased retirement, 401(k) benefits or matching
8 benefits, or deferred compensation benefits. It is the intent of this Settlement that the
9 Individual Settlement Payments provided for in this Agreement are the sole payments to be
10 made by Defendants to the Settlement Class Members in connection with this Settlement, and
11 that the Settlement Class Members are not entitled to any new or additional compensation or
12 benefits as a result of having received the payments (notwithstanding any contrary language or
13 agreement in any benefit or compensation plan document that might have been in effect during
14 the period covered by this Settlement).

15 51. Settlement Administrator: The Settlement Administrator shall be Phoenix
16 Settlement Administrators. The Settlement Administrator will maintain acceptable electronic
17 and physical security protocols to adequately protect and safeguard the private employee
18 information it will have access to as a result of the claims process. The fees and expenses of
19 the Settlement Administrator, which are currently estimated at approximately Fifteen
20 Thousand Dollars and Zero Cents (\$15,000.00), shall be paid through the Gross Settlement
21 Amount.

22 52. Attorneys' Fees and Attorneys' Costs: Subject to the Court's approval, Class
23 Counsel shall be allowed to seek attorneys' fees in an amount up to Three Hundred Thirty-
24 Three Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$333,333.33)
25 and litigation costs up to a total sum of Twenty-Five Thousand Dollars (\$25,000.00).
26 Defendants will not object to Class Counsel's application for attorneys' fees and costs in these
27 amounts. The amounts set forth above will cover all work performed and all fees and costs
28 incurred to date, and all work to be performed and all fees and costs to be incurred in the

future in connection with the approval by the Court of this Stipulation and the administration of the Settlement. Should Class Counsel request a lesser amount, or should the Court approve a lesser amount of Attorneys' Fees or Attorneys' Costs, the difference between the lesser amount and the maximum amount set forth above shall be added back into the Net Settlement Amount. Class Counsel's attorney fees and costs shall be paid to Class Counsel within ten (10) calendar days of the transfer to the Settlement Administrator of the Gross Settlement Amount.

53. Class Representative Enhancement Award: Subject to the Court's approval, Plaintiff shall be allowed to seek an Enhancement Award of up to a maximum of Five Thousand Dollars and Zero Cents (\$5,000.00) as reimbursement for her service as Class Representative. Defendants will not object to Plaintiff's application for the Enhancement Award to the Class Representative in this amount. It is understood that the Enhancement Award is in addition to any Individual Settlement Payment to which Plaintiff is entitled. The Enhancement Award shall be paid to the Class Representative from the Gross Settlement Amount within ten (10) calendar days of the transfer to the Settlement Administrator of the Gross Settlement Amount.

54. PAGA Award: Subject to the Court's Approval, up to a maximum of Seventy-Five Thousand Dollars and Zero Cents (\$75,000.00) shall be set aside for the payment of penalties for the Released PAGA Claims. Pursuant to PAGA, the LWDA Payment shall be paid to the LWDA. The Total Aggrieved Employee Payment shall be paid to Aggrieved Employees on a pro rata basis. The PAGA Award shall constitute a complete payment of PAGA penalties for, and shall fully and finally resolve, the Released PAGA Claims.

- a. The Total Aggrieved Employee Payment shall be divided among the Aggrieved Employees on a pro-rata basis, based upon the number of pay periods worked during the PAGA Period, or PAGA Workweeks. Each individual Aggrieved Employee's PAGA Workweeks will be divided by the aggregate number of PAGA Workweeks worked by the Aggrieved Employees during the PAGA Period, and then multiplied by the Total Aggrieved Employee Payment, to obtain his or her respective Individual

PAGA Payment amount.

b. One hundred percent (100%) of the Individual PAGA Payment shall be classified as penalties and interest.

c. Within ten (10) calendar days of the transfer to the Settlement Administrator of the Gross Settlement Amount, the Settlement Administrator shall issue to each Aggrieved Employee his/her Individual PAGA Payment.

d. Aggrieved Employees shall have one hundred eighty (180) days from the date of issuance of the Individual PAGA Payment to negotiate the check. Any Individual PAGA Payment not cashed within 180 days shall be paid to the following *cy pres* recipient in accordance with California Code of Civil Procedure § 384: Watsonville Law Center. Aggrieved Employees will be bound by the Settlement regardless of whether they cash their Individual PAGA Payment.

55. Tax Forms: The Settlement Administrator shall be responsible for issuing the payments and withholding all required state and federal taxes in accordance with this Stipulation. The Settlement Administrator will issue IRS Form W-2 with respect to the amounts paid as wages to the Settlement Class Members and IRS Form 1099 with respect to the amounts paid as penalties and interest to the Settlement Class Members and Aggrieved Employees. The Settlement Administrator will also issue IRS Form 1099 to: (1) Plaintiff for the Enhancement Award for her service as Class Representative; and (2) Class Counsel for the amount paid for approved Attorneys' Fees and Attorneys' Costs. The Settlement Administrator will be responsible for preparing these forms correctly. The Settlement Administrator shall also be responsible for submitting Defendants' share of payroll taxes to the appropriate government agencies on behalf of Defendants. Plaintiff and Class Counsel will be responsible for correctly characterizing this compensation for tax purposes and for paying any taxes on the amounts received.

56. Indemnification: Plaintiff and Class Counsel acknowledge and agree that they

1 are and will be responsible for the payment of any and all Federal, State, and Local taxes or
2 penalties associated with their respective allocated portions of the payments described herein,
3 and agree to indemnify, defend, and hold the Released Parties harmless from any and all
4 claims by any Federal, State, or Local taxing authority that Plaintiff or Class Counsel failed to
5 pay or underpaid their or her share of taxes associated with the payments set forth in this
6 Agreement. The Parties acknowledge and agree that Class Counsel is not responsible for the
7 payment of any or all Federal, State, and Local taxes or penalties associated with payments to
8 Plaintiff, Settlement Class Members, and Aggrieved Employees, and further acknowledge and
9 agree that Class Counsel does not agree to indemnify, defend, or hold the Released Parties
10 harmless from any and all claims by any Federal, State, or Local taxing authority that Plaintiff,
11 Class Members, or Aggrieved Employees failed to pay or underpaid their or his or her share of
12 taxes associated with the payments set forth in this Agreement.

