

1 Gabrielle M. Wirth (SBN 106492)

wirth.gabrielle@dorsey.com

2 Erica H. Chen (SBN 312806)

chen.eric@dorsey.com

3 **DORSEY & WHITNEY LLP**

600 Anton Boulevard, Suite 2000

4 Costa Mesa, CA 92626-7655

Telephone: (714) 800-1400

5 Facsimile: (714) 800-1499

6 Attorneys for Defendant

Semios USA Inc.

8 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF STANISLAUS**

10
11 ALEXANDER NATAREN, an individual, on
12 behalf of himself and all other similarly situated
individuals,

13 Plaintiff,

14 vs.

15 SEMIOS USA INC., a Washington corporation;
16 and DOES 1-20, inclusive,

17 Defendants.

CASE NO: **CV-21-000629**

Assigned for all purposes to:

Hon. Sonny S. Sandhu

Dept. 24

**CLASS ACTION SETTLEMENT
AGREEMENT AND RELEASE**

Action Filed:

February 8, 2021

Trial Date:

None Set

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1 This Class Action Settlement Agreement and Release (“Agreement” or “Settlement”) is made
2 and entered into by and between Plaintiff Alexander Nataren (“Plaintiff”) and Defendant Semios USA,
3 Inc. (“Defendant”) (collectively, the “Parties”).

4 **RECITALS**

5 This Settlement is made and entered into by and between Plaintiff and Defendant, and is subject
6 to the terms and conditions hereof, and to the Court’s approval. The Parties expressly acknowledge that
7 this Agreement is entered into solely for the purpose of settlement and that nothing herein is an admission
8 of liability or wrongdoing by Defendant. If for any reason the Settlement is not approved, it will be of
9 no force or effect, and the Parties shall be returned to their original respective positions.

10 **DEFINITIONS**

11 The following definitions are applicable to this Agreement. Definitions contained elsewhere in
12 this Agreement shall also be effective:

13 **Relevant Parties and Time Periods**

- 14 1. The “**Action**” means the action styled as *Alexander Nataren v. Semios USA, Inc.*,
15 Stanislaus County Superior Court Case No. CV-21-000629.
- 16 2. “**Class Counsel**” means Marco A. Palau, Joseph D. Sutton, and Eric S. Trabucco of
17 Advocates for Worker Rights LLP.
- 18 3. “**Defense Counsel**” means Gabrielle Wirth and Erica Chen of Dorsey & Whitney LLP.
- 19 4. “**Defendant**” means Defendant Semios USA, Inc. including its predecessors, if any, as
20 well as each of its respective predecessors, successors, and all former, current, and future related
21 organizations, companies, divisions, subsidiaries, affiliates, insurers, and parents, and collectively, their
22 respective former, current and future directors, officers, employees, agents, representatives, attorneys,
23 fiduciaries, assigns, heirs, executors, administrators, beneficiaries, insurers and trustees.
- 24 5. “**Court**” means the Superior Court of the State of California in and for the County of
25 Stanislaus, or any other court taking jurisdiction of the Action.
- 26 6. “**Preliminary Approval Date**” means the date of the Court’s order granting preliminary
27 approval of the Settlement.
- 28 7. “**Class Period**” means the period four (4) years prior to the filing of the initial complaint

1 in this action (or February 8, 2017) through May 31, 2021.

2 8. “**Class Members**” means all persons classified by Defendant as non-exempt agricultural
3 employees who work or have worked for Defendant within the State of California during the Class Period
4 who do not opt out of this Settlement.

5 9. “**Settlement Class**” or “**Settlement Class Members**” means all of the Class Members;
6 Defendant represents there are approximately one hundred and forty-four (144) Class Members. This
7 representation is a material term of this Agreement.

8 10. “**PAGA Period**” means the time period from one prior to Plaintiff giving written notice
9 to Defendant and the Labor Workforce & Development Agency (“LWDA”) (February 8, 2020) through
10 May 31, 2021.

11 11. “**PAGA Employees**” are defined as all persons classified by Defendant non-exempt
12 agricultural employees who worked for Defendant within the State of California at any point during the
13 PAGA Period.

14 12. “**Participating Class Members**” means all Settlement Class Members who do not submit
15 valid Requests for Exclusion.

