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10 individually and on behalf of similarly situated employees

11 **SUPERIOR COURT OF CALIFORNIA**
12 **FOR THE COUNTY OF SACRAMENTO**

13 LONI GARCIA, individually and on behalf of
14 all other similarly situated employees,

15 Plaintiff,

16 vs.

17 AQUALITY WATER MANAGEMENT,
18 INC., a California Corporation; JOSH
19 BROWN, an individual; and DOES 1 to 100,
20 inclusive,

21 Defendants.

Case No. 34-2021-00292794

CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS ACTION AND PAGA SETTLEMENT**

Date: January 5, 2022

Time: 9:00 a.m.

Dept.: 54

Judge: Christopher E. Krueger

Filed: January 21, 2021

Trial Date: None set

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on January 5, 2022 at 9:00 a.m. or as soon thereafter as the matter
3 may be heard in Department 54 of the above-entitled Court, Plaintiff Loni Garcia, individually and on
4 behalf of all other similarly situated individuals, hereby move for entry of an Order for the following:

- 5 1. Certifying the proposed class herein for purposes of settlement;
- 6 2. Appointing Plaintiff Loni Garcia as class representative for purposes of settlement;
- 7 3. Appointing the Shimoda Law Corp. as Class Counsel for purposes of settlement;
- 8 4. Approving the proposed total maximum gross class action and Private Attorneys General Act
9 settlement, in the amount of \$107,426.00¹, which is incorporated herein by reference;
- 10 5. Approving the application for payment to Class Counsel of attorneys' fees in the amount of
11 \$36,750 (35% of the Gross Settlement Amount);
- 12 6. Approving the application for payment to class counsel of reasonable costs in the amount of
13 \$5,494.05;
- 14 7. Approving the Class Representative Enhancement Payment of \$7,500 to Plaintiff Loni
15 Garcia;
- 16 8. Approving the appointment of Simpluris, Inc. as the Claims Administrator and for payment
17 to Simpluris, Inc. for administering said class action settlement in the amount of \$3,500;
- 18 9. Preliminarily approving the settlement of claims under the Private Attorneys General Act for
19 the total amount of \$10,000, 75% of which will be paid to the Labor and Workforce
20 Development Agency and 25% of which will be paid to Aggrieved Employees;
- 21 10. Directing that any residue from settlement checks that were not cashed by the check cashing
22 deadline be donated to the Center for Workers' Rights under the doctrine of *cy pres*; and
- 23 11. Approving and adopting the Proposed Order and its implementation schedule, which is filed
24 herewith and incorporated by reference.

25 This motion is being made pursuant to Code of Civil Procedure section 382, Labor Code section
26 2699(1), and California Rule of Court 3.769, on the grounds that the proposed class action and Private
27

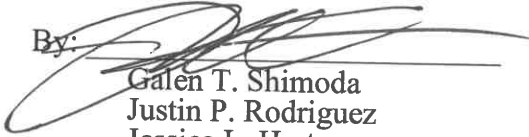
28 ¹ Due to an increase in workweeks above the 10% threshold agreed to by the parties, the gross settlement amount increased proportionally by \$2,426.

1 Attorneys General Act settlement is fair, reasonable, and adequate as to all class members and should be
2 given final approval by the Court. This motion will be based on the notice of motion, memorandum of
3 points and authorities, the Declaration of Galen T. Shimoda, the Declaration of Cassandra Polites,
4 exhibits, the record and files of this case, and any further oral or documentary evidence introduced at the
5 hearing of this motion.

6
7 **Pursuant to Local Rule 1.06 (A), the court will make a tentative ruling on the merits of this matter**
8 **by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings for the**
9 **department may be downloaded off the court's website. If the party does not have online access,**
10 **they may call the dedicated phone number for the department as referenced in the local telephone**
11 **directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and**
12 **receive the tentative ruling. If you do not call the court and the opposing party by 4:00 p.m. the**
13 **court day before the hearing, no hearing will be held.**

14 Dated: November 23, 2021

Shimoda Law Corp.

15 By: 

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Justin P. Rodriguez
Jessica L. Hart
Attorneys for Plaintiff

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19 BROWN, an individual; and DOES 1 to 100,
20 inclusive,

21 Defendants.

Case No. 34-2021-00292794

CLASS ACTION

**MEMORANDUM OF POINTS &
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT**

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I. INTRODUCTION AND OPENING SUMMARY OF ARGUMENT

This Motion is brought seeking final approval of a wage and hour class action settlement in the gross amount of \$107,426. *See generally* Exhibit A (Joint Stipulation Regarding Class Action and PAGA Settlement and Release [“Agreement”]); *see also* Declaration of Galen T. Shimoda (“Decl. Shimoda”), ¶ 10. Plaintiff Loni Garcia (“Plaintiff”) brought this class action individually and on behalf of other similarly situated employees employed by Defendants Aquality Water Management, Inc., and Josh Brown, (“Defendants”). Plaintiff worked for Defendants in California from February 5, 2020, to June 6, 2020, and was subject to all the same policies and practices that are alleged to be unlawful in this litigation. *See generally* Exhibit B (Plaintiff’s Operative Complaint).

Plaintiff has alleged that Defendants: 1) failed to pay overtime wages; 2) failed to pay minimum wages; 3) failed to provide meal periods; 4) failed to provide rest periods; 5) wage statement violations; 6) waiting time penalties; and 7) unfair competition. *See generally* Exhibit B. Plaintiff has also alleged Defendants are liable for civil penalties under the Private Attorneys General Act (“PAGA”) based on these violations. *See id.*; Exhibit C (Plaintiff’s Ltr. to the LWDA Regarding PAGA Claims). These violations primarily stem from Plaintiff’s allegations that Defendants violated California law by 1) failing to pay Plaintiff and similarly situated employees for all hours worked due their failure to pay for off-the-clock “on call” time and inaccurate record keeping policy; 2) failing to provide duty free meal and rest periods by requiring Plaintiff and similarly situated employees to remain “on call” during breaks; 3) failing to accurately itemize the hours and wages earned on paystubs issued to class members; and 4) failing to properly pay overtime and premium pay due to Defendants’ failure to incorporate shift differentials into the Regular Rate of Pay (“RROP”). *See* Exhibit B. Plaintiff has contended that this is a meritorious class action lawsuit and that this case is appropriate for class certification for settlement purposes as the requisites for class certification in this case can be satisfied. *See* Exhibit B.

Defendants have denied all of Plaintiff’s allegations in their entirety and any liability or wrongdoing of any kind. *See* Decl. Shimoda, ¶ 5. Defendants have denied that this case is appropriate for class certification other than for purposes of settlement and that Plaintiff would have difficulty proving class certification, or representative treatment here. *See id.* However, subject to approval by

1 the Court, the parties have been able to compromise and settle all asserted claims for monetary
2 compensation as a result of extensive investigations, informal document and data exchanges, and
3 extended negotiations relating to all aspects of the asserted claims. *See* Exhibit A. Plaintiff's counsel
4 is convinced that the proposed settlement is in the best interest of the putative class based on the
5 discovery, investigations, negotiations, and a detailed knowledge of the issues in this case. *See* Decl.
6 Shimoda, ¶¶ 3, 6-10. The prospect of potential class certification issues and the uncertainty of class
7 certification, difficulties of complex litigation, the lengthy process of establishing specific damages and
8 various possible delays and appeals were carefully considered by Plaintiff and Plaintiff's counsel in
9 agreeing to the proposed settlement. *See id.*

10 It is well within the discretion of this Court to grant final approval of the Agreement, which
11 satisfies all of the criteria for final settlement approval under California law. Accordingly, Plaintiff
12 requests that the Court: (1) certify the proposed settlement class; (2) grant final approval of the
13 proposed Agreement (Exhibit A); and (3) adopt the implementation schedule contained in the proposed
14 order.

15 **II. PROCEDURAL AND LITIGATION HISTORY**

16 Plaintiff filed a class action complaint on approximately January 21, 2021, in the Sacramento
17 County Superior Court against Defendants. Plaintiff exhausted administrative remedies under the
18 PAGA by providing notice of the claims and violations to the LWDA. *See* Exhibit C; Cal. Lab. Code §
19 2699.3(a), (c); Decl. Shimoda, ¶ 3. *See id.*; Exhibit B. There is no date set for a motion for
20 certification or trial in this matter. *See* Decl. Shimoda, ¶ 4.

21 **III. INVESTIGATION AND DISCOVERY CONDUCTED**

22 Plaintiff thoroughly investigated issues affecting certification, the merits of the class claims, and
23 potential damages for such claims. *See id.* Plaintiff worked during the time all of Defendants' policies
24 and practices at issue in the Complaint were in effect and provided information regarding these policies
25 and practices, enabling pre-filing investigations to take place. *See id.* The parties engaged in informal
26 discovery and exchange of documents, including a representative sampling of employee data, such as
27 timecards, paystubs, payroll data and relevant policies for the entirety of the statute of limitations
28 applicable to the alleged claims. The discovery covered all aspects of the asserted claims, including

1 certification issues, merits issues, damages, the scope and configuration of Class Members, the content
2 and implementation of the wage and hour policies at issue, issues relating to manageability concerns at
3 trial, among other relevant areas. *See* Decl. Shimoda, ¶ 7. The information allowed Plaintiff to
4 determine the extent and frequency of any violations in accordance with Plaintiff's contentions and
5 create an accurate damages model to assess the reasonableness of any settlement. *See id.*

6 **IV. NEGOTIATION AND PROPOSED SETTLEMENT**

7 **a. Plaintiff and Defendants Engaged in Extensive Arm's Length Negotiations**

8
9 The final settlement occurred only after extended, and sometimes contentious, arm's length
10 negotiations. Over the course of approximately nine (9) months, Plaintiff has been investigating the
11 claims and discussing with Defendants' counsel the merits of the claims and certification issues present
12 in this case. *See id.* at ¶¶ 6-10. The parties exchanged substantial amounts of information and legal
13 analysis regarding the asserted claims. *See id.* Then, only after nearly nine (9) months of litigation and
14 negotiation, the parties were able to reach a mutually agreeable settlement. *See id.* at ¶ 8. In light of
15 the claims and defenses at issue, the parties agreed to a Gross Settlement Amount of \$105,000, which
16 has since increased to \$107,426.00 due to an increase in workweeks and the escalator clause contained
17 in Section 10.1 of the Agreement. *See* Exhibit A; *see* Decl. Shimoda ¶ 10.

18 **b. The Terms of the Settlement**

19 Under the settlement agreement, Defendants have agreed to the following:

- 20 1. The following groups of individuals are covered by the Settlement (*See* Exhibit A, ¶¶
21 1.2, 1.8):

22 All non-exempt employees who have or continue to work for Defendants
23 from November 9, 2019 to August 24, 2021. (Aggrieved Employees)

24 All non-exempt employees who have or continue to work for Defendants
25 from January 21, 2017 to August 24, 2021. (Class Members)

- 26 2. Defendants agree to pay the Gross Settlement Amount of \$107,426.00, exclusive of the
27 employer's share of payroll taxes, to resolve and release the claims alleged in the Complaint. *See id.* at
28 ¶¶ 5.1, 5.2; *see also* Decl. Shimoda, ¶ 10. No portion of the Gross Settlement Amount will revert to
Defendants. *See* Exhibit A at ¶ 5.6. Aggrieved Employees will still be paid their share of the PAGA

1 Payment regardless of whether they opt out of being Class Members. *See id.* at 7.5.1.

2 3. The parties agree that up to \$7,500 for Plaintiff Loni Garcia will be paid as a Class
3 Representative Enhancement Payment. This amount will be in addition to any amount Plaintiff may be
4 entitled to under the terms of the Agreement. *See id.* at ¶ 5.4.

5 4. The parties agree that the cost of administering this class action settlement shall be paid
6 from the settlement proceeds. The parties have selected Simpluris, Inc. to act as the class action claims
7 administrator, who has provided a final cost estimate of \$3,500 for administration work that has been
8 performed and will be performed in the future. *See* Declaration of Cassandra Polites (“Decl. Polites”),
9 ¶ 17. The difference between the actual administration costs and the \$5,000 originally allocated will be
10 paid to participating Class Members. *See* Decl. Shimoda, ¶ 18.

11 5. The parties agree that \$10,000 of the Gross Settlement Amount shall be allocated to
12 resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment (\$7,500) will be
13 paid to the LWDA and Twenty-Five Percent (25%) will be paid to Aggrieved Employees (\$2,500). *See*
14 Exhibit A, ¶ 5.5.

15 6. The parties agree that up to Thirty-Five Percent (35%) of the Gross Settlement Amount
16 (\$36,750)¹ will be paid for Plaintiff’s attorneys’ fees incurred in the litigation of this case. Defendants
17 will not oppose any application for attorneys’ fees so long as it is within this threshold. *See id.* at ¶ 5.2.
18 The parties agree that Plaintiff will be entitled to the actual litigation costs which are \$5,494.05. *See id.*
19 Exhibit D (Plaintiff’s Itemized Costs). The notice to be sent to class members stated the maximum cost
20 potential of \$10,000. *See* Decl. Polites, Exh. A.

21 7. Any Claims Administrator Costs, any amounts paid for attorneys’ fees and costs, the
22 Class Representative Enhancement Payment, and PAGA Payment will be paid out from the Gross
23 Settlement Amount, not in addition to the Gross Settlement Amount. *See* Exhibit A, ¶¶ 5.1-5.5.

24 8. For any portion of the Net Settlement Sum or PAGA Payment allocated to Qualified
25 Claimants and/or Aggrieved Employees that is not claimed by them by cashing their respective
26
27

28 ¹ Even though the gross settlement amount has increased slightly due to an increase in total workweeks, the attorneys’ fee amount has remained 35% of the original \$105,000 gross settlement amount.

1 settlement checks within 120 days, the remaining amount shall be paid to the Center for Workers
2 Rights under the doctrine of *cy pres*. See Exhibit A, at ¶ 5.6.

3 **c. Allocation of Settlement Funds**

4 Payment to Qualified Claimants and Aggrieved Employees of their Claim Amount will not
5 require the submission of a claim form. A Net Settlement Amount will be determined by subtracting
6 from the Gross Settlement Amount any amounts for approved attorneys' fees and costs, any
7 Enhancement Payment to the Class Representative, the Claims Administrator Costs, and the PAGA
8 Payment. Each Class Member's share will be determined by dividing their total weeks worked within
9 the Class Period by the total weeks worked by all Class Members within the Class Period. That
10 fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's
11 individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion
12 of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA
13 Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period.
14 That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the
15 Aggrieved Employee's individual share. See Exhibit A, at ¶ 5.8.

16 **V. PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND THE**
17 **SUBSEQUENT CLASS ACTION ADMINISTRATION**

18 Plaintiff's motion for preliminary approval of the class action settlement was approved by the
19 Court, in its entirety, on August 24, 2021. To comply with the class members' due process rights, the
20 parties enlisted an exhaustive method to ensure the best practical means possible was used to provide
21 notice to the class. The parties provided the class action administrator the names, last known address,
22 and social security numbers for the class. The class action administrator then updated this information
23 by doing an address trace for each individual using this information. See Decl. Polites, ¶¶ 6-7. If the
24 Notice Packets were returned as undeliverable, further investigation was performed and they were re-
25 mailed using updated information. See *id.* at ¶ 8. Of the 34 Notice Packets mailed, zero were
26 undeliverable after use of these methods. See *id.* The Notice Packets included information regarding
27 the requested attorneys' fees, costs, payment to the LWDA, administration costs, and tax allocations.
28 See Decl. Polites, Ex. A.

1 The average distribution to participating class members is approximately \$1,299.47, the
2 maximum distribution is approximately \$3,552.73. *See id.* at ¶ 15. No objections to the proposed
3 settlement have been received and no class members opted out. *See Decl. Polites*, ¶¶ 9-11.

4 VI. ARGUMENT

5 a. Class Action Settlements are Subject to Court Review and Approval Under the 6 California Rules of Court

7 A class action may not be dismissed, compromised, or settled without Court approval and the
8 decision to approve or reject a settlement is committed to the Court's sound discretion. *See Cal. Rules*
9 *of Court*, Rule 3.769; *Fed. R. Civ. Proc.*, Rule 23(e)²; *Wershba v. Apple Computer, Inc.*, 91 Cal. App.
10 4th 224, 234-35 (2001); *see also Cal. Lab. Code* §§ 2699(1)(2) (requiring Court review of PAGA
11 settlements). However, courts should give "proper deference to the private consensual decision of the
12 parties," since "the court's intrusion upon what is otherwise a private consensual agreement negotiated
13 between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment
14 that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
15 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned."
16 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998). Where a settlement is reached on terms
17 agreeable to all parties, a court should disapprove of the settlement "only with considerable
18 circumspection." *Jamison v. Butcher & Sherrerd*, 68 F.R.D. 479, 481 (E.D. Pa. 1975). The law favors
19 settlement of lawsuits, particularly class actions and other complex cases where substantial resources
20 can be conserved by avoiding the time, expense, and rigors of formal litigation. *See Neary v. Regents of*
21 *Univ. of Cal.*, 3 Cal. 4th 273, 277-81 (1992).

22 b. The Terms of The Settlement Are Fair and Within the Range of Reasonableness

23 The purpose of the Court's final evaluation of a proposed class action settlement is to determine
24 only whether the proposed settlement is within the range of reasonableness. *See Wershba*, 91 Cal. App.
25 4th at 234-35. If the Court finds a proposed settlement falls within "the range of reasonableness," it
26 should grant final approval of the class action settlement. *See, e.g., North County Contr.'s Assn., Inc. v.*
27 *Touchstone Ins. Svcs.*, 27 Cal. App. 4th 1085, 1089-90 (1994). To make the fairness determination, the

28 ²The California Supreme Court has authorized California's trial courts to rely on these federal resources to decide class certification issues. *See Green v. Obledo*, 29 Cal.3d 126, 145-46 (1981).

1 Court must consider several factors, including:

2 the strength of the Plaintiff's case, the risk, expense, complexity and likely duration of
3 further litigation, the risk of maintaining class action status through trial, the amount
4 offered in settlement, the extent of discovery completed and the stage of the proceedings,
5 the experience and views of counsel, the presence of a governmental participant, and the
6 reaction of the class members to the proposed settlement.

7 *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996). However, this Court should begin its
8 analysis with a presumption that the settlement is fair. "A presumption of fairness exists where: (1) the
9 settlement is reached through arm's length bargaining; (2) investigation and discovery are sufficient to
10 allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4)
11 the percentage of objectors is small." *Id.* at 1802.

12 **i. The Settlement is a Result of Extensive, Non-Collusive Arm's Length
13 Negotiations Between the Parties**

14 Settlement in this case was reached only after litigation and extensive arm's length negotiations
15 lasting nearly nine (9) months. *See* Decl. Shimoda, ¶¶ 6-10. At all times, the negotiations were
16 adversarial and contentious, although still professional in nature. *See id.* Further, while Plaintiff
17 contends she would ultimately prevail on the claims and the issue of certification, this is not a certainty
18 and there is substantial risk in proceeding to further litigation. *See id.* at ¶¶ 6-10. The ability to secure a
19 guaranteed settlement now and ensure class members receive some compensation, rather than proceed to
20 further litigation and potentially recover nothing, was a motivating factor in reaching this settlement.
21 *See id.*

22 **ii. The Extent of Investigation and Discovery Completed Provided Ample
23 Information to Enter Into an Informed and Reasonable Settlement**

24 The parties were in possession of all necessary information during the negotiations. The parties
25 engaged in substantial informal discovery and exchange of documents, including a representative
26 sampling of employee data, such as timecards, paystubs, payroll data and relevant policies for the
27 entirety of the statute of limitations applicable to the alleged claims, which covered all aspects of the
28 class claims and helped thoroughly vet the extent of Plaintiff's claims against Defendants and create an
accurate damages model. *See id.* at ¶ 6-10. Plaintiff was in possession of this information prior to
calculating the potential damages in this case. *See id.* As a result, Plaintiff was able to make a

1 reasonable estimation of Defendants' potential liability. *See id.* For these reasons, the settlement now
2 before the Court was reached at a stage where "the parties certainly have a clear view of the strengths
3 and weaknesses of their cases" sufficient to support the settlement. *Boyd v. Bechtel Corp.*, 485 F. Supp.
4 610, 617 (N.D. Cal. 1979).

5 **iii. Plaintiff's Counsel is Experienced in Similar Litigation and No Class Member**
6 **Objected to the Settlement**

7 Plaintiff's counsel has considerable experience in class actions and wage and hour litigation.
8 Plaintiff's counsel has brought and is currently bringing several wage and hour class and/or PAGA
9 actions. Thus, Plaintiff's counsel is qualified to evaluate the class claims, value of settlement versus
10 moving for certification and going to trial, and the viability of possible affirmative defenses. *See Decl.*
11 *Shimoda*, ¶¶ 11-16. Plaintiff's counsel believes that the settlement is fair and reasonable in light of the
12 complexities of the case, the uncertainties of class certification and litigation, and the secured benefit to
13 the class. *See id.* at ¶ 6. This belief is bolstered by the fact that no objections to the settlement have
14 been made and no class members have opted out. *See Decl. Polites*, ¶¶ 9-11.

15 **iv. The Settlement is Fair and Reasonable Based on the Strength of Plaintiff's Case**
16 **and the Risks and Costs of Further Litigation**

17 A review of the Agreement's terms does not give rise to any doubts about its fairness. Based on
18 the records and facts of this case, Plaintiff has secured a gross recovery of approximately 11.6% and a
19 net recovery of approximately 5.1% of the claims' maximum likely value. *See Decl. Shimoda*, at ¶¶ 9-
20 10. Additionally, the average net award per class member is approximately \$1,299.47 and the highest
21 recovery is approximately \$3,552.73. *See Decl. of Polites*, ¶ 15. This settlement is a reasonable
22 compromise of the class and PAGA claims, and is within the percentile ranges of the total available
23 damages that have been approved in other class settlements. *See Wershba*, 91 Cal. App. 4th at 246,
24 250; *Rebney v. Wells Fargo Bank*, 220 Cal.App.3d 1117, 1139 (1990); *Officers for Justice v. Civil Serv.*
25 *Comm'n*, 688 F.2d 615, 628 (9th Cir. 1982); *see also In re Omnivision Technologies, Inc.*, 559
26 F.Supp.2d 1036, 1042 (2007) (noting that certainty of recovery in settlement of 6% of maximum
27 potential recovery after reduction for attorney's fees was higher than median percentage for recoveries
28 in shareholder class action settlements, averaging 2.2%-3% from 2000 through 2002); *Bravo v. Gale*
Triangle, Inc., 2017 U.S. Dist. LEXIS 77714 (C.D. Cal. 2017) (approving a settlement where the net

1 recovery to class members was approximately 7.5% of the projected maximum recovery amount); *Avila*
2 *v. Cold Spring Granite Co.*, 2017 U.S. Dist. LEXIS 130878 (E.D. Cal. 2017): (approving a settlement
3 with a gross recovery of 11% of the projected maximum damages available and a net recovery of
4 approximately 6.7% of the projected maximum recovery); *Bellinghausen v. Tractor Supply Co.*, 306
5 F.R.D. 245 (N.D. Cal 2015) (approving a settlement where the gross recovery was approximately 8.5%
6 of the projected maximum recovery).

7 **v. The Proposed Settlement is a Reasonable Compromise of Claims**

8 The case of *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116 (2008) requires additional
9 information be presented to the Court, acting as a fiduciary for the absent class members “to ensure that
10 the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims
11 being released, discounted by the risks and expenses of attempting to establish and collect on those
12 claims by pursuing the litigation” *Id.* at 129. *Munoz v. BCI Coca-Cola Bottling Co. of Los*
13 *Angeles*, 186 Cal. App. 4th 399 (2010), clarified that a *Kullar* showing does not require the parties to
14 submit an illusory prediction of the outer reaches of exposure without taking into account the actual
15 risks of certification, decertification, dispositive motions, and trial. *Kullar* also does not require an
16 explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its
17 claims provided there is a record that allows “an understanding of the amount that is in controversy and
18 the realistic range of outcomes of the litigation.” *Id.* at 409. The *Munoz* Court found that the record
19 before the trial court was sufficient, having included the number of class members, payroll data,
20 declarations describing hours and overtime worked, as well as variances in duties and rest and meal
21 period experience, and a companion action alleging less than \$5,000,000 in damages. This information
22 constituted “an adequate basis from which to garner a reasonably adequate understanding of the amount
23 that is in controversy within the meaning of *Kullar*.” *Id.*

24 Plaintiff similarly relied upon payroll data and Class Members data to determine the realistic
25 potential damages suffered by the class as a whole. *See* Decl. Shimoda, ¶¶ 6-10. This analysis allowed
26 Plaintiff to determine the extent and frequency of potential violations on all claims as to all Class
27 Members. *See id.* Ultimately, Plaintiff secured a percentage of the total demand for the putative class
28 that is within the range of what has been found to be sufficient in several other cases. *See, supra*,

1 Section V.c.iv; *see also, e.g., In re Omnivision Technologies, Inc.*, 559 F.Supp.2d at 1042; *Reed v. I-*
2 *800 Contacts, Inc.*, 2014 U.S. Dist. LEXIS 255 (S.D. Cal. 2014) (approving a settlement of \$11.7
3 million where the maximum range of damages was \$5,000 for each of the alleged 300,000 instances of
4 unlawful recording violations (\$1.5 billion), equaling approximately .78% of the total demand and
5 approximately \$800 per class member). This settlement represents a reasonable compromise given the
6 percentage of the total demand that was secured, the average recovery per class member, the Court's
7 ability and discretion to cut PAGA penalties, and the uncertainty of class certification. *See Decl.*
8 Shimoda, ¶¶ 9-10.

9 **vi. The Enhancement Payment to the Named Plaintiff for Plaintiff's Services to the**
10 **Putative Class Is Reasonable and Routinely Awarded by Courts**

11 The Enhancement Payment to the named Plaintiff is intended to recognize the time and effort
12 expended on behalf of the class. Indeed, Courts routinely approve enhancement payments to
13 compensate named plaintiffs for the services they provide and the risks they incurred during the course
14 of the class action litigation. *See Ingram v. The Coca Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001).
15 In *Ingram*, the Court approved enhancement payments of \$300,000.00 to each named plaintiff in
16 recognition of the services they provided to the class by responding to discovery, participating in the
17 mediation process, and taking the risk of stepping forward on behalf of the class. *See Id.* at 694; *see*
18 *also Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294 (N.D. Cal. 1995) (approving a \$50,000.00
19 enhancement payment).