13 **NOTICE TO THE SETTLEMENT CLASS**

14 57. Within fourteen (14) calendar days of preliminary approval of this Settlement by
15 the Court, Defendants shall provide to the Settlement Administrator a Class Member List,
16 consisting of the names, last known addresses, Social Security Numbers, total number of Class
17 Workweeks and/or PAGA Workweeks worked by each Class Member and Aggrieved
18 Employee during the Class and PAGA Periods, respectively.

19 58. The Settlement Administrator (along with any of its agents) shall represent and
20 warrant that it will: (1) provide reasonable and appropriate administrative, physical, and
21 technical safeguards for any personally identifiable information ("PII"), which it receives from
22 Defendants' Counsel and/or Class Counsel; (2) not disclose the PII to third parties, including
23 agents or subcontractors, without Defendants' consent; (3) not disclose or otherwise use the
24 PII other than to carry out its duties as set forth herein; and (4) promptly provide Defendants
25 with notice if PII is subject to unauthorized access, use, disclosure, modification, or
26 destruction. The Settlement Administrator may provide notice to both parties if the PII is
27 subject to unauthorized access, use, disclosure, modification, or destruction; however, all
28 additional communications from the Settlement Administrator regarding the scope,

1 circumstances, and substance shall be communicated solely to Defendants.

2 59. The Settlement Administrator shall send a Notice of Proposed Settlement to each
3 Class Member by first class mail within ten (10) calendar days of receipt of the Class Member
4 List. Prior to mailing the Notice, the Settlement Administrator shall update the addresses of the
5 Class Members by reference to the National Change of Address Database maintained by the
6 United States Postal Service. If a Notice is returned as non-deliverable but with a forwarding
7 address, the Settlement Administrator shall resend the Notice to the forwarding address. If a
8 Notice is returned as non-deliverable with no forwarding address, the Settlement
9 Administrator shall conduct an advanced skip trace to locate the most current address of the
10 person to whom the Notice was addressed, and shall resend within five (5) calendar days the
11 Notice to any updated address. Upon completion of these steps, the Parties shall be deemed to
12 have satisfied their obligations to provide the Notice to the affected Class Members.

13 60. The Settlement Administrator shall provide to the Court, concurrently with
14 Plaintiff's Motion for Final Approval, a declaration of due diligence and proof of mailing with
15 regard to the mailing of the Notices.

16 61. The Settlement Administrator shall also be responsible for:

- 17 a. Mailing the Notice as directed by the Court;
- 18 b. Consulting with counsel for the Parties concerning any relevant issue,
19 including (without limitation) the estimated amounts of approximate
20 Individual Settlement Payments and Individual PAGA Payments, and the
21 acceptance of any late or deficient disputes;
- 22 c. Keeping track of timely and proper requests for exclusion;
- 23 d. Calculation and distribution of Individual Settlement Payments and
24 Individual PAGA Payments and payment to the LWDA;
- 25 e. Providing weekly status reports to counsel for the Parties, including: (a)
26 the number of Notices mailed; (b) the number of disputes received (and
27 sending copies of said disputes); (c) the number of objections received;
28 and (d) the number of requests for exclusion received.

- f. Notifying Defendants' Counsel of the wiring instructions to fund the Settlement Amount as approved by the Court;
- g. Distributing and paying the Individual Settlement Payments, Individual PAGA Payments, LWDA Payment, the Enhancement Award to Plaintiff, and Attorneys' Fees and Attorneys' Costs awarded to Class Counsel;
- h. Issuing tax forms and addressing employer and employee-side payroll taxes; and
- i. Such other tasks as the Parties mutually agree or the Court orders the Settlement Administrator to perform, including responding to questions from Class Members.

REQUESTS FOR EXCLUSION

62. Each Class Member shall have forty-five (45) calendar days from the mailing of the Notice within which to complete and postmark a written request for exclusion, for return to the Settlement Administrator. The request for exclusion need not be in any particular form and will be considered a valid request for exclusion so long as it communicates a clear desire by the Class Member not to be included in the Settlement and/or Settlement Class, identifies his/her full name and current address along with his/her signature. No requests for exclusion shall be accepted if postmarked after the forty-five (45) calendar day period for the filing of exclusions. Class Members are responsible to maintain a photocopy of their request for exclusion, reflecting that it was submitted in a timely manner. Any disputes regarding the timeliness of a request for exclusion or whether a written communication constitutes a valid request that cannot be resolved between the Parties shall be determined by the Court, whose determination shall be final.

63. Any Class Member who validly excludes him/herself from this Settlement shall not be bound by this Settlement Agreement and shall not be entitled to any portion of the Net Settlement Amount. However, a Class Member who validly excludes him/herself from the Settlement may also be considered an Aggrieved Employee under the terms of the Settlement. Aggrieved Employees may not exclude themselves from the portion of the Settlement that

1 pertains to Released PAGA Claims and will receive a portion of the Total Aggrieved
2 Employee Payment in consideration of the release of Released PAGA Claims even if they
3 request to exclude themselves from the class portion of the Settlement.

4 64. If ten percent (10%) or more of the Class Members opt out of the Settlement by
5 submitting valid and timely requests for exclusion, Defendants shall have the right in their sole
6 discretion to rescind and void the Parties' Settlement at any time before final approval by the
7 Court, by providing written notice to Class Counsel at least twenty eight (28) calendar days
8 prior to the final fairness hearing, provided the Settlement Administrator has previously
9 furnished Defendants with the number and percentage of valid and timely requests for
10 exclusion. If Defendants exercise this option, Defendant shall pay all Settlement Administrator
11 Costs incurred up to that date.

