

**CLASS AND PAGA REPRESENTATIVE ACTION
SETTLEMENT AGREEMENT AND CLASS NOTICE**

This Class and PAGA Representative Action Settlement Agreement (“Agreement”) is made by and between Plaintiff Fernando Flores (“Plaintiff”) and Defendant San Jose, LLC (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means Plaintiff’s lawsuit alleging wage and hour violations against Defendant captioned Fernando Flores v. San Jose, LLC, Santa Clara County Superior Court Case No. 20CV371772, filed on October 19, 2020.
- 1.2. “Administrator” means Phoenix Settlement Administrators the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement. The Administration Expenses Payment is estimated not to exceed \$24,500 (Twenty-Four Thousand Five Hundred).
- 1.4. “PAGA Member” means a current or former California non-exempt employee, who was paid overtime wages and/or shift differentials by Defendant, at any time during the PAGA Period, as amended.
- 1.5. “Class Counsel” means: Larry Lee and Kristen Agnew of Diversity Law Group, P.C.
- 1.6. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.7. “Class Data” means Class Members’ identifying information in Defendant’s possession, including the name, last-known mailing address, Social Security number, and number of pay periods during the Class Period and PAGA Period.
- 1.8. “Class Member Address Search” means the Administrator’s investigation and search for current Class Members’ mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator.

- 1.9. “Class Notice” means the Court Approved Notice of Class Action Settlement, to be mailed to Class Members, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.10. “Class Member” means a current or former California non-exempt employee, who was paid overtime wages and/or shift differentials by Defendant at any time during the Class Period.
- 1.11. “Class Period” means the period beginning April 22, 2019 to April 6, 2023.
- 1.12. “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as Class Representative, Fernando Flores.
- 1.13. “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.14. “Court” means the Superior Court of California, County of Santa Clara.
- 1.15. “Defendant” means named Defendant San Jose, LLC.
- 1.16. “Defense Counsel” means Richard J. Simmons, Jason W. Kearnaghan, Melanie M. Hamilton, and Hilary A. Habib of Sheppard, Mullin, Richter, and Hampton LLP.
- 1.17. “Effective Date” means the date on which the Final Award becomes final. For purposes of this Section, the Final Award “becomes final” only after the Court grants the Motion for Final Approval and upon service of the Notice of Entry of Order and/or Judgment, and upon the latter of: (i) if no appeal, or other challenge is filed, the seventieth (70th) day following Notice of Entry of the Court’s Order and/or Judgment; (ii) the date of affirmance of an appeal of the Order Granting Final Approval and/or Judgment becomes final under the California Rules of Court; or (iii) the date of final dismissal of any appeal from the Order Granting Final Approval and/or Judgment or the final dismissal of any proceeding on review of any court of appeal decision relating to the Order Granting Final Approval and/or Judgment, and issuance of remittitur.
- 1.18. “Final Approval” or “Final Award” means the Court’s order granting final approval of the Settlement.
- 1.19. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.20. “Gross Settlement Amount” means \$200,000.00 (Two Hundred Thousand Dollars and No Cents) which is the total gross amount Defendant agrees to pay under the Settlement. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Litigation Expenses, Class Representative Service Payment and the Administration Expenses Payment.

- 1.21. “Individual Class Payment” means the Participating Class Member’s share of the Net Settlement Amount, calculated in accordance with Paragraph 3.2.4.1 below.
- 1.22. “Individual PAGA Payment” means the PAGA Member’s share of 25% of the PAGA Penalties, calculated in accordance with Paragraph 3.2.5.1 below.
- 1.23. “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.24. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.25. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.26. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Class Members as Individual Class Payments.
- 1.27. “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.28. “Objection to Settlement” means the Court Approved Objection Form in the form, without material variation, attached as Exhibit B and incorporated by reference into this Agreement.
- 1.29. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698, et seq.).
- 1.30. “PAGA Notice” means Plaintiff’s October 14, 2020 letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a), Case No. LWDA-CM- 688609-19.
- 1.31. “PAGA Pay Period” means any Pay Period during which a PAGA Member worked for Defendant for at least one day during the PAGA Period.
- 1.32. “PAGA Period” means the period from April 22, 2019 to April 6, 2023.
- 1.33. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the PAGA Members (\$2,500.00) and 75% to the LWDA (\$7,500.00) in settlement of PAGA claims.
- 1.34. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.