20 In this case, Plaintiff provided and explained documents, being available at all times to discuss
21 the case with Plaintiff's counsel. *See Decl. Shimoda*, ¶ 7. Plaintiff spent a significant amount of time
22 pursuing this litigation for the benefit of all Class Members. *See id.* Plaintiff brought this action
23 knowing there would be a delay in any payment as the litigation progressed, rather than proceeding on
24 individual claims in front of the California Labor Commissioner. *See id.* Payment of \$7,500 to
25 Plaintiff is appropriate given the risk, assistance, time required in bringing this case and resolution of
26 this case.

27 **vii. Awarding Attorneys' Fees as a Percentage of the Common Fund Is Reasonable**
28 **and Customarily Approved by Courts**

California state and federal courts have recognized that when a litigant's efforts create or

1 preserve a fund from which others derive benefits, the Court may spread litigation costs proportionally
2 among all the beneficiaries to compensate those who created the fund. *See Boeing Co. v. Van Gemert*,
3 444 U.S. 472, 477-478 (1980) (“A lawyer who recovers a common fund for the benefit of persons other
4 than . . . her client is entitled to a reasonable attorney’s fee from the fund as a whole.”); *Vincent v.*
5 *Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375
6 (1970); *Waters v. Intern. Precious Metals Corp.*, 190 F.3d 1291 (11th Cir. 1999); *see also Serrano v.*
7 *Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016).
8 The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to “spread litigation
9 costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
10 burden alone.” *Vincent*, 557 F.2d at 769; *Williams v. MGM-Pathe Communications Co.*, 129 F.3d 1026,
11 1027 (9th Cir. 1977). California state courts have approved use of a percentage of the fund to calculate
12 reasonable attorney fee awards where the amount of the settlement is certain or is an easily calculable
13 sum of money. *See Dunk*, 48 Cal. App. 4th at 1808.

14 The Ninth Circuit has also held that the common fund doctrine applies when: (1) the class of
15 beneficiaries is sufficiently identifiable; (2) the benefits can be accurately traced; and (3) the fee can be
16 shifted with some exactitude to those benefitting. *See Paul, Johnson, Alston & Hunt v. Graulity*, 886
17 F.2d 268, 271 (9th Cir. 1989). These criteria are “easily met” when “each member of a certified class
18 has an undisputed and mathematically ascertainable claim to part of a lump-sum settlement recovered
19 on her behalf.” *Id.* at 271 (citations omitted). Under the three (3) factors set forth in *Paul, Johnson,*
20 *Alston & Hunt*, the common fund doctrine applies in this case because there is a sufficiently identifiable
21 class of beneficiaries (*e.g.* the settlement class), the benefits can be accurately traced to the settlement
22 Plaintiff and Plaintiff’s counsel were able to negotiate on behalf of the class, and the fee can be shifted
23 with exactitude to those benefiting as the fee request is a specific, lump-sum percentage of the common
24 fund. As set forth in the fee award examples provided below for the Court’s reference, it is an accepted
25 practice in wage and hour class action settlements to award attorneys’ fees based on a percentage of the
26 common fund. *See, e.g., Staton v. Boeing Co.*, 327 F.3d 938, 967-972 (9th Cir. 2003); *Sanders v. City*
27 *of Los Angeles*, 3 Cal.3d 252, 261, 263 (1970); *Wershba*, 91 Cal. App. 4th at 254; *Bell v. Farmers Ins.*
28 *Exchange*, 115 Cal. App. 4th 715, 726, 765 (2004).

1 Historically, attorneys' fee awards in common fund cases in general range from 20% to 50% of
2 the fund, depending on the circumstances of the case. See Newberg on Class Actions, (3rd Ed.), 1992,
3 §14.03 (finding 50% to be the upper limit). Awards ranging between 30% and 40% of the fund are
4 generally approved as reasonable in wage and hour settlements below \$10 million:

5 More particularly, courts may award attorneys fees in the 30-40% range in wage and hour
6 class actions that result in recovery of a common fund under \$10 million. See *Vasquez v.*
7 *Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 491-492 (E.D. Ca. 2010) (citing to five
8 recent wage and hour class actions where federal district courts approved attorney fee
9 awards ranging from 30 to 33%); *Singer v. Becton Dickenson and Co.*, 2010 U.S. Dist.
10 LEXIS 53416, 2010 WL 2196104, *8 (S.D. Ca. June 1, 2010) (approving attorney fee
award of 33.33% of the common fund and holding that award was similar to awards in
three other wage and hour class action cases where fees ranged from 33% to 40%); *Romero*
v. Producers Dairy Foods, Inc., 2007 U.S. Dist. LEXIS 86270, 2007 WL 3492841 (E.D.
Ca. Nov. 14, 2007).

11 See *Martin v. Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796 at *22-23 (S.D. Cal. 2011). Plaintiff's
12 request of Thirty-Five Percent (35%) of the settlement sum for attorneys' fees is within established
13 rates for fee awards in class settlements pursuant to the common fund doctrine, especially in light of the
14 excellent results achieved in this case. See *In re Activision Sec. Litigation*, 723 F.Supp. 1373, 1379
15 (N.D. Cal. 1989); *Watson v. Raytheon Company*, USDC Southern District, Case No. 3:10-cv-00634;
16 *Dirienzo v. Dunbar Armored, Inc.*, USDC Southern District, Case No. 3:09-cv-02745; *Green, et al. v.*
17 *Penske Logistics, L.L.C., et al.*, USDC Southern District, Case No. 3:09-cv-00069; *Benitez et al. v.*
18 *Wilbur*, USDC Eastern District, Case No. 1:08-cv-01122; *Chavez et al. v. Petrissans et al.*, USDC
19 Eastern District, Case No. 1:08-cv-00122; *Willis et al. v. Cal-Western Transport*, USDC Eastern
20 District, Case No. 1:00-cv-05695. To determine whether a percentage is reasonable, a court should
21 consider: (1) the percentage that would likely be negotiated between parties in a similar case; (2) the
22 percentage applied in other class actions; (3) the quality of class counsel; (4) the size of the award; and
23 (5) whether there are any objections by class members. See *In re Ikon Office Solutions, Inc. Secur.*
24 *Litig.*, 194 F.R.D. 166, 193 (E.D. Pa. 2000); *In re Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS 13555,
25 71 (C.D. Cal. 2005) ("the absence of objections or disapproval by class members to class counsel's fee
26 request further supports finding the fee request reasonable").

27 These factors support Plaintiff's request for reasonable attorneys' fees. The typical percentage
28 negotiated between parties ranges from thirty-five to forty percent (35% to 40%) in individual litigation

1 depending on the complexity of the case. In class action litigation, the typical percentage negotiated
2 between parties ranges from thirty to forty percent (30% to 40%) based on the same factors. Plaintiffs
3 request of 35% falls within these typical fee arrangements. *See* Decl. Shimoda, ¶ 17. The quality of
4 counsel and the average size of settlement payments to Class Members and Aggrieved Employees
5 (\$1,299.47) also support the fee request when compared to other settlements courts have considered as
6 good results. *See Schiller v. David's Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776 at *48 (E.D. Cal.
7 2012) ("Class Members will receive an average of approximately \$198.70, with the highest payment to
8 a Class Member being \$695.78 . . . Overall, the Court finds that the results achieved are good, which is
9 highlighted by the fact that there was no objection to the settlement amount or the attorneys' fees
10 requested."); *Gardner v. GC Servs., LP*, 2012 U.S. Dist. LEXIS 47043, 18 (S.D. Cal. 2012) ("the
11 results achieved in this case were very favorable. Class members are provided with immediate
12 monetary relief, with an average award of around several hundred dollars and a minimum award of
13 \$50"). Furthermore, no objections to the settlement have been made by class members and no class
14 member has opted out. *See* Decl. Polites, ¶¶ 9-11.

15 **c. Certification of the Class is Appropriate**

16 Class certification is appropriate when (1) the class is ascertainable and (2) there is "a well-
17 defined community of interest in the questions of law and fact involved affecting the parties to be
18 represented." *Dunk*, 48 Cal. App. 4th at 1806. The "community of interest" element "embodies three
19 factors: (1) common questions of law or fact predominate; (2) class representatives with claims or
20 defenses typical of the class; and (3) class representatives who can adequately represent the class." *Id.*
21 Here, the parties agree that, for the purposes of settlement, these prerequisites are met. *See* Exhibit A.

22 **i. The Proposed Settlement Class is Ascertainable and Sufficiently Numerous**

23 The proposed settlement class is ascertainable because all putative class members can be readily
24 identified through employee personnel and payroll files. *See Noel v. Thrifty Payless, Inc.*, 7 Cal.5th
25 955, 980 (2019); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 932 (1981); *Lee v. Dynamex, Inc.*, 166
26 Cal. App. 4th 1325, 1334 (2008). The numerosity requirement is met because there are thirty-four (34)
27 individuals who fall within the definition of Class Member, which makes joinder of all members
28 impracticable. *See Gay v. Waiters' & Dairy Lunchmen's Union*, 489 F.Supp. 282 (N.D. Cal. 1980),

1 *aff'd* 694 F.2d 531 (9th Cir. 1982); *Hebbard v. Calgrove*, 28 Cal. App. 3d 1017, 1030 (1972) (noting no
2 set minimum to meet the numerosity prerequisite, but a class as few as twenty-eight (28) members is
3 acceptable). Thus, these requirements are satisfied.

4 **ii. The Commonality, Predominance, and Typicality Requirements are Met**

5 The commonality requirement is met when there are questions of law or fact regarding the class
6 as a whole. *See Hanlon*, 150 F.3d at 1019. Commonality requires only that some common legal or
7 factual questions exist; Plaintiff need not show that all issues in the litigation are identical. *See*
8 *Richmond v. Dart Ind., Inc.*, 29 Cal.3d 462, 473 (1981); *City of San Jose v. Superior Court*, 12 Cal.3d
9 447, 460 (1974). Common questions of law or fact must also predominate over individual questions
10 and class-wide treatment of a dispute must be superior to individual litigation.³ *See Richmond*, 29
11 Cal.3d at 469. Predominance requires a putative class be sufficiently cohesive to warrant adjudication
12 by representation. *See Hanlon*, 150 F.3d at 1022. The typicality requirement is met when claims of the
13 named representative are typical of those of the class, though “they need not be substantially identical.”
14 *Id.* at 1020; *Classen v. Weller*, 145 Cal. App. 3d 27, 46-47 (1983).

15 The common questions of law and fact in this case stem from Plaintiff’s contention that
16 Defendants 1) failed to pay Plaintiff and similarly situated employees for all hours worked; 2) failed to
17 provide duty free meal and rest periods by requiring Plaintiff and similarly situated employees to
18 remain “on call” during breaks; 3) failed to accurately itemize the hours and wages earned on paystubs
19 issued to class members; and 4) failed to properly pay overtime and premium pay due to Defendants’
20 failure to incorporate shift differentials into the Regular Rate of Pay (“RROP”). *See* Exhibit B. The
21 waiting time penalties, unfair competition, and PAGA claims are derivative of these violations. *See id.*
22 Plaintiff and the Class Members seek the same remedies under state law. Under these specific
23 circumstances, the commonality and predominance requirements are satisfied. Regarding the typicality
24 requirement, Plaintiff contends she suffered from the same unlawful policies, treatment, and
25 circumstances as Class Members did, will request the same remedies, and will rely on the same
26 methods of proof to establish liability and damages. *See id.* Thus, the typicality requirement is also
27

28 ³When assessing predominance and superiority, a court may consider that the class will be certified for settlement purposes only and that manageability of trial is therefore irrelevant. *See Amchem Products v. Windsor*, 521 U.S. 591 (1997).

1 satisfied for settlement purposes.

2 **iii. The Adequacy Requirement is Met**

3 The adequacy of representation requirement is met if the named representative and counsel have
4 no interests adverse to those of the putative class members and are committed to vigorously prosecuting
5 the case on behalf of the class. *See Hanlon*, 150 F.3d at 1020; *McGhee v. Bank of America*, 60
6 Cal.App.3d 442, 450-51 (1976). Those standards are met here. Under the preliminarily approved
7 settlement, Plaintiff and the putative class members will receive a pro rata share of the settlement based
8 on the number of workweeks they worked for Defendants. *See Exhibit A*. Finally, any settlement class
9 member who wishes to opt-out of the settlement may do so, and he or she may also dispute the number
10 of workweeks stated in the Notice of Settlement.

11 There is no conflict of interest between Plaintiff and Class Members. Plaintiff and Plaintiff's
12 counsel have pursued the claims made in the operative Complaint vigorously on behalf of the class.
13 Plaintiff's counsel, with Plaintiff's assistance, thoroughly investigated the claims made in this case by
14 speaking with Plaintiff and reviewing substantial amounts of documents. Plaintiff's counsel thereafter
15 engaged Defendants' counsel in settlement discussions over the course of approximately nine (9)
16 months. Moreover, Plaintiff's counsel has experience defending and bringing wage and hour claims.
17 Because Plaintiff's counsel has vigorously pursued Plaintiff's and the class members' claims, the
18 adequacy requirement is met. *See generally* Decl. Shimoda.

19 **VII. CONCLUSION**

20 For all of the foregoing reasons, Plaintiff respectfully requests that this Court certify the class
21 for settlement purposes; grant final approval to the proposed settlement, including the Plaintiff's Class
22 Representative Enhancement Payment, the payment to the LWDA under PAGA, and Class Counsel's
23 application for reasonable attorneys' fees and costs; find that the Notice of Settlement and
24 administration process satisfied class members' due process rights; and approve the proposed order
25 submitted concurrently herewith.

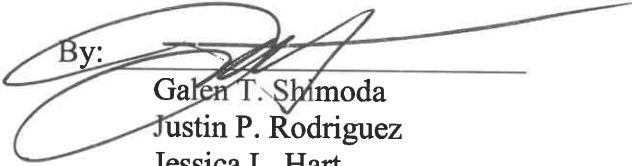
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1 Dated: November 23, 2021

Shimoda Law Corp.

2
3 By: 

Galen T. Shimoda

Justin P. Rodriguez

Jessica L. Hart

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10 individually and on behalf of similarly situated employees

11 **SUPERIOR COURT OF CALIFORNIA**

12 **FOR THE COUNTY OF SACRAMENTO**

13 LONI GARCIA, individually and on behalf of
14 all other similarly situated employees,

15 Plaintiff,

16 vs.

17 AQUALITY WATER MANAGEMENT,
18 INC., a California Corporation; JOSH
19 BROWN, an individual; and DOES 1 to 100,
20 inclusive,

21 Defendants.

Case No. 34-2021-00292794

CLASS ACTION

**EXHIBIT LIST AND EXHIBITS IN
SUPPORT OF PLAINTIFF'S MOTION FOR
FINAL APPROVAL OF CLASS ACTION
AND PAGA SETTLEMENT**

Date: January 5, 2022

Time: 9:00 a.m.

Dept.: 54

Judge: Christopher E. Krueger

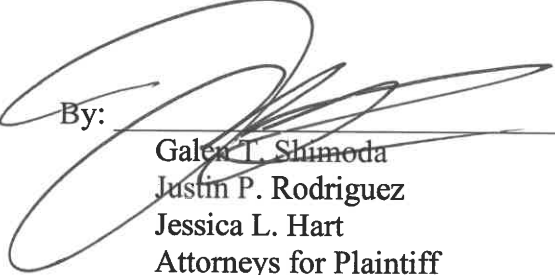
Filed: January 21, 2021

Trial Date: None set

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
A	Joint Stipulation Regarding Class Action and PAGA Settlement and Release
B	Plaintiff's Operative Complaint
C	Plaintiff's Letter to the LWDA Regarding PAGA Claims
D	Plaintiff's Itemized Costs
E	Proof of Submission of Proposed Settlement Agreement to LWDA

Dated: November 23, 2021

Shimoda Law Corp.

By: 

Galen T. Shimoda
Justin P. Rodriguez
Jessica L. Hart
Attorneys for Plaintiff

EXHIBIT A

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17
18
19 **SUPERIOR COURT OF CALIFORNIA**
20 **FOR THE COUNTY OF SACRAMENTO COUNTY**

21 LONI GARCIA, individually and on behalf of
22 all other similarly situated employees,

23 Plaintiff,

24 vs.

25 AQUALITY WATER MANAGEMENT, INC.,
26 a California Corporation; JOSH BROWN, an
27 individual; and DOES 1 to 100, inclusive,

28 Defendants.

Case No.: 34-2021-00292794

**JOINT STIPULATION REGARDING CLASS
ACTION AND PAGA SETTLEMENT AND
RELEASE**

Filed: January 21, 2021

Trial Date: None set

1 This Joint Stipulation Regarding Class Action and PAGA Settlement and Release (“Agreement”)
2 is made and entered into between the Plaintiff Loni Garcia (“Plaintiff”), on behalf of herself, the Labor
3 and Workforce Development Agency, and Aggrieved Employees, and Defendants Aquality Water
4 Management, Inc., its owners, officers and managers, and all of its related and affiliated entities, and Josh
5 Brown, (“Defendants”). This Agreement is subject to the terms and conditions set forth below and the
6 approval of the Court.

7 **1. DEFINITIONS**

8 The following terms, when used in this Agreement, have the following meanings:

9 1.1 “Action” means the above stated lawsuit, *Garcia v. Aquality Water Management, Inc.*,
10 Sacramento County Superior Court, Case No. 34-2021-00292794, filed January 21, 2021.

11 1.2 “Aggrieved Employee(s)” means all of Defendants’ non-exempt employees who have or
12 continue to work for Defendants during the PAGA Claim Period.

13 1.3 “Agreement” or “Settlement” or “Settlement Agreement” means this Joint Stipulation
14 Regarding Class Action and PAGA Settlement and Release.

15 1.4 “Claim Amount” means an individual Qualified Claimant’s and Aggrieved Employee’s
16 allocation of the Net Settlement Amount and PAGA Payment respectively, as defined in Sections 1.21,
17 1.25, 5.5, and 5.8.

18 1.5 “Claims Administrator” means and refers to Simpluris, Inc., the third-party entity that will
19 administer the Agreement as outlined in Sections 4 and 7, or any other third-party class action settlement
20 claims administrator agreed to by the Parties and approved by the Court for the purposes of administering
21 this Agreement. The Parties each represent that they do not have any financial interest in the Claims
22 Administrator or otherwise have a relationship with the Claims Administrator that could create a conflict
23 of interest.

24 1.6 “Claims Administrator Costs” means the fees and expenses reasonably incurred by the
25 Claims Administrator as a result of the procedures and processes expressly required by this Agreement,
26 and shall include all costs of administering the Agreement, including, but not limited to, all tax document
27 preparation, custodial fees, and accounting fees incurred by the Claims Administrator; all costs and fees
28 associated with preparing, issuing and mailing any and all notices and other correspondence to Class

1 Members and/or Aggrieved Employees; all costs and fees associated with communicating with Class
2 Members and/or Aggrieved Employees, Class Counsel, and Defendants' Counsel; all costs and fees
3 associated with computing, processing, reviewing, and paying the Claim Amounts, and resolving disputes;
4 all costs and fees associated with calculating tax withholdings and payroll taxes, if any, making related
5 payment to federal and state tax authorities, if any, and issuing tax forms relating to payments made under
6 the Agreement; all costs and fees associated with preparing any tax returns and any other filings required
7 by any governmental taxing authority or agency; all costs and fees associated with preparing any other
8 notices, reports, or filings to be prepared in the course of administering Claim Amounts; and any other
9 costs and fees incurred and/or charged by the Claims Administrator in connection with the execution of
10 its duties under this Agreement.

11 1.7 "Class Counsel" means Galen T. Shimoda and Jessica L. Hart, of the Shimoda Law Corp.

12 1.8 "Class Member(s)" means all of Defendants' non-exempt employees who have or continue
13 to work for Defendants over the Class Period. The estimated number of Class Members is thirty-two (32).

14 1.9 "Class Period" means January 21, 2017 up to either (1) the date a signed order
15 preliminarily approving the settlement is filed, or (2) sixty (60) days after this Agreement is signed,
16 whichever is earlier.

17 1.10 "Class Representative" means Plaintiff Loni Garcia.

18 1.11 "Class Representative's Released Claims" means all claims arising from, could have been
19 asserted, or related in any way to the Class Representative's employment with Defendants, under federal,
20 state, or local laws, and/or ordinances, or tort or contract theories, whether known or unknown, and
21 whether anticipated or unanticipated, including without limitation statutory, constitutional, contractual or
22 common law claims for lost wages, unpaid wages, emotional distress, punitive damages, special damages,
23 damages, unpaid costs, penalties, liquidated damages, interest, attorneys' fees, litigation costs, restitution,
24 equitable relief or other similar relief or claims. The Class Representative's Released Claims exclude
25 claims for workers' compensation, unemployment insurance benefits, or other claims that cannot be
26 released as a matter of law.

27 1.12 "Complaint" means the operative Complaint on file in the Action with the Court.

28 1.13 "Court" means the Sacramento County Superior Court.

1 1.14 “Defendants” means Aquality Water Management, Inc., and Josh Brown.

2 1.15 “Defendants’ Counsel” means Alexandra M. Asterlin of Palmer Kazanjian Wohl Hodson,
3 LLP.

4 1.16 “Enhancement Payment” means the amount approved by the Court to be paid to the Class
5 Representative in recognition of the time and effort expended on behalf of Class Members for the benefit
6 of Class Members, which is in addition to any Claim Amount paid to the Class Representative as a
7 Qualified Claimant.

8 1.17 “Effective Date” means the fourteenth (14th) calendar day after the Court signs the Final
9 Approval Order unless there is a timely objection lodged, in which case either (a) the sixtieth (60th)
10 calendar day after a signed order granting final approval of this Agreement has been filed provided no
11 motion to vacate the judgment, appeal, writ or other appellate proceeding having been filed; or (b) the
12 seventh (7th) calendar day after any motion to vacate the judgment, appeal, writ, or other appellate
13 proceeding opposing the Agreement has been finally dismissed with no material change to the terms of
14 this Agreement and there is no right to pursue further remedies or relief, whichever is later.

15 1.18 “Final Approval Date” means the date a signed order granting final approval of this
16 Agreement is filed with the Court.

17 1.19 “Gross Settlement Amount” is the sum of One Hundred and Five Thousand Dollars
18 (\$105,000).

19 1.20 “LWDA” means the California Labor and Workforce Development Agency.

20 1.21 “Net Settlement Amount” is the portion of the Gross Settlement Amount available for
21 distribution to Qualified Claimants, as described in this Agreement, after deduction of Plaintiff’s
22 attorneys’ fees and litigation costs, Claims Administrator Costs, the PAGA Payment, and Enhancement
23 Payment to the Class Representative.

24 1.22 “Notice of Settlement” means the document substantially in the form attached hereto as
25 Exhibit 1.

26 1.23 “Notice Period” means forty-five (45) calendar days from the initial mailing of the Notice
27 of Settlement to Class Members and Aggrieved Employees.

28 1.24 “PAGA” means Private Attorneys General Act.

1 1.25 “PAGA Payment” means the amount allocated from the Gross Settlement Amount towards
2 resolving claims under the Private Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq.*

3 1.26 “PAGA Claim Period” means from November 9, 2019 up to either (1) the date a signed
4 order preliminarily approving the settlement is filed, or (2) sixty (60) days after this Agreement is
5 signed, whichever is earlier.

6 1.27 “Parties” mean Defendants and Plaintiff.

7 1.28 “Preliminary Approval Date” means the date a signed order granting preliminary approval
8 of this Agreement is filed with the Court.

9 1.29 “QSF” means a Qualified Settlement Fund set up by the Claims Administrator for the
10 benefit of the Qualified Claimants and/or Aggrieved Employees and from which the payments under this
11 Agreement shall be made. Any amounts Defendants have agreed to pay under this Agreement shall remain
12 the property of Defendants until the payments required under the Agreement are made.

13 1.30 “Qualified Claimant” means any and all Class Members who have not made any timely
14 request to opt-out of the Agreement.

15 1.31 “Qualified Claimant’s Released Claims” means all claims, charges, complaints, demands,
16 actions, and causes of action contained in the Complaint, and any other claims, charges, complaints,
17 demands, actions, and causes of action that could have been brought based on the facts alleged in the
18 operative Complaint, through the Class Period. This release excludes the release of claims not permitted
19 by law. The Qualified Claimant’s Released Claims excludes claims for workers’ compensation or
20 unemployment insurance benefits. This release will cover all Class Members who do not opt out.

21 1.32 “Qualifying Workweeks” are weeks worked by Class Members and/or Aggrieved
22 Employees during the Class Period and/or PAGA Claim Period, respectively, in California. For Class
23 Members, workweeks shall be defined as the total length of service (in days) in California during the Class
24 Period divided by seven (7). For Aggrieved Employees workweeks shall be defined as the total length of
25 service (in days) in California during the PAGA Claim Period divided by seven (7). The calculation of a
26 Class Member’s and/or Aggrieved Employee’s workweeks and a determination as to whether a Class
27 Member and/or Aggrieved Employee was actively employed in California in a particular workweek shall
28 be construed from Defendants’ records.

1 1.33 “Released PAGA Claims” means any and all claims, charges, complaints, demands,
2 actions, and causes of action that were or could have been brought under the Private Attorneys General
3 Act, Labor Code § 2698 *et seq.*, based on the facts or claims alleged in the Action during the PAGA Claim
4 Period. Aggrieved Employees cannot opt out of this waiver of claims.

5 1.34 “Released Parties” means Defendants, as well as Defendants’ officers, shareholders,
6 directors, agents, representatives, employees, attorneys, insurers and their successors and assigns, and all
7 persons acting by, through, under, or in concert with any of them.

8 **2. DESCRIPTION OF THE LITIGATION**

9 2.1 On or about November 9, 2020, Plaintiff sent notice to the LWDA to exhaust
10 administrative remedies under the PAGA for 1) violations of Labor Code §§ 510, 1194, and IWC Wage
11 Order No. 4, § 3 (Failure to Pay Overtime Wages); 2) violations of Labor Code §§ 226.7, 512, and IWC
12 Wage Order No. 4, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu
13 Thereof); 3) violations of Labor Code § 226.7 and IWC Wage Order No. 4, § 12(A) (Failure to Provide
14 Rest Periods or Pay Premiums in Lieu Thereof); 4) violations of Labor Code §§ 226, 226.3 (Failure to
15 Provide Accurate Wage Statements); 5) violations of Labor Code §§ 201-203, 256 (Failure to Pay Final
16 Wages); 6) violations of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in
17 Any Industrial Welfare Commission Order); and 7) violations of Labor Code §§ 226.3, 1174, and IWC
18 Wage Order No. 4 § 7(A)(3) (Failure to Maintain Accurate Records). The LWDA did not respond to the
19 notice within the statutorily required time frame and, as such, Plaintiff became authorized to act as a
20 Private Attorneys General on all alleged PAGA claims.