16 13. “**Effective Date**” means that date on which the settlement embodied in this Settlement
17 Agreement shall become effective after all of the following events have occurred: (i) Final Approval
18 of the Settlement is granted by the Court; and (ii) the Court’s order approving the Settlement becomes
19 a Final Judgment.

20 14. “**Final Judgment**” means the latest of: (i) if there is an appeal of the Court’s order, the
21 date the order is affirmed on appeal, or the date of dismissal of such appeal, or, (ii) if an objection to
22 the settlement is filed by any Settlement Class Member, then the expiration date of the time for filing
23 or noticing any appeal of the order, which is sixty (60) calendar days from entry of the order; or (iii)
24 if no objection has been filed by any Settlement Class Member, then the date that the Court grants
25 final approval of this Settlement.

26 **Settlement Payments**

27 15. “**Settlement**” means the agreement among parties to resolve the Action, as set forth in
28 this Agreement.

1 16. **“Gross Settlement Amount”** means the maximum settlement amount of Two-Hundred
2 and Twenty-Five Thousand Dollars and Zero Cents (\$225,000.00) to be paid by Defendant in full
3 satisfaction of all claims arising from the Action. This Gross Settlement Amount has been agreed to by
4 Plaintiff and Defendant based on the aggregation of the agreed-upon settlement value of individual
5 claims. Defendant maintains no reversionary right to any portion of the Gross Settlement Amount.
6 The entire Gross Settlement Amount will be distributed and no part of the Gross Settlement Amount will
7 revert to Defendant. Defendant will be obligated to pay all employer-side payroll taxes applicable to the
8 Individual Settlement Payments outside of the Gross Settlement Amount. The Gross Settlement Amount
9 will be used to make the following payments, as those terms are defined below:

- 10 a. Individual Settlement Payments;
- 11 b. Class Representative Service Award;
- 12 c. Settlement Administration Costs;
- 13 d. PAGA Settlement Amount;
- 14 e. Class Counsel’s Fee Award; and
- 15 f. Class Counsel’s Cost Award.

16 17. **“Net Settlement Amount”** means the balance of the Gross Settlement Amount remaining
17 after deduction of the following payments, as those terms are defined below:

- 18 a. Class Representative Service Award;
- 19 b. Settlement Administration Costs;
- 20 c. LWDA Payment;
- 21 d. Class Counsel’s Fee Award; and
- 22 e. Class Counsel’s Cost Award.

23 The entire Net Settlement Amount is the maximum amount that will be available for distribution
24 to Participating Class Members, in the form of Individual Settlement Payments based on the number of
25 workweeks worked by each Class Member during the Class Period.

26 18. **“Class Representative Service Award”** means the amount to be paid to the Plaintiff in
27 recognition of his risk, effort and work in prosecuting the Action and achieving this outcome on behalf
28 of Settlement Class Members.

1 19. **“Class Counsel’s Fee Award”** means attorneys’ fees agreed upon by the Parties and
2 approved by the Court for Class Counsel’s litigation and resolution of the Action, including, but not
3 limited to, fees associated with litigating the Action, documenting the Settlement, securing the Court’s
4 approval of the Settlement, obtaining entry of the Judgment terminating the Action, and other related
5 matters.

6 20. **“Class Counsel’s Cost Award”** means all reasonable costs (up to ten thousand dollars
7 (\$10,000.00), as defined below) incurred and to be incurred by Class Counsel in the Action subject to
8 the Court’s approval, including, but not limited to, expert witness fees, up through the Court’s approval
9 of the Settlement and obtaining entry of the Judgment terminating the Action, and any other expenses.

10 21. **“Individual Settlement Payment”** means each Participating Class Member’s pro-rata
11 share of the Net Settlement Amount.

12 22. **“PAGA Settlement Amount”** means the portion of the Class Settlement Amount
13 (\$5,000) that the Parties have agreed will be allocated to resolve all claims and remedies under the Labor
14 Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”). The amount
15 of the PAGA Settlement Amount is subject to Court approval pursuant to California Labor Code section
16 2699(1)(2). Pursuant to the PAGA, 75% of the PAGA Settlement Amount shall be paid to the California
17 Labor and Workforce Development Agency (“the **LWDA Payment**”), and 25% of the PAGA Settlement
18 Amount shall remain in the Net Settlement Amount to be included when distributing Individual
19 Settlement Payments to Participating Class Members.