- 1.35. "Pay Period" means any pay period during which a Class Member worked for Defendant, for at least one day.
- 1.36. "Plaintiff" means Fernando Flores, the named plaintiff in the Action.
- 1.37. "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement.
- 1.38. "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.39. "Released Class Claims" means the claims being released as described in Paragraph 6.3 below.
- 1.40. "Released PAGA Claims" means the claims being released as described in Paragraph 6.4 below.
- 1.41. "Released Parties" means: Defendant and each of its past, present and future agents, employees, servants, officers, directors, managing agents, members, owners (whether direct or indirect), partners, trustees, representatives, shareholders, stockholders, attorneys, parents, subsidiaries, equity sponsors, related companies/corporations and/or partnerships, divisions, assigns, predecessors, successors, insurers, reinsurers, consultants, joint venturers, joint employers, potential and alleged joint employers, temporary staffing agencies and employees thereof, common law employers, potential and alleged common law employers, dual employers, potential and alleged dual employers, co-employers, potential and alleged co-employers, contractors, affiliates, service providers, alter-egos, potential and alleged alter-egos, vendors, affiliated companies/organizations, any person and/or entity with potential or alleged to have joint liability, and all of their respective past, present and future employees, directors, officers, members, owners, agents, representatives, payroll agencies, attorneys, stockholders, fiduciaries, parents, subsidiaries, other service providers, clients and assigns and any and all persons and/or entities acting under, by, through or in concert with any of them.
- 1.42. "Request for Exclusion" means the Court approved Opt-Out Form to be mailed to Class Members in the form, without material variation, attached as Exhibit C and incorporated by reference into this Agreement.
- 1.43. "Response Deadline" means 45 calendar days after the Administrator mails Notice to the Class Members and PAGA Members, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.

- 1.44. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.
- 1.45. “Settlement Payment Check” means the payment to Class Members.

2. RECITALS.

- 2.1. Plaintiff is a former employee of Defendant at some point during the Class Period.
- 2.2. On October 19, 2020, Plaintiff filed a complaint against Defendant in Santa Clara County Superior Court. The complaint asserted two causes of action: (1) failure to issue accurate itemized wage statements; and (2) penalties under the Private Attorneys General Act (“PAGA”).
- 2.3. On April 6, 2023 the Court certified the inaccurate wage statement claim. Plaintiff was appointed as class representative.
- 2.4. Defendant denies the allegations in the Action, denies any failure to comply with the laws identified in the Action, and denies any and all liability for the causes of action alleged in the Action.
- 2.5. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice on October 14, 2020.
- 2.6. The parties subsequently agreed to resolve this matter following informal settlement discussions.
- 2.7. Prior to resolving the matter and finalizing the Agreement, Plaintiff obtained, through discovery, relevant information from Defendant, including but not limited to an adequate sampling of employee payroll data, records relating to Plaintiff, Defendant’s policy documents, and the exchange of relevant data points pertaining to the Class and PAGA claims. Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in Dunk v. Foot Locker Retail, Inc., 48 Cal.App.4th 1794, 1801 (1996) and Kullar v. Foot Locker Retail, Inc., 168 Cal.App.4th 116, 129-30 (2008) (“Dunk/Kullar”).

3. MONETARY TERMS.

- 3.1. Gross Settlement Amount. Defendant promises to pay \$200,000.00 and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes required by law on the wage portions of the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.2 of the Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or Class Members, or PAGA Members to submit any

claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

- 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$7,500.00 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defendant will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. A reduction by the Court of the Class Representative Service Payment shall not be grounds to nullify this Agreement. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment. The Class Representative Service Payment will be in addition to the Plaintiff's Individual Settlement Payment paid pursuant to the Settlement, and is conditioned on the execution by each Plaintiff of a stand-alone settlement agreement and general release of all claims.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than one third (33 1/3%) of the Gross Settlement Amount, which is currently estimated to be \$66,666.66, and a Class Counsel Litigation Expenses Payment of not more than \$40,000.00 (Forty Thousand Dollars). Defendant will not oppose requests for these payments provided they do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion the Class Counsel Fees Payment and/or Class Counsel Litigation Expenses Payment. A reduction by the Court of either the Class Counsel Fees Payment(s) and/or Class Counsel Litigation Expenses Payment(s) shall not be grounds to nullify this Agreement. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3. To the Administrator: A reasonable Administration Expenses Payment, as approved by the Court.

3.2.4. To Each Participating Class Member:

3.2.4.1. For each Participating Class Member, an Individual Class Payment calculated as follows: The Settlement Administrator will calculate the Individual Class Payments by dividing the Net Settlement Amount by the total number of Participating Class Members (*i.e.* each Participating Class Member shall receive the same dollar amount in distribution). Participating Settlement Class Members are entitled to 100% of the Net Settlement Amount. Defendant maintains no reversionary right to any portion of the Net Settlement Amount.

3.2.4.2. Tax Allocation of Individual Class Payments. 100% of each Individual Class Payment will be allocated to settlement of claims for penalties. The Individual Class Payments are not subject to wage withholdings and will be reported on IRS 1099 Forms. Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

3.2.4.3. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis. Non-Participating Class Members shall still receive an Individual PAGA Payment.