21 2.2 After exhausting administrative remedies, Plaintiff filed a class action Complaint on
22 January 21, 2021 in Sacramento County Superior Court on behalf of herself, Class Members and
23 Aggrieved Employees alleging claims for 1) failure to pay overtime wages; 2) failure to pay minimum
24 wages; 3) meal period violations; 4) rest period violations; 5) wage statement violations; 6) waiting time
25 penalties; 7) unfair competition; and 8) Private Attorneys General Act., including those PAGA claims
26 alleged in the November 9, 2020 notice to the LWDA.

27 2.3 Through informal discovery, Defendants and Defendants’ Counsel provided Class
28 Counsel with copies of all applicable versions of its policies and procedures, employee handbooks,

1 information on Class Members including, but not limited to, Class Members' workweeks, dates of
2 employment, total number of Class Members, their rates of pay, and pay periods as well as timecard data
3 and payroll reports for a randomly selected sample of Class Members.

4 2.4 After Class Counsel received the data, the Parties engaged in informal settlement
5 negotiations, but were not able to come to a resolution. On June 23, 2021, the Parties participated in a
6 lengthy mediation with private mediator David Perrault. At the conclusion of the mediation, the Parties
7 were able to come to a resolution. At all times, the Parties' settlement negotiations have been non-
8 collusive, adversarial, and at arm's length.

9 2.5 Discussions between Plaintiff and Class Counsel, discussions between counsel for the
10 Parties, document productions, extensive legal analysis, the provision of information by Defendants to
11 Plaintiff and the detailed analysis of the records, including expert analysis, have permitted each side to
12 assess the relative merits of the claims and the defenses to those claims.

13 2.6 In the Action, Plaintiff contends that Defendants violated California law in 1) failing to pay
14 Plaintiff and similarly situated employees for all hours worked due their failure to pay for off-the-clock
15 "on call" time and inaccurate record keeping policy; 2) failing to provide duty free meal and rest periods
16 by requiring Plaintiff and similarly situated employees to remain "on call" during breaks; 3) failing to
17 accurately itemize the hours and wages earned on paystubs issued to class members; and 4) failing to
18 properly pay overtime and premium pay due to Defendants' failure to incorporate shift differentials into
19 the Regular Rate of Pay ("RROP"). The waiting time penalties, unfair competition, and PAGA claims
20 are derivative of these violations. Defendants have denied each of Plaintiff's claims and Defendants have
21 denied that this Action is appropriate for class certification for anything other than settlement purposes.
22 The agreed upon Gross Settlement Amount was reached after evaluating the Parties' theories of potential
23 exposure for the underlying claims and the class data supporting these claims. The Parties, with the
24 assistance of the mediator, also assessed appropriate discounts to the potential liability based on
25 Defendants' factual and legal contentions and defenses.

26 2.7 The Parties agree that the above-described investigation and evaluation, as well as
27 discovery and the information exchanged to date, are more than sufficient to assess the merits of the
28 respective Parties' positions and to compromise the issues on a fair and equitable basis. Plaintiff, Class

1 Counsel, Defendants, and Defendants' Counsel have concluded that it is desirable that the Action be
2 settled in a manner and upon such terms and conditions set forth herein in order to avoid further expense,
3 inconvenience and distraction of further legal proceedings, and the risk of an adverse outcome each of the
4 Parties potentially face in the Action. Therefore, the Parties desire to resolve the claims in the Action.
5 Plaintiff, Class Counsel, Defendants, and Defendants' Counsel are of the opinion that the Agreement for
6 the consideration and terms set forth herein is fair, reasonable, and adequate in light of all known facts
7 and circumstances.

8 **3. THE CONDITIONAL NATURE OF THIS AGREEMENT**

9 3.1 This Agreement and all associated exhibits or attachments are made for the sole purpose
10 of settling the Action. This Agreement and the settlement it evidences are made in compromise of disputed
11 claims. Because the Action was pled as a class action, this Agreement must receive preliminary and final
12 approval by the Court. Accordingly, the Parties enter into this Agreement and associated settlement on a
13 conditional basis. If the Court does not enter an order granting final approval of the Agreement, or if the
14 Court's approval of the settlement is reversed or materially modified on appellate review, this Agreement
15 shall be deemed null and void; it shall be of no force or effect whatsoever; it shall not be referred to or
16 utilized for any purpose whatsoever; and the negotiation, terms and entry of the Agreement shall remain
17 subject to the provisions of California Evidence Code Sections 1119 and 1152, Federal Rule of Evidence
18 408, and any other analogous rules of evidence that may be applicable.

19 3.2 Defendants have denied all claims, charges, complaints, demands, actions, and causes of
20 action as to liability, damages, liquidated damages, penalties, interest, fees, restitution, injunctive relief
21 and all other forms of relief asserted in the Action. Defendants have agreed to resolve the Action via this
22 Agreement, but to the extent this Agreement is deemed void or the Final Approval Date does not occur,
23 Defendants do not waive, but rather expressly reserve, all rights to challenge all such claims and
24 allegations in the Action upon all procedural and factual grounds, including, without limitation, the ability
25 to challenge class or collective treatment on any grounds, as well as to assert any and all other potential
26 defenses or privileges.

27 //

28 //

1 **4. SCOPE OF THE CLASS**

2 4.1 The scope of the class of individuals encompassed under the Agreement, who are entitled
3 to all benefits as authorized under the Agreement and subject to all obligations and duties required under
4 the Agreement, shall include all Class Members as defined in Section 1.8 and all Aggrieved Employees
5 as defined in Section 1.2. However, it shall not include any Class Members who submit valid and timely
6 requests to opt-out of the Agreement and settlement, as set forth in Section 7.5.1.

7 4.2 Individuals entitled to recover under this Agreement will include only those individuals
8 who are identified as being within the scope of this Agreement under Section 4.1.

9 4.3 Any person who believes that he or she is a Class Member or Aggrieved Employee and
10 wishes to participate in the Agreement, but did not receive a Notice of Settlement because his or her name
11 did not appear on the class list provided to the Claims Administrator prior to mailing, may submit a data
12 request to the Claims Administrator. The data request must contain all of the following information: (a)
13 the full name and, if applicable, Social Security Number of the individual making the request; (b) the
14 name used by such employee as of the time his or her employment with Defendants ended; (c) the years
15 during which such employee was employed with Defendants; and (d) a return address to which a response
16 may be sent. Every data request must be postmarked on or before the conclusion of the Notice Period or
17 otherwise submitted to the Claims Administrator such that it is received before the conclusion of the
18 Notice Period. Upon receipt of any data requests, the Claims Administrator shall promptly (in no event
19 more than two business days) transmit the data requests to Defendants' Counsel and request that
20 Defendants review their records.

21 4.4 If Defendants do agree that the person listed in a data request is a Class Member and/or
22 Aggrieved Employee, the Claims Administrator shall promptly mail a Notice of Settlement to the person
23 who submitted the data request, at the address designated for that purpose in the data request. All
24 provisions of this Agreement relating to the Notice of Settlements shall apply to Notice of Settlements
25 sent in response to data requests, and any person who submits a data request and is sent a Notice of
26 Settlement in response shall be treated by the Claims Administrator as a Class Member and/or Aggrieved
27 Employee for all other purposes.

1 4.5 If Defendants disagree that the person listed in a data request is a Class Member and/or
2 Aggrieved Employee, Defendants' Counsel and Class Counsel shall attempt to resolve any such dispute
3 in good faith within seven (7) calendar days of Class Counsel being advised in writing of the data request
4 dispute. Defendants' records shall control unless the individual submitting the data request provides
5 persuasive evidence to doubt the accuracy of those records. Each data request dispute that Defendants'
6 Counsel and Class Counsel cannot timely resolve shall be resolved by the Claims Administrator. The
7 Claims Administrator must accept and weigh all the evidence provided in a good faith attempt to resolve
8 the dispute. The Claims Administrator must resolve any dispute submitted to it within seven (7) calendar
9 days after Defendants' Counsel and Class Counsel submit the dispute to the Claims Administrator. The
10 decision by the Claims Administrator shall be final and there shall be no right of appeal.

11 **5. TERMS OF THE SETTLEMENT**

12 The Parties agree as follows:

13 5.1 Gross Settlement Amount: In consideration and exchange for the releases described in
14 Section 6, Defendants shall pay the Gross Settlement Amount (\$105,000). Funding of the Gross
15 Settlement Amount shall occur within twenty-one (21) days after the Final Approval Date to be held in
16 trust in a QSF by the Claims Administrator for no more than fourteen (14) days after Defendant's last day
17 to fund the settlement. The Gross Settlement Amount includes payments to Qualified Claimants,
18 attorneys' fees up to a maximum of 35% of the Gross Settlement Amount which equals \$36,750, attorneys'
19 costs not to exceed \$10,000 Claims Administrator Costs estimated to not exceed \$5,000, the Enhancement
20 Payment of \$7,500 to the Class Representative, and the PAGA Payment of \$10,000. Any monies
21 necessary to satisfy Defendants' tax obligations (e.g. employer FICA, FUTA and SDI contributions on
22 wage payments) on any monies distributed to Qualified Claimants will be paid in addition to the Gross
23 Settlement Amount.

24 5.2 Attorneys' Fees and Costs: Class Counsel will apply to the Court for attorney's fees of
25 35% or \$36,750 of the Gross Settlement Amount, which shall be paid from the Gross Settlement Amount.
26 Defendants have agreed to not oppose Class Counsel's application for attorneys' fees, so long as it does
27 not exceed the \$36,750 threshold. Class Counsel will also be entitled to reimbursement for advanced
28 litigation expenses not to exceed \$10,000, which shall be paid from the Gross Settlement Amount.

1 Defendants have agreed to not oppose Class Counsel's request for reimbursement for advanced litigation
2 expenses so long as they do not exceed the \$10,000 threshold. The Claims Administrator will issue Class
3 Counsel an IRS Form 1099 for the attorneys' fees and costs paid under this Agreement. In the event that
4 the Court awards less than the requested attorneys' fees and/or costs, the portion of the requested amounts
5 not awarded to Class Counsel shall be added to the Net Settlement Amount to be distributed to Qualified
6 Claimants on a pro rata basis.

7 5.3 Claims Administrator Costs: The Claims Administrator Costs shall be paid from the Gross
8 Settlement Amount and shall not exceed \$5,000. The difference between any actual costs and the allocated
9 \$5,000 shall be added to the Net Settlement Amount to be distributed to Qualified Claimants on a pro rata
10 basis.

11 5.4 Enhancement Payment: Class Counsel, on behalf of Plaintiff, shall apply to the Court for
12 an Enhancement Payment to the Class Representative in an amount not to exceed Seven Thousand Five
13 Hundred Dollars (\$7,500) to compensate for the risks, time, and expense of her involvement in the Action
14 and securing the benefits of this Agreement for Class Members. The Enhancement Payment is in addition
15 to the Claim Amount Plaintiff would otherwise be due under the Agreement as a Qualified Claimant.
16 Defendants have agreed to not oppose Class Counsel's request for an Enhancement Payment to Plaintiff
17 so long as it does not exceed the amount stated herein. The Enhancement Payment will be designated as
18 a non-wage payment and reported on an IRS Form 1099. In the event that the Court awards less than the
19 Enhancement Payment amount requested, then any portion of the requested amount not awarded to the
20 Class Representative shall be added to the Net Settlement Amount to be distributed to Qualified Claimants
21 on a pro rata basis.

22 5.5 PAGA Payment: Ten Thousand Dollars (\$10,000) of the Gross Settlement Amount shall
23 be allocated to resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment will
24 be paid to the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees on a pro rata
25 basis as described below in Section 5.8. Any amount not approved by the Court for the allocated PAGA
26 Payment shall be added to the Net Settlement Amount to be distributed to Qualified Claimants on a pro
27 rata basis.
28

1 5.6 Treatment of Residue and Cy Pres: For any portion of the Net Settlement Amount or
2 PAGA Payment allocated to Qualified Claimants and/or Aggrieved Employees that were not claimed by
3 cashing their respective settlement checks before the deadline to do so, that remaining amount shall be
4 donated to the Center for Workers Rights. No portion of the Gross Settlement Amount will revert to
5 Defendants for any reason.

6 5.7 No Additional Benefits Contributions: All Claim Amounts paid to Qualified Claimants
7 and/or Aggrieved Employees shall be deemed to be income solely in the year in which such amounts were
8 actually received. It is expressly understood and agreed that the receipt of such Claim Amounts will not
9 entitle any Qualified Claimant and/or Aggrieved Employee to any new or additional compensation or
10 benefits under any company bonus or other compensation or benefit plan or agreement in place during the
11 period covered by the Agreement, nor will it entitle any Qualified Claimant and/or Aggrieved Employee
12 to any increased retirement, 401(k) and/or 403(b) benefits or matching benefits, or deferred compensation
13 benefits. It is the intent of this Agreement that the Claim Amounts provided for in this Agreement are the
14 sole payments to be made by Defendants to the Qualified Claimants and Aggrieved Employees in
15 connection with this Agreement (notwithstanding any contrary language or agreement in any benefit or
16 compensation plan document that might have been in effect during the period covered by this Agreement).

17 5.8 Pro Rata Distribution Formula: Payment to Qualified Claimants and/or Aggrieved
18 Employees of their Claim Amount will not require the submission of a claim form. A Net Settlement
19 Amount will be determined by subtracting from the Gross Settlement Amount any amounts for approved
20 attorneys' fees and costs, any Enhancement Payment to the Class Representative, the Claims
21 Administrator Costs, and the PAGA Payment. Each Class Member's share will be determined by dividing
22 their total weeks worked within the Class Period by the total weeks worked by all Class Members within
23 the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class
24 Member's individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25%
25 portion of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA
26 Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period.
27 That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved
28 Employee's individual share.

1 5.9 Tax Allocation: The Parties recognize that the Claim Amounts to be paid to Qualified
2 Claimants and/or Aggrieved Employees reflect a settlement of a dispute over claimed penalties and wages.
3 The Claims Administrator shall calculate the employer's share of payroll taxes on the amounts paid to
4 Qualified Claimants as wages as well as calculating all required withholdings and deductions from said
5 wage payments. The characterization of Claim Amounts to Qualified Claimants and/or Aggrieved
6 Employees are as follows:

7 5.9.1 One Third (1/3) of each Qualified Claimants' Claim Amount shall be allocated for
8 payment of disputed wages and shall be subject to required employer taxes. Qualified Claimants shall
9 receive an IRS Form W-2 for reporting of this portion of their Claim Amount.

10 5.9.2 Two Thirds (2/3) of each Qualified Claimants' Claim Amount shall be allocated
11 for disputed statutory penalties and interest, and no amount shall be deducted for any taxes. This portion
12 of the Claim Amount consists of other income, not wages, for which the Qualified Claimants shall receive
13 an IRS Form 1099-MISC.

14 5.9.3 The entirety (100%) of each Aggrieved Employee's share of the 25% portion of the
15 PAGA Payment shall be allocated for payment of disputed civil penalties, and no amount shall be deducted
16 for any taxes. This portion of the Claim Amount consists of other income, not wages, for which the
17 Aggrieved Employees shall receive an IRS Form 1099-MISC.

18 5.10 Qualified Claimants and Aggrieved Employees shall be solely responsible for the reporting
19 and payment of their share of any federal, state and/or municipal income or other taxes on payments made
20 pursuant to this Agreement, and shall hold the Parties, Class Counsel, and Defendants' Counsel free and
21 harmless from any claims resulting from treatment of such payments as non-taxable, including the
22 treatment of such payments as not subject to withholding or deduction for payroll and employment taxes.
23 No party has made any representation to any of the other Parties as to the taxability of any payments
24 pursuant to this Agreement, including the payments to Qualified Claimants, the payments to Aggrieved
25 Employees, the payments to Class Counsel, the payments to the Class Representative, the payroll tax
26 liability of Defendants, or the allocation of the Net Settlement Amount or PAGA Payment to wage and
27 non-wage income as provided in this Section, or otherwise as to tax implications of any provision of this
28 Agreement.

1 5.11 No Additional Contribution by Defendants: Defendants' monetary obligation under this
2 Agreement is limited to the Gross Settlement Amount and any employer-side payroll taxes owed on
3 amounts characterized as wages under this Agreement. All other costs and expenses arising out of or in
4 connection with the performance of this Agreement shall be paid from the Gross Settlement Amount,
5 unless expressly provided otherwise herein. However, in the event this agreement is deemed null and
6 void as described in Section 3 because the Court, in its independent determination, finds that the
7 Agreement does not meet the standards for settlement approval, then Defendants and Plaintiff shall be
8 equally responsible for the costs of the Claims Administrator incurred between the date the Agreement
9 was executed and the date of such event.

10 5.12 Certification For Settlement Purposes: The Parties agree that, for purposes of settlement
11 only, certification of the class as defined in Sections 1.8 and 4.1 is appropriate and the requisites for
12 establishing class certification have been met and are met.

13 5.13 Adequacy of Class Counsel and Class Representatives: The Parties agree that, for purposes
14 of settlement only, Class Counsel and Plaintiff are adequate representatives for Class Members and
15 Aggrieved Employees.

16 5.14 Res Judicata Effect: The Order and Final Judgment entered by the Court granting final
17 approval of the settlement shall have *res judicata* effect as to a) each Qualified Claimant, as to class action
18 claims asserted in this Action, for Class Period, b) as to each aggrieved PAGA employee, as to the PAGA
19 claims asserted issue in this Action, for the PAGA Claim Period, and 3) the State of California with respect
20 to said PAGA claims

21 **6. RELEASE**

22 6.1 Release of Claims by Qualified Claimants: Upon the Effective Date, all Qualified
23 Claimants will be deemed to fully, finally and forever release Qualified Claimant's Released Claims as to
24 all Released Parties. In addition, on the Effective Date, all Qualified Claimants and their successors in
25 interest will be permanently enjoined and forever barred from prosecuting any of Qualified Claimant's
26 Released Claims against any of the Released Parties. Although Qualified Claimants may hereafter
27 discover facts in addition to or different from those which they now know or believe to be true with respect
28 or related to the subject of this Action, as of the effective date, class members shall be deemed to have

1 fully, finally and forever settled and released any and all of the released claims, for the Class Period,
2 known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or
3 hidden, which now exist or heretofore have existed upon any theory of law or equity now existing,
4 including but not limited to conduct which is negligent, intentional, with or without malice, or breach of
5 any duty, law, or rule, without regard to subsequent discovery or existence of such different or additional
6 facts. Each and every Qualified Claimant shall be permanently enjoined and forever barred from
7 prosecuting any and all claims released pursuant to this Agreement

8 6.2 Release of Claims by Aggrieved Employees: Upon the Effective Date, all Aggrieved
9 Employees will be deemed to fully, finally and forever release the Released PAGA Claims as to all
10 Released Parties. In addition, on the Effective Date, all Aggrieved Employees and their successors in
11 interest will be permanently enjoined and forever barred from prosecuting any of the Released PAGA
12 Claims against any of the Released Parties.

13 6.3 Release by Plaintiff: Upon the Effective Date, Plaintiff will be deemed to fully, finally and
14 forever release the Qualified Claimant's Released Claims, Released PAGA Claims, and Class
15 Representative's Released Claims as to all Released Parties. In addition, on the Effective Date, Plaintiff
16 and any successors in interest will be permanently enjoined and forever barred from prosecuting any of
17 the Qualified Claimant's Released Claims, Released PAGA Claims, and Class Representative's Released
18 Claims against any and all of the Released Parties. Plaintiff agrees that upon executing of this Agreement,
19 she will not serve as a PAGA representative in any future action against Defendants. Plaintiff further
20 agrees that she will not serve as a witness against Defendants in any other lawsuit or legal proceeding
21 against Defendants, in any forum, except as compelled by subpoena or court order.

22 6.4 Notwithstanding the provisions of section 1542 of the Civil Code of the State of California,
23 Plaintiff irrevocably and unconditionally waives, releases, and forever discharges Defendants and each
24 and all of its officers, agents, directors, supervisors, employees, representatives, insurers, and their
25 successors and assigns, and all persons acting by, through, under, or in concern with any of them, from
26 any and all charges, complaints, claims, demands, actions, causes of action, judgments, rights, fees,
27 damages, debts, obligations, and liabilities of any kind of nature whatsoever, known or unknown,
28 suspected or unsuspected, which Plaintiff at any time heretofore had or claimed to have or which Plaintiff

1 may have regarding events that have occurred as of the date of this Agreement, including, without
2 limitation, any and all claims related or in any manner incidental to the Action. This release of claims by
3 Plaintiff shall take effect upon the date that Defendant transfers the Gross Settlement Amount to the Claim
4 Administrator.

5 6.5 All rights under section 1542 of the Civil Code of the State of California are hereby
6 expressly waived by Plaintiff, as to the release of claims by Plaintiff. Section 1542 of the Civil Code of
7 the State of California provides as follows:

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

12 **7. SETTLEMENT ADMINISTRATION**

13 7.1 Duties of Claims Administrator: The Claims Administrator shall be responsible for: 1)
14 receiving Class Member and Aggrieved Employee contact information and confirming addresses are
15 valid; 2) calculating estimated Claim Amounts and any and all taxes associated with the Claim Amounts,
16 including Employer taxes; 3) taking appropriate steps to trace and locate any individual Class Members
17 and Aggrieved Employee whose address or contact information as provided to the Claims Administrator
18 is inaccurate or outdated and mailing the Notice of Settlement to Class Members; 4) providing notification
19 to the appropriate state and federal officials of this Agreement as required under the law; 5) receiving,
20 independently reviewing, and resolving any challenges (in consultation with Class Counsel and
21 Defendants' Counsel) from Class Members and/or Aggrieved Employees, including any associated
22 documentation, regarding their Qualified Workweek calculations; 6) receiving and serving on Class
23 Counsel, Defendants' Counsel, and the Court, copies of any written objections, and/or any opt out
24 statements; 7) establishing a toll free telephone line and responding to inquiries and requests for
25 information or assistance from Class Members and/or Aggrieved Employees; 8) maintaining a QSF; 9)
26 determining and paying the final amounts due to be paid under the Agreement after resolution of all
27 challenges, disputes, opt-outs, awarded attorneys' fees and costs, Claims Administrator Costs, PAGA
28 Payment, taxes, any Enhancement Payments, and for funds that cannot be distributed due to the inability

1 to locate Class Members or Aggrieved Employees; 10) determining the validity of any disputes or late
2 opt-outs by previously unidentified Class Members or Aggrieved Employees; 11) paying any residual
3 funds from uncashed checks; 12) reporting to Class Counsel and Defendants' Counsel regarding the
4 statistics of the administration, including (a) the number of initial Notice of Settlements mailed; (b) the
5 number of forwarded Notice of Settlements; (c) the number of re-mailed Notice of Settlements; (d) the
6 number of total undeliverable Notice of Settlements; (e) the number of address traces performed for
7 undeliverable Notice of Settlements; (f) the number of Notice of Settlements undeliverable from traced
8 addresses; (g) the number of total objections received; (h) the number of opt-out requests received; (i) the
9 number of disputes received; (j) the number of disputes resolved; 13) providing a declaration to the Court
10 regarding the final statistics of the administration and compliance with all payment obligations under the
11 Agreement; 14) completing all necessary tax reporting on the QSF and payment of the Claim Amounts to
12 Qualified Members and Aggrieved Employees; and 15) carrying out other related tasks as necessary to
13 effectuate the terms of this Agreement and any Order of the Court. All disputes relating to the Claims
14 Administrator's ability and need to perform its duties shall be referred to the Court, if necessary, which
15 will have continuing jurisdiction over the terms and conditions of this Agreement, until all payments and
16 obligations contemplated by the Agreement have been fully executed.

17 7.2 Notice to Class Members and Aggrieved Employees: The Notice of Settlement will
18 provide Class Members and Aggrieved Employees with a summary of the terms and conditions of the
19 Agreement, how to participate in the settlement, how to object to the Agreement, how to dispute the
20 individual's Qualifying Workweeks, and how to opt-out from the Agreement. The Notice of Settlement
21 will also inform Class Members and Aggrieved Employees of the Gross Settlement Amount, Net
22 Settlement Amount, proposed attorneys' fees and costs allocations, any proposed Enhancement Payments,
23 proposed Claims Administrator Cost allocations, proposed PAGA Payment allocations, the scope of the
24 class, the nature and extent of the released claims, dates set for a fairness hearing and hearing on Class
25 Counsels' motion for attorneys' fees and costs. The Notice of Settlement shall include information
26 regarding Class Member's and Aggrieved Employee's estimated Claim Amount.

27 7.3 Class Member Data and Mailing: No later than fourteen (14) calendar days after the
28 Preliminary Approval Date, Defendants shall provide the Claims Administrator with the name, last known

1 mailing address, last known telephone number, Social Security Number, start and end date of employment
2 (if any) of each Class Member, and any other information the Claims Administrator needs to effectuate
3 notice to Class Members and Aggrieved Employees as outlined herein. The Claims Administrator shall
4 review the data to determine the number of Qualifying Workweeks for each Class Member and Aggrieved
5 Employee. No later than fourteen (14) calendar days after receipt of such address information, the Claims
6 Administrator will perform a national change of address ("NCOA") search, update the addresses per the
7 results of the NCOA search, and then mail the Notice of Settlement, substantially in the form attached as
8 Exhibit 1, to each Class Member and Aggrieved Employee by first-class mail, postage prepaid. The
9 Claims Administrator shall maintain all information received from Defendants confidential to itself, and
10 Defendants' Counsel. However, Class Counsel shall be able to review the breakdown of Qualified
11 Workweeks and estimated Claim Amounts for Class Members and Aggrieved Employees prior to mailing
12 for quality assurance provided the personal identifying information is redacted and/or omitted. The parties
13 agree the social security numbers will be used only by the settlement administrator for the sole purpose of
14 effectuating the Agreement and will not be provided to Class Counsel at any time or in any form or
15 included in notices. Social security numbers and contact information shall not be filed with the Court
16 except as ordered by the Court and if placed under seal.

