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

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

21 Plaintiff,

22 vs.

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

26 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.

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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