3.2.5. To the LWDA and PAGA Members: PAGA Penalties in the amount of \$10,000 to be paid from the Gross Settlement Amount, with 75% (\$7,500.00) allocated to the LWDA PAGA Payment and 25% (\$2,500.00) allocated to the Individual PAGA Payments as a satisfaction and release of the Released PAGA claims.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by dividing the amount of the PAGA Members' 25% share of PAGA Penalties (\$2,500.00) by the total number of PAGA Members (*i.e.* each PAGA Member shall receive the same dollar amount in distribution). PAGA Members assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

- 4.1. Class Data. Not later than thirty (30) calendar days after the Court grants Preliminary Approval of the Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect employee privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if they discover that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.
- 4.2. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than 10 (ten) business days after the Effective Date.
- 4.3. Payments from the Gross Settlement Amount. Within 30 calendar days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment.
- 4.3.1. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Participating Class Members, and or PAGA Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all PAGA Members including Non-Participating Class Members who qualify as PAGA Members (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Administrator must update the recipients' mailing addresses using the National Change of Address Database.
- 4.3.2. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address

ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

4.3.3. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member, thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

4.3.4. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

6. RELEASES OF CLAIMS. As of the date of Judgment, Plaintiff, Participating Class Members, and PAGA Members will release claims against all Released Parties as follows:

6.1 Plaintiff's Release. As a condition of receiving any portion of the Class Representative Service Payments, Plaintiff and each of his respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties, and each and all of them, from any and all claims, liabilities, causes of actions, charges, complaints, obligations, costs, losses, damages, injuries, attorneys' fees, and other legal responsibilities, of any form whatsoever, whether known or unknown, unforeseen, unanticipated, unsuspected, or latent, which Plaintiff or his heirs, administrators, executors, successors in interest, and/or assigns have incurred or expect to incur, or now own or hold, or have at any time heretofore owned or held, or may at any time own, hold, or claim to hold by reason of any matter or thing arising from any cause prior to the later date of Plaintiff's execution of this Agreement or Plaintiff's execution of the stand-alone individual settlement agreements. This Release extends to any and all claims including, but not limited to, the Released Class Claims, PAGA Released Claims, and any alleged (a) violation of the National Labor Relations Act, Title VII of the Civil Rights Act, the California Fair Employment and Housing Act, the Americans With Disabilities Act of 1990, the Federal Age Discrimination in Employment Act, as amended by the Older Workers Benefit Protection Act of 1990, the Fair Labor Standards Act, the California Labor Code, any applicable California Wage Order, the California Private Attorneys General Act ("PAGA") (to include, but not limited to, acting as a PAGA representative), the California Equal Pay Act, the California Fair Pay Act, the Occupational Safety and Health Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the California Family Rights Act, the Employee Retirement Income Security Act (excluding vested benefits), the California Unfair Business Practices Act/Unfair Competition Law, the Family and Medical Leave Act, the Worker Adjustment and Retraining Notification Act, and any state law equivalent; (b) harassment,

discrimination and/or retaliation, or failure to prevent the same, on the basis of age, race, color, ancestry, national origin (including language use restrictions), citizenship, religious creed (including religious dress and grooming practices), sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), marital status, domestic partnership status, sexual orientation, gender, gender identity or gender expression, veteran status, military status, political affiliation, failure to accommodate a disability, failure to engage in the interactive process, family care or medical leave status or the denial of family and medical care leave, physical or mental disability (including HIV and AIDS), medical condition (including cancer and genetic characteristics), genetic information or any other basis protected by applicable federal, state and/or local laws, regulations, rules, ordinances and/or orders, failure to pay wages due or other monies owed; (c) any whistleblower or retaliation claims on the basis of any protected activity or other protected basis; (d) breach of any express or implied promise, contract or agreement (express or implied), or breach of the implied covenant of good faith and fair dealing; (e) any tort or common law claims, including wrongful discharge, intentional or negligent infliction of emotional distress, negligence, fraud, misrepresentation, defamation, libel, slander, interference with prospective economic advantage, or other tort or common law actions; (f) claims for misclassification, wage and hour, or other claims related to hours, conditions, or compensation related to work; and (g) any other violation of local, state, or federal law, constitution, statute, regulation or ordinance, public policy, contract, or tort or common law claim, whether for legal or equitable relief, having any bearing whatsoever on the terms and conditions of employment, or association or working relationship, with any of the Released Parties, including but not limited to any allegations for penalties, interest, costs and fees, including attorneys' fees, incurred in any of these matters, which Plaintiff ever had, now have, or may have as of the date of this Agreement (with the exception of the Released Class Claims and Released PAGA Claims, as the release for those claims is discussed in Sections 6.2 and 6.3 below, and will extend through the Class Period and PAGA Period, respectfully). All such claims, liabilities or causes of action (including, without limitation, claims for related attorneys' fees and costs) are forever barred by this Agreement regardless of the forum in which they may be brought. The Parties intend for this release to be as broad as possible. Plaintiff's Release applies to persons who are not signatories to the Agreement.