17 7.4 Returned and/or Re-mailed Notice of Settlements: In the event that a Notice of Settlement
18 is returned to the Claims Administrator as non-delivered on or before the conclusion of the Notice Period,
19 the Notice of Settlement shall be sent to the forwarding address affixed thereto within five (5) calendar
20 days. If no forwarding address is provided, then the Claims Administrator shall promptly attempt to
21 determine a correct address using a single skip-trace, computer or other search using the name, address
22 and/or Social Security number of the individual involved, and shall then perform a single re-mailing within
23 five (5) calendar days. Following each search that does not result in a corrected address, for those Class
24 Members who appear to be current employees of Defendants at the time of the Preliminary Approval Date,
25 the Claims Administrator shall contact Defendants' Counsel for assistance and Defendants shall cooperate
26 in good faith with the Claims Administrator's reasonable efforts to obtain valid mailing addresses for
27 Class Members to the extent they are active employees of Defendants. In the event the Notice of
28 Settlement is forwarded to a new address and/or re-mailed to a Class Member, the deadline for the Class

1 Member to submit any request to opt-out, dispute, or objection shall be the end of the Notice Period or ten
2 (10) days from the date of the re-mailing, whichever is later. In the event the procedures in this Section
3 are followed and the Class Member does not timely and properly request to opt-out, the Class Member
4 shall be bound by all terms of the Agreement, including the Releases contained in Section 6.

5 7.5 Responses to Notice of Settlement:

6 7.5.1 *Opt-Outs:* The Notice of Settlement shall provide that Class Members who wish
7 to exclude themselves from the Agreement must submit a request to opt-out as provided in this Section.
8 The request to opt-out must (a) state the Class Member's full name and date of birth; (b) a statement that
9 he or she does not want to be a Class Member, does not want to participate in the settlement, and/or wants
10 to be excluded from the settlement; (c) identify the case name and number (*i.e. Garcia v. Aquality Water*
11 *Management, Inc.*, 34-2021-00292794); (d) be signed; and (e) be post-marked no later than the conclusion
12 of the Notice Period or the re-mailing timeline stated in Section 7.4. The Class Member must personally
13 sign the request to opt-out. No request to opt-out may be made on behalf of a group of Class Members.
14 The date of the postmark on the return-mailing envelope shall be the exclusive means used to determine
15 whether a request to opt-out has been timely submitted. Any Class Member who requests to opt-out of
16 the Agreement will not be entitled to any benefit of the Agreement or any portion of the Net Settlement
17 Amount, will not be bound by the Agreement, nor will they have any right to object, appeal or comment
18 thereon. Class Members who fail to submit a valid and timely request to opt-out shall be bound by all
19 terms of the Agreement and any order or final judgment thereon, regardless of whether they otherwise
20 have requested to opt-out of the Agreement. Aggrieved Employees cannot opt out of this Agreement as
21 it relates to the PAGA Payment or Released PAGA Claims regardless of whether they opt out of being a
22 Class Member. No party, nor any attorney for any party, or anyone acting on any of their behalf or at any
23 of their direction, may encourage class members to opt out of this Agreement. No opt out may be made
24 on behalf of a group.

25 7.5.2 *Objection Procedures:* Any Class Member who does not opt-out but who wishes
26 to object to this Agreement or otherwise to be heard concerning this Agreement shall send their written
27 objections to the Claims Administrator and also serve copies of the objections on Class Counsel and
28 Defendants' Counsel. The Notice of Settlement shall make clear that the Court can only approve or deny

1 the Agreement, not change the terms of the Agreement. The objection must (a) state the Class Member's
2 full name and date of birth; (b) provide evidence that the individual is, in fact, a Class Member; (c) state
3 the reasons for the objection(s), including any legal analysis and/or supporting documentation; (d) identify
4 the case name and number (*i.e. Garcia v. Aquality Water Management, Inc.*, 34-2021-00292794) (e) be
5 signed; and (f) be post-marked no later than the conclusion of the Notice Period or the re-mailing timeline
6 stated in Section 7.4. The objecting Class Member must also file a notice of intent to appear with the
7 Court and serve the notice on Class Counsel and Defendants' Counsel, if they intend to appear at the final
8 approval hearing.

9 7.5.3 *Dispute Procedures:* Any Class Member who disputes the number of Qualifying
10 Workweeks on the Notice of Settlement shall contact the Claims Administrator. The dispute must (a)
11 identify the nature of the dispute; (b) provide any information or documentation supporting the dispute;
12 (c) be signed; and (d) be post-marked no later than the conclusion of the Notice Period or the re-mailing
13 timeline stated in Section 7.4. The Claims Administrator shall promptly (in no event more than two
14 business days) forward all such disputes to Defendants' Counsel and request that Defendants review the
15 dispute. Defendants' records shall presumptively control unless the Class Member can produce
16 documentation evidencing other periods of employment worked. If Defendants do agree with submitted
17 information, the Class Member shall be credited or subtracted Qualifying Workweeks in accordance with
18 their submitted dispute and that final number of Qualified Workweeks shall govern the calculation of that
19 Class Member's Claim Amount. If Defendants do not agree with the submitted information, Defendants'
20 Counsel will promptly advise Class Counsel of the dispute, which includes turning over any
21 documentation submitted by the Class Member as part of the dispute. Defendants' Counsel and Class
22 Counsel shall attempt in good faith to resolve any such dispute within five (5) calendar days of Class
23 Counsel being advised of the dispute. Each dispute that Defendants' Counsel and Class Counsel cannot
24 timely resolve shall be resolved by the Claims Administrator or Court.

25 7.5.4 *Deficient Opt-Outs, Objections, or Disputes:* In the event that a deficient opt-out,
26 objection, or dispute is received on or before the conclusion of the Notice Period, the Claims Administrator
27 shall mail a letter to the Class Member within five (5) calendar days informing them of the deficiency. If
28 a deficiency letter is mailed to a Class Member, the deadline for the Class Member to cure the deficiency

1 shall be the end of the Notice Period or ten (10) days from the date of the deficiency letter, whichever is
2 later.

3 7.6 Due Process Acknowledgement: Compliance with the procedures set forth in Sections 7.1
4 to 7.5.4 shall constitute due and sufficient notice to Class Members of the Action and the Agreement and
5 shall satisfy Class Members' due process rights. Nothing else shall be required of the Parties, Class
6 Counsel or Defendants' Counsel to provide notice of the proposed Agreement.

7 7.7 Claims Administrator Declaration Regarding Notice Period: Within twenty-one (21) days
8 after the conclusion of the Notice Period, the Claims Administrator shall provide Class Counsel and
9 Defendants' Counsel with a signed declaration under penalty of perjury providing a complete and detailed
10 report regarding the statistics and responses of settlement administration to date and all the Claims
11 Administrators' obligations under Sections 5.8 to 5.9-5.9.3, 7.1 to 7.5.4, and 7.9.

12 7.8 Claims Administrator Payments to Qualified Claimants, Class Counsel and Plaintiff:
13 Within seven (7) calendar days after the Final Approval Date and the Court's determination of the amount
14 of attorneys' fees and costs payable to Class Counsel, the Enhancement Payment payable to Plaintiff, the
15 PAGA Payment, and Claims Administrator Costs, the Claims Administrator shall calculate the final Net
16 Settlement Amount, the final Claim Amounts for Qualified Claimants and/or Aggrieved Employees, any
17 applicable taxes thereon, and report the results of these calculations to Class Counsel and Defendants'
18 Counsel. Defendants are to wire the Gross Settlement Amount and applicable taxes necessary to fund the
19 Settlement as described in Section 5.1 to the Claims Administrator within twenty-one (21) days after the
20 Final Approval Date to be to be held in trust in a QSF. Within fourteen (14) days after Defendants' last
21 day to fund the settlement, the Claims Administrator shall deliver payment of Class Counsels' attorney's
22 fees and costs, the Enhancement Payment payable to Plaintiff, the 75% portion of the PAGA Payment
23 payable to the LWDA, Claims Administrator Costs, and payment to Qualified Claimants and/or Aggrieved
24 Employees as required under this Agreement and approved by Court.

25 7.8.1 The Claims Administrator shall send a check by mail for the Court-approved
26 attorneys' fees and costs to Class Counsel unless another method is requested by Class Counsel. Class
27 Counsel shall provide the Claims Administrator with the pertinent taxpayer identification number and
28 payment instructions after the Final Approval Date.

1 7.8.2 The Claims Administrator shall send a check by mail for the Court-approved
2 Enhancement Payment to the Class Representative, care of Class Counsel unless another method is
3 requested by Class Counsel.

4 7.8.3 Only Qualified Claimants and Aggrieved Employees will receive their Claim
5 Amount.

6 7.8.4 The Claims Administrator shall remit and report the applicable portions of the
7 payroll tax payment to the appropriate taxing authorities on a timely basis pursuant to its duties under this
8 Agreement. Defendants agree to reasonably cooperate with the Claims Administrator to the extent
9 necessary to determine the amount of the payroll tax payment required.

10 7.9 Settlement Check Expiration and Uncashed Checks: The Claims Administrator shall issue
11 Claim Amounts to Qualified Claimants and Aggrieved Employees in the form of a check, which shall
12 become null and void if not deposited within one-hundred and twenty (120) calendar days of issuance.
13 After one-hundred and twenty (120) calendar days of issuance, the checks shall be voided and funds from
14 all uncashed checks shall be transmitted in accordance with Section 5.6. The Claims Administrator shall
15 deliver these funds within fourteen (14) calendar days after the check cashing deadline.

16 7.10 Claims Administrator Declaration Regarding Compliance and Settlement Administration:
17 Within twenty-one (21) days after the last day for Qualified Claimants and Aggrieved Employees to cash
18 their settlement checks, the Claims Administrator shall provide Class Counsel and Defendants' Counsel
19 with a signed declaration under penalty of perjury providing a complete and detailed report regarding the
20 settlement administration documenting that all payments under the Agreement have been made, that the
21 Court's final approval order has been complied with, and that all the obligations of the Claims
22 Administrator have been completed.

23 **8. PRELIMINARY SETTLEMENT ADMINISTRATION SCHEDULE**

24 8.1 The schedule may be modified depending on whether and when the Court grants necessary
25 approvals, orders notice to Class Members, and sets further hearings. The schedule may also be modified
26 to correct clerical errors and to reflect the provisions in the Agreement as described above. In the event
27 of such modification, the Parties shall cooperate to complete the settlement procedures as expeditiously
28 as reasonably practicable. Modifications should be explicitly set forth and agreed to in writing and signed

by Plaintiff and Defendants. The preliminary schedule for notice, approval, and payment procedures carrying out the Agreement is as follows:

Last day for Defendants to provide Claims Administrator with Class Member information	Within 14 calendar days after the Preliminary Approval Date
Last day for Claims Administrator to complete NCOA search, update Class Member mailing information, and mail Notice of Settlement	Within 14 calendar days after the Claims Administrators' receipt of Class Members' information from Defendants
Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	45 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later
Last day for Claims Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 21 calendar days after end of the Notice Period
Last day for Claims Administrator to calculate the final Net Settlement Amount, the final Claim Amounts for Qualified Claimants and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations Class Counsel and Defendants' Counsel	Within 7 days after the Final Approval Date
Last day for Defendants to fund settlement	Within 21 calendar days after Final Approval Date
Last day for Claims Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Claims Administrator Costs, payment to Qualified Claimants, and payment to Aggrieved Employees	Within 14 days after Defendant's last day to fund the settlement
Last day for Qualified Members and Aggrieved Employees to cash settlement checks	120 days after issuance of checks to Qualified Members and Aggrieved Employees
Last day for Claims Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiary	Within 14 days after settlement check cashing deadline

Last day for Claims Administrator to provide Parties with compliance declaration

Within 21 days after settlement check cashing deadline

9. DUTIES OF THE PARTIES

9.1 Preliminary Approval: The Parties will cooperate in obtaining, through an unopposed motion to be filed as soon as reasonably practicable, an order from the Court preliminarily approving this Agreement at the earliest possible date concurrently with the Court's certification of the Action as a class action for settlement purposes. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed, shall take all steps that may be requested by the Court relating to, or that are otherwise necessary to the approval and implementation of this Agreement and shall otherwise use their respective best efforts to obtain certification for settlement purposes, approval of, and implementation of this Agreement. The Parties will submit this Agreement to the Court for preliminary approval of its terms and for approval of the steps to be taken to obtain its final approval. Within one week of signing this Agreement, Class Counsel shall provide a draft of the Preliminary Approval Motion to Defendants' Counsel. Defendants' Counsel will provide comments and/or proposed revisions within one week after receipt of the draft Preliminary Approval Motion from Class Counsel. With regard to the final approval documents, a similar one-week maximum review and response time shall be observed by the Parties. The Parties will request that the Court's preliminary approval of this Agreement be embodied in an Order Granting Preliminary Approval of Class Action and PAGA Settlement.

9.1.1 Plaintiff's motion shall seek an order: 1) Preliminarily approving the Agreement; 2) Approving as to form and content the proposed Notice of Settlement; 3) Directing the mailing of the Notice of Settlement by first class mail to Class Members and Aggrieved Employees; 4) Preliminarily appointing Plaintiff and Class Counsel as representatives of Class Members; 5) Preliminarily approving settlement administration services to be provided by the Claims Administrator; 6) Preliminarily approving the proposed Enhancement Payment to Plaintiff; 7) Preliminarily approving the application for payment of reasonable attorneys' fees and reimbursement of litigation-related expenses to Class Counsel; and 8)

1 Scheduling a fairness hearing on the question of whether the proposed Agreement should be finally
2 approved as fair, reasonable and adequate as to the Class Members.

3 9.1.2 Defendants shall not oppose Plaintiff's motion for approval of the proposed
4 Agreement.

5 9.1.3 The Parties shall cooperate with each other and the Claims Administrator during
6 the process of giving Class Members notice and opportunity to object to the Agreement, as necessary and
7 appropriate to assure effective communication to individual Class Members of information about their
8 rights and obligations under this Agreement.

9 9.2 Final Approval and Fairness Hearing: On a date approved by the Court and set forth in the
10 Notice of Settlement, the Court shall hold the Final Approval and Fairness Hearing where objections, if
11 any, may be heard. Class Counsel shall provide the Court as part of the motion for final approval of the
12 Agreement, a declaration by the Claims Administrator of due diligence and proof of mailing of the Notice
13 of Settlement required to be mailed to Class Members by this Agreement, and of the delivery results of
14 the Claim Administrator's mailings including tracing and re-mailing efforts.

15 9.2.1 Class Counsel will submit a proposed order and judgment for final approval, which
16 shall include findings and orders: 1) Approving the Agreement, adjudging the terms thereof to be fair,
17 reasonable and adequate, and directing that its terms and provisions be carried out; 2) Approving the
18 payment of an Enhancement Payment to the Class Representative; 3) Approving Class Counsel's
19 application for an award of attorneys' fees and reimbursement of out-of-pocket litigation expenses; 4)
20 Approving the Claims Administrator Costs; and 5) Providing that the Court will retain jurisdiction to
21 oversee administration and enforcement of the terms of the Agreement and the Court's orders.

22 9.2.2 Following entry of the Court's Order granting final approval of the Agreement, the
23 Parties will each act to ensure the fulfillment of all its provisions, including but not limited to the
24 following: 1) Should an appeal be taken from the final approval of the Agreement or motion to set aside
25 the judgement be filed, all parties will support the final approval order on appeal or otherwise; 2) Class
26 Counsel will assist the Claims Administrator as needed or requested in the process of identifying and
27 locating Qualified Claimants and Aggrieved Employees entitled to payments under the Agreement and
28 assuring delivery of such payments; 3) Class Counsel and Defendants' Counsel will cooperate with each

1 other and assist the Claims Administrator as needed or requested in completing the distribution of any
2 residual amounts, as specified above, to the *cy pres* beneficiary; 4) Class Counsel, in conjunction with the
3 Claims Administrator, will certify to the Court completion of all payments required to be made by this
4 Agreement.

5 9.3 Final Judgment: If the Court approves this Agreement at the final approval and fairness
6 hearing, the Parties will request that the Court enter an Order Granting Final Approval of Class Action
7 and PAGA Settlement and Final Judgment.

8 9.4 Notice to LWDA: Plaintiff agrees to provide notice to the Labor and Workforce
9 Development Agency ("LWDA") of this settlement in accordance with Labor Code § 2699(1)(2).

10 **10. MISCELLANEOUS TERMS**

11 10.1 Defendant's Right to Withdraw Based on Opt-Outs: If, prior to the Final Approval Date,
12 10% or more of the Class Members have submitted proper and timely requests to opt-out in accordance
13 with the provisions of the Agreement, Defendants may, at its election, rescind the Agreement and all
14 actions taken in its furtherance will be thereby null and void. Defendants must exercise this right of
15 rescission, in writing, to Class Counsel, within seven (7) calendar days after the Claims Administrator
16 notifies the Parties of the total number of opt-outs. If the option to rescind is exercised, then any Claims
17 Administrator Costs shall be paid by Defendants. Defendants have represented that there are no more
18 than 2,653 workweeks during the Class Period. In the event the number of workweeks during the Class
19 Period is more than 2,918 (*i.e.*, greater than 10% more than 2,653), then the Gross Settlement Amount
20 shall be increased proportionally by the workweeks in excess of 2,918, multiplied by the pay period
21 value. For example, if there were 11,900 workweeks represented to exist during the Class Period, but
22 there are actually 15,000 workweeks in the Class Period, and the actual workweek value is \$5.00 per
23 workweek, Defendants would have to increase the Gross Settlement Amount by \$15,500.00 (15,000
24 workweeks – 11,900 workweeks = 3,100 workweeks x \$5.00/workweek).

25 10.2 Circular 230 Disclaimer: EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF
26 THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT
27 OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND
28 AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN

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

19 10.3 No Prior Assignments: The Parties represent, covenant, and warrant that they have not
20 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
21 any person or entity any portion of any liability, claim, demand, action, cause of action or right released
22 and discharged in this Agreement.

23 10.4 Waiver of Appeal and Ability to Opt Out: To the extent permitted by applicable law, by
24 signing this Agreement, Defendants are waiving any rights to appeal from the Court's approval of the
25 settlement unless the Court materially modifies the settlement. Furthermore, by signing this Agreement
26 Plaintiff is waiving any right or ability to opt out of this Agreement during the Notice Period or otherwise.
27
28

1 10.5 Exhibits Incorporated by Reference: The terms of this Agreement include the terms set
2 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth in this
3 Agreement. Any Exhibits to this Agreement are an integral part of the Settlement.

4 10.6 Judgment and Retention of Jurisdiction to Enforce: Upon the Final Approval Date,
5 judgment will be entered according to this Agreement, with the Court to retain jurisdiction over the parties
6 to enforce the terms therein.

7 10.7 Mutual Cooperation: The Parties agree to cooperate fully with one another to accomplish
8 and implement the terms of this Agreement. Such cooperation shall include, but not be limited to,
9 execution of such other documents and the taking of such other action as may reasonably be necessary to
10 fulfill the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including
11 all efforts contemplated by this Agreement and any other efforts that may become necessary by Court
12 order, or otherwise, to effectuate this Agreement and the terms set forth herein.

13 10.8 No Admission of Liability: Neither the acceptance nor the performance by Defendants of
14 the terms of this Agreement, nor any of the related negotiations or proceedings, is or shall be claimed to
15 be, construed as, or deemed to be, an admission by Defendants of the truth of any of the allegations in the
16 Complaint, the representative character of the Action, the validity of any of the claims that were or could
17 have been asserted by Plaintiff and/or Class Members in the Action, or of any liability or guilt of
18 Defendants in the Action. Nothing in this Agreement shall be construed to be or deemed an admission by
19 Defendants of any liability, culpability, negligence, or wrongdoing toward Plaintiff, the Class Members,
20 or any other person, and Defendants specifically disclaim any liability, culpability, negligence, or
21 wrongdoing toward Plaintiff, the Class Members, or any other person. Each of the Parties has entered
22 into this Stipulation with the intention to avoid further disputes and litigation.

23 10.9 Notices: Unless otherwise specifically provided herein, all notices, demands, or other
24 communications given hereunder shall be in writing and shall be deemed to have been duly given as of
25 the third business day after mailing by United States certified mail, return receipt requested, addressed as
26 follows:

27 To Plaintiff and the Class:
28

1 Galen T. Shimoda
Justin P. Rodriguez
2 Brittany V. Berzin
Jessica L.Hart
3 Shimoda Law Corp.
9401 East Stockton Blvd., Suite 120
4 Elk Grove, CA 95624

5 To Defendants:

6 Alexandra M. Asterlin
Palmer Kazanjian
7 2277 Fair Oaks Blvd., Suite 455
Sacramento, CA 95825
8 T 916.442.3552
F 916.640-1521
9

10 10.10 Mutual Drafting of Agreement: The Parties hereto agree that the terms and conditions of
11 this Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that
12 this Agreement shall not be construed in favor of or against any party by reason of the extent to which any
13 party or its counsel participated in the drafting of this Agreement. The Agreement shall be interpreted in
14 accordance with the plain meaning of its terms and not strictly for or against any party.
15

16 10.11 Binding Effect of Agreement: By signing this Agreement, the Parties and their heirs,
17 administrators, representatives, executors, successors, and assigns are bound by the terms herein. The
18 Parties waive their rights to file an appeal, writ, or any challenge whatsoever to the terms of this
19 Agreement. This Stipulation shall be binding upon and inure to the benefit of the Parties hereto and their
20 respective heirs, trustees, executors, Claims Administrators, successors, and assigns.

21 10.12 Attorneys' Fees and Costs Limitations: Neither Class Counsel nor any other attorneys
22 acting for, or purporting to act for, the Class, Class Members, or Plaintiff, may recover or seek to recover
23 any amounts for fees, costs, or disbursements from the Releasees or the Gross Settlement Amount except
24 as expressly provided in this Agreement. The Parties stipulate and agree that the Sacramento County
25 Superior Court shall have continuing jurisdiction to enforce the terms of the Agreement pursuant to Civil
26 Procedure Code section 664.6 and that the prevailing party any action necessary to enforce the terms of
27 the Agreement after default by the other party may recover reasonable attorney's fees and costs related
28 thereto.

1 10.13 No Modifications: This Agreement may be amended or modified only by a written
2 instrument signed by counsel for all Parties or their successors-in-interest. This Agreement may not be
3 discharged except by performance in accordance with its terms.

4 10.14 Authorization to Enter Into Settlement Agreement: Counsel for all Parties warrant and
5 represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement
6 and to take all appropriate action required or permitted to be taken by such Parties pursuant to this
7 Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of
8 this Agreement.

9 10.15 Class Member Signatories: Because the Action has not yet been certified, and the Class
10 Members are so numerous, the Parties agree that it is impossible or impractical to have each Class Member
11 sign this Agreement. It is agreed that, for purposes of seeking approval of the Agreement, this Agreement
12 may be executed on behalf of all Class Members by the Class Representative.

13 10.16 Counterparts: This Agreement shall become effective upon its execution by all of the
14 undersigned. Plaintiff, Class Counsel, Defendants and Defendants' Counsel may execute this Agreement
15 in counterparts, and execution of counterparts shall have the same force and effect as if each had signed
16 the same instrument. Facsimile, electronic, and/or scanned copies of signatures shall have the same force
17 and effect of originals.

18 10.17 Choice of Law: The Agreement and any exhibits hereto shall be considered to have been
19 negotiated, executed, and delivered, and to have been wholly performed, in the State of California, and
20 the rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance
21 with, and governed by, the substantive laws of the State of California without giving effect to that State's
22 choice of law principles.

23 10.18 Headings and Captions: Section titles or captions contained in the Agreement are inserted
24 as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of
25 this Agreement, or any provision thereof.

26 10.19 No Retaliation or Discouragement: The Parties agree they will take no action that could
27 be construed as retaliation against any Class Members for participating or seeking to participate in this
28 class action settlement. The Parties will not discourage any class member from participating or seeking

1 to participate in this class action settlement. This is a material term of the Agreement and non-breaching
2 Parties will seek court intervention if this provision is breached. Should non-breaching Party prevail, they
3 shall be entitled to further attorneys' fees and costs.

4 10.20 Integrated Agreement: This Agreement sets forth the entire understanding between the
5 Parties and supersedes any and all prior agreements, oral or written, pertaining to the subject matter hereof.
6 Each party acknowledges that there is no representation, inducement, promise or agreement which has
7 been made, orally or otherwise, by the other party, concerning the terms or conditions of this Agreement,
8 which is not expressly embodied in this Agreement. In entering into this Agreement, the Parties represent
9 that the terms of this Agreement are fully understood and voluntarily accepted by the Parties.

10 10.21 Binding on Successors and Assigns: This Agreement will be binding upon, and inure to
11 the benefit of, the successors or assigns of the Parties to this Agreement, as previously defined.

12 10.22 Invalidity of Any Provision: Before declaring any provision of this Agreement invalid, the
13 Court will first attempt to construe the provision as valid to the fullest extent possible consistent with
14 applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.
15 Should any provision of this Agreement be declared or determined by any court of competent jurisdiction
16 to be illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining parts,
17 terms, or provisions shall not be affected thereby, and the illegal, unenforceable, or invalid part, term, or
18 provision shall be deemed not to be a part of this Agreement.

19 10.23 Waiver of Compliance: No waiver of any condition or covenant contained in this
20 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply
21 or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

22 IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized
23 attorneys, as of the day and year herein set forth.

1 **For Plaintiff:**

2 Date: 7/9/2021

DocuSigned by:



Loni Garcia

6 **FOR Defendants:**

7 Date: _____

By: _____

For Aquality Water Management, Inc.

10 Date: _____

By: _____

For Josh Brown

13 APPROVED AS TO FORM

Shimoda Law Corp.

15 Dated: 7/9/21

By: 

Galen T. Shimoda

Justin P. Rodriguez

Brittany V. Berzin

Jessica L. Hart

Attorneys for Plaintiff and similarly situated employees

19 APPROVED AS TO FORM

PALMER KAZANJIAN

22 Dated: _____

By: _____

Alexandra M. Asterlin

Attorney for Defendants

1 **For Plaintiff:**

2 Date: _____

3 _____
Loni Garcia

4
5
6 **FOR Defendants:**

7 Date: July 12, 2021

8 _____
By:
For Aquality Water Management, Inc.

9
10 Date: July 12, 2021

11 _____
By:
For Josh Brown

12
13 APPROVED AS TO FORM

Shimoda Law Corp.

14
15 Dated: _____

16 By: _____
Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Jessica L. Hart
Attorneys for Plaintiff and similarly situated
employees

17
18
19 APPROVED AS TO FORM

PALMER KAZANJIAN

20
21 Dated: 7/12/2021

22 _____
By:
Alexandra M. Asterlin
Attorney for Defendants

EXHIBIT B

FILED/ENDORSED

JAN 21 2021

By: K. Johnson
Deputy Clerk

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Brittany V. Berzin (Cal. State Bar No. 325121)
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Facsimile: (916) 760-3733

Attorneys for Plaintiff LONI GARCIA,
on behalf of herself and similarly situated employees

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

LONI GARCIA, individually and on behalf of
all other similarly situated employees,

Plaintiff,

vs.