12 **OBJECTIONS TO THE SETTLEMENT**

13 65. Each Class Member shall have forty-five (45) calendar days from the mailing of
14 the Notice, or such number of days as the Court shall specify, within which to postmark an
15 objection, for return to the Settlement Administrator. Any Class Member wishing to object to
16 the approval of this settlement ("Objecting Class Member") shall inform the Court and the
17 Parties in the objection of (1) full name and current address of the Objecting Class Member;
18 and (2) the specific reason(s) for the objection; and shall also provide any and all evidence and
19 supporting papers (including, without limitation, all briefs, written evidence, and declarations)
20 to be considered by the Court. Any Objecting Class Member who wishes to appear at the
21 Settlement Hearing and be heard orally in support of or in opposition to the Settlement, must
22 state so in the written objection. Even if a Class Member does not submit a written objection,
23 they may be heard orally by the Court by appearing at the final approval hearing and stating
24 their objection.

25 66. Counsel for the Parties shall file any response to the objections submitted by
26 Objecting Class Members, if any, at least seven (7) calendar days before the date of the Final
27 Approval Hearing.

28 67. At no time shall any of the Parties or their counsel seek to solicit or otherwise

1 encourage Class Members to submit written objections to the Settlement or to appeal from the
2 Court's Final Order and Judgment. Class Counsel shall not represent any Class Members with
3 respect to any such objections to this Settlement.

4 **RELEASE BY THE SETTLEMENT CLASS MEMBERS, CLASS**
5 **REPRESENTATIVE, AND AGGRIEVED EMPLOYEES**

6 68. Released Class Claims: Upon the Effective Date and funding of the Gross
7 Settlement Amount, and except as to such rights or claims as may be created by this
8 Stipulation, Plaintiff and each Settlement Class Member agree to fully release and discharge
9 the Released Parties from the Released Class Claims.

10 69. General Release by Plaintiff: Upon the Effective Date and funding of the Gross
11 Settlement Amount, and as a condition of receiving any portion of her Class Representative
12 Enhancement Award, Plaintiff, for herself only, agrees to the additional following General
13 Release: In consideration of Defendants' promises and agreements as set forth herein, Plaintiff
14 hereby fully releases and forever discharges the Released Parties for any and all causes of
15 action, obligations, costs, expenses, damages, claims, liabilities, and benefits (including
16 attorneys' fees and costs), of whatever character, in law or in equity, known or unknown,
17 suspected or unsuspected, matured or otherwise, of any kind whatsoever, now existing or
18 arising in the future, based on any act, omission, event, occurrence, or nonoccurrence which
19 were, or could have been asserted in the Action and/or arising out of her employment with the
20 Released Parties, including but not limited to any and all claims under the Americans With
21 Disabilities Act; Title VII of the Civil Rights Act of 1964; the Civil Rights Act of 1991; the
22 Age Discrimination in Employment Act; the Fair Labor Standards Act; the Equal Pay Act; the
23 Employee Retirement Income Security Act; the Consolidated Omnibus Budget Reconciliation
24 Act; the Family and Medical Leave Act; the California Fair Employment and Housing Act; the
25 California Constitution; the California Labor Code; the California Government Code; the
26 California Civil Code; the California Industrial Welfare Commission Wage Orders, as well as
27 any other claims based on theories of wrongful or constructive discharge, breach of contract or
28 implied contract, fraud, misrepresentation, promissory estoppel or intentional and/or negligent

1 infliction of emotional distress, or damages under any other federal, state or local statutes,
2 ordinances, regulations, rules or laws. This release excludes claims for workers'
3 compensation, unemployment insurance benefits, or other claims that cannot be released as a
4 matter of law.. This release specifically includes any and all claims, demands, obligations
5 and/or causes of action for damages, restitution, penalties, interest, and attorneys' fees and
6 costs (except provided by this Agreement) relating to or in any way connected with her
7 employment with Released Parties and the matters referred to herein, whether or not known or
8 suspected to exist, and whether or not specifically or particularly described herein.
9 Specifically, Plaintiff waives all rights and benefits afforded by California Civil Code § 1542,
10 which provides:

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

16 70. Released PAGA Claims: Upon the Effective Date and funding of the Gross
17 Settlement Amount, and except as to such rights or claims as may be created by this
18 Stipulation, Plaintiff and each Aggrieved Employee agree to fully release and discharge the
19 Released Parties from the Released PAGA Claims.

20 **DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL**

21 71. Class Counsel shall promptly submit this Stipulation of Settlement to the Court
22 in support of Plaintiff's Motion for Preliminary Approval and determination by the Court as to
23 whether the proposed Settlement is within the range of possible judicial approval. Promptly
24 upon execution of this Stipulation, Class Counsel shall apply to the Court for the entry of an
25 order substantially in the following form:

- 26 a. Scheduling of the Final Approval Hearing on the question of whether the
27 proposed Settlement, including payment of Attorneys' Fees, Attorneys'
28 Costs, and the Class Representative's Enhancement Award should be

1 finally approved as fair, reasonable, and adequate as to the Settlement
2 Class Members;

3 b. Certifying the Settlement Class;

4 c. Approving the Notice;

5 d. Directing the mailing of the Notice by first class mail to the Class
6 Members; and

7 e. Preliminarily approving the Settlement subject only to the objections of
8 the Class Members and final review by the Court.

9 **DUTIES OF THE PARTIES FOLLOWING FINAL APPROVAL**

10 72. Following final approval by the Court of the settlement provided for in this
11 Stipulation, Class Counsel shall submit a proposed Final Order and Judgment in
12 approximately the following form: approving the Settlement, adjudging the terms thereof to be
13 fair, reasonable, and adequate, and directing consummation of its terms and provisions
14 including the approval of Class Counsel's application for an award of attorneys' fees and costs
15 and the Enhancement Award to the Class Representative.

16 **PARTIES' AUTHORITY**

17 73. The signatories hereto hereby represent that they are fully authorized to enter
18 into this Stipulation and bind the Parties hereto to the terms and conditions thereof.