- 6.2 This release excludes the release of claims not permitted by law. Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time. Plaintiff acknowledges that he may discover facts or law different from, or in addition to, the facts or law that he now knows or believes to be true but agree, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

- 6.2.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the

provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

6.3 Release by Participating Class Members:

As of the date of deposit of the Gross Settlement Amount into a QSF, all Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, shall fully and finally release the Released Parties of the Released Class Claims. The Released Class Claims are limited to the Class Period. The “Released Class Claims” means all claims asserted in the Action, and all claims arising from or related to the facts and claims alleged in the Action or PAGA Notice, or that could have been raised in the Action or PAGA Notice based on the facts and claims alleged, as amended. The Released Class Claims include all claims for improper or inaccurate wage statements; failure to keep accurate records; unfair business practices related to the Released Class Claims; penalties, including recordkeeping penalties, wage statement penalties, and attorneys’ fees and costs; and all claims related to the Released Class Claims arising under the California Labor Code (including but not limited to sections 226, 1174, 2698 *et seq.* and 2699 *et seq.*); all claims related to the abovementioned claims arising under: the Wage Orders of the California Industrial Welfare Commission; the California Private Attorneys General Act of 2004 (“PAGA”); California Business and Professions Code section 17200, *et seq.*; the California Civil Code, to include but not limited to, sections 3336 and 3294; 12 CCR § 11040; 8 CCR § 11060; California Code of Civil Procedure § 1021.5; the California common law of contract; the FLSA, 29 U.S.C. § 201 *et seq.*; and federal common law. This release excludes the release of claims not permitted by law.

6.4 Release by PAGA Members: As of the date of deposit of the Gross Settlement Amount into a QSF, all PAGA Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, assigns, and the LWDA, shall release the Released Parties from all known and unknown claims for civil penalties under PAGA that were asserted in the Action, and any claims alleged, or could have been alleged, in the Action, as amended, based on the allegations asserted in the Action, as amended, and/or in the PAGA Notice, including, but not limited to, all claims for improper or inaccurate wage statements; failure to keep accurate records; and attorneys’ fees and costs; and all claims related to the Class Released Claims arising under the California Labor Code (including but not limited to sections 226, 1174, 2698 *et seq.* and 2699 *et seq.*) (“Released PAGA Claims”). PAGA Members’ Released PAGA Claims are limited to the PAGA Period. All PAGA Members, including those who timely and effectively exclude themselves from the Released Class Claims (Settlement), shall nevertheless be bound by the Released PAGA Claims and shall receive a pro rata portion of 25% of the PAGA Penalties.

7. MOTION FOR PRELIMINARY APPROVAL. Plaintiff shall prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies with Santa Clara County Superior Court’s current requirements for Preliminary Approvals.

7.1 Plaintiff’s Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under Dunk/Kullar and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its: willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and/or the Administrator; (v) a signed declaration from Class Counsel attesting to its competency to represent Class Members; and (vi) its timely transmission to the LWDA of all necessary PAGA documents pursuant to Labor Code section 2699(l) (initial notice of violations (Labor Code section 2699.3, subd. (a)), operative complaints (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2))); and all facts relevant to any actual or potential conflict of interest with Class Members and/or the Administrator.

7.2 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court’s Preliminary Approval to the Administrator.

7.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court’s concerns.

8. SETTLEMENT ADMINISTRATION.

8.1 Selection of Administrator. The Parties have jointly selected Phoenix Settlement Administrators to serve as the Administrator and verified that, as a condition of appointment, Phoenix Settlement Administrators agrees to be bound by this Agreement

and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

- 8.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of providing reports state and federal tax authorities.
- 8.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.
- 8.4 Notice to Class Members.
- 8.4.1 No later than 3 business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members and PAGA Members in the Class Data.
- 8.4.2 Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice, substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.
- 8.4.3 Not later than 3 business days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.
- 8.4.4 The deadlines for Class Members’ written objections and Requests for Exclusion will be extended an additional 14 days beyond the 45 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Members of the extended deadline with the re-mailed Class Notice.
- 8.4.5 If the Administrator, Defendant or Class Counsel are contacted by or otherwise discover any persons who believe they should have been included in the

Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

8.5 Requests for Exclusion (Opt-Outs).

- 8.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member, or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.
- 8.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member, and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.
- 8.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.
- 8.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are PAGA Members are deemed to release the claims identified in Paragraph 6.3 of this Agreement and are eligible for an Individual PAGA Payment.

8.6 Objections to Settlement.

8.6.1 Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

8.6.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 45 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

8.6.3 Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

8.7 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8.7.1 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members, including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

8.7.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion ("Exclusion List"); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).