AQUALITY WATER MANAGEMENT,
INC., a California Corporation; JOSH
BROWN, an individual; and DOES 1 to 100,
inclusive,

Defendants.

Case No. 34-2021-00292794

CLASS ACTION

COMPLAINT FOR DAMAGES:

1. Failure to Pay Overtime Wages
2. Failure to Pay Minimum Wages
3. Meal Period Violations
4. Rest Period Violations
5. Wage Statement Violations
6. Waiting Time Penalties
7. Unfair Competition
8. Private Attorneys General Act

DEMAND FOR JURY TRIAL

FILED BY FAX

1 Plaintiff LONI GARCIA ("Plaintiff"), on behalf of herself and all other similarly situated
2 employees, hereby files this Complaint against Defendants AQUALITY WATER MANAGEMENT,
3 INC., a California Corporation; JOSH BROWN, an individual; and DOES 1 to 100, inclusive
4 (hereinafter all collectively referred to as "Defendants"). On information and belief, Plaintiff allege
5 the following:

6 INTRODUCTION

7 1. This is a class action lawsuit brought by Plaintiff on behalf of herself and similarly
8 situated employees seeking unpaid overtime wages, minimum wages, meal period premiums, rest period
9 premiums, and statutory penalties for violations of the California Labor Code. Plaintiff has also alleged
10 a Private Attorneys General Act ("PAGA") cause of action.

11 JURISDICTION AND VENUE

12 2. The Sacramento County Superior Court has jurisdiction in this matter pursuant to
13 California Code of Civil Procedure section 410.10 to determine alleged violations of the California
14 Labor Code, California Business and Professions Code, and Wage Order No. 4.

15 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a), and 395.5, in that
16 Defendant resides in Sacramento County, does business in Sacramento County, and Defendant's
17 principal place of business is in Sacramento County.

18 4. Plaintiff sought permission pursuant to Labor Code section 2699 *et seq.* to pursue the
19 claims set forth in this Complaint against Defendants as a Private Attorney General on behalf of herself
20 and other similarly situated employees. Pursuant to Labor Code section 2699.3, Plaintiff gave written
21 notice via online submission to the Labor and Workforce Development Agency ("LWDA") on
22 approximately November 9, 2020. Plaintiff provided facts and legal bases for her claims within the
23 notice to the LWDA on all violations asserted under the Private Attorneys General Act cause of action.
24 Plaintiff submitted the \$75.00 filing fee. The November 9, 2020 notice was also sent via certified mail
25 to Defendants on the same day. Plaintiff is informed and believes, that to date, the LWDA has not
26 provided any response to Plaintiff's notice correspondence. Accordingly, Plaintiff is informed and
27 believes that she has exhausted all administrative remedied pursuant to the Private Attorneys General
28 Act and may bring this action on behalf of herself and all similarly situated employees. *See Cal. Labor*

1 Code § 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc. v. Sup. Ct.*, 134 Cal.App.4th 365, 383 n.18, 385
2 n.19 (2005).

3 **PARTIES**

4 5. LONI GARCIA is an individual over the age of eighteen (18) and is a resident of the
5 State of California.

6 6. On information and belief, Plaintiff alleges, AQUALITY WATER MANAGEMENT,
7 INC., is now and/or at all times mentioned in this Complaint was a California Corporation and the
8 owner and operator of an industry, business and/or facility doing business in the State of California.

9 7. Plaintiff is informed and believes, and thereupon alleges, that JOSH BROWN is an
10 individual over the age of eighteen (18) and is a resident of the State of California. Plaintiff further
11 alleges that JOSH BROWN is an owner, director, officer, and/or managing agent of AQUALITY
12 WATER MANAGEMENT, INC. responsible for causing the violations outlined in the first through
13 seven and nine causes of action. As such JOSH BROWN is individually liable pursuant to California
14 Labor Code section 558.1.

15 8. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the
16 alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and
17 are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true
18 names and capacities of these DOE Defendants when they are ascertained. At all times mentioned
19 herein, each Defendant was the agent or employee of each of the other Defendants and was acting within
20 the course and scope of such agency or employment. The Defendants are jointly and severally liable to
21 Plaintiff.

22 9. At all times mentioned herein, each Defendant was the agent or employee of each of the
23 other Defendants and was acting within the course and scope of such agency or employment. The
24 Defendants are jointly and severally liable to Plaintiff.

25 10. Defendants, and each of them, are now and/or at all times mentioned in this Complaint
26 were members of and/or engaged in a joint employment, joint venture, partnership and common
27 enterprise, and were acting within the course and scope of, and in pursuance of said joint employment,
28 joint venture, partnership and common enterprise.

1 11. Defendants, and each of them, now and/or at all times mentioned in this Complaint
2 approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

3 12. Defendants proximately caused Plaintiff to be subjected to the unlawful practices,
4 wrongs, complaints, injuries and/or damages alleged in this Complaint.

5 **CLASS ALLEGATIONS**

6 13. Plaintiff brings the (First) through (Seventh) Causes of Action on behalf of herself
7 and all others similarly situated as a class action pursuant to California Code of Civil Procedure
8 section 382. The class which Plaintiff seeks to represent is composed of, and defined, as follows:

9 All non-exempt, hourly employees who worked for Defendant in
10 California from four (4) years prior to the filing of this Complaint to the
11 present.

12 14. This action has been brought and may be properly maintained as a class action,
13 pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-
14 defined community of interests in the litigation and the proposed class is easily ascertainable.

15 (a) Numerosity: The putative class is so numerous that the individual joinder of all members
16 is impracticable under the circumstances of this case. While the exact number of class
17 members is unknown to Plaintiff at this time, Plaintiff is informed and believes that
18 Defendants have employed as many as fifty (50) individuals falling within the above
19 stated class definition throughout the State of California during the applicable statute of
20 limitations, who were subjected to the policies and practices outlined in this Complaint.
21 As such, joinder of all members of the putative class is not practicable.

22 (b) Common Questions Predominate: Common questions of law and fact exist as to all
23 members of the putative class and predominate over questions that affect only individual
24 members of the class. These common questions of law and fact include, without
25 limitation, the following:

- 26 (1) Whether Defendants had an improper system to record the hours worked of
27 employees;
28 (2) Whether as a result of Defendants' policies, or lack thereof, Defendants failed to
pay Plaintiff and the putative class all wages, including overtime, they were owed;

- 1 (3) Whether as a result of Defendants' policies and practices Plaintiff's and putative
2 class members received all wages, due and owing, at the time of their termination
3 or separation;
- 4 (4) Whether Defendants provided Plaintiff's and putative class members with wage
5 statements that complied with Labor Code section 226;
- 6 (5) Whether Defendants had a policy and/or practice in place to authorize and permit
7 Plaintiff to take all meal periods owed to them; and
- 8 (6) Whether Defendants had a policy and/or practice in place to authorize and permit
9 Plaintiff to take all rest periods owed to them.
- 10 (c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative
11 class. The putative class also sustained damages arising out of Defendants' common
12 course of conduct in violation of the law as complained of herein. Plaintiff and all
13 members of the putative class were non-exempt employees who were not compensated
14 for all overtime hours as a result of Defendants' failure to correctly implement an
15 alternative workweek. Plaintiff and putative class members were also not paid all meal
16 and rest period premiums they were owed as a result of Defendants failure to authorize
17 and permit all meal and rest periods. Additionally, Defendants issued Plaintiff and all
18 members of the putative class wage statements that did not comply with Labor Code
19 section 226. As a result, Plaintiff and each member of the putative class will have
20 suffered the same type of harm and seek the same type of recovery based on the same
21 legal theories.
- 22 (d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the
23 putative class. For all relevant times, Plaintiff resided in California and worked for
24 Defendants in California. Moreover, Plaintiff is an adequate representative of the
25 putative class as Plaintiff has no interests that are adverse to those of putative class
26 members. Additionally, Plaintiff has retained counsel who has substantial experience in
27 complex civil litigation and wage and hour matters.
- 28

1 (e) Superiority: A class action is superior to other available means for the fair and efficient
2 adjudication of the controversy since individual joinder of all members of the putative
3 class is impracticable. Class action treatment will permit a larger number of similarly
4 situated persons to prosecute their common claims in a single forum simultaneously,
5 efficiently, and without the unnecessary duplication of effort and expense that numerous
6 individual actions would engender. Further, as damages suffered by each individual
7 member of the class may be relatively small, the expenses and burden of the individual
8 litigation would make it difficult or impossible for individual members of the class to
9 redress the wrongs done to them, and an important public interest will be served by
10 addressing the matter as a class action. The cost to the court system of adjudication of
11 such individualized litigation would be substantial. Individualized litigation would also
12 present the potential for inconsistent or contradictory judgments.

13 15. Plaintiff is unaware of any difficulties that are likely to be encountered in the
14 management of this action that would preclude its maintenance as a class action.

15 **GENERAL ALLEGATIONS**

16 16. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 15 as though fully
17 set forth herein. Plaintiff worked for Defendant from approximately February 5, 2020 to June 6, 2020 as
18 an hourly, non-exempt employee. Plaintiff worked as a water operator. Similarly situated employees
19 also worked for Defendants as hourly, non-exempt employees.

20 17. Defendants failed to compensate Plaintiff and Aggrieved Employees for all wages
21 including overtime owed. Defendants failed to record accurately record the times of its employees thus
22 leading to shortages in wages paid to Plaintiff and Aggrieved Employees.

23 18. Defendants also failed to authorize and permit Plaintiff and Aggrieved Employees to take
24 all meal and rest periods owed to them, including second meal periods and third rest periods when
25 Plaintiff and Aggrieved Employees worked over ten (10) hours in a shift. This was due to Defendants'
26 practice of scheduling Plaintiff and other Aggrieved Employees to work at least ten (10) hours in a day.
27 Defendants did not pay Plaintiff and Aggrieved Employees for meal and rest period premiums.
28 //

19. In addition, Defendants did not keep records of Plaintiff's and Aggrieved Employees' meal periods. Plaintiff and Aggrieved Employees would enter their hours once every two weeks in Defendants' quick books software. Thus, Defendants did not maintain accurate records of Plaintiff's and Aggrieved Employees' work hours and meal periods.

20. As a result of Defendants' failure to pay Plaintiff and Aggrieved Employees all overtime wages, minimum wages, and meal and rest period premiums, the wage statements Defendant issued were defective. Specifically, Defendant did not list on Plaintiff's and Aggrieved Employees' wage statements the correct gross and net wages earned, the correct regular and overtime hours, and the total missed meal and rest period premiums earned. Similarly, Defendant's failure to pay all overtime wages minimum wages, and meal and rest period premiums owed also resulted in Defendant's failure to pay Plaintiff and Aggrieved Employees all final wages owed to them within twenty-four (24) hours of their termination or seventy-two (72) hours of their resignation.

CAUSES OF ACTION

FIRST CAUSE OF ACTION
FAILURE TO PAY OVERTIME WAGES
(As to all Defendants)

21. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 20 as though fully set forth herein.

22. During the period Plaintiff was employed by Defendants, Defendants were required to compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours per day. *See, e.g., IWC Wage Order No. 4, section (3)(A); Cal. Lab. Code §§ 510, 1194.*

23. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day and/or forty (40) hours per week on several occasions while employed by Defendants. However, Defendants failed to compensate Plaintiff and similarly situated employees for all overtime hours worked at their regular rate of pay.

24. Plaintiff and similarly situated employees were not exempt from overtime protections employees under the California Wage Orders and Labor Code.

25. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

SECOND CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
(As to all Defendants)

26. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 25 as though fully set forth herein.

27. For the period preceding the filing of this Complaint, Defendants were required to compensate Plaintiff and similarly situated employees with at least California's applicable minimum for every hour worked. *See* MW-Order 2019; IWC Wage Order, No. 4, section 4(A); Cal. Lab. Code § 1194. Defendants failed to pay Plaintiff and similarly situated employees for all time they spent working for Defendants.

28. Plaintiff was not exempt to the State's Minimum Wage Order. Defendants aware of their obligation to pay the minimum wage for each hour worked but failed to do so.

29. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

THIRD CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(As to all Defendants)

30. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 29 as though fully set forth herein.

31. An employer must provide an employee a meal period in accordance with the applicable Wage Order, and California Labor Code sections 226.7 and 512.

32. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 4, section 11(A) require an employer to provide an uninterrupted meal period of not less than thirty (30) minutes for each work period of more than five (5) hours.

33. California Labor Code section 512 and Wage Order No. 4 section 11(B) further provide that employers may not employ employees for a work period for more than ten (10) hours per day without providing the employee with a second meal period of at least thirty (30) minutes. However, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. Employees are entitled to one (1) hour of pay at their regular rate of compensation for each meal period not provided.

34. Defendants employed Plaintiff and similarly situated employees for periods of more than five (5) hours without providing meal breaks of at least thirty (30) minutes or a second meal period of at least thirty (30) minutes when Plaintiff and similarly situated employees worked more than ten (10) hours in a day. Defendants failed to allow Plaintiff and similarly situated employees take all their meal periods and also failed to allow Plaintiff and similarly situated employees to take their second meal period before the completion of their tenth hour of work. Plaintiff and similarly situated employees did not waive their rights to all meal periods throughout their employment.

35. Defendants further failed to pay Plaintiff and similarly situated employees the applicable meal period premiums for any such missed meal breaks.

36. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

FOURTH CAUSE OF ACTION
REST PERIOD VIOLATIONS
(As to all Defendants)

37. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 36 as though fully set forth herein.

38. An employer must provide an employee a rest period in accordance with the applicable Wage Order and California Labor Code section 226.7.

39. California Labor Code section 226.7 and Wage Order No. 4, section 12(A) require an employer to provide a rest period of not less than ten (10) minutes for each work period of more than four (4) hours or a major fraction thereof.

11

1 40. Plaintiff alleges that Defendants failed to authorize and permit Plaintiff and similarly
2 situated employees to take paid rest periods of at least ten (10) minutes for each work period that
3 they worked more than four (4) hours or a major fraction thereof.

4 41. Defendants further failed to pay Plaintiff and similarly situated employees the
5 applicable rest period premiums for any such missed rest periods.

6 42. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
7 employees have been damaged as stated in the section below entitled "DAMAGES," which is
8 incorporated here to the extent pertinent as if set forth here in full.

9
10 **FIFTH CAUSE OF ACTION**
 WAGE STATEMENT VIOLATIONS
 (As to all Defendants)

11 43. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 42 as though fully
12 set forth herein.

13 44. Pursuant to California Labor Code section 226(a), an employer must provide an itemized
14 statement to an employee, semimonthly or at the time of each payment of wages, showing:

15 *(1) gross wages earned, (2) total hours worked by the employee, except for*
16 *any employee whose compensation is solely based on a salary and who is*
17 *exempt from payment of overtime under subdivision (a) of Section 515 or*
18 *any applicable order of the Industrial Welfare Commission, (3) the*
19 *number of piece-rate units earned and any applicable piece rate if the*
20 *employee is paid on a piece-rate basis, (4) all deductions, provided that*
21 *all deductions made on written orders of the employee may be aggregated*
22 *and shown as one item, (5) net wages earned, (6) the inclusive dates of the*
23 *period for which the employee is paid, (7) the name of the employee and*
24 *the last four digits of his or her social security number or an employee*
25 *identification number other than a social security number, (8) the name*
26 *and address of the legal entity that is the employer and, if the employer is*
27 *a farm labor contractor, as defined in subdivision (b) of Section 1682, the*
28 *name and address of the legal entity that secured the services of the*
 employer, and (9) all applicable hourly rates in effect during the pay
 period and the corresponding number of hours worked at each hourly rate
 by the employee. The deductions made from payment of wages shall be
 recorded in ink or other indelible form, properly dated, showing the
 month, day, and year, and a copy of the statement and the record of the
 deductions shall be kept on file by the employer for at least three years at
 the place of employment or at a central location within the State of
 California.

45. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an
itemized statement or failed to provide an accurate and complete itemized statement showing the

1 requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not
2 accurately itemize the correct gross and net wages earned, the correct hours of overtime, and the total
3 missed meal and rest period premiums earned. The paystubs also did not accurately itemize
4 Plaintiff's and similarly situated employees' total hours worked due to Defendants' policies.
5 Plaintiff and similarly situated employees were not able to promptly and easily determine the amount
6 of unpaid wages owed to them from their paystubs alone. Additionally, Plaintiff and similarly
7 situated employees suffered confusion over whether they received all wages owed and were
8 prevented from effectively challenging information on their wage statements.

9 46. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
10 employees have been damaged as stated in the section below entitled "DAMAGES," which is
11 incorporated here to the extent pertinent as if set forth here in full.

12 **SIXTH CAUSE OF ACTION**
13 **WAITING TIME PENALTIES**
14 **(As to all Defendants)**

15 47. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 46 as though fully
16 set forth herein.

17 48. An employer must pay an employee who is terminated all unpaid wages immediately
18 upon termination. *See* Cal. Lab. Code § 201.

19 49. An employer must pay an employee who resigns all unpaid wages within seventy-two
20 (72) hours of their resignation. *See* Cal. Lab. Code § 202.

21 50. Plaintiff and similarly situated employees did not receive all wages, including overtime
22 wages, and meal and rest period premiums at their termination or within the required time after their
23 separation from employment.

24 51. An employer who willfully fails to pay an employee wages in accordance with California
25 Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30)
26 days. *See* Cal. Lab. Code § 203.

27 52. Defendants knew of their obligation to pay Plaintiff's and similarly situated employees'
28 their final wages when their employment terminated. Indeed, Defendants had knowledge that Plaintiff
and similarly situated employees worked over ten hours per day. Defendants knew of their obligation to

1 pay Plaintiff and similarly situated individuals for all hours worked, including overtime wages, and meal
2 and rest period premiums because Defendants did not take the steps necessary to have a valid alternative
3 workweek agreement and Plaintiff's and similarly situated employees' time and pay records showed
4 they were working unpaid overtime hours. Such conduct shows Defendants had knowledge of earned,
5 but unpaid wages at the time of separation, yet Defendants still refused to pay the remaining wages
6 owed.

7 53. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
8 have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by
9 thirty (30) days for Defendants' failure to pay all wages due.

10 **SEVENTH CAUSE OF ACTION**
11 **UNFAIR COMPETITION**

12 **(As to AQUALITY Water Management, Inc. and DOES 1 to 100)**

13 54. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 53 as though fully
14 set forth herein.

15 55. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act
16 or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1
17 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. See
18 California Business and Professions ("B&P") Code § 17200.

19 56. Plaintiff and similarly situated employees were not paid all wages owed, including
20 overtime wages, minimum wages, and meal and rest period premiums, during their employment or any
21 time thereafter, in violation of California Labor Code sections 226.7, 510, 512 and 1194, and Wage
22 Order No. 4-2001.

23 57. Plaintiff further alleges that such actions and/or conduct constitute a violation of the
24 California Unfair Competition Law ("UCL") (Business and Professions Code 17200 *et seq.*) pursuant to
25 *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

26 58. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the
27 UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to
28 restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code

sections 17203, 17208, violations of California Labor Code sections 226.7, 510, 512, and 1194 all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

EIGHTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(As to all Defendants)

59. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 58 as though fully set forth herein.

60. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the following provisions of the Labor Code in their dealings with him and other similarly situated current and former employees:

- Violation of Labor Code §§ 510, 1194; IWC Wage Order 4, § 3 (Failure to Pay Overtime Wages)
- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)
- Violation of Labor Code §§ 226.7, 512; IWC Wage Order 4, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 226.7; IWC Wage Order 4, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 226.3, 1174, 1198; IWC Wage Order 4, § 7(A) (Failure to Maintain Accurate Records)

61. Plaintiff seeks civil penalties against Defendants as provided in the Labor Code, or, if no civil penalty is provided, default penalties pursuant to Labor Code section 2699(f)(2).

62. Plaintiff seeks these civil penalties from Defendants pursuant to Labor Code sections 2699(a) and 2699.3.

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
2. As to the First Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
3. As to the Second Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;
4. As to the Third Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;
5. As to the Fourth Cause of Action:
 - a. Penalties as provided for in Labor Code section 226, including the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which the violation occurred and one hundred dollars (\$100.00) per employee for each violation in the subsequent pay periods, but not to exceed four thousand dollars (\$4,000.00);
 - b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section 226(e);
6. As to the Sixth Cause of Action:
 - a. Penalties as provided for in Labor Code section 1174.5;
7. As to the Eight Cause of Action:
 - a. For civil penalties as provided for in the Labor Code for each enumerated violation;
 - b. For those Labor Code sections, the violation of which there is no civil penalty

1 provided, the default penalty provided in Labor Code section 2699(f): for any
2 initial violation, one hundred dollars (\$100) for each aggrieved employee per pay
3 period; For any subsequent violation, two hundred dollars (\$200) for each
4 aggrieved employee per pay period;

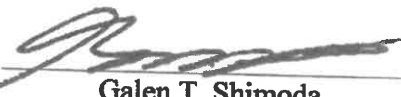
- 5 c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
6 d. For any other remedies as allowed by law and/or deemed appropriate by the
7 Court;

8 8. As to All Causes of Action:

- 9 a. For other such relief as this Court may deem just and proper;
10 b. Attorney's fees as provided by law; and
11 c. Interest as provided by law.
12

13 Dated: January 20, 2021

Shimoda Law Corp.

14
15 By: 

16 Galen T. Shimoda
17 Justin P. Rodriguez
18 Brittany V. Berzin
19 Renald Konini
20 Attorneys for Plaintiff
21
22
23
24
25
26
27
28

EXHIBIT C



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www.shimodalaw.com

November 9, 2020

For Online Filing:

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Garcia v. Aquality Water Management, Inc.*

Dear Labor Commissioner,

As counsel for Loni Garcia ("Plaintiff"), I am writing to provide you and the following "employer" notice pursuant to California Labor Code section 2699.3:

Aquality Water Management, Inc.
1900 Terracina Dr, Suite 110
Sacramento, CA 95834

We are setting forth the "facts and theories" to support each of the counts found within this complaint. Please notify us of your intent to investigate any or all of the claims alleged herein against Aquality Water Management, Inc. ("Defendant"). Should you decide not to investigate, we request that you allow us to bring the following action on behalf of Plaintiff and all Aggrieved Employees, pursuant to Labor Code section 2699(a). Specifically, Aggrieved Employees shall include, but is not limited to the following: all non-exempt, hourly employees who worked for Defendant in California. Plaintiff is clearly entitled to bring a Private Attorneys General Act ("PAGA") claim for civil penalties on behalf of these individuals pursuant to *Huff v. Securitas Security Services USA, Inc.*, 23 Cal.App.5th 745, 757 (2018) (finding a plaintiff has PAGA standing if affected by one of the alleged violations; the plaintiff need not have personally experienced all the violations pursued in PAGA action).

A. FACTS

Plaintiff worked for Defendant from approximately February 5, 2020 to June 6, 2020 as an hourly, non-exempt employee. Plaintiff worked as a water operator. Similarly situated employees also worked for Defendants as hourly, non-exempt employees.

Defendant failed to compensate Plaintiff and Aggrieved Employees for all overtime owed. Defendant implemented invalid alternative workweek schedules for Plaintiff and Aggrieved Employees that resulted in unpaid overtime premiums. Plaintiff and Aggrieved Employees were regularly scheduled to work ten (10) hours in a day but were not paid overtime



wages for work performed over eight (8) hours per day. However, Defendant's alternative workweek schedule failed to comply with all of the regulations established by the Industrial Welfare Commission's Wage Orders and California Labor Code section 511. For instance, no alternative workweek election results were reported by Defendant to the Division of Labor Standards Enforcement. Labor Code § 511(e).

Defendant also failed to authorize and permit Plaintiff and Aggrieved Employees to take all meal and rest periods owed to them, including second meal periods and third rest periods when Plaintiff and Aggrieved Employees worked over ten (10) hours in a shift. This was due to Defendant's practice of scheduling Plaintiff and other Aggrieved Employees to work at least ten (10) hours in a day. Defendant did not pay Plaintiff and Aggrieved Employees for meal and rest period premiums.

In addition, Defendant did not keep records of Plaintiff's and Aggrieved Employees' meal periods. Further, Defendant did not have a time system for Plaintiff and Aggrieved Employees to clock in and out. Plaintiff and Aggrieved Employees would enter their hours once every two weeks in Defendant's quick books software. Thus, Defendant did not maintain accurate records of Plaintiff's and Aggrieved Employees' work hours and meal periods as required by Wage Order No. 4 section 7(A)(3).

As a result of Defendants' failure to pay Plaintiff and Aggrieved Employees all overtime wages, and meal and rest period premiums, the wage statements Defendant issued were defective. Specifically, Defendant did not list on Plaintiff's and Aggrieved Employees' wage statements the correct gross and net wages earned, the correct regular and overtime rates of pay, and the total missed meal and rest period premiums earned. Similarly, Defendant's failure to pay all overtime wages and meal and rest period premiums owed also resulted in Defendant's failure to pay Plaintiff and Aggrieved Employees all final wages owed to them within twenty-four (24) hours of their termination or seventy-two (72) hours of their resignation.

B. ALLEGATIONS AND CHARGES

Count One – Violation of Labor Code §§ 510, 1194; IWC Wage Order 4, § 3 (Failure to Pay Overtime Wages)

Labor Code sections 510 and 1194 require employers to pay employees 1 ½ times their regular rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek. Employers must also pay employees 1 ½ times their regular rate of pay for the first eight (8) hours worked on the seventh day of work in any one workweek. Finally, employers must pay employees 2 times their regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh day of work in any one workweek. As stated above, Plaintiff



and Aggrieved Employees worked over eight (8) hours per day and forty (40) hours per week and were not paid all overtime wages owed. Plaintiff and all Aggrieved Employees are entitled to recover all unpaid overtime wages. Failure to pay such wages is against the law.

Count Two - Violation of Labor Code §§ 226.7, 512 and Wage Order No. 4, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 4, section 11(A) require employers to provide employees meal periods of thirty (30) minutes per five (5) hours worked, which is to be taken before the completion of the fifth hour. Labor Code section 512 and Wage Order No. 4, section 11(B) further provide that employers may not employ employees for a work period of more than ten (10) hours per day without providing the employee with a second meal period of thirty (30) minutes; however, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant meal periods pursuant to California law. Defendant also failed to pay any meal period premiums for their failure to provide meal periods. This was in violation of the law.