19 **MUTUAL FULL COOPERATION**

20 74. The Parties agree to fully cooperate with each other to accomplish the terms of
21 this Stipulation, including, but not limited to, execution of such documents and taking of such
22 action as reasonable may be necessary to implement the terms of this Stipulation. The Parties
23 to this Stipulation shall use their best efforts, including all efforts contemplated by this
24 Stipulation and any other efforts that may become necessary by order of the Court, or
25 otherwise, to effectuate this Stipulation and the terms set forth herein. As soon as practicable
26 after execution of this Stipulation, Class Counsel shall take all necessary steps to secure the
27 Court's final approval of this Stipulation.

28 75. The Parties and their respective counsel agree that they will not attempt to

1 encourage or discourage Class Members from filing requests for exclusion.

2 **DISPUTES REGARDING REMAINING TERMS OF THE SETTLEMENT**

3 76. If the Parties have a dispute with regard to the terms of the Stipulation, the
4 Parties agree to informally resolve the dispute by engaging Russ J. Wunderli Esq. to mediate
5 such dispute.

6 **NO PRIOR ASSIGNMENTS**

7 77. The Parties and their respective counsel represent, covenant, and warrant that
8 they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign,
9 transfer, or encumber to any person or entity any portion of any liability, claim, demand,
10 action, cause of action, or right herein released and discharged except as set forth herein.

11 **NO ADMISSION**

12 78. Nothing contained herein, nor the consummation of this Stipulation, is to be
13 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the
14 part of Defendants. Each of the Parties hereto has entered into this Stipulation solely with the
15 intention to avoid further disputes and litigation with the attendant inconvenience and
16 expenses.

17 **BREACH AND ENFORCEMENT ACTIONS**

18 79. The Parties will jointly request that the Court retain jurisdiction pursuant to
19 California Code of Civil Procedure § 664.6 to oversee and enforce the terms of this
20 Settlement. In the event of a breach of this Settlement, the non-breaching Party shall provide
21 notice to the breaching party and request that the breaching party cure any alleged breach. If
22 the breach is not cured within thirty (30) days of said notice, the non-breaching party may
23 pursue legal action or other proceeding against any other breaching party or parties to enforce
24 the provisions of this Stipulation or to declare rights or obligations under this Stipulation. In
25 the event of such enforcement actions, the successful party or parties shall be entitled to
26 recover from the unsuccessful party or parties reasonable attorneys' fees and costs, including
27 expert witness fees incurred in connection with any enforcement actions. All such disputes
28 shall be resolved by the Court.

NOTICES

80. Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed as follows:

To Plaintiff, the Settlement Class, and Class Counsel:

B. James Fitzpatrick
Laura L. Franklin
FITZPATRICK & SWANSTON
555 S. Main Street
Salinas, CA 93901
Telephone: (831) 755-1311

Larry W. Lee
Max W. Gavron
DIVERSITY LAW GROUP, P.C.
515 South Figueroa Street, Suite 1250
Los Angeles, California 90071
Telephone: (213) 488-6555

To Defendants and Defendants' Counsel:

Brian D. Bertossa
Alexis M. Gabrielson
COOK BROWN, LLP
2407 J Street, Second Floor
Sacramento, CA 95816
Telephone: (916) 442-3100

CONSTRUCTION

81. The Parties hereto agree that the terms and conditions of this Stipulation are the result of lengthy, intensive arm's-length negotiations between the Parties, and this Stipulation shall not be construed in favor of or against any party by reason of the extent to which any Party or her or its counsel participated in the drafting of this Stipulation.

CAPTIONS AND INTERPRETATIONS

82. Paragraph titles or captions contained herein are inserted as a matter of

1 convenience and for reference, and in no way define, limit, extend or describe the scope of this
2 Stipulation or any provision of it. Each term of this Stipulation is contractual and not merely a
3 recital.

4 **MODIFICATION**

5 83. This Stipulation may not be changed, altered, or modified, except in writing and
6 signed by the Parties and/or their attorneys and approved by the Court.

7 **INTEGRATION CLAUSE**

8 84. This Stipulation and the Exhibits attached hereto and incorporated herein by
9 reference, contain the entire agreement between the Parties relating to the settlement and
10 transaction contemplated hereby, and all prior or contemporaneous agreements,
11 understandings, representations, and statements, whether oral or written and whether by a
12 Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived
13 except in writing.

14 **CALIFORNIA LAW GOVERNS**

15 85. All terms of this Stipulation and Exhibits hereto shall be governed by and
16 interpreted according to the laws of the State of California.

17 **INVALIDITY OF ANY PROVISION**

18 86. Before declaring any provision of this Stipulation invalid, the Court shall first
19 attempt to construe the provision as valid to the fullest extent possible consistent with
20 applicable precedents so as to define all provisions of this Stipulation valid and enforceable.
21 Any invalid, illegal, or unenforceable provision determined by the Court shall in no way affect
22 any other provision if Defendants and Class Counsel, on behalf of the Parties and the
23 Settlement Class, mutually elect in writing to proceed as if such invalid, illegal, or
24 unenforceable provision had never been included in this Stipulation.

25 **CONFIDENTIALITY**

26 87. The Parties and their counsel agree that they will not issue any press releases,
27 initiate any contact with the press, respond to any press inquiry, or have any communication
28 with the press about the fact, amount, or terms of the Settlement. In addition, the Parties and

1 their counsel agree that they will not engage in any advertising or distribute any marketing
2 materials relating to the Settlement of this case, including, but not limited to, any postings on
3 any websites maintained by Class Counsel. Nothing in this paragraph limits Class Counsel's
4 communications with Class Members or prospective clients about the Settlement.
5 Notwithstanding anything to the contrary in this paragraph or elsewhere in this Agreement,
6 Defendants shall be permitted to make such disclosures regarding this case and settlement as
7 they deem necessary or appropriate for purposes of corporate reporting, and/or complying with
8 applicable securities laws and the rules of the stock exchange on which shares are traded or as
9 otherwise required by law.