8.7.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things,

tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received and objections received (“Weekly Report”). The Weekly Reports must include provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

8.7.4 Administrator’s Declaration. Not later than 14 days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.

8.7.5 Final Report by Settlement Administrator. Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

9. DEFENDANT’S RIGHT TO WITHDRAW. If the number of valid Requests for Exclusion identified in the Exclusion List exceeds seven and one half percent (7.5%) of the total of all Class Members, Defendant may elect, but is not obligated, to withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendant will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendant must notify Class Counsel and the Court of their election to withdraw not later than seven days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

10. MOTION FOR FINAL APPROVAL. Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order, and a proposed Judgment (collectively “Motion for Final Approval”). Plaintiff shall provide drafts of these documents

to Defense Counsel not later than seven days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

10.1 Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

10.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administration Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

10.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

10.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the

Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

- 11. AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit a proposed amended judgment.

12. ADDITIONAL PROVISIONS.

- 12.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Action have merit or that Defendant has any liability for any claims asserted. The Parties agree that class certification (aside from the claims that were already certified) and representative treatment is for purposes of this Settlement only. If for any reason the Court does not grant Preliminary Approval, Final Approval or enter Judgment, Defendant reserves the right to contest certification of any class for any reason, and Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Defendant's defenses. The Settlement, this Agreement and the Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

- 12.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendant, and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, with any third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

- 12.3 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class

Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

- 12.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits and the individual settlement agreements executed by Defendant and Plaintiff, shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 12.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 12.6 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 12.7 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 12.8 No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 12.9 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 12.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 12.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.

- 12.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 12.13 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Actions and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 12.14 Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Class Data received from Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the destruction, of Class Data.
- 12.15 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 12.16 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 12.17 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

Larry Lee, Esq.
Kristen Agnew, Esq.
DIVERSITY LAW GROUP
515 S. Figueroa Street, Suite 1250
Los Angeles, California 90071
Tel.: (213) 488-6555
Email: lwlee@diversitylaw.com
kagnew@diversitylaw.com

To Defendant:

Richard J. Simmons, Esq.
Jason W. Kearnaghan, Esq.
Hilary A. Habib, Esq.
SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
333 South Hope Street, 43rd Floor
Los Angeles, CA 90071-1422
Telephone: (213) 620-1780
Facsimile: (213) 620-1398
rsimmons@sheppardmullin.com
jkearnaghan@sheppardmullin.com
hhabib@sheppardmullin.com

12.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

12.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement.

On Behalf of Plaintiff:

Dated: 11052024

DocuSigned by:

14BB8DC0-353C-47C5-BF26-403A14227C6E
Fernando Flores, Plaintiff

On Behalf of Defendant San Jose, LLC

Dated: 12/9/24


Name: MATT CAVA
Title: VP

APPROVED AS TO FORM & CONTENT

Dated: 11/06/2024

DIVERSITY LAW, P.C.

DocuSigned by:

Kristen Agnew

EB4A3E2CC41F48E...

Larry Lee
Kristen Agnew

Attorneys for Plaintiff

Dated: 12/10/2024

**SHEPPARD, MULLIN, RICHTER &
HAMPTON LLP**



Richard J. Simmons
Jason W. Kearnaghan
Attorneys for Defendant

EXHIBIT “A”

**NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION
AND HEARING DATE FOR FINAL COURT APPROVAL**

***Flores v. San Jose, LLC, Superior Court of the State of California,
County of Santa Clara, Case No. 20CV371772***

***The Superior Court for the State of California authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

PLEASE READ THIS NOTICE CAREFULLY.

You may be eligible to receive money from an employee class action lawsuit (“Action”) against Defendant San Jose, LLC (“Defendant”) for alleged wage and hour violations. The Action was filed by Plaintiff Fernando Flores (“Plaintiff”) and seeks payment of (1) penalties for inaccurate wage statements on behalf of non-exempt employees of Defendant who were paid overtime and/or shift differentials at any time during the Class Period (April 22, 2019 through April 6, 2023) (“Class Members”), and (2) penalties under the California Private Attorney General Act (“PAGA”) for all non-exempt employees of Defendant who were paid overtime and/or shift differentials at any time during the PAGA Period (April 22, 2019 through April 6, 2023) (“PAGA Members”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendant to fund Individual Class Payment payments to Class Members, and (2) a PAGA Settlement requiring Defendant to fund the PAGA Penalties to pay penalties to the California Labor and Workforce Development Agency (“LWDA”) and to PAGA Members.

Based on Defendant’s records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be <<\$_____>> and your share of the PAGA Penalties is estimated to <<be \$_____>>.** The actual amount you may receive may be different.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or do not act. Read this Notice carefully. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff’s attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Defendant to make payments under the Settlement and requires Class Members and PAGA Members to give up their rights to assert certain claims against Defendant.