Count Three – Violation of Labor Code § 226.7 and Wage Order No. 4, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 4, section 12(A) require employers to provide employees paid off-duty rest periods of ten (10) minutes per four (4) hours or major fraction thereof worked. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant rest periods pursuant to California law. Defendant also failed to pay any rest period premiums for their failure to provide rest periods. This was in violation of the law.

Count Four– Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)

Labor Code section 226 requires employers to furnish to employees with “an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, . . . (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer . . . and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee” For



the reasons stated above, Defendant failed to comply with these requirements with respect to Plaintiff and Aggrieved Employees. This is in violation of the law.

Count Five – Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)

Labor Code sections 201-203 require that all wages, including overtime wages, be paid to employees upon separation and/or termination of employment. Here, for the reasons stated above, Plaintiff and Aggrieved Employees did not receive all final wages due and owing to them at the time of termination or seventy-two (72) hours thereafter as required by Labor Code sections 201-203. This is in violation of the law.

Count Six – Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)

Labor Code section 558 states that it is unlawful for any employer, or other person acting on behalf of an employer, to violate or cause to be violated any of sections 500 to 558.1 of the Labor Code or any order of the Industrial Welfare Commission. Similarly, Labor Code section 558.1 states that it is unlawful for any employer or other person acting on behalf on an employer to violate, or cause to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, as well as Sections 203, 226, 226.7, 1193.6, 1194, or 2802 of the Labor Code. As described above, Defendant, by and through Defendant's agents, violated Plaintiff and Aggrieved Employees' rights provided for under Labor Code sections 558 and 558.1 as well as the incorporated Wage Orders and incorporated statutes therein. This is against the law.

Count Seven– Violation of Labor Code §§ 226.3, 1174 and Wage Order No. 4 § 7(A)(3) (Failure to Maintain Accurate Records)

Labor Code section 226.3 provides that any employer who fails to maintain records required by Labor Code section 226(a) or provide records required by 226(a) shall be subject shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation. Labor Code section 1174(d) provides that employers must keep and maintain accurate payroll records showing the hours worked daily by, and the wages paid to, employees. Wage Order No. 4 section 7(A)(3) provides that every employer shall keep accurate information with respect to each employee showing when the employee begins and ends each work period, meal periods, split sift intervals, and total daily hours worked. Defendant failed to maintain the accurate records required by law and, instead, maintained incomplete, inaccurate records regarding Plaintiff and Aggrieved Employees' wage records and hours worked. This was against the law.



If you have any questions or require any further information regarding the facts and theories to support these claims, do not hesitate to contact our office.

Very truly yours,

Shimoda Law Corp.

By: _____


Galen T. Shimoda

GTS:rk
cc: Client via e-mail

1 *Garcia v. Aquality Water Management, Inc.*

2 **PROOF OF SERVICE — CCP §§ 1013a and 2015.5**
3 **and California Rules of Court, Rule 1.21 and Rule 2.150**

4 I, Melissa A. Phillips, declare that:

5 I am a citizen of the United States and am over the age of eighteen years and not a party to
6 the within above-entitled action.

7 On November 9, 2020, I served the following documents on the party below:

- 8 • Private Attorney General Act Letter

9
10 Aquality Water Management, Inc.
11 1900 Terracina Dr, Suite 110
12 Sacramento, CA 95834

12 [XXX] [By Certified Mail] I am familiar with my employer's practice for the collection
13 and processing of correspondence for mailing with the United States Postal
14 Service and that each day's mail is deposited with the United States Postal
15 Service that same day in the ordinary course of business. On the date set forth
above, I served the aforementioned document(s) on the parties in said action by
placing a true copy thereof enclosed in a sealed envelope with postage thereon
fully prepaid, for collection and mailing on this date, following ordinary business
practices, at Elk Grove, California, addressed as set forth above.

16 [] [By Personal Service] By personally delivering a true copy thereof to the office
17 of the addressee above.

18 [] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown
above. No error was reported by the e-mail service that I used.

19 [] [By Overnight Courier] By causing a true copy and/or original thereof to be
20 personally delivered via the following overnight courier service: _____.

21 I declare under penalty of perjury under the laws of the State of California that the foregoing
22 is true and correct, and that this declaration was executed on November 9, 2020, at Elk Grove,
23 California.

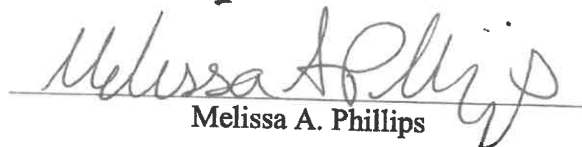
24
25 
26 Melissa A. Phillips
27
28

EXHIBIT D

Garcia, Loni Costs			
Client	Entered	Description	Amount
Garcia, Loni	10/30/2020	Administration/Copy Fee - Class Action - Phone, Fax, Scan, Copying, Non-Certified/Courier Postage, Lexis Legal Research Fees	\$500.00
Garcia, Loni	11/9/2020	Payment to LWDA - PAGA Filing Fee	\$75.00
Garcia, Loni	11/9/2020	Certified Mail - PAGA Lt to Employer	\$4.05
Garcia, Loni	1/20/2021	Payment to Court - Complaint Fee Superior Court	\$435.00
Garcia, Loni	1/20/2021	Service Fee to Court - Complaint	\$40.00
Garcia, Loni	2/4/2021	Service Fee to Court - Notice of Disassociation / Association	\$40.00
Garcia, Loni	2/11/2021	Service Fee to Court - Complex Fees	\$40.00
Garcia, Loni	2/11/2021	Payment to Court - Complex Fees	\$1,000.00
Garcia, Loni	6/1/2021	Mediation	\$3,000.00
Garcia, Loni	7/2/2021	Service Fee to Court - Case Management Statement	\$40.00
Garcia, Loni	7/21/2021	Payment to Court - Preliminary Approval Motion	\$60.00
Garcia, Loni	7/21/2021	Service Fee to Court - Preliminary Approval Motion	\$40.00
Garcia, Loni	8/31/2021	Service Fee to Court - Case Management Statement	\$40.00
Garcia, Loni	Anticipated	Payment to Court - Final Approval Motion	\$60.00
Garcia, Loni	Anticipated	Service Fee to Court - Final Approval Motion	\$40.00
Garcia, Loni	Anticipated	Service Fee to Court - Case Management Statement	\$40.00
Garcia, Loni	Anticipated	Service Fee to Court - Compliance Declaration	\$40.00
Total:			\$5,494.05

EXHIBIT E

FILED BY FAX

1 Galen T. Shimoda (Cal. State Bar No. 226752)
2 Justin P. Rodriguez (Cal. State Bar No. 278275)
3 Jessica L. Hart (Cal. State Bar No. 331441)
4 **Shimoda Law Corp.**
5 9401 East Stockton Boulevard, Suite 120
6 Elk Grove, CA 95624
7 Telephone: (916) 525-0716
8 Facsimile: (916) 760-3733

9 Attorneys for Plaintiff LONI GARCIA
10 individually and on behalf of similarly situated employees

11 **SUPERIOR COURT OF CALIFORNIA**
12 **FOR THE COUNTY OF SACRAMENTO**

13 LONI GARCIA, individually and on behalf of
14 all other similarly situated employees,

15 Plaintiff,

16 vs.

17 AQUALITY WATER MANAGEMENT,
18 INC., a California Corporation; JOSH
19 BROWN, an individual; and DOES 1 to 100,
20 inclusive,

21 Defendants.

Case No. 34-2021-00292794

CLASS ACTION

**DECLARATION OF GALEN T. SHIMODA
IN SUPPORT OF PLAINTIFF'S MOTION
FOR FINAL APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: January 5, 2022

Time: 9:00 a.m.

Dept.: 54

Judge: Christopher E. Krueger

Filed: January 21, 2021

Trial Date: None set

1 I, Galen T. Shimoda, declare:

2 1. I am an attorney at law duly admitted to practice before all the courts of the State of
3 California and an attorney of record for Plaintiff Loni Garcia ("Plaintiff") herein. I am making this
4 declaration on behalf of the named Plaintiff, the putative class members, and in support of Plaintiff's
5 Motion for Final Approval of Class Action and PAGA Settlement ("Motion"). A true and correct copy
6 of the Joint Stipulation Regarding Class Action and PAGA Settlement and Release ("Agreement") in
7 this matter is filed with this Motion as Exhibit A.

8 2. This case was brought as a wage and hour class action based on Plaintiff's contention
9 that Defendants Aquality Water Management, Inc., and Josh Brown, ("Defendants") violated California
10 law by 1) failing to pay overtime wages; 2) failing to pay minimum wage, 3) failing to provide meal
11 periods; 4) failing to provide rest periods; 5) wage statement violations; 6) waiting time penalties; and
12 7) unfair competition. Plaintiff also alleged liability for civil penalties under the Private Attorneys
13 General Act ("PAGA"). These claims were based on allegations that Defendants violated California
14 law by 1) failing to pay Plaintiff and similarly situated employees for all hours worked due their failure
15 to pay for off-the-clock "on call" time and inaccurate record keeping policy; 2) failing to provide duty
16 free meal and rest periods by requiring Plaintiff and similarly situated employees to remain "on call"
17 during breaks; 3) failing to accurately itemize the hours and wages earned on paystubs issued to class
18 members; and 4) failing to properly pay overtime and premium pay due to Defendants' failure to
19 incorporate shift differentials into the Regular Rate of Pay ("RROP"). The PAGA, waiting time
20 penalty, wage statement violation, and unfair competition claims also derive from these violations.

21 3. Plaintiff is the only named representative in this matter. From our initial investigations
22 of Plaintiff's claims and documents, we believed these claims had merit and could be maintained as a
23 class action. We filed the action on or about January 21, 2021. Plaintiff exhausted administrative
24 remedies through the Labor and Workforce Development Agency ("LWDA"). Plaintiff filed a notice
25 with the LWDA on November 9, 2020, setting forth the facts and theories of liability. A true and
26 correct copy of the notice filed with the LWDA is being filed with this Motion as Exhibit C. A copy of
27 the notice was also sent to Defendants via certified mail and the \$75.00 filing fee was remitted to the
28 LWDA at that time. There was no response by the LWDA regarding its intent to investigate the claims

1 alleged in Plaintiff's notice for more than 65 days. As such, Plaintiff became authorized to commence
2 a civil action under the PAGA. A true and correct copy of Plaintiff's operative Complaint is filed with
3 this Motion as Exhibit B. A copy of the complaint was uploaded to the LWDA on February 2, 2021,
4 after we received an endorsed copy back from Court.

5 4. Currently, there is no date set for a motion to certify the class and there is no trial date.

6 5. Defendants are represented in this matter by Alexandra M. Asterlin of Palmer
7 Kazanjian. From the beginning, Defendants have contested the merits of this case, the suitability of the
8 case for class action or representative treatment, the manageability of the case at trial, and Plaintiff's
9 ability to prove a violation in each pay period for each employee among other defenses and contentions
10 they made challenging the propriety of this action. Defendants further contended that, even assuming
11 there was a finding supporting the imposition of PAGA penalties, the Court would likely exercise its
12 discretion to substantially reduce any such penalties owed based on evidence of good faith attempts to
13 comply with Labor Code obligations by Defendants. Notwithstanding its agreement to settle this
14 matter, Defendants believe the practices Plaintiff is contending are unlawful either do not exist or, to
15 the extent they do exist, fully comply with all state and federal employment laws with respect to
16 Plaintiff and Class Members. Also, Defendants have contended that this matter is not appropriate for
17 class certification outside of this proposed class settlement.

18 6. Based on the expected testimony from Plaintiff and Class Members, a review of
19 Defendants' policies and procedures and other documents relating to the alleged claims, information on
20 the number of Class Members, Class Members' dates of employment, and a representative sample of
21 Class Members' payroll data, the scope of the potential damages to Plaintiff and Class Members in light
22 of the claims alleged, the uncertainty in the law with regard to certification, and the negotiations that
23 have taken place, I am convinced that the proposed settlement is in the best interest of the class. The
24 length and risks of trial and other normal perils of litigation that impact the value of the claims were also
25 considered and weighed in reaching the Agreement. In addition, I carefully considered the prospect of
26 potential class certification issues as well as the uncertainty of class certification, the difficulties of
27 complex litigation, and the lengthy process of establishing specific damages and various possible delays
28 and appeals in agreeing to the proposed settlement. I further considered the fact that penalties under the

1 PAGA could be substantially cut at the discretion of the Court even if Plaintiff was successful on
2 proving those claims and there was risk that a Court could find no willfulness in the failure to pay wages
3 at separation, which would eliminate the value of the waiting time penalty entirely. Overall, I believe it
4 is more beneficial to secure a guaranteed benefit to the class now rather than to proceed with litigation
5 and potentially obtain zero funds to the class due to legal or factual issues in the case.

6 7. My office, including my associate Jessica L. Hart, my paralegals, and myself, along with
7 Plaintiff's assistance, thoroughly investigated the merits of the claims and potential damages for such
8 claims. The parties engaged in informal discovery and exchange of documents, including a
9 representative sampling of employee data, such as timecards, paystubs, payroll data and relevant policies
10 for the entirety of the statute of limitations applicable to the alleged claims. The discovery covered all
11 aspects of the asserted claims, including certification issues, merits issues, damages, the scope and
12 configuration of Class Members, the content and implementation of the wage and hour policies at issue,
13 issues relating to manageability concerns at trial, among other relevant areas. From this production we
14 were able to determine information critical to a reliable damages analysis such as the average hourly
15 rate, average daily hours worked, average number of workweeks and pay periods that had potential
16 violations based on the asserted claims, the frequency with which violations occurred in a given week
17 and/or pay period, and the number for former employees. This information allowed my office to assess
18 both liability and damages and create an accurate damages model. Plaintiff assisted in all aspects of this
19 litigation including providing factual information relating to Plaintiff's and similarly situated
20 employees' employment conditions, providing a substantial number of documents, and answering
21 questions regarding Defendants' factual contentions in this matter. This was important because it
22 directly related to our ability to maintain this case as a class action and our ability to obtain a favorable
23 settlement for the class.

24 8. Throughout this litigation our office had numerous communications with Defendants'
25 Counsel discussing our respective positions. The parties engaged in mediation on June 23, 2021, using
26 an experienced mediator, David Perrault. It was only after approximately nine (9) months of extensive,
27 arm's length negotiations that the parties were able to reach a settlement, which only occurred after a
28

1 full-day mediation. The negotiations were at all times contentious and adversarial, though still
2 professional in nature.

3 9. The parties reviewed and analyzed substantial amounts of data regarding the class
4 claims. Based on our analysis and review of all relevant documents and Class Member information, I
5 have determined that the maximum damages for the asserted class claims is approximately \$1,268,292,
6 which includes civil penalties under the PAGA. The likely exposure for PAGA penalties is
7 approximately \$425,250.00 based on the counts alleged to the LWDA and the class data. Based on our
8 research, we did not find any prior Labor Commissioner or court decisions that stated Defendants'
9 practices and/or policies were improper. As such, a "subsequent violation" may not be found for
10 penalty calculation purposes and the exposure analysis here is based on an "initial violation" valuation
11 being adopted by any fact finder if this matter went to trial.

12 10. I believe the PAGA penalties in this case may be reduced however due to the fact that
13 the penalties would be in addition to amounts owed for substantive violations and much of the penalties
14 are based on violations due to technical non-compliance with the Labor Code. Furthermore,
15 Defendants produced a substantial number of documents that a Court may find demonstrates a good
16 faith attempt at compliance that merits the reduction of civil penalties. Courts regularly cut civil
17 penalties on PAGA claims where statutory penalties for the same violations are assessed as well. The
18 statutorily authorized discretion that Courts have used to reduce penalties ranges substantially. *See*
19 *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (30% reduction);
20 *Fleming v. Covidien, Inc.*, 2011 U.S. DIST. LEXIS 154590, *9 (C.D. Cal. 2011) (82% reduction).
21 Thus, civil penalties may be cut to approximately \$76,545 (82% reduction) or lower given the
22 derivative recovery. Taking this into account, the likely recovery if Plaintiff was successful at trial on
23 proving all the substantive class damages plus civil penalties after a reduction of the PAGA penalties
24 would be approximately \$919,587. Taking this into account, Plaintiff's \$107,426 gross recovery under
25 the Agreement represents approximately 11.6% of the maximum likely value in this matter. After
26 deducting from the Gross Settlement Amount the proposed allocations for attorneys' fees and costs
27 (\$42,244.05), any Enhancement Payment to the Class Representative (\$7,500), Claims Administrator
28 Costs (\$3,500), and the 75% portion of the PAGA Payment to the LWDA (\$7,500), the net recovery

1 under the Agreement is \$46,681.95, which represents approximately 5.1% of the maximum likely value
2 in this matter. Based on the final numbers from the administrator, the average recovery for class
3 member is approximately \$1,299.47 and the maximum recovery is approximately \$3,552.73. I believe
4 the Agreement represents a reasonable compromise of claims based on the legal and factual disputes in
5 this case. The ability to secure a guaranteed settlement now and ensure Class Members receive some
6 compensation, rather than proceed to further litigation and potentially recover nothing, was a
7 motivating factor in reaching this Agreement. Since the settlement agreement was executed by the
8 parties, the gross settlement amount has increased from \$105,000 to \$107,426 due to an increase in the
9 total workweeks in the class period beyond the 10% threshold agreed to by the parties. The \$2,426
10 increase is in proportion to the increase in workweeks beyond the 10% threshold set by the parties in
11 Section 10.1 of the Joint Stipulation Regarding Class Action and PAGA Settlement and Release.

12 11. I am a shareholder at Shimoda Law Corp. In agreeing to represent Plaintiff and take on
13 the case for all Class Members, I agreed to take this case on a contingency basis, meaning that I would
14 take a percentage of any settlement or judgment should we recover a monetary amount. I took a risk
15 that we would not recover any money in this matter if we were unsuccessful at trial. I also took on the
16 risk that the case may not be certified as a class action and/or be subject to an unfavorable summary
17 judgment ruling. However, I believe it is important to make sure employees are able to find affordable
18 representation in order to ensure that employers are complying with all their legal obligations towards
19 employees and paying employees all their hard-earned wages.

20 12. I have been a regular panel speaker for the CEB (Continuing Education of the Bar)
21 Employment Review seminars from 2014 to the present. My speaking engagements include the
22 following: 1) Lorman Military Leave Law Speaker; 2) Restaurant Association Speaker at Annual
23 Seminar (Los Angeles); 3) Federal Bar Association, Sacramento Chapter: 2015 Amendments to the
24 Federal Rules of Civil Procedure (Mar. 30, 2016); 4) CEB – Employment Law Practice: 2016 Year in
25 Review (Jan. 20, 2017); 5) CEB – Employment Law Practice: 2015 Year in Review (Jan. 22, 2016); 6)
26 CEB – Employment Law Practice: Year in Review (2014) (Jan. 9, 2015); 7) CEB - Employment Law
27 Practice: Year in Review (2013) (Jan. 10, 2014); 8) Sacramento County Bar Association - Class
28 Actions from the Trenches: Real World Experiences from the Plaintiff and Defense Bar (Feb. 21,

2012); 9) Sacramento Employer Advisory Council – Wage and Hour Workshop: Going Beyond the Exemption Discussion (Apr. 7, 2016); 10) Sacramento Employer Advisory Council - Wage & Hour Panel and AB 1825 Training: Updates on California’s New Wage Laws and Manager Compliance Training (Apr. 25, 2017); 11) Sacramento County Bar Association, Labor and Employment Section – PAGA Representative Litigation: Emerging Trends and Issues (May 17, 2016); 12) Sacramento Business Journal Panel – Overtime Rules (Jun. 23, 2016); 13) Association of Defense Counsel of Norther California & Nevada - Employment Law Update – Do the Math: Calculation Exposure and Damages in Wage and Hour Cases (Aug. 12, 2016); 14) California Employment Lawyers Association - PAGA Today and PAGA Tomorrow: Moderate-Advanced Issues In PAGA Litigation (Oct. 20, 2017); 15) California Employment Lawyers Association Advanced Wage and Hour Seminar – Better Know a Venue Roundup (May 17, 2019). I have been AV rated by Martindale Hubbell since 2013, was recognized as a Super Lawyer (Rising Star) from approximately 2009 to 2013 and was recognized as a Super Lawyer from 2014 to present.

13. I have practiced law in California since being admitted to the State Bar in 2003, litigating wage and hour class actions and individual wage and hour litigation among other cases. I began practicing class action law on the defense side at the firm of Orrick, Herrington & Sutcliffe LLP. I then switched to plaintiff class action work in 2005. My class action experience is in wage and hour law. I have litigated several class action cases in California State and Federal Courts, including up to certification, settlement, preliminary and final approval, and disbursement of monies, and have been found to be satisfy the adequacy requirements for class counsel. Some of the class action and/or PAGA cases I am litigating and/or have litigated as lead or co-counsel include the following:

- *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- *Acosta v. Acosta Sales, LLC, et al.*, Case No. 2:11-CV-01796 (C.D. Cal.);
- *Atchley v. Blaggs Food Service, LLC*, 34-2017-0215930 (Sac. Sup. Ct.);
- *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- *Arnall v. North American Merchandising Service Inc.*, Case No. 06AS01439 (Sac. Sup. Ct.);
- *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);

- 1 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 2 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac.
- 3 Sup. Ct.);
- 4 • *Benak v. MDStat Urgent Care, Inc.*, No. 34-2015-00188181 (Sac. Sup. Ct.);
- 5 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup.
- 6 Ct.);
- 7 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup.
- 8 Ct.);
- 9 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac.
- 10 Sup. Ct.);
- 11 • *Carlos v. Abel Mendoza, Inc., et al.*, Case No. 34-2016-00195806 (Sac. Sup. Ct.);
- 12 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup.
- 13 Ct.);
- 14 • *Carr et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 15 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-
- 16 00209613 (Sac. Sup. Ct.);
- 17 • *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- 18 • *Colbert v. American Home Craft Inc.*, Case No. 05AS05012 (Sac. Sup. Ct.);
- 19 • *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.)
- 20 • *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242
- 21 (San Joaquin Sup. Ct.);
- 22 • *Dugue v. Sierra Forever Families, et al.*, Case No. 34-2017-00210770 (Sac. Sup. Ct.);
- 23 • *Fadhl v. Siemens Healthcare Diagnostics, Inc., et al.*, Case No. 34-2017-00209518 (Sac.
- 24 Sup. Ct.);
- 25 • *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
- 26 • *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- 27 • *Gerard v. Les Schwab Tires Center of California, Inc.*, Case No. 34-2007-30000003 (Sac.
- 28 Sup. Ct.);

- 1 • *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- 2 • *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- 3 • *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- 4 • *Hernandez et al. v. MP Nexlevel, LLC et al*, Case No. 3 :16-cv-03015-JCS (N.D. Cal.);
- 5 • *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac Sup. Ct.);
- 6 • *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- 7 • *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- 8 • *James v. Language World Services, Inc., et al.*, Case No. 34-2020-00279929 (Sac. Sup. Ct.);
- 9 • *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- 10 • *Koretsky v. Furniture USA, Inc.*, Case No. 34-2014-00172142 (Sac. Sup. Ct.);
- 11 • *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- 12 • *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.);
- 13 • *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac.
- 14 Sup. Ct.);
- 15 • *Miller v. Leaders in Community Alternatives*, Case No. FCSO47249 (Solano Sup. Ct.);
- 16 • *Pickens v. Elica Health Centers*, Case No. 34-2016-00200382 (Sac. Sup. Ct.);
- 17 • *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- 18 • *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- 19 • *Rickwalt v. Direct Reconditioning, LLC, et al.*, Case No. 34-2015-00175642 (Sac. Sup. Ct.);
- 20 • *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-
- 21 00082201 (Sac Sup. Ct.);
- 22 • *Rogers v. Les Scwhab Tires Center of California, Inc.*, Case No. 34-2009-00066320 (Sac.
- 23 Sup. Ct.);
- 24 • *Schechter et al. v. Isys Solutions, Inc.*, Case No. RG10550517 (Alameda Sup. Ct.);
- 25 • *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- 26 • *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- 27 • *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac.
- 28 Sup. Ct.);

- *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.);
- *Williams v. Civic Development Group*, Case No. 06AS00267 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

14. The preceding list does not include those cases where, for various reasons, the case was filed as a class action and/or PAGA action, but did not maintain that status through the end of the case.

15. My associate, Jessica L. Hart, Esq., also worked with me on this matter and was critical in assisting with all aspects of the litigation of this case. Ms. Hart graduated from University of California Davis School of Law. Prior to joining Shimoda Law Corp., Ms. Hart worked alongside a number of attorneys in the Sacramento area focusing almost exclusively on plaintiff's side litigation and employment law. Since joining my firm, Ms. Hart has worked on a variety of individual, class action, and Private Attorneys General Act cases involving wage and hour claims. As an associate, some of the class action and/or PAGA cases Ms. Hart is litigating and/or has litigated as co-counsel include the following:

- *Afoa v. Milestone Retirement Communities, LLC, et al.*, Case No. 34-2020-00282555 (Sac. Sup. Ct.);
- *Cota v. Milestone Management (CA) – Meadows, LLC*, Case No. 34-2020-00280648 (Sac. Sup. Ct.);
- *Coy v. Southern Home Care Services, Inc., et al.*, Case. No. 2:21-CV-00067-JAM-CKD (E.D. Cal.);
- *Dreyer v. Automation Anywhere, Inc.* Case. No 20CV372730 (Santa Clara Sup. Ct.);
- *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242 (San Joaquin Sup. Ct.);
- *Fang v. Interpress Technologies, Inc.* Case. No. 34-2021-00292937 (Sac. Sup. Ct.);
- *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
- *Hawkins v. Twitch Interactive, Inc.*, Case No. 34-2020-00281761 (Sac. Sup. Ct.);
- *Hudson v. Stockton Nursing and Rehab Center, LLC*, Case No. STK-CV-UOE-2020-0008507 (San Joaquin Sup. Ct.);

- *Hussaini v. Integrated Resources, Inc, et al.*, Case No. 34-2021-00297152 (Sac. Sup. Ct.);
- *Kee, et al. v. Dr. Jeffrey A. Saladin, Dental Corporation, et al.*, Case No.34-2020-00290072 (Sac. Sup. Ct.);
- *Leon v Golden Bay Fence Plus Iron Works, Inc., et al.*, Case No. STK-CV-UOE-2021-0000543 (San Joaquin Sup. Ct.);
- *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.);
- *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac. Sup. Ct.);
- *Madrigal Vargas v. Mary Ann's Baking Co., Inc.*, Case No. 2:21-CV-00320-JAM-JDP (E.D. Cal.);
- *Perez v. Too Infinity Management, LLC, et al.*, Case No. 34-2020-00285276 (Sac. Sup. Ct.);
- *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct.);
- *Whiteside v. SPSG Partners, et al.*, Case. No. 2:20-cv-01643-TLN-DMC (Sac. Sup. Ct.);
- *Valentin v Sacramento Laundry Company, Inc.*
Sacramento Superior Court Case No. 34-2019-00270987; and
- *Pek, et al v. Varris Management, Inc.*, Case No. STK-CV-UOE-2020-3954 (San Joaquin Sup. Ct.).