10 **BINDING ON ASSIGNS**

11 88. This Stipulation shall be binding upon and inure to the benefit of the Parties
12 hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

13 **CLASS MEMBER SIGNATORIES**

14 89. It is agreed that because the Settlement Class Members are so numerous, it is
15 impossible or impractical to have each member execute this Stipulation. The Notice of
16 Pendency of Class Action, Exhibit "A" hereto, will advise the Settlement Class of the binding
17 nature of the release, and the release shall have the same force and effect as if this Stipulation
18 were executed by each member.

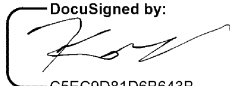
19 **COUNTERPARTS**

20 90. This Stipulation may be executed in counterparts and by facsimile signatures,
21 and when each party has signed and delivered at least one such counterpart, each counterpart
22 shall be deemed an original and, when taken together with other signed counterparts, shall
23 constitute one Stipulation binding upon and effective as to all parties.

24 IN WITNESS HEREOF, the Parties hereto knowingly and voluntarily executed this
25 Joint Stipulation of Settlement and Release between Plaintiff and Defendants as of the date(s)
26 set forth below:

27 DATED: November 18, 2022
28 _____

PLAINTIFF

DocuSigned by:

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Karina Mosqueda

DATED: _____

DEFENDANT SANSEI GARDENS, INC.

_____, Title

DATED: _____

DEFENDANT NEW IMAGE LANDSCAPING
COMPANY

_____, Title

DATED: November 18, 2022

FITZPATRICK & SWANSTON
DIVERSITY LAW GROUP, P.C



B. James Fitzpatrick
Larry W. Lee

Attorneys for Plaintiff Karina Mosqueda, on
behalf of herself, the Class, and Aggrieved
Employees

DATED: _____

COOK BROWN, LLP

Brian D. Bertossa
Alexis M. Gabrielson
Attorneys for Defendants Sansei Gardens, Inc.
and New Image Landscaping Company

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Karina Mosqueda

DATED: _____

DEFENDANT SANSEI GARDENS, INC.

_____, Title

DATED: _____

DEFENDANT NEW IMAGE LANDSCAPING
COMPANY

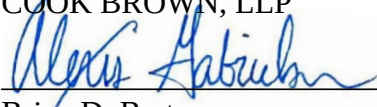
_____, Title

DATED: _____

FITZPATRICK & SWANSTON
DIVERSITY LAW GROUP, P.C

B. James Fitzpatrick
Larry W. Lee
Attorneys for Plaintiff Karina Mosqueda, on
behalf of herself, the Class, and Aggrieved
Employees

DATED: _____11/10/22_____

COOK BROWN, LLP


Brian D. Bertossa
Alexis M. Gabrielson
Attorneys for Defendants Sansei Gardens, Inc.
and New Image Landscaping Company

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Karina Mosqueda

DATED: Nov. 8, 2022

DEFENDANT SANSEI GARDENS, INC.

Brian Thelander
president, Title

DATED: Nov. 8, 2022

DEFENDANT NEW IMAGE LANDSCAPING
COMPANY

Brian Thelander
president, Title

DATED: _____

FITZPATRICK & SWANSTON
DIVERSITY LAW GROUP, P.C

B. James Fitzpatrick
Larry W. Lee
Attorneys for Plaintiff Karina Mosqueda, on
behalf of herself, the Class, and Aggrieved
Employees

DATED: _____

COOK BROWN, LLP

Brian D. Bertossa
Alexis M. Gabrielson
Attorneys for Defendants Sansei Gardens, Inc.
and New Image Landscaping Company

EXHIBIT A

MOSQUEDA v. SANSEI GARDENS, INC. AND NEW IMAGE LANDSCAPE COMPANY
SETTLEMENT ADMINISTRATOR

[INSERT SETTLEMENT ADMINISTRATOR]

IMPORTANT LEGAL MATERIALS

Barcode39 - <<SequenceNo>>

<<Name1>> <<Name2>> <<Name3>> <<Name4>>

<<Address1>>

<<Address2>>

<<City>> <<State>> <<Zip10>>

<<CountryName>>

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MONTEREY

MOSQUEDA v. SANSEI GARDENS, INC. AND NEW IMAGE LANDSCAPE COMPANY -
Case No. 21CV000325

**NOTICE OF PENDENCY OF CLASS ACTION AND PROPOSED
SETTLEMENT**

If you were employed by Sansei Gardens, Inc. or New Image Landscape Company (“Defendants”) in California at any time between February 3, 2017 and [REDACTED], 2022, and did not sign Defendants’ December 2020 Arbitration Agreement, you may be eligible to receive compensation from a class action settlement.

- A former employee of Sansei Gardens, Inc. and New Image Landscape Company filed a wage-and-hour class and Private Attorneys General Act (“PAGA”) action on behalf all other similarly situated employees against Sansei Gardens, Inc. and New Image Landscape Company (this “Action”). Sansei Gardens, Inc. and New Image Landscape Company deny all allegations and contend that they have lawfully and fairly treated Class Members at all relevant times.
- To avoid the continuing expense of litigation, however, the parties have reached a settlement that the Court has preliminarily approved on the ground that the settlement is fair, reasonable, adequate, and in the best interests of the Class Members.

This Notice is Court Approved. This is not a solicitation from an attorney.

YOUR LEGAL RIGHTS & OPTIONS IN THIS SETTLEMENT	
DO NOTHING	You will be deemed part of the Class Action, will receive payment from the Net Settlement Amount, and will be releasing all claims you may have in the Action.

EXCLUDE YOURSELF	You will NOT be deemed part of the Class Action and will NOT receive any money or release any claims under the Labor Code. However, if you are an “Aggrieved Employee” (defined below) you will still receive your Individual PAGA Payment even if you exclude yourself.
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Your options are explained in this notice. Read the entire notice. If you still have questions, please call **Settlement Administrator** at **xxx-xxx-xxxx**.

**PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED.
YOU MAY BE ENTITLED TO RECEIVE MONEY FROM THIS PROPOSED
SETTLEMENT.**

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3.	What is a class action?	3
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1. WHY DID I GET THIS NOTICE?

You received this Notice because Sansei Gardens, Inc.’s and/or New Image Landscape Company’s (collectively, “Defendants”) business records reflect that you worked, or continue to work, as a non-exempt employee for Defendants between February 3, 2017, and [REDACTED], 2022, and have not signed Defendants’ December 2020 Arbitration Agreement.

This Notice is to let you know that there was a hearing on [Preliminary Approval Hearing Date], in the Superior Court of the State of California for the County of Monterey, at which time Judge Thomas W. Wills preliminarily approved the Settlement, conditionally certified a class action for the purposes of settlement only, and ordered that you receive this Notice.

The Notice explains the nature of the Action, the general terms of the proposed Settlement, and your legal rights and obligations. To obtain more information about the Settlement, including information about how you can see a copy of the Settlement Agreement, see Section 12, below.

2. WHAT IS THE ACTION ABOUT?

Plaintiff Karina Mosqueda, former employee, claims that Sansei Gardens, Inc. and New Image Landscape Company violated state wage and hour laws and unfair competition laws by, among other things: failing to provide legally compliant meal and/or rest periods; failing to pay overtime wages; failing to pay prevailing rate of per diem wages; failing to provide legally compliant wage statements; failing to pay sick pay wages at the regular rate of pay; failing to reimburse business expenses; and failing to pay wages timely upon termination. Sansei Gardens, Inc. and New Image Landscape Company deny all of the allegations in the Action, assert that they have fully complied with all of their legal obligations, and are prepared to continue to defend the action vigorously. The Court has not made any ruling on the merits in the Action.

3. WHAT IS A CLASS ACTION?

In a class action lawsuit, one or more persons sue on behalf of other people who have similar claims. Karina Mosqueda (“Plaintiff”) is the individual who is bringing this Action on your behalf and on behalf of other similarly situated employees.

In this Action, the Plaintiff seeks to represent you on a class and representative basis. A class action allows the Court to resolve the claims of all the class members at the same time. A class member is bound by the determination or judgment entered in the case, whether the class wins or loses, and may not file his or her own lawsuit on the same claims that were decided in the class action. A class action allows one court to resolve all of the issues in a lawsuit for all the class members who choose not to exclude themselves from the class.

4. WHO IS INCLUDED IN THE SETTLEMENT CLASS?

All current and former hourly, non-exempt employees who were employed by Sansei Gardens, Inc. and/or New Image Landscape Company at their facilities in California, who have not signed Defendants’ December 2020 Arbitration Agreement, at any time between February 3, 2017, and ****, 2022 (the “Class Period”).

5. HOW MUCH IS THE SETTLEMENT?

The parties have agreed to settle the case for a maximum total payment of \$1,000,000.00 (“Settlement Fund”), which includes: (1) anticipated attorneys’ fees of \$333,333.33, which is 1/3 of the maximum total payment, and costs to Class Counsel, which will not exceed \$25,000.00; (2) service payments to Plaintiffs for acting as the class representatives, which will not exceed \$5,000.00 to Plaintiff; (3) settlement administration costs, which are estimated to be \$15,000.00; and (4) the PAGA Award, which is estimated to be \$75,000.00 divided between the State of California (75% (\$56,250.00) shall be distributed to the State of California) and the Aggrieved Employees (25% (\$18,750.00) shall be distributed to the Aggrieved Employees). The amount of money remaining after these payments, which is known as the “Net Settlement Amount,” will be distributed to all Class Members who do not exclude themselves from the Settlement (the “Settlement Class Members”).

Twenty-five percent (25%), or \$18,750.00, of the PAGA Award shall be distributed to the Aggrieved Employees regardless of whether they request to be excluded from the Settlement. This amount is referred to as the “Total Aggrieved Employee Payment.”

Each Settlement Class Member’s share of the Net Settlement Amount will be calculated based on the number of workweeks they worked for Sansei Gardens, Inc. and/or New Image Landscape Company between February 3, 2017, and [REDACTED], 2022 (the “Class Period”). The Net Settlement Amount shall be divided among the Settlement Class Members on a pro-rata basis, calculated as follows: The Net Settlement Amount will be divided by the total number of relevant workweeks worked by all Settlement Class Members during the Class Period to establish a value for each workweek. That weekly value will then be multiplied by the number of relevant workweeks worked by each Settlement Class Member to determine their settlement amount. For tax reporting purposes, the Individual Settlement Payment will be allocated as 33% wages (reported on a form W-2, with required taxes withheld) and 67% as penalties and interest (reported on a form 1099, with no withholding taken).

Each Aggrieved Employee’s share of the Total Aggrieved Employee Payment shall be divided among the Aggrieved Employees on a pro-rata basis, based upon the number of pay periods worked during the PAGA Period, or PAGA Workweeks. Each individual Aggrieved Employee’s PAGA Workweeks will be divided by the aggregate number of PAGA Workweeks worked by the Aggrieved Employees during the PAGA Period, and then multiplied by the Total Aggrieved Employee Payment, to obtain his or her respective Individual PAGA Payment amount. For tax reporting purposes, the Individual PAGA Payment amount will be allocated as 100% penalties (reported on a form 1099, with no withholding taken).

Nothing in this Notice or the Settlement is intended to be tax advice. You should consult your tax advisor for any tax issues pertaining to this Settlement.

6. HOW MUCH WILL I RECEIVE FROM THE SETTLEMENT?

The business records of Sansei Gardens, Inc. and New Image Landscape Company indicate that you worked as a non-exempt employee in California for <<Workweeks>> during the Class Period. Therefore, assuming every Class Member participates in the Settlement, you can expect to receive approximately \$<<EstimatedAward>>.

[**APPLIES ONLY TO AGGRIEVED EMPLOYEES:** The business records of Sansei Gardens, Inc. and New Image Landscape Company indicate that you worked as a non-exempt employee in California for <<Workweeks>> during the PAGA Period. Therefore, you are entitled to receive approximately [REDACTED] as your Individual PAGA Payment.]