If you worked for Defendant during the Class Period/PAGA Period, you have two basic options under the Settlement:

- (1) **Do Nothing.** You do not have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or a share of the PAGA Penalties.

As a Participating Class Member, though, you will give up your right to assert Released Class Claims against Defendant as described below in Section 4 below.

- (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment, however you will preserve your right to personally pursue Released Class Claims against Defendant. If you are a PAGA Member, you remain eligible for a share of the PAGA Penalties. **You cannot opt-out of the PAGA portion of the proposed Settlement.**

Defendant will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and a share of the PAGA Penalties. In exchange, you will give up your right to assert the claims against Defendant that are covered by this Settlement. Additional information is set forth below.
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Response Deadline is ____.	If you do not want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. If you request exclusion, you will receive no money from the Class Settlement and you will not be bound by the Class Settlement. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 7 of this Notice. However, you cannot opt-out of the PAGA portion of the proposed Settlement. If you are a PAGA Member and exclude yourself, you will still be paid your share of the PAGA Penalties and will remain bound by the release of the Released PAGA Claims regardless of whether you submit a request for exclusion.
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. See Section 8 of this Notice.

the Response Deadline (_____)	
You Can Participate in the Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on _____ at _____ [a.m./p.m.], at the Santa Clara County Superior Court, located at 191 N First St, San Jose, CA 95113, in Department 19 before Judge Theodore Zayner. This hearing may change as explained below in Section 9. You do not have to attend but you do have the right to appear, in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 9 of this Notice

1. Why did I get this Notice?

A class action settlement (the "Settlement") of the above-captioned action pending in the Superior Court of the State of California, in and for the County of Santa Clara (the "Court"), has been reached between Plaintiff and Defendant and has been granted preliminary approval by the Court. You may be entitled to receive money from this Settlement.

You have received this Notice because you have been identified as a member of the Class, which is defined as:

"Class Member" means a current or former California non-exempt employee of Defendant who was paid overtime wages and/or shift differentials by Defendant at any time during the Class Period. The "Class Period" is April 22, 2019 through April 6, 2023.

2. What is this class action lawsuit about?

On October 19, 2020, Plaintiff filed a complaint against Defendant in Santa Clara County Superior Court. The complaint asserted two causes of action: (1) failure to issue accurate itemized wage statements; and (2) penalties under the Private Attorneys General Act ("PAGA"). On April 6, 2023 the Court certified the inaccurate wage statement claim. Plaintiff was appointed as class representative.

Defendant denies the allegations in the Action, denies any failure to comply with the laws identified in the Action, and denies any and all liability for the causes of action alleged in the Action.

The Parties subsequently agreed to resolve this matter following informal settlement discussions. The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>>. At that time, the Court also preliminarily approved the Plaintiff to serve as the Class Representative, and the law firm Diversity Law Group to serve as Class Counsel.

The Court has not ruled on the merits of Plaintiff's claims. However, to avoid additional expense, inconvenience, and interference with the business operations of Defendant, the Parties concluded that it is in their best interests and the interests of the Class to settle the Action now on the terms summarized in this Class Notice. The Settlement was reached after arm's-length negotiations between the Parties. The Plaintiff and Class Counsel think the settlement is in the best interest of all Class Members.

Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Defendant, which expressly denies all liability.

3. What are the terms of the Settlement?

Gross Settlement Amount. Defendant has agreed to pay an "all in" amount of Two Hundred Thousand Dollars (\$200,000) (the "Gross Settlement Amount") to fund the settlement of the Action. The Gross Settlement Amount includes all payments of Individual Class Payments to Class Members, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, the Administration Expenses Payment, and the PAGA Penalties for civil penalties under PAGA. Within ten (10) days of the Judgment becoming Final, Defendant will fund the Gross Settlement Amount by depositing the money with the Settlement Administrator. "Final" means the date the Judgment is entered, unless there are objections in which case "Final" means when the Judgment is no longer subject to appeal. Thirty (30) days after the Settlement is funded, the Settlement Administrator will mail checks for the Individual Class Payments to Participating Class Members

Court Approved Deductions from Gross Settlement Amount. The proposed payments, subject to Court approval, will be deducted from the Gross Settlement Amount before payments of Individual Class Payments are made to Class Members who do not request exclusion ("Participating Class Members"). At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:

- **Administration Expenses Payment.** Payment to the Settlement Administrator, estimated not to exceed \$24,500 for expenses, including expenses of notifying the Class Members of the Settlement, processing opt outs, and distributing settlement checks and tax forms.
- **Attorneys' Fees and Costs.** Payment to Class Counsel of reasonable attorneys' fees not to exceed one-third (1/3) of the Gross Settlement Amount, which presently equals \$66,666.66, and an additional amount to reimburse actual litigation costs incurred by the Plaintiff not to exceed \$40,000.00. Class Counsel has been prosecuting the Action on behalf of Plaintiff and the Class on a contingency fee basis (that is, without being paid any

money to date) and has been paying all litigation costs and expenses. The amounts stated are what Class Counsel will be requesting and the final amounts to be paid will be decided at the Final Approval Hearing.