16. The preceding list does not include those cases where, for various reasons, the case was filed as a class action and/or PAGA action, but did not maintain that status through the end of the case.

17. I am requesting attorneys' fees and costs pursuant to the common fund doctrine as I believe it to be applicable to the present case pursuant to *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977), *Laffitte v. Robert Half Internat. Inc.*, 1 Cal.5th 480 (2016), and *Paul, Johnson, Alston & Hunt v. Grauly*, 886 F.2d 268, 271 (9th Cir. 1989). Plaintiff and our firm have been able to secure an identifiable benefit on behalf of the class and equity counsels that the cost of the representation should be born equally amongst all class members receiving these benefits. The settlement recovery provides

1 an excellent result and is the product of substantial time and effort in analyzing the facts and law
2 applicable to this case. I agreed to take this case on a contingency and as a class action with the
3 possibility that I would not receive any compensation for my time and efforts due to issues regarding
4 the merits and/or certification and have carried that risk over the course of the case. I have reviewed
5 fee arrangements and Court ordered fee awards in similar class cases and I believe that the thirty-five
6 Percent (35%) fee request is within the accepted ranges and eminently reasonable in light of the results
7 obtained for the putative class, with an average net payout of \$1,299.47 and a high net payout of
8 \$3,552.73. In my experience with contingency cases in employment law cases, the typical percentage
9 negotiated between parties ranges from thirty-five to forty percent (35% to 40%) in individual
10 litigation. In class action litigation, my experience in my own firm and working with several other
11 firms has been that the typical percentage negotiated between parties and approved by a court ranges
12 from thirty to forty percent (30% to 40%) based on the same factors. I have also reviewed several
13 recent Federal District Court Cases where the Court has approved common fund based fee requests.
14 These cases include *In re Activision Sec. Litigation*, 723 F.Supp. 1373, 1379 (N.D. Cal. 1989), *Watson*
15 *v. Raytheon Company*, USDC Southern District, Case No. 3:10-cv-0063, *Dirienzo v. Dunbar Armored,*
16 *Inc.*, USDC Southern District, Case No. 3:09-cv-02745, *Green, et al. v. Penske Logistics, L.L.C., et al.*,
17 USDC Southern District, Case No. 3:09-cv-00069, *Benitez et al. v. Wilbur*, USDC Eastern District,
18 Case No. 1:08-cv-01122, *Chavez et al. v. Petrissans et al.*, USDC Eastern District, Case No. 1:08-cv-
19 00122, and *Willis et al. v. Cal-Western Transport*, USDC Eastern District, Case No. 1:00-cv-05695,
20 which are cited in Plaintiff's Memorandum of Points and Authorities. I believe my request of \$36,750
21 (approximately 35%) for attorneys' fees is justified given the results obtained on behalf of the class.
22 Moreover, at this time, my firm has advanced all costs for Plaintiff and Class Members and has not
23 received any compensation whatsoever for our time expended in this case. The expected costs through
24 final approval are \$5,494.05. Attached as Exhibit D is a true and correct copy of the costs incurred
25 prior to the filing of this Motion and the expected costs incurred through the final approval and fairness
26 hearing. The difference in the actual costs and the originally allocated \$10,000 will be added to the Net
27 Settlement Amount.
28

18. I have used several class action administrator companies in the wage and hour class actions I have resolved in the past and believe Simpluris, Inc. will provide the best service to administer the class settlement. Under the settlement, the difference between the originally allocated \$5,000 and the actual administrative costs of \$3,500 will be paid out to putative class members on a pro rata basis.

19. A copy of the Agreement this Motion were submitted to the LWDA for review at the same time the Motion was submitted to the Court pursuant to California Labor Code section 2699(1)(2). A true and correct copy of documents demonstrating the settlement documents were provided to the LWDA and that the LWDA has confirmed receipt are being filed with this Motion as Exhibit E.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 23rd day of November 2021 in Elk Grove, California.


Galen T. Shimoda

1 Galen T. Shimoda (Cal. State Bar No. 226752)
2 Justin P. Rodriguez (Cal. State Bar No. 278275)
3 Jessica L. Hart (Cal. State Bar No. 331441)

4 **Shimoda Law Corp.**

5 9401 East Stockton Boulevard, Suite 120

6 Elk Grove, CA 95624

7 Telephone: (916) 525-0716

8 Facsimile: (916) 760-3733

9 Attorneys for Plaintiff LONI GARCIA

10 individually and on behalf of similarly situated employees

11 **SUPERIOR COURT OF CALIFORNIA**
12 **FOR THE COUNTY OF SACRAMENTO**

13 LONI GARCIA, individually and on behalf of
14 all other similarly situated employees,

15 Plaintiffs,

16 vs.

17 AQUALITY WATER MANAGEMENT,
18 INC., a California Corporation; JOSH
19 BROWN, an individual; and DOES 1 to 100,
20 inclusive,

21 Defendants.

Case No. 34-2021-00292794

Honorable Christopher E. Krueger

CLASS ACTION

**DECLARATION OF CASSANDRA
POLITES FOR SIMPLURIS, INC.
REGARDING NOTICE AND
SETTLEMENT
ADMINISTRATION**

Date: January 5, 2022

Time: 9:00 a.m.

Dept.: 54

Judge: Christopher E. Krueger

Filed: January 21, 2021

Trial Date: None Set

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DECLARATION OF CASSANDRA POLITES

I, CASSANDRA POLITES, declare the following facts to be true and correct and if called as a witness would testify competently to the same:

1. I am employed as a Case Manager by Simpluris, Inc. ("Simpluris"), the settlement administrator in the above-entitled action. My business address is 3194-C Airport Loop Drive, Costa Mesa, CA 92626. My telephone number is (714) 640-5624. I am over 21 years of age and authorized to make this declaration on behalf of Simpluris and myself.

2. Simpluris is a class action settlement administration company headquartered in Costa Mesa, California. It was founded by individuals who have each managed hundreds of settlements along with professionals in the areas of software development, third-party claims administration, mail-house operations and call center support management.

3. Simpluris was appointed by the Court as Settlement Administrator to administer the settlement in accordance with the terms of the Second Amended Stipulation of Class Action and PAGA Settlement (the "Settlement"). Simpluris has been responsible, among other things, for: (a) printing and mailing the Notice of Class Action Settlement ("Class Notice"); (b) receiving and remailing undeliverable Class Notices; (c) calculating each Class Member's estimated *pro rata* share of the Net Settlement Fund ("Individual Settlement Share") based on the number of workweeks that he or she worked for Defendant as an hourly-paid or non-exempt employee during the period from January 21, 2017 through August 24, 2021 ("Class Workweeks") and each Aggrieved Employee's estimated *pro rata* share of the Employee PAGA Amount ("Individual PAGA Payment") based on the number of workweeks that he or she worked for Defendant as an hourly-paid or non-exempt employee during the period from November 9, 2019 through August 24, 2021 ("PAGA Workweeks"); (d) receiving and validating any written disputes from Class Members or Aggrieved Employees regarding their Class Workweeks, PAGA Workweeks, or other information stated in their Class Notice ("Workweeks Dispute"), written objections to the Class Settlement, address changes, and/or written requests to be excluded from the Class Settlement ("Requests for Exclusion"); (e) and answering questions from Class Members. If the Court grants final approval of the Settlement, Simpluris will be responsible, among other things, for: (f) calculating Individual Settlement Payments and Individual PAGA Payments,

1 distributing funds, and tax-reporting following final approval; (g) mailing settlement checks; (h) and
2 for such other tasks as the Parties mutually agree or the Court orders Simpluris to perform.

3 **NOTIFICATION TO THE CLASS**

4 4. On August 25, 2021, Simpluris received the Court-approved Class Notice from Class
5 Counsel. The Class Notice advised Class Members of their right to opt out from the Class Settlement,
6 object to the Class Settlement, or do nothing, and the implications of each such action. The Class
7 Notice advised Class Members of applicable deadlines and other events, including the Final Approval
8 Hearing, and how Class Members could obtain additional information. The Class Notice was pre-
9 printed with the name and address of the Class Member or Aggrieved Employee, Class Workweeks
10 used to calculate his/her estimated Individual Settlement Share, and instructions for challenging the
11 workweeks. A true and correct copy of an exemplar Class Notice in English is attached hereto as
12 “EXHIBIT A”.

13 5. On September 7, 2021, Counsel for Defendant provided Simpluris with a mailing list
14 containing the names, last known addresses, Social Security Numbers, telephone numbers, and dates
15 of employment for each Class Members (“Class List”). The Class List contained data for thirty-four
16 (34) unique individuals identified as Class Members.

17 6. The mailing addresses contained in the Class List were processed and updated utilizing
18 the National Change of Address Database (“NCOA”) maintained by the U.S. Postal Service. The
19 NCOA contains changes of address filed with the U.S. Postal Service. In the event that any individual
20 had filed a U.S. Postal Service change of address request, the address listed with the NCOA was utilized
21 in connection with the mailing of the Class Notice. Of those thirty-four (34) addresses, Simpluris was
22 able to update five (5) new addresses.

23 7. On September 21, 2021, after updating the mailing addresses through the NCOA, Class
24 Notices were mailed via First Class Mail to the thirty-four (34) Class Members contained in the Class
25 List. The Class Notice advised Class Members that they could submit a written Request for Exclusion,
26 objection to the Class Settlement, and/or Workweeks Dispute postmarked by November 5, 2021
27 (“Response Deadline”).

28 8. As of this date, a total of two (2) Class Notices were returned to Simpluris by the Post

Office, of which none had a forwarding address. For the two (2) Class Notices without forwarding addresses, Simpluris performed an advance address search (i.e. skip trace) to locate an updated address using Accurant. Simpluris used the Class Member's name and previous address to locate an updated address. Through the advance address searches, Simpluris was able to locate two (2) updated addresses. Ultimately, no Class Notices were undeliverable.

EXCLUSIONS AND OBJECTIONS

9. As of this date, Simpluris has not received any valid timely and valid Request for Exclusion from the Settlement.

10. As of this date, Simpluris has not received any Workweeks Disputes.

11. Class Members who wished to object to the Class Settlement were directed to submit a written objection to the Settlement Administrator. As of this date, Simpluris has not received any objections.

BREAKDOWN OF SETTLEMENT FUND

12. The Net Settlement Fund available to Settlement Class Members is estimated to be \$46,681.95, and was calculated by subtracting the requested attorneys' fees (\$36,750.00), the amount allocated for litigation costs and expenses (\$5,494.05), the requested Enhancement Payment (\$7,500.00), the requested Settlement Administration Costs (\$3,500.00), and the PAGA Payment (\$7,500.00) from the Gross Settlement Amount (\$107,426.00).

13. Pursuant to the Agreement, 25% of the PAGA Payment (\$2,500.00) will be allocated to Aggrieved Employees regardless of whether he or she opts out of the Class Settlement ("Employee PAGA Amount"); Aggrieved Employees cannot opt out of the PAGA Settlement. The Employee PAGA Amount is allocated on a *pro rata* basis using their PAGA Workweeks.

14. The *highest* Individual PAGA Payment to an Aggrieved Employee is currently estimated to be approximately \$155.91, the *average* Individual PAGA Payment is currently estimated to be approximately \$89.29. There are twenty-eight (28) Aggrieved Employees.

15. The *highest* Individual Settlement Share to a Settlement Class Member is currently estimated to be approximately \$3,552.73, the *average* Individual Settlement Share is currently estimated to be approximately \$1,299.47. These amounts are subject to employee-side tax and withholdings.

1 16. As of this date, the estimated Employer Taxes that will be paid by Defendant in addition
2 to the Gross Settlement Amount is \$2,937.81.

3 **ADMINISTRATION COSTS**

4 17. Simpluris' total costs for services in connection with the administration of this Settlement,
5 including fees incurred and anticipated future costs for completion of the administration, are \$3,500.00.
6 Simpluris' work in connection with this matter will continue with the calculation of the settlement checks,
7 issuance and mailing of those settlement checks, etc., and to do the necessary tax reporting on such
8 payments. Attached as "**EXHIBIT B**" is a true and correct copy of the invoice stating the Settlement
9 Administration Costs.

10
11 I declare under penalty of perjury under the laws of the State of California that the foregoing is
12 true and correct. Executed this 9th day of November 2021, at Costa Mesa, CA.

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17 CASSANDRA POLITES

EXHIBIT A

**CALIFORNIA SUPERIOR COURT
FOR THE COUNTY OF SACRAMENTO**
Case No. 34-2021-00292794
Garcia v. Aquality Water Management et al.

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

«IMbFullBarcodeEncoded»

«FirstName» «LastName»

«Address1» «Address2»

SIMID «SIMID»
«Case_No»_130553

«City», «State» «Zip»-«ZipDPC3»

ATTENTION: All non-exempt employees who have or continue to work for Defendants from January 21, 2017 up to August 24, 2021.

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF CLASS ACTION LITIGATION AND POTENTIAL DISBURSEMENT OF SETTLEMENT FUNDS TO YOU. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO PARTICIPATE OR TO OPT OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW.

Pursuant to an order from the Sacramento County Superior Court (“Court”) granting preliminary approval of this class action settlement, entered on August 24, 2021. You are receiving notice of a proposed class action settlement between Plaintiff Loni Garcia (“Plaintiff” or “Class Representative”), and Defendants Aquality Water Management, Inc., and Josh Brown (“Defendants”) on behalf of Class Members as defined above. You are receiving this notice because Defendants’ records indicate you fall within the definition of “Class Member.” Defendants’ records also indicate that you worked «MERGED_WW_CALC» workweeks during the applicable Class Period (as defined below), which means your share of the settlement proceeds is estimated to be \$«MERGED_EstSettAmnt_CALC». Your actual share of the settlement proceeds will vary depending on the total number of Class Members who choose to participate and the resolution of any workweek disputes as described in this notice.

The terms of the Agreement and a description of the case are identified in this notice. Pursuant to the Court’s order, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

I. BACKGROUND OF THE CASE

On January 21, 2021, Plaintiff, a former employee, filed a Complaint against Defendants in the California Superior Court for the County of Sacramento on behalf of herself and Class Members. The term “Action” means this putative class action pending in the Superior Court of California for the County of Sacramento, Case No. 34-2021-00292794. The Class Period is January 21, 2017 to August 24, 2021.

In the Action, Plaintiff sought to obtain unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of herself and Class Members. Plaintiff alleged that Defendants violated California law by 1) violating Labor Code §§ 510, 1194, and IWC Wage Order No. 4, § 3 (Failure to Pay Overtime Wages); 2) violating Labor Code §§ 1194, 1197.1, and IWC Wage Order No. 4, § 4 (Failure to Pay Minimum Wages); 3) violating Labor Code §§ 226.7, 512, and IWC Wage Order No. 4, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof); 4) violating Labor Code § 226.7 and IWC Wage Order No. 4, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof); 5) violating Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements); 6) violating of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages); 7) violating Business and Professions Code §§ 17200, *et seq.* (Unfair Competition); and 8) violating Labor Code §§ 2698, *et seq.*, (Private Attorneys General Act). Defendants have denied all of Plaintiff’s

allegations. The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Furthermore, the Parties have participated in a full day mediation facilitated by a neutral third party. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide Settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting the Agreement, Defendants continue to deny all allegations and claims. Defendants have entered into this settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation.

The Parties have entered into a *Joint Stipulation Regarding Class Action PAGA Settlement and Release* ("Agreement"), which has been preliminarily approved by the Court. The Agreement applies to any and all Class Members as defined above. "Class Member" does not include persons who submit a valid request to opt out (as explained below). If you are a Class Member, you have the opportunity to participate in the settlement, or to exclude yourself ("opt out") from the settlement. This notice is to advise you of how you can either participate in the settlement or be excluded from the settlement.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, Defendants agree to pay a total sum of One Hundred and Five Thousand Dollars (\$107,426.00) ("Gross Settlement Amount"). Deducted from this Gross Settlement Amount will be sums approved by the Court for attorneys' fees, not to exceed 35% of the Gross Settlement Amount (which equals \$36,750), attorneys' costs not to exceed \$10,000, Claims Administrator Costs estimated not to exceed \$5,000, Class Representative's Enhancement Payment of \$7,500, and \$10,000 for alleged PAGA penalties (the "PAGA Payment"), which will result in a "Net Settlement Amount" for distribution to all Class Members. Any employer side taxes attributable to payments allocated as wages will be paid by Defendants in addition to the Gross Settlement Amount. As explained further below, the amount of each Class Member's share of the Net Settlement Amount will depend on the number of weeks worked by participating Class Members during the Class Period. Of the \$10,000 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among Aggrieved Employees, which are defined as all of Defendants' non-exempt employees who have or continue to work for Defendants from November 9, 2019 up to August 24, 2021.

The number of weeks you worked during the Class Period and your estimated share of the Net Settlement Amount and PAGA Payment ("Claim Amount") is stated on the first page of this notice. The actual amount received may be more or less than the amount stated depending on the actual number of weeks worked by participating Class Members, the resolution of any disputes regarding workweeks, and on the distributions finally approved and allocated by the Court. However, whether Class Members opt out will have no effect on Aggrieved Employees' allocations for the PAGA claims.

B. Claim Amounts and Allocation Between Class Members and Aggrieved Employees

Defendants will pay Claim Amounts through the Claims Administrator, as described below, to each Class Member who does not opt out of the settlement and to Aggrieved Employees. All Claim Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that all Claim Amounts payable to eligible Class Members will be allocated from the Net Settlement Amount and paid as 2/3 for disputed interest, statutory penalties, and other non-wage damages for which IRS Forms 1099-MISC will issue and 1/3 for disputed wages for which IRS Forms W-2 will issue. The PAGA Payment to Aggrieved Employees will be paid as 100% for civil penalties.

Payment to Class Members, who do not opt out, and Aggrieved Employees will not require the submission of a claim form. Each Class Member's share will be determined by dividing their total weeks worked within the Class Period by the total weeks worked by all Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee's individual

share. Receipt of the Claim Amounts will not entitle any Class Member or Aggrieved Employee to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

C. Calculations to Be Based on Defendants' Records and Resolution of Workweek Disputes

For each Class Member, the amount payable will be calculated by the Claims Administrator from Defendants' records. Defendants' records will be presumed correct, unless evidence to the contrary is provided to the Claims Administrator. Defendants' records and any additional evidence will be reviewed by the Claims Administrator in the event of a dispute about the number of workweeks worked by an individual Class Member. If a Class Member disputes the accuracy of Defendants' records, all supporting documents evidencing additional workweeks must be submitted by the Class Member. The dispute must (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than November 5, 2021. The dispute will be resolved by the Claims Administrator based on the records and evidence provided. The Claims Administrator's decision on all disputes will be final and binding.

D. Release of Claims

For those Class Members who do not opt out and Aggrieved Employees, the Agreement contains the following releases:

Class members who do not opt out will be deemed to have released all claims, charges, complaints, demands, actions, and causes of action contained in the Complaint, and other claims, charges, complaints, demands, actions and causes of action that could have been brought based on the facts alleged in the operative Complaint, through the Class Period. This release excludes the release of claims not permitted by law. The Qualified Claimant's Released Claims exclude claims for workers' compensation or unemployment insurance benefits.

Aggrieved Employees will be deemed to have released any and all claims, charges, complaints, demands, actions, and causes of action that were or could have been brought under the Private Attorneys General Act, Labor Code § 2698 *et seq.*, based on the facts or claims alleged in the Action during the PAGA Claim Period. Aggrieved Employees cannot opt out of this waiver of claims.

The individuals released ("Released Parties") means Defendants, as well as Defendants' officers, shareholders, directors, agents, representatives, employees, attorneys, insurers and their successors and assigns, and all persons acting by, through, under, or in concert with any of them.

Class Members can talk to one of the lawyers appointed as Class Counsel (listed below) for free or talk to their own lawyer if Class Members have questions about the released claims and what they mean.

E. Attorneys' Fees and Costs

Defendants have agreed to pay Class Counsel's attorneys' fees to be approved by the Court, up to a maximum of 35% of the Gross Settlement Amount which equals \$36,750, and attorneys' costs not to exceed \$10,000. Class Counsel's attorneys' fees and costs will be paid and deducted from the Gross Settlement Amount.

F. Reasonableness of Settlement

All attorneys for the Parties to the Action believe the amounts payable to Class Members, Aggrieved Employees, and amounts for attorneys' fees and costs requested are fair and reasonable. The Class Representative and Class Counsel support this Settlement. Among the reasons for support are the defenses to liability potentially available to Defendants, the inherent risk of trial on the merits, the risk of denial of class certification, and the delays associated with litigation.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement

If you wish to participate in the settlement and believe your workweek information is accurate, **you do not need to take any further action.** Payment will be automatically made to you consistent with the terms of the Agreement and Court Order. If you wish to dispute the workweek calculation, you may follow the procedures outlined in Section II.C above. California law protects Class Members from retaliation based on their decision to participate in the Settlement.

B. Excluding Yourself from the Settlement

If you do not wish to participate in the settlement, you may be excluded (*i.e.*, “opt out”) by submitting a timely written request to the Claims Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the settlement, and/or want to be excluded from this settlement; (c) identify the case name and number (*i.e.* *Garcia v. Aquality Water Management, Inc.*, 34-2021-00292794); (d) be signed; and (e) be post-marked no later than **November 5, 2021**. The request to opt out must be signed, dated and mailed by First Class U.S. Mail or the equivalent, to:

Garcia v. Aquality Water Management et al.
P.O. Box 26170
Santa Ana, CA 92799
Telephone: (888) 369-3780

The request to opt out must be postmarked no later than November 5, 2021. If you submit a request to opt out, which is not postmarked by November 5, 2021, your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. If the request to opt out is sent from within the United States it must be sent through the United States Postal Service by First Class Mail, or the equivalent. Do not use a postage meter, as that may not result in a postmark appearing on the envelope containing your request to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the Claims Administrator, no longer be a Class Member and not receive their share of the class settlement payment. Aggrieved Employees cannot opt out of this Agreement and will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

C. Objection to Settlement

If you do not opt out of the settlement, you can object to the terms of the Agreement. However, if the Court rejects your objection, you will still be bound by the terms of the Agreement. You can ask the Court to deny approval by filing an objection. You **cannot** ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object. The objection must (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including any legal analysis and/or supporting documentation; (d) identify the case name and number (*i.e.* *Garcia v. Aquality Water Management, Inc.*, 34-2021-00292794); (e) be signed; and (f) be post-marked no later than November 5, 2021. The objection must be sent to the Claims Administrator at the address identified in section III.B and to counsel for Plaintiff and Defendants at the addresses identified in section IV of this notice.

If you have submitted a written objection as outlined above, you may also appear at the Final Approval Hearing, either in person or through your own attorney, to state your objection. However, you must file a notice of intent to appear with the Court and serve the notice on counsel for Plaintiff and Defendants. If you appear through your own attorney, you are responsible for paying that attorney.

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

After final approval of the settlement has been granted by the Court, each and every Class Member who does not opt out of the settlement and Aggrieved Employee will release Defendants and the Released Parties from the released claims described above. In other words, if you were employed as a Class Member by Defendants in California during the Class Period, and you do not exclude yourself from the settlement, you will be deemed to have entered into this release and to have released the above-described claims. In addition, you will be barred from ever suing Defendants and the Released Parties with respect to the claims covered by this settlement. If the settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in The Gordon D. Schaber Sacramento County Courthouse Dept. 54, Second Floor 813 6th Street Sacramento, CA 95814 on January 5, 2022 at 1:30 p.m. to determine whether the Agreement should be finally approved as fair, reasonable, and adequate. The Court also will be asked to approve Class Counsel's request for attorneys' fees and costs. The hearing may be continued without further notice to Class Members. It is not necessary for you to appear at this hearing, unless you wish to object to the settlement.

VI. ADDITIONAL INFORMATION

If you want additional information about this lawsuit and its proceedings, you can contact Class Counsel or Defendants' Counsel as follows:

Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Jessica L. Hart
Shimoda Law Corp.
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733
On behalf of Plaintiff

Alexandra M. Asterlin
Palmer Kazanjian
2277 Fair Oaks Blvd., Suite 455
Sacramento, CA 95825
Telephone: (916) 442-3552
Facsimile (916) 640-1521

On behalf of Defendants

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS. IF YOU HAVE ANY QUESTIONS, CALL 1-888-369-3780.

BY ORDER OF THE COURT

EXHIBIT B



3194-C Airport Loop Drive
Costa Mesa, CA 92626
800-779-2104 www.simpluris.com

Estimate #: 13472 Prepared By: Michael Sutherland
Estimate Date: 6/17/2021 Direct Dial #: 321-223-5067
Email: msutherland@simpluris.com

Attorney/Client: Plaintiff Attorney
Jessica Hart
Firm: SHIMODA LAW
<Associate@shimodalaw.com>

Attorney/Client: Defense Attorney
Firm:
Email:

Case Name: Garcia v. Aquality Water Management: Opt Out Settlement

Anticipated Total Cost	\$4,094
Capped Fee*	\$3,500
Cost Per Person	\$109.38
Postage included	\$36.70

Terms:

1) Capped Fees assume that Simpluris will receive data in a Single Excel file with no substantial change in class size or response rate.