If you disagree with the number of workweeks indicated, please contact the Settlement Administrator and provide the total number of relevant workweeks that you believe you worked for Sansei Gardens, Inc. and New Image Landscape Company as a non-exempt employee during the Class Period. If you dispute Sansei Gardens, Inc.'s and New Image Landscape Company's business records of the number of relevant workweeks you worked, you must submit documentation, such as pay records, etc., that you believe demonstrate that the number of relevant workweeks stated above is incorrect. Any such documentation must be postmarked on or before [REDACTED], 2022. Disputes postmarked after this date will not be honored.

If you do not provide satisfactory supporting documentation of the relevant workweeks that you believe you worked when you were employed by Sansei Gardens, Inc. and New Image Landscape Company during the Class Period, any payment you receive will be based only on the workweeks stated by Sansei Gardens, Inc.'s and New Image Landscape Company's records as indicated above. Sansei Gardens, Inc.'s and New Image Landscape Company's records will be presumed to be correct, but the Settlement Administrator will evaluate any information and evidence you submit and determine which dates should be applied. If any dispute remains thereafter, the Court will adjudicate the dispute.

7. WHAT IS BEING RELEASED AS PART OF THE SETTLEMENT?

Upon final approval of the Settlement by the Court and funding of the Settlement Fund by Defendants, Class Members who do not exclude themselves from the Settlement will release and fully discharge Defendants and all of their subsidiaries, affiliates, shareholders, members, agents, predecessors, successors, and assigns, and their current and former officers, directors, employees and representatives ("Released Parties") from all potential and/or actual claims that were or may have been raised in the Action or that are reasonably related to the factual allegations in the Action, including claims under Labor Code §§ 201, 202, 203, 204, 207, 208, 209, 210, 216, 218, 218.5, 218.6, 223, 225.5, 226, 226.3, 226.7, 246, 510, 512, 558, 1770, *et seq.*, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800, 2802, 2698, 2699, 2699.3, and 2699.5, California Industrial Welfare Commission Wage Orders, Cal. Code Regs., tit. 8, § 11040, *et seq.*, California Business and Professions Code § 17200, *et seq.*, and all meal or rest period claims, meal or rest period premium payment claims, claims for unpaid wages, overtime, minimum wages, including but not limited to claims for failing to properly calculate the regular rate of pay for purposes of paying overtime, sick pay, and meal and rest period premium payments, failing to pay all minimum and overtime wages for hours worked, failure to pay all wages owed upon separation of employment, and failing to provide accurate itemized wage statements and complete payments of wages at separation or termination, failure to provide accurate and itemized wage statements, unfair competition based on the foregoing, unlawful business practices based on the foregoing, fraudulent business practices based on the foregoing, claims for waiting time penalties, civil penalties based on the foregoing, interest, fees, costs, and any other claims that may have been raised in the Action or that reasonably relate to the allegations therein during the Class Period.

The Judgment will resolve the claims to the extent provided in the Settlement Agreement and will permanently bar Settlement Class Members from prosecuting any and all such claims against the Released Parties. You will remain bound by the Settlement, and you cannot sue,

continue to sue or be a part of any other lawsuit about the Released Class Claims. It also means that all of the Court's orders will apply to you and legally bind you.

[APPLIES ONLY TO AGGRIEVED EMPLOYEES]: Upon final approval of the Settlement by the Court and funding of the Settlement Fund, Aggrieved Employees will release and fully discharge Released Parties from all potential and/or actual claims that were or may have been raised in the Action or that are reasonably related to the factual allegations in the Action, including all claims for civil penalties under Labor Code §§ 2698, 2699, 2699.3, and 2699.5 for any alleged violations of Labor Code §§ 201, 202, 203, 204, 207, 208, 209, 210, 216, 218, 218.5, 218.6, 223, 225.5, 226, 226.3, 226.7, 246, 510, 512, 558, 1770, *et seq.*, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800, and 2802, California Industrial Welfare Commission Wage Orders, Cal. Code Regs., tit. 8, § 11040, *et seq.*, and all meal or rest period claims, meal or rest period premium payment claims, claims for unpaid wages, overtime, minimum wages, including but not limited to claims for failing to properly calculate the regular rate of pay for purposes of paying overtime, sick pay, and meal and rest period premium payments, failing to pay all minimum and overtime wages for hours worked, failure to pay all wages owed upon separation of employment, and failing to provide accurate itemized wage statements and complete payments of wages at separation or termination, failure to provide accurate and itemized wage statements, claims for waiting time penalties, interest, fees, costs, and any other claims that may have been raised in the PAGA Action or that reasonably relate to the allegations therein during the PAGA Period.

The Judgment will resolve the claims to the extent provided in the Settlement Agreement and will permanently bar Aggrieved Employees from prosecuting any and all such claims against the Released Parties. You will remain bound by the Settlement, and you cannot sue, continue to sue or be a part of any other lawsuit about the Released PAGA Claims. It also means that all of the Court's orders will apply to you and legally bind you. This is true even if you decide to opt out of the class portion of the Settlement.]

8. WHAT ARE MY OPTIONS UNDER THE SETTLEMENT?

(a) DO NOTHING.

You do not need to do anything to participate in the settlement. If the Settlement is approved and no objections are filed, you will receive an Individual Settlement Payment from this Settlement as described above after the Final Approval Hearing on [REDACTED], 2022. You will be deemed a part of the Class Action, and you will be releasing the claims you may have, as described above. Class Counsel have been appointed and approved by the Court and Class Counsel will represent you.

(b) OBJECT TO THE SETTLEMENT.