- Class Representative Service Payment. A Class Representative Service Payment in an amount not more than \$7,500.00 to the named Plaintiff as service award, or such lesser amount as may be approved by the Court, to compensate him for services on behalf of the Class in initiating and prosecuting the Action, and for the risks he undertook. The amounts stated are what Plaintiff will be requesting and the final amounts to be paid will be decided at the Final Approval Hearing.
- PAGA Penalties. A payment of \$10,000 relating to Plaintiff's claim under PAGA, \$7,500.00 of which will be paid to the State of California's Labor and Workforce Development Agency ("LWDA"). The remaining will \$2,500.00 will be distributed to the PAGA Members as Individual PAGA Payments. The Settlement Administrator will calculate each Individual PAGA Payment on a pro rata basis.

Calculation of Payments to Class Members. After all of the payments of the court-approved Attorneys' Fees and Costs, the Class Representative Service Payment, the PAGA Penalties, and the Administration Expenses Payment, are deducted from the Gross Settlement Amount, the remaining portion, the "Net Settlement Amount," shall be distributed as Individual Class Payments to the Participating Class Members. The Net Settlement Amount is estimated to be at least \$ _____. The Settlement Administrator will pay an Individual Class Payment from the Net Settlement Amount to each Participating Class Member on a pro rata basis.

If the Settlement is approved by the Court and you do not exclude yourself, you will automatically be mailed a check for your Individual Class Payment to the same address as this Class Notice. You do not have to do anything to receive a payment. If your address has changed, you must contact the Settlement Administrator to inform them of your correct address to ensure you receive your payment.

Tax Matters. 100% of each Individual Class Payment will be allocated to settlement of claims for penalties. The Individual Class Payments are not subject to wage withholdings and will be reported on IRS 1099 Forms. Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

Conditions of Settlement. This Settlement and your receipt of the Individual Class Payment is conditioned upon the Court entering an order granting final approval of the Settlement and entering judgment.

The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and Defendant have agreed that, in either case, the Settlement will be void: Defendant will not pay any money and Class Members will not release any claims against Defendant.

Need to Promptly Cash Payment Checks. The front of every check issued will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

4. What Do I Release Under the Settlement?

Released Class Claims. As of the date of deposit of the Gross Settlement Amount into a Qualified Settlement Fund ("QSF"), all Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, shall fully and finally release the Released Parties of the Released Class Claims. The Released Class Claims are limited to the Class Period. The "Released Class Claims" means all claims asserted in the Action, and all claims arising from or related to the facts and claims alleged in the Action or PAGA Notice, or that could have been raised in the Action or PAGA Notice based on the facts and claims alleged, as amended. The Released Class Claims include all claims for improper or inaccurate wage statements; failure to keep accurate records; unfair business practices related to the Released Class Claims; penalties, including recordkeeping penalties, wage statement penalties, and attorneys' fees and costs; and all claims related to the Released Class Claims arising under the California Labor Code (including but not limited to sections 226, 1174, 2698 *et seq.* and 2699 *et seq.*); all claims related to the abovementioned claims arising under: the Wage Orders of the California Industrial Welfare Commission; the California Private Attorneys General Act of 2004 ("PAGA"); California Business and Professions Code section 17200, *et seq.*; the California Civil Code, to include but not limited to, sections 3336 and 3294; 12 CCR § 11040; 8 CCR § 11060; California Code of Civil Procedure § 1021.5; the California common law of contract; the FLSA, 29 U.S.C. § 201 *et seq.*; and federal common law. This release excludes the release of claims not permitted by law.

Released PAGA Claims. As of the date of deposit of the Gross Settlement Amount into a QSF, all PAGA Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, assigns, and the LWDA, shall release the Released Parties from all known and unknown claims for civil penalties under PAGA that were asserted in the Action, and any claims alleged, or could have been alleged, in the Action, as amended, based on the allegations asserted in the Action, as amended, and/or in the PAGA Notice, including, but not limited to, all claims for improper or inaccurate wage statements; failure to keep accurate records; and attorneys' fees and costs; and all claims related to the Class Released Claims arising under the California Labor Code (including but not limited to sections 226, 1174, 2698 *et seq.* and 2699 *et seq.*) ("Released PAGA Claims"). PAGA Members' Released PAGA Claims are limited to the PAGA Period. All PAGA Members, including those who timely and effectively exclude themselves from the Released Class Claims (Settlement), shall nevertheless be bound by the Released PAGA Claims and shall receive a pro rata portion of 25% of the PAGA Penalties.