Total Possible Class Size:	32	Undeliverable Rate:	10%
Response Rate:	1%	Call Rate:	0%
Mailing Document Language:	English	Fund Distribution:	Simpluris
Reminder Postcard:	No	Redistribution:	No
Unclaimed Funds:	Cy Pres	State(s):	Single

Case Setup

Data Compilation: Develop Case Specific Response Tracking - Error Reports

Category	Unit Value	# of Units	Total
Project Manager - Case Setup	\$125.00	3	\$375.00
Database Manager - Initial Data Analysis	\$140.00	3	\$420.00
Total			\$795.00

Notification

Notice Packet: 5 pg Notice, - Double Sided - English

Category	Unit Value	# of Units	Total
Mail Notice Packet	\$1.00	32	\$32.00
Postage	\$0.55	32	\$17.60
NCOA/CASS/LACS	\$25.00	1	\$25.00
Undeliverable Processing	\$0.25	3	\$0.80
Skip Trace RUM	\$2.00	3	\$6.40
Remail Notice	\$1.50	3	\$4.08
Remail Postage	\$0.55	3	\$1.50
Mailing Supervisor	\$50.00	1	\$50.00
Total			\$137.38

Call Center

Establish Case Specific Toll Free Number

Category	Unit Value	# of Units	Total
Customer Service Reps/Call Center Support	\$75.00	0	\$0.00
800 # Charges	\$0.10	0	\$0.00
Total			\$0.00



3194-C Airport Loop Drive
Costa Mesa, CA 92626
800-779-2104 www.simpluris.com

Administration

Process Mail, Opt-Outs or Objections			
Category	Unit Value	# of Units	Total
Database Manager	\$125.00	1	\$125.00
Resolving Mismatched TINs	\$75.00	1	\$75.00
Dispute/Deficiencies - Send One Cure Letter	\$1.50	2	\$3.00
Opt Out Processing	\$1.50	0	\$0.48
Data Entry	\$50.00	1	\$50.00
Project Manager	\$125.00	1	\$125.00
Weekly Reporting to Counsel	WAIVED	12 Wks of Reporting	\$0.00
Total			\$378.48

Distribution

Setup a Disbursement Account			
Print & Mail Checks to Class Members: W2, 1099's - File Reports with Appropriate Federal & State Taxing Authorities			
Account Management & Reconciliation			
Category	Unit Value	# of Units	Total
Disbursement Data Preparation	\$140.00	1	\$140.00
Disbursement Manager - Data Validation	\$75.00	1	\$75.00
Setup Banking Account/QSF	\$300.00	1	\$300.00
Print & Mail Check	\$3.00	32	\$96.00
Postage	\$0.55	32	\$17.60
Process Returned Checks	\$0.50	0	\$0.16
Skip Trace Search Undeliverable Checks	\$3.00	0	\$0.96
Remail Checks (Includes Postage)	\$3.00	0	\$0.96
QSF Account Reconciliation	\$250.00	1	\$250.00
Individual Federal/State Tax Reporting	\$350.00	1	\$350.00
QSF Reporting/Declaration	\$300.00	1	\$300.00
QSF Annual Tax Preparation Fee	\$750.00	1	\$750.00
Reissuing Checks/1099's	\$5.00	0	\$2.40
Responding to IRS, State, Agency Inquiries	\$75.00	1	\$75.00
Disbursement Manager	\$125.00	1	\$125.00
Total			\$2,483.08



3194-C Airport Loop Drive
Costa Mesa, CA 92626
800-779-2104 www.simpluris.com

Case Wrap Up

Send Final Reports to Counsel			
Category	Unit Value	# of Units	Total
Data Manager-Final Reporting	\$125.00	1	\$125.00
Clerical-Clean Up Any Misc	\$50.00	1	\$50.00
Project Manager-Wrap-up Final Issues	\$125.00	1	\$125.00
Total			\$300.00

Postage

\$36.70

Total Case Cost:

\$4,093.94

All administration services to be provided by Simpluris to Client, are provided subject to the following terms and conditions:

1. **Services.** Simpluris agrees to provide Client those services set forth in the Bid (the "Services") to which these terms and conditions are attached and which has been provided to Client. As compensation for such Services, Client agrees to pay the fees for Services outlined in the Bid. However, Client such fees for Services are estimated based on the requirements provided by Client and actual fees charged by Simpluris may be greater or less than such estimate and Client will be responsible for the payment of all such fees.
2. **Billing and Payment.** Simpluris will invoice Client on a regular basis unless a specific timeframe is otherwise set forth in the Bid. Client shall pay all invoices within 30 days of receipt. Amounts unpaid after thirty (30) days are subject to a service charge at the rate of 1.5% per month or, if less, the highest rate permitted by law. Services are not provided on a contingency basis and Client shall remain liable to Simpluris for all fees for the Services, regardless of any court decisions, and/or actions by the parties, including disapproval or withdrawal of a settlement.
3. **Retention of Documents.** Unless directed otherwise in writing by the Client, Simpluris will destroy all undeliverable mail (except for undeliverable checks) on the date that it is processed and retained in Simpluris' system. Simpluris will maintain records to establish that the subject mail is undeliverable. Simpluris will retain undeliverable checks until the Qualified Settlement Fund is closed. Simpluris will also retain all other class member and putative class member correspondence (including without limitation, claims forms and opt out forms) for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later. Lastly, Simpluris will retain bank & tax documents for such period of time as it determines is required to maintain compliance with various federal and state requirements.
4. **Limitation of Liability; Disclaimer of Warranties.** Simpluris warrants that it will perform the Services diligently, with competence and reasonable care. Simpluris' only obligation will be to correct any non-conformance with the foregoing warranty. In no event will Simpluris be liable for any lost profits/opportunities, business interruption or delay or, special, consequential, or incidental damages incurred by Client relating to the performance of the Services, regardless of whether Client's claim is for breach of contract, tort (including negligence and strict liability) or otherwise. Under no circumstances will Simpluris be liable to Client for any claims, losses, costs, penalties, fines, judgment or damages, including court costs and reasonable attorney's fees (collectively, "Losses"), whether direct or indirect, arising out of, related to, or in connection with Services in an amount in excess of the total fees charged or chargeable to Client for the particular portion of the Services affected by Simpluris' omission or error. THE WARRANTIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.
5. **Force Majeure.** To the extent performance by Simpluris of any of its obligations hereunder is substantially prevented by reason of any act of God or because of any other matter beyond Simpluris' reasonable control, then such performance shall be excused and this Agreement, at Simpluris' option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.
6. **Rights in Data.** Client agrees that it will not obtain, nor does Simpluris convey, any rights of ownership in the programs, system data, or materials provided or used by Simpluris in the performance of the Services.
7. **Electronic Communications.** During the provision of the Services the parties may wish to communicate electronically with each other at a business e-mail address. However, the electronic transmission of information cannot be guaranteed to be secure or error free and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. Accordingly, each party agrees to use commercially reasonable procedures to check for the then most commonly known viruses and to check the integrity of data before sending information to the other electronically, but each party recognizes that such procedures cannot be a guarantee that transmissions will be virus free. It remains the responsibility of the party receiving an electronic communication from the other to carry out a virus check on any attachments before launching any documents whether received on disk or otherwise.
8. **Notice.** Any notice required or permitted hereunder shall be in writing and shall be delivered personally, by, or sent by registered mail, postage prepaid, or overnight courier and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service. Notice should be addressed to an officer or principal of Client and Simpluris, as the case may be.
9. **Waiver.** Failure or delay on the part of a party to exercise any right, power or privilege hereunder shall not operate as a waiver thereof or any of other subject, right, power or privilege.
10. **Termination.** Client may terminate the Services at anytime upon 30 days prior written notice to Simpluris. Termination of Services shall in no event relieve Client of its obligation make any payments due and payable to Simpluris in respect of Services rendered up to the effective date of Termination. Simpluris may terminate this Agreement (i) for any reason upon no less than 90 days prior written notice to the Client; or (ii) upon 15 calendar days' prior written notice, if the Client is not current in payment of fees.
11. **Jurisdiction.** The parties hereto irrevocably and unconditionally submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby irrevocably and unconditionally waive any objection to the laying of venue of any such suit, action or proceeding in such Court.
12. **Survival.** Any remedies for breach of this Agreement, this Section and the following Sections will survive any expiration or termination of this Agreement: Section 4 - Limitation of Liability; Disclaimer of Warranties, Section 6 - Rights in Data, and Section 12- Jurisdiction, 14 -Confidentiality, and Section 15 - Indemnification.
13. **Entire Agreement.** These Terms and Conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.
14. **Confidentiality.** Simpluris maintains reasonable and appropriate safeguards to protect the confidentiality and security of data provided by Client to Simpluris in connection with the Services. If, pursuant to a court order or other proceeding, a third party requests that Simpluris to disclose any confidential data provided by or for Client, Simpluris will promptly notify the Client unless prohibited by applicable law. Client will then have the option to provide Simpluris with qualified legal representation at Client's expense to defend against such request. If, pursuant to a court order, Simpluris is required to disclose data, produce documents, or otherwise act in contravention of the obligation to maintain confidentiality set forth in these terms and conditions, Simpluris will not be liable for breach of said obligation.
15. **Indemnification.** Client will indemnify and hold Simpluris (and the officers, employees, affiliates and agents harmless against any Losses incurred by Simpluris, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by Simpluris in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by Simpluris pursuant to Client's instructions.
16. **Severability.** If any term or condition or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
17. **Database Administration.** Simpluris' database administration for Client assumes that Client will provide complete data that includes all information required to send notifications and calculate and mail settlement payments. Data must be provided in a complete, consistent, standardized electronic format. Simpluris' standardized format is Microsoft Excel, however, Simpluris may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by Simpluris on a time and materials basis according to Simpluris' Standard Rates.

Simpluris Security Summary – White Paper

Simpluris is committed to the security and overall protection of not only our data and information but our client's data and information, as well. As a demonstration of our commitment, we maintain SOC 2 Certification which requires strict adherence to policies and procedures surrounding information security, including processing and storage of confidential customer data. Simpluris supports a comprehensive, written Information Security Program that complies with all applicable laws and regulations (e.g. HIPAA, Gramm-Leach-Bliley Act, MA 201 CMR 17.00) and is designed to (a) ensure the security, privacy and confidentiality of Client and Class Member Information, (b) protect against any reasonably anticipated threats or hazards to the security or integrity of Client or Class Member Information, and (c) protect against unauthorized access to, use, deletion, or modification of Class Member Information. Simpluris has designated specific employees to be responsible for the administration of its Information Security Program. Also, Simpluris regularly and routinely monitors, tests, and updates our Information Security Program.

Simpluris uses Client and Class Member Information only for the purposes for which its' clients provide it, as described in any Agreements or Court Orders governing the provision of Simpluris' services in any particular case. Simpluris maintains a process for identifying, assessing, and mitigating the risks to Class Member Information in each relevant area of Simpluris' operations. At Simpluris, we continuously evaluate the effectiveness of the safeguards for controlling these risks to data and bank accounts. Simpluris restricts access to Class Member Information only to those employees, agents, or subcontractors who need to know the information to perform their jobs. Simpluris performs background checks of all its employees that will have access to Sensitive Personal Information, including a review of their references, employment eligibility, education, and criminal history to ensure they do not pose a risk to the security of Client or Class Member Information.

Simpluris adheres to the following industry best practices to safeguard its systems which process, store or transmit Client and Class Member Information:

- Identity and Access Management;
- Complex passwords are routinely and regularly changed;
- Role-based access control systems to limit individual employee access to network applications and systems based on their particular job role and function;
- Data Loss Prevention and Intrusion Prevention System software at multiple layers to prevent from internal and external threats of data leaks, malicious activity, and policy violations
- Encryption of Class Member Information if transmitted over public or wireless networks (e.g., via email, FTP, the Internet, etc.);
- Implementation of a Secure File Transfer system (using SSL encryption) for transmitting documents back and forth to clients;
- Encryption of servers, portable media, laptops, desktops, smartphones, mobile devices, and new technologies that store Class Member Information;
- Complex password authentication for remote access to Company's networks;
- Upon hire and annually after that, training of all employees with access to Class Member Information, (including any agents, and subcontractors with access to Class Member Information) about their obligations to implement the Information Security Program;
- Strict disciplinary measures for employees who violate the Information Security Program;
- Preventing terminated employees from accessing Class Member Information;
- Appropriately configured and updated firewall, antivirus, and spyware software;
- Prompt application of vendor-recommended security patches and updates to systems and other applications to avoid any adverse impact on Class Member Information;
- Separation of Duties;
- Infrastructure and Physical Security;
- Business Continuity Planning;
- Disaster Recovery Planning

1 Galen T. Shimoda (Cal. State Bar No. 226752)
2 Justin P. Rodriguez (Cal. State Bar No. 278275)
3 Jessica L. Hart (Cal. State Bar No. 331441)
4 **Shimoda Law Corp.**
5 9401 East Stockton Boulevard, Suite 120
6 Elk Grove, CA 95624
7 Telephone: (916) 525-0716
8 Facsimile: (916) 760-3733

9 Attorneys for Plaintiff LONI GARCIA
10 individually and on behalf of similarly situated employees

11 **SUPERIOR COURT OF CALIFORNIA**
12 **FOR THE COUNTY OF SACRAMENTO**

13 LONI GARCIA, individually and on behalf of
14 all other similarly situated employees,

15 Plaintiff,

16 vs.

17 AQUALITY WATER MANAGEMENT,
18 INC., a California Corporation; JOSH
19 BROWN, an individual; and DOES 1 to 100,
20 inclusive,

21 Defendants.

Case No. 34-2021-00292794

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT**

Date: January 5, 2022
Time: 9:00 a.m.
Dept.: 54
Judge: Christopher E. Krueger

Filed: January 21, 2021
Trial Date: None set

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Final Approval of Class Action and PAGA Settlement ("Motion") in the above
3 referenced case came before this Court, on January 5, 2022 at 9:00 a.m., in Department 54 before
4 Christopher E. Krueger, presiding. Named Plaintiff Loni Garcia ("Plaintiff") filed this putative class
5 action on January 21, 2021. The operative Complaint alleges that Defendants Aquality Water
6 Management, Inc., and Josh Brown, ("Defendants") violated California law by 1) failing to pay
7 overtime wages; 2) failing to pay minimum wage, 3) failing to provide meal periods; 4) failing to
8 provide rest periods; 5) wage statement violations; 6) waiting time penalties; and 7) unfair
9 competition. Plaintiff has also alleged Defendants are liable for civil penalties under the Private
10 Attorneys General Act ("PAGA") based on these violations. Plaintiff sought attorneys' fees and costs
11 as part of this Action. Defendants denied all of Plaintiff's claims and denied that this case was
12 appropriate for class treatment. No class has been certified. The class settlement was preliminarily
13 approved by this Court on August 24, 2021.

14 The parties have agreed to settle the class and PAGA claims. Defendants will provide
15 monetary consideration in exchange for a release of claims consistent with the terms of the proposed
16 settlement as set forth in the Joint Stipulation Regarding Class Action and PAGA Settlement and
17 Release ("Agreement"). Any capitalized terms herein shall have the same meaning as set forth in the
18 Agreement. The Court, having received and considered Plaintiff's Motion for Final Approval of Class
19 Action and PAGA Settlement, the declarations in support, the Agreement, the Notice of Settlement,
20 and other evidence, HEREBY ORDERS AND MAKES DETERMINATIONS AS FOLLOWS:

21 **1. CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF CLASS**
22 **REPRESENTATIVES; APPOINTMENT OF CLASS COUNSEL**

23 The Court finds that certification of the following class for settlement purposes only is
24 appropriate under the California Code of Civil Procedure and related case law:

25 All of Defendants non-exempt employees who have or continue to work
26 for Defendants from January 21, 2017 to August 24, 2021.

27 The Court recognizes that the foregoing definition is for Class Member identification purposes
28 only and is not intended to capture the claims at issue or limit or alter the released claims under the

1 Agreement.

2 The Court finds that Class Members meet the ascertainability and numerosity requirements since
3 the parties can identify with a matter of certainty, based on payroll records, individuals who fall within
4 the definition and the number of Class Members would make joinder impractical. The commonality and
5 predominance requirements are met for settlement purposes since there are questions of law and fact
6 common to Class Members. The common questions of law or fact in this case all stem from Plaintiff's
7 contentions that Defendants caused the violations outlined above by 1) failing to pay Plaintiff and
8 similarly situated employees for all hours worked due their failure to pay for off-the-clock "on call" time
9 and inaccurate record keeping policy; 2) failing to provide duty free meal and rest periods by requiring
10 Plaintiff and similarly situated employees to remain "on call" during breaks; 3) failing to accurately
11 itemize the hours and wages earned on paystubs issued to class members; and 4) failing to properly pay
12 overtime and premium pay due to Defendants' failure to incorporate shift differentials into the Regular
13 Rate of Pay ("RROP"). The PAGA, waiting time penalty, wage statement violation, and unfair
14 competition claims also derive from these violations. Additionally, Class Members seek the same
15 remedies under state law. The typicality requirement for settlement purposes is also satisfied since the
16 claims of the Class Representative based on the same facts and legal theories as those applicable to the
17 class members.

18 The Court also finds that certifying the settlement class is required to avoid each Class Member
19 from litigating similar claims individually. This settlement will achieve economies of scale for Class
20 Members with relatively small individual claims and conserve the resources of the judicial system.

21 The Court finds that Plaintiff Loni Garcia and Plaintiff's counsel, Galen T. Shimoda
22 and Jessica L. Hart to be adequate representatives of the settlement class. The Court confirms their
23 appointments as class representative and class counsel, respectively.

24 **2. APPROVING CLASS ACTION AND PAGA SETTLEMENT**

25 The Court has reviewed the preliminarily approved Agreement, which was submitted with
26 Plaintiff's Motion as Exhibit A. The Court finds that final approval is warranted as the Agreement falls
27 within the range of reasonableness and is fair, reasonable, and adequate for the class. The Court also
28 acknowledges that class members were able to object to the settlement through the administration

1 process and at a fairness hearing. No such objections were made by the class members and no class
2 members opted out. Because the Court finds the Parties' settlement to have been agreed upon only after
3 an extensive investigation and arms-length negotiations, and in an attempt to avoid further delays and
4 costs, the Court gives final approval to the Agreement and all terms therein as if stated here in full,
5 including the \$107,426 Gross Settlement Amount.

6 The Court orders that Plaintiff Loni Garcia will receive \$7,500 as a Class Representative
7 Enhancement Payment in addition to any amount Plaintiff may be entitled to under the Agreement's pro
8 rata distribution formula for Plaintiff's time and effort on behalf of Class Members.

9 The Court orders and approves Simpluris, Inc. to act as the Claims Administrator in this case.
10 The Claims Administrator will take its fees out of the Gross Settlement Amount, which are not to exceed
11 \$3,500. Any difference between the actual cost of the Claims Administrator and the approved payment
12 of \$5,000 will be redistributed to Qualified Claimants on a pro-rata basis.

13 The Court finds that an award of fees under the common fund doctrine is appropriate in this case
14 because there is a sufficiently identifiable class of beneficiaries (*i.e.* Class Members), the benefits can be
15 accurately traced as set forth in the Agreement, Plaintiff and Class Counsel were able to negotiate on
16 behalf of Class Members, and the fee can be shifted with exactitude to those benefiting as the fee request
17 is a specific, lump-sum percentage of the Gross Settlement Amount. *See Paul, Johnson, Alston & Hunt*
18 *v. Gaulty*, 886 F.2d 268, 271 (9th Cir. 1989); *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v.*
19 *Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016). The Court finds the attorneys' fees request of
20 Thirty-Five Percent (35%) of the Gross Settlement Amount, *i.e.* \$36,750, to be appropriate
21 compensation for Class Counsel. The attorneys' fees request is within the range that has been approved
22 by other Courts in similar cases and is reasonable in light of the circumstances of this case, the
23 substantial and beneficial results obtained on behalf of Class Members, and the contingent nature of the
24 recovery over the course of this case, which included potential loss at summary judgment, certification,
25 and/or trial proceedings. Additionally, the Court orders that \$5,494.05 of the settlement proceeds will
26 be paid to class counsel for reasonable costs incurred in this case. The difference between the actual
27 costs incurred and the originally allocated amount of \$10,000.00 shall be paid to the class on a pro-rata
28 basis.

1 The Court approves of the Ten Thousand Dollars (\$10,000) PAGA Payment, which shall be paid
2 from the Gross Settlement Amount, not in addition to the Gross Settlement Amount, to resolve the
3 alleged PAGA claims. Seventy-Five percent (75%) of the PAGA Payment will be paid to the Labor and
4 Workforce Development Agency ("LWDA") and Twenty-Five percent (25%) will be paid to Aggrieved
5 Employees on a pro rata basis as described in the Agreement. The Court also finds that the Agreement
6 provides a recovery that creates an effective substantial deterrent to any potential future non-compliance,
7 furthering the purpose of the Labor Code and LWDA.

8 The Court approves of the identified *cy pres* distribution plan wherein any checks issued to
9 Qualified Claimants and/or Aggrieved Employees that are not cashed by the deadline to do so shall be
10 paid out to the Center for Workers' Rights.

11 The releases and waivers for Class Members who do not opt out of being bound by the
12 Agreement (*i.e.* Qualified Claimants), Aggrieved Employees, and the Class Representative are also
13 approved by the Court as set forth in the Agreement.

14 **3. APPROVAL OF DISTRIBUTION TO THE CLASS, THE NOTICE OF SETTLEMENT,**
15 **OPPORTUNITY TO OPT OUT OF, AND OBJECT TO, THE SETTLEMENT**

16 The Court finds that the Notice of Settlement, which was submitted with Plaintiff's Motion as
17 Exhibit A to the Declaration of Cassandra Polites, fairly and adequately advised Class Members of the
18 terms of the preliminary approved Agreement, the rights being waived, their right to opt out, the ability
19 to dispute the number of workweeks worked during the Class Period, their pro rata share of the Net
20 Settlement Amount, how to participate in the settlement, how to file documentation in opposition to the
21 proposed settlement, and when to appear at the fairness hearing. The Court further finds that the Notice
22 of Settlement and distribution of such notice by first class mail to each identified Class Member at his or
23 her most recent address based on a National Change of Address database search from the Class
24 Members' last known address and a skip trace on any Class Members who have the Notice of Settlement
25 returned as "undeliverable" or "not at this address" comported with all constitutional requirements,
26 including those of due process, and provides the best notice practicable under the circumstances.

27 **IMPLEMENTATION SCHEDULE**

28 Accordingly, with good cause shown, the Court hereby approves and orders that the following

1 implementation schedule be adhered to:

2 3 4 5 6	Last day for Claims Administrator to calculate the final Net Settlement Amount, the final Claim Amounts for Qualified Claimants and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations Class Counsel and Defendants' Counsel	Within 7 calendar days after the Final Approval Date
7 8 9	Last day for Defendants to fund settlement	Within 21 calendar days after the Final Approval Date
10 11 12 13	Last day for Claims Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Claims Administrator Costs, payment to Qualified Claimants, and payment to Aggrieved Employees	Within 14 days after Defendant's last day to fund the settlement
14 15 16	Last day for Qualified Members and Aggrieved Employees to cash settlement checks	120 days after issuance of checks to Qualified Members and Aggrieved Employees
17 18	Last day for Claims Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 days after settlement check cashing deadline
19 20	Last day for Claims Administrator to provide Parties with compliance declaration	Within 21 days after settlement check cashing deadline

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IT IS FURTHER ORDERED that this final approval order is effective as a judgment with each party to bear its own fees and costs outside of what has been ordered herein. This matter is subject to the Court's continuing jurisdiction to monitor and enforce the terms of this order and the approved Agreement.

IT IS SO ORDERED.

Date: _____

By: _____
Judge of the Superior Court

1 Galen T. Shimoda (Cal. State Bar No. 226752)
2 Justin P. Rodriguez (Cal. State Bar No. 278275)
3 Jessica L. Hart (Cal. State Bar No. 331441)
4 **Shimoda Law Corp.**
5 9401 East Stockton Boulevard, Suite 120
6 Elk Grove, CA 95624
7 Telephone: (916) 525-0716
8 Facsimile: (916) 760-3733

9 Attorneys for Plaintiff LONI GARCIA
10 individually and on behalf of similarly situated employees

11 **SUPERIOR COURT OF CALIFORNIA**
12 **FOR THE COUNTY OF SACRAMENTO**

13 LONI GARCIA, individually and on behalf of
14 all other similarly situated employees,

15 Plaintiff,

16 vs.

17 AQUALITY WATER MANAGEMENT,
18 INC., a California Corporation; JOSH
19 BROWN, an individual; and DOES 1 to 100,
20 inclusive,

21 Defendants.

Case No. 34-2021-00292794

CLASS ACTION

PROOF OF SERVICE

Date: January 5, 2022
Time: 9:00 a.m.
Dept.: 54
Judge: Christopher E. Krueger

Filed: January 21, 2021
Trial Date: None set

1 *Loni Garcia v. Aquality Water Management, Inc., et al.*
2 *Sacramento Superior Court Case No. 34-2021-00292794*

3 **PROOF OF SERVICE — CCP §§ 1013a and 2015.5**
4 **and California Rules of Court, Rule 1.21 and Rule 2.150**

5 I, Caitlyn A. Lopez, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party to
7 the within above-entitled action.

8 On November 24, 2021, I served the following documents on the party below:

- 9 • Plaintiff's Notice of Motion and Motion for Final Approval of Class Action and
10 PAGA Settlement
- 11 • Memorandum of Points & Authorities in Support of Plaintiff's Motion for Final
12 Approval of Class Action and PAGA Settlement
- 13 • Exhibit List and Exhibits in Support of Plaintiff's Motion for Final Approval of Class
14 Action and PAGA Settlement
- 15 • Declaration of Galen T. Shimoda in Support of Plaintiff's Motion for Final Approval
16 of Class Action and PAGA Settlement
- 17 • Declaration of Cassandra Polites for Simpluris, Inc. Regarding Notice and Settlement
18 Administration
- 19 • [Proposed] Order Granting Plaintiff's Motion for Final Approval of Class Action and
20 PAGA Settlement

21 Alexandra M. Asterlin (221286) 22 Palmer Kazanjian Wohl Hodson, LLP 23 2277 Fair Oaks Blvd., Suite 455 24 Sacramento, CA 95825 25 Telephone: (916) 442-3552 26 Facsimile: (916) 640-1521 27 Email: aasterlin@pkwhlaw.com 28 CCervantes@pkwhlaw.com	
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21 [] [By Mail] I am familiar with my employer's practice for the collection and
22 processing of correspondence for mailing with the United States Postal Service
23 and that each day's mail is deposited with the United States Postal Service that
24 same day in the ordinary course of business. On the date set forth above, I served
25 the aforementioned document(s) on the parties in said action by placing a true
26 copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, for
27 collection and mailing on this date, following ordinary business practices, at Elk
28 Grove, California, addressed as set forth above.

26 [] [By Personal Service] By personally delivering a true copy thereof to the office
of the addressee above.

27 [XXX] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown
28 above. No error was reported by the e-mail service that I used.

1 [] [By Overnight Courier] By causing a true copy and/or original thereof to be
2 personally delivered via the following overnight courier service:_____.

3 I declare under penalty of perjury under the laws of the State of California that the foregoing
4 is true and correct, and that this declaration was executed on November 24, 2021, at Elk Grove,
5 California.

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7 _____
8 Caitlyn A. Lopez
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