You can object to any of the terms of the Settlement before the Final Approval Hearing. Failure to take the steps below will be deemed a waiver of your objections. If the Court rejects your objection, you will still be bound by the terms of the Settlement, but you will also receive an Individual Settlement Payment. To object, you must mail your written objection and any notice of intention to appear at the Final Approval Hearing to the Settlement Administrator at the address listed below by **[INSERT OBJECTION DEADLINE]** (45 days after the date of mailing of this Notice):

MOSQUEDA v. SANSEI GARDENS, INC. AND NEW IMAGE LANDSCAPE
COMPANY

SETTLEMENT ADMINISTRATOR
[INSERT SETTLEMENT ADMINISTRATOR]
Toll-free number: [TBD]

Any written objections must state each specific reason for your objection and any legal support for each objection. Your objection and the envelope containing the objection must state: “Attention: *MOSQUEDA v. SANSEI GARDENS, INC. AND NEW IMAGE LANDSCAPE COMPANY*, CASE NO. 21CV000325.” Your objection must also state your full name and current address, and include any and all evidence you want considered by the Court. If you wish to address the Court at the Final Approval Hearing scheduled for [REDACTED], you must also state your desire to be heard at the Final Approval Hearing in your written objection. You may appear personally at the Final Approval Hearing, or through your own counsel, paid for at your own expense.

IF YOU DO NOT TIMELY MAKE YOUR OBJECTION AND/OR APPEAR AT THE FINAL APPROVAL HEARING, YOU WILL BE DEEMED TO HAVE WAIVED ALL OBJECTIONS.

(c) REQUEST TO BE EXCLUDED FROM THE SETTLEMENT.

If you do not want to participate in the settlement, you have the right to request to be excluded. To do so, you must submit a written request for exclusion to the Settlement Administrator at the following address:

**MOSQUEDA v. SANSEI GARDENS, INC. AND NEW IMAGE LANDSCAPE
COMPANY
SETTLEMENT ADMINISTRATOR**

To be valid, a written request for exclusion must state that you wish to be excluded, and (1) must contain your name and current address; (2) must be signed by you; (3) must be postmarked on or before [EXCLUSION DEADLINE]; and (4) must be returned to the Settlement Administrator at the address listed above.

Unless you timely request to be excluded from the settlement, you will be bound by the judgment upon final approval of the Settlement, including the Release described in this Notice. Class Counsel will not represent your interests if you request to be excluded.

[APPLIES TO AGGRIEVED EMPLOYEES: Even if you exclude yourself from the class action portion of the settlement, you will still receive your Individual PAGA Payment and discharge the Released PAGA Claims.]

9. WHO ARE THE LAWYERS IN THIS CASE?

Counsel for PLAINTIFFS and the CLASS:

B. James Fitzpatrick, Esq.
Laura L. Franklin, Esq.
FITZPATRICK & SWANSTON
555 S. Main Street
Salinas, CA 93901
Telephone: (831) 755-1311

Larry W. Lee, Esq.
Max W. Gavron, Esq.
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
Telephone: (213) 488-6555

Defendants are represented by Cook Brown, LLP.

10. HOW WILL THE LAWYERS AND CLASS REPRESENTATIVES BE PAID?

The lawyers representing Plaintiff and the Class Members (“Class Counsel”) will be requesting from the Court an amount not to exceed 1/3 of the total settlement amount (\$333,333.33) for their attorneys’ fees, and reimbursement of their litigation costs not to exceed \$25,000.00. A copy of Class Counsel’s application for attorneys’ fees and costs can be viewed at the Courthouse after [INSERT DATE 16 Court days before final approval], during normal business hours. The actual amount awarded to Class Counsel will be determined by the Court.

Class Counsel will also ask the Court to approve individual payment to Plaintiff Karina Mosqueda of up to \$5,000 for her services as Class Representative and her willingness to accept the risks of bringing this case. This amount also is subject to Court approval.

11. NOTICE OF HEARING ON FINAL APPROVAL AND OBJECTIONS TO CLASS ACTION SETTLEMENT.

The Court will hold a Final Approval Hearing on [REDACTED], 2022, at 8:30 a.m., in Department 15 of the Superior Court of the State of California for the County of Monterey, 1200 Aguajito Road, Monterey, California 93940, to consider any objections that may be submitted and determine whether the Settlement should be approved as fair, reasonable, adequate, and in the best interests of the Class. The Final Approval Hearing may be continued without further notice to the Class Members.

It is not necessary for you to appear at the Final Approval Hearing unless you have timely filed an objection with the Court. However, you have the right to attend the Final Approval Hearing and be represented by your own counsel at your own expense. If you plan to attend the Final Approval Hearing, you may contact Class Counsel to confirm the date and time. If the Settlement is not approved by the Court or does not become final for some reason, the Action may continue to trial.

If you have requested exclusion from the Settlement, you may not speak at the Final Approval Hearing.

12. HOW DO I GET MORE INFORMATION?

This Notice contains a summary of the basic terms of the Settlement. For the precise terms, you may review the Joint Stipulation and Settlement of PAGA and Class Action Claims (which defines the capitalized terms used in this Notice and provides a brief summary of what has happened in the Action). The pleadings and other records in this litigation, including the First Amended Complaint, the Court’s Preliminary Approval Order, and Class Counsel’s application for attorneys’ fees and costs, may be examined in person at the Clerk’s office at the Superior Court of the State of California for the County of Monterey, 1200 Aguajito Road, Monterey, California 93940.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at the address and telephone number listed below, toll free. Please refer to the Sansei Gardens, Inc. and New Image Landscape Company Class Action Settlement.

Mosqueda v. Sansei Gardens, Inc. and New Image Landscape Company

SETTLEMENT ADMINISTRATOR

[INSERT INFO]

You may also contact the attorneys for the Class, whose names and contact information are listed above. **PLEASE DO NOT TELEPHONE THE COURT OR SANSEI GARDENS, INC.'S AND NEW IMAGE LANDSCAPE COMPANY'S LAWYERS FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIMS PROCESS.**

13. WHAT IF MY INFORMATION CHANGES?

If, after you receive this Notice, you change your postal address or telephone number, it is your responsibility to inform the Settlement Administrator of your updated information to ensure receipt of your Individual Settlement Payment.