

**AMENDMENT TO SETTLEMENT AGREEMENT OF
PRIVATE ATTORNEYS GENERAL ACT CLAIMS**

This Amendment to the Settlement Agreement of Private Attorneys General Act Claims (“**AMENDMENT**”) is made and entered into between Plaintiff Jesus Gaxiola (“**Plaintiff**”), acting in a private attorney general capacity, and Defendants San Diego Tech Building Solutions, Inc. and Alberto Nunez (collectively, “**Defendants**”) (altogether, “**Parties**”; singularly, “**Party**”).

1. **RECITALS:** This AMENDMENT is made with reference to the following facts:

1.1 Subject to approval by the San Diego Superior Court, the Parties previously executed the Settlement Agreement of Private Attorneys General Act Claims (“Agreement”), attached hereto as **Exhibit A**, and incorporated herein as though fully set forth, relating to certain disputes and controversies alleged in the action entitled *Gaxiola v. San Diego Tech Building Solutions, Inc. et al.*, San Diego Superior Court, Case No. 37-2021-00000416-CU-WR-CTL (the “PAGA Action”).

1.2 The sole purpose of this AMENDMENT is to change the Gross Settlement Amount from \$300,000 to \$290,000 and to remove the \$10,000 Enhancement Award, previously provided in the Agreement, and adjust the related settlement provisions and amounts accordingly.

2. **CHANGES TO THE AGREEMENT:**

2.1 Section I.(5.) of the Agreement (Exh. A) provides the Gross Settlement Amount is the exact sum of Three Hundred Thousand Dollars (\$300,000.00).

2.2 **Section I.(5.) of the Agreement (Exh. A) is hereby amended to the following:**

“**Gross Settlement Amount**” is the exact sum of Two Hundred-Ninety Thousand Dollars (\$290,000.00), which represents the total amount payable under this Settlement Agreement by Defendants, including, but not limited to, attorneys’ fees, costs, and the PAGA Payment.

2.3 Section I.(10.) of the Agreement (Exh. A) provides that the amount of the PAGA Payment may change based on the determination of multiple factors, including the “Enhancement Payment” to Plaintiff.

2.4 **Section I.(10.) of the Agreement (Exh. A) is hereby amended to the following:**

“**PAGA Payment**” means the total penalty amount of approximately \$151,996.27, 75% (\$113,997.20) of which will be paid to the LWDA, and 25% (\$37,999.07) of which will be paid to the PAGA Settlement Employees. The PAGA Payment may increase or decrease based on review by the Court of the requested attorneys’ fees, and costs.

2.5 Section III.(3.) of the Agreement (Exh. A) provides that Defendants shall pay \$300,000.00 as the Gross Settlement Amount.

2.6 **Section III.(3.) of the Agreement (Exh. A) is hereby amended to the following:**

Gross Settlement Amount. Defendants shall pay \$290,000.00 as the Gross Settlement Amount, as set forth below in paragraph IV.4. The Parties agree to the following allocations to be paid from the Gross Settlement Amount:

2.7 Section III.(3.)(b.) of the Agreement (Exh. A) provides that up to \$120,000 shall be paid to Plaintiff’s counsel for payment of attorneys’ fees.

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2.8 Section III.(3.)(b) of Agreement (Exh. A) is hereby amended to the following:

Attorneys' Fees and Costs: Up to \$116,000.00 shall be paid to Plaintiff's Counsel for payment of attorneys' fees and up to \$15,560.00 shall be paid to Plaintiff's Counsel for reimbursement of costs. Defendants shall not oppose Plaintiff's request for attorneys' fees and costs up to these amounts. In the event that Court approval is required and a payment of less than \$116,000.00 in fees or \$15,560 in costs to Plaintiff's Counsel is approved, the difference will be added to the PAGA Payment. The Settlement Administrator will report this payment on an IRS Form 1099 issued to Plaintiff's Counsel.

2.9 Section III.(3.)(d) of Agreement (Exh. A) provides an Enhancement Award to Plaintiff in an amount up to \$10,000.

2.10 Section III.(3.)(d) of Agreement (Exh. A) is hereby deleted in its entirety.

2.11 Section III.(4.) of Agreement (Exh. A) provides that Plaintiff is responsible for payment of all taxes based on the Enhancement Payment, and must indemnify Defendants for any tax liability based on the Enhancement Payment.

2.12 Section III.(4.) of Agreement (Exh. A) is hereby deleted in its entirety.

2.13 Section IV.(1.) of the Agreement (Exh. A) provides in part that Plaintiff's initial installment payment is \$16,666.78.

2.14 Section IV.(1.) of Agreement (Exh. A) is hereby amended to the following:

Within ten (10) calendar days of Defendants' initial installment payment of \$16,666.66, Plaintiff shall file a Dismissal of the Action with Prejudice and will concurrently serve this PAGA Settlement on the LWDA as required by PAGA.

2.15 Section IV.(3.) of Agreement (Exh. A) provides for entry of a stipulated judgment in the amount of \$300,000, in the event of default.