5. How much will my payment be?

Your estimated Individual Class Payment from the Net Settlement Amount is <<_____>>.

Your estimated Individual PAGA Payment is <<_____>>.]

6. How can I get a payment?

To get money from the Settlement, you do not have to do anything. A check for your Individual Class Payment will be mailed automatically to the same address as this Class Notice. If your address is incorrect or has changed, you must notify the Settlement Administrator. The Settlement Administrator is: _____.

The Court will hold a Final Approval Hearing on _____ at _____ to decide whether to approve the Settlement and fix the amounts to be paid as attorneys' fees and costs to Class Counsel and as service payment to Plaintiff. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed approximately two months after this hearing. If there are objections or appeals, resolving them can take time, perhaps more than a year. Please be patient.

7. What if I don't want to be a part of the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself from the Class portion of the Settlement or "opt out." **If you opt out, you will not receive an Individual Class Payment from the Settlement, and you will not be bound by its terms, which means you will retain the right to sue Defendant for the Released Class Claims.** However, PAGA Members who opt out will still be paid their allocation of the PAGA Penalties and will remain bound by the release of the Released PAGA Claims regardless whether they submit a request for exclusion. The PAGA Penalties is \$10,000.00, of which \$2,500.00 will be distributed to the PAGA Members to be allocated on a pro rata basis. Your share of the PAGA Penalties, if any, is set forth in Section 5 above.

To opt out, you must submit to the Settlement Administrator a written, signed and dated request to opt-out postmarked no later than the Response Deadline which is _____. You may also fax a written, signed and dated request to opt out to _____ or email a written, signed and dated to _____ by no later than the Response Deadline. The request to opt-out should state in substance that you wish to be excluded from the class settlement in the *Flores v. San Jose, LLC* lawsuit. The request to opt-out should state the Class Member's full name, address and email address or telephone number. Please include the name and number of the case, which is *Flores v. San Jose, LLC*, Case No. 20CV371772. **The request to opt-out must be completed and signed by you. No other person may opt-out for a living member of the Class.**

The address for the Settlement Administrator is _____. Written requests for exclusion that are postmarked, faxed or emailed after _____, are incomplete or

unsigned will be rejected, and those Class Members will remain bound by the Settlement and the release described above.

8. How do I Object to the Settlement?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Defendant are asking the Court to approve. At least sixteen (16) court days before the Final Approval Hearing, scheduled for _____, Class Counsel and Plaintiff will file in Court a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair.

The Response Deadline for sending written objections to the Administrator is _____ [forty-five (45) days after the date of the Notice or an additional 14 days after the Notice in the case of re-mailing]. You may also fax the objection to _____ or email the objection to _____ by no later than this Response Deadline. Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action, *Flores v. San Jose, LLC*, Case No. 20CV371772, and include your name, current address, email or telephone number, and approximate dates of employment for Defendant and sign the objection. The Settlement Administrator's contact information is as follows:

Settlement Administrator:

Name of Company: _____

Email Address: _____

Mailing Address: _____

Telephone Number: _____

Fax Number: _____

Alternatively, a Participating Class Member can object by attending the Final Approval Hearing. You should be ready to tell the Court what you object to, why you object, and any facts that support your objection. You also have the option to appear at the hearing by audio or video. Check the Court's website for the most current information. See Section 9 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

9. Can I Attend the Final Approval Hearing?

The Court will hold a Final Approval Hearing at _____ (Pacific Standard Time) on _____, in Department 19 of the Superior Court of California, County of Santa Clara, 191 N First St, San Jose, CA 95113 before Judge Theodore Zayner. At this hearing the Court will

consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement and to fix the amounts to be paid as attorneys' fees and costs to Class Counsel and as Service Payment to Plaintiff. If there are objections, the Court will consider them. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing remotely.

10. How Can I Get More Information?

This Class Notice summarizes the proposed settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Judgment, the motion for attorneys' fees, costs and service awards, the motion for final approval or other Settlement documents by contacting Class Counsel. You may get more details by examining the Court's file on the Internet via the Online Case Search page for the Santa Clara County Superior Court.

The contact information for Class Counsel is as follows:

DIVERSITY LAW GROUP, P.C.
Larry W. Lee
Kristen M. Agnew
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
Telephone: (213) 488-6555
Facsimile: (213) 488-6554
lwlee@diversitylaw.com
kagnew@diversitylaw.com

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- **What if Your Address Changes** - To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.
- **What if You Fail To Cash a Check** - Settlement checks will be null and void 180 days after issuance if not deposited or cashed, and this expiration date is printed on the check. In such event, the Settlement Administrator shall direct all unclaimed funds to be paid to the California Controller's Unclaimed Property Fund in the name of the Class Member
- **What if You Lose Your Check** - If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.