2.16 Section IV.(3.) of Agreement (Exh. A) is hereby amended to the following:

Stipulation for Entry of Judgment: Defendants agree to be subject to a Stipulation for Entry of Judgment as security to ensure the payment obligations set forth in this Settlement Agreement. If Defendants fail to timely pay any portion of the Gross Settlement Amount as required by paragraph IV.4, Plaintiff shall be required to provide written notice of default to Defendants' counsel via e-mail (at annie.ellis@annicellislaw.com). Defendants shall have five business days to cure such default by postmarking or wiring the delinquent payment(s). If Defendants fail to cure, Plaintiff shall file the Stipulation for Entry of Judgment (Exhibit A) with the Clerk of the San Diego Superior Court against Defendants (San Diego Tech Building Solutions, Inc. and Alberto Nunez). Plaintiff shall be entitled to a Stipulation for Entry of Judgment in the amount of \$290,000, less credit for any and all portions of the Gross Settlement Amount already made, plus interest at the rate of 10% per annum on any amounts not yet paid. Further, Plaintiff shall be entitled to reasonable attorneys' fees and costs for filing the Stipulation for Entry of Judgment.

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2.17 Section IV(4) of Agreement (Exh. A) provides a description of the payment schedule, which includes payment of the Enhancement Payment.

2.18 **Section IV.(4.) of Agreement (Exh. A) is hereby amended to the following:**

Timeline for Funding of Gross Settlement Amount: After the Court approves this Settlement Agreement, Defendants will fulfill their payment obligations for the Gross Settlement Amount as follows: (1) within thirty (30) days of Court approval, Defendants shall make an initial payment of \$16,666.66 to the Settlement Administrator; (2) for 16 subsequent calendar months thereafter, Defendants shall make monthly installment payments of \$16,666.66 no later than the 15th of each month; (3) Defendants' final payment in the amount of \$6,666.78 shall be made no later than the 15th day of the 18th month following Court approval.

2.19 Section IV(5) of Agreement (Exh. A) provides a chart of the payment schedule, which includes payment of the Enhancement Payment.

2.20 **Section IV.(4.) of Agreement (Exh. A) is hereby amended to the following:**

Monthly Installment	Defendants' Payment	Disbursements		Escrow Balance
Month 1	\$16,666.66	\$2,443.73	Fees to Phoenix (\$2,443.73)	\$14,222.93
Month 2	\$16,666.66	\$15,560.00	Costs to Pl.'s counsel (\$15,560)	\$15,329.59
Month 3	\$16,666.66	\$0.00	No Disbursement	\$31,996.25
Month 4	\$16,666.66	\$48,662.91	Individual PAGA payments (\$38,999.07); Fees to Pl.'s counsel (\$9,663.84)	\$0.00
Month 5	\$16,666.66	\$16,666.66	Fees to Pl.'s counsel	\$0.00
Month 6	\$16,666.66	\$16,666.66	Fees to Pl.'s counsel	\$0.00
Month 7	\$16,666.66	\$16,666.66	Fees to Pl.'s counsel	\$0.00
Month 8	\$16,666.66	\$16,666.66	Fees to Pl.'s counsel	\$0.00
Month 9	\$16,666.66	\$16,666.66	Fees to Pl.'s counsel	\$0.00

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Month 10	\$16,666.66	\$16,666.66	Fees to Pl.'s counsel	\$0.00
Month 11	\$16,666.66	\$6,336.20	Fees to Pl.'s counsel	\$10,330.46
Month 12	\$16,666.66	\$0.00		\$26,997.12
Month 13	\$16,666.66	\$0.00		\$43,663.78
Month 14	\$16,666.66	\$0.00		\$60,330.44
Month 15	\$16,666.66	\$0.00		\$76,997.10
Month 16	\$16,666.66	\$0.00		\$93,663.76
Month 17	\$16,666.66	\$0.00		\$110,330.42
Month 18	\$6,666.78	\$116,997.20	to the LWDA	\$0.00

3. MISCELLANEOUS:

3.1 The AMENDMENT expressly incorporates the prior Agreement executed by the Parties. The Parties agree that this AMENDMENT and the Agreement constitute the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions.

3.2 Each party has cooperated in the drafting and preparation of the Agreement. Hence, in any construction to be made of the Agreement, the same shall not be construed against any party.

3.3 This AMENDMENT may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one agreement, which shall be binding upon and effective as to all Parties.

3.4 This AMENDMENT is four (4) pages in length. A electronically signed copy of this AMENDMENT will have the same force and effect as an original signature.

PLAINTIFF:

Dated: _____



Jesus Gaxiola (Oct 25, 2022 16:44 PDT)
Jesus Gaxiola

DEFENDANTS:

Dated: _____

Alberto Nunez, on behalf of himself and San Diego
Tech Building Solutions, Inc.

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Jesus Gaxiola

DEFENDANTS:

11 / 07 / 2022
Dated: _____

Alberto Nunez

Alberto Nunez, on behalf of himself and San Diego
Tech Building Solutions, Inc.