20 23. **“Settlement Administration Costs”** means the costs payable from the Gross Settlement
21 Amount to the Settlement Administrator (up to seven thousand dollars (\$7,000.00), as defined below)
22 for administering this Settlement, including, but not limited to, printing, distributing, and tracking
23 documents for this Settlement, tax reporting, distributing the Gross Settlement Amount, and providing
24 necessary reports and declarations, as requested by the Parties. The Settlement Administration Costs
25 shall be paid from the Gross Settlement Amount, including, if necessary, any such costs in excess of the
26 amount represented by the Settlement Administrator as being the maximum costs necessary to administer
27 the Settlement.

28 24. **“Settlement Payment Checks”** means the payments to all Participating Class Members,

1 which shall be mailed to Participating Class Members within fifteen (15) business days after the
2 Effective Date.

3 **Administration of Settlement**

4 25. “**Settlement Administrator**” means Phoenix Class Action Administration Solutions
5 (“Phoenix”), a qualified third-party class action settlement administrator to be approved by the Court for
6 the purposes of administering this Settlement. The Parties each represent that they do not have any
7 financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement
8 Administrator that could create a conflict of interest.

9 26. “**Class Lists and Data**” means complete lists of all Settlement Class Members that
10 Defendant will diligently and in good faith compile from its records and provide to the Settlement
11 Administrator within fifteen (15) calendar days after Preliminary Approval of this Settlement. The Class
12 Lists and Data shall be formatted in Microsoft Office Excel and shall each include a column for each of
13 the following, for each Settlement Class Member:

- 14 a. First Name;
- 15 b. Last Name;
- 16 c. Social Security Number;
- 17 d. Most recent mailing address; and
- 18 e. Dates and number of workweeks in which the Settlement Class Member
19 performed work for Defendant during the Settlement Class Member’s relevant
20 Class Period.

21 27. “**Notice Packet**” means the Notice of Proposed Class Action Settlement, substantially in
22 the form attached as **Exhibit A**.

23 28. “**Response Deadline**” means forty-five (45) days following the date the Settlement
24 Administrator initially mails the Notice Packet to Class Members.

25 29. “**Notice of Objection**” means a Settlement Class Member’s valid and timely written
26 objection to the Settlement.

27 30. “**Request for Exclusion**” means a timely letter submitted by a Settlement Class Member
28 indicating a request to be excluded from, i.e., or opt-out of, the Settlement.

1 31. **“Released Claims”** means the full and final release of claims by all Participating Class
2 Members for any of the claims alleged in the Action, or which could have been brought in the Action,
3 including:

- 4 a) All claims for failure to provide meal period premiums or failure to provide meal
5 periods under the Labor Code or the applicable wage order(s) that accrued during
6 the Claims Period;
7 b) All claims for failure to pay rest period premiums or failure to authorize and
8 permit rest periods under the Labor Code or the applicable wage order(s) that
9 accrued during the Claims Period;
10 c) All claims for unpaid wages, failure to pay minimum wage, failure to pay
11 overtime, and any other claim for failure to pay wages under the Labor Code or
12 the applicable wage order(s), any claim for failure to pay wages at the agreed upon
13 rate under Labor Code 221 to 223 during the Claims Period.
14 d) All claims for failure to timely pay wages and/or waiting time penalties pursuant
15 to Labor Code §201 to 204 that accrued during the Claims Period;
16 e) All claims for failure to maintain records under the Labor Code or the applicable
17 wage order(s), including under Labor Code 1174, which accrued during the
18 Claims Period;
19 f) All claims for failure to issue adequate wage statements, whether for any penalty
20 or wage, pursuant to Labor Code §226 that accrued during the Claims Period;
21 g) All claims for penalties under the California Private Attorneys’ General Act based
22 on the aforementioned alleged Labor Code violations;
23 h) All claims for unfair business practices under Business and Professions Code
24 §17200 based on the aforementioned alleged Labor Code violations; and
25 i) Any other claims arising, or which could have arisen, from the operative facts
26 alleged in Plaintiff’s Complaint filed on February 8, 2021.

27 32. **“Released Parties”** means Defendant, and any of its former and present parents,
28 subsidiaries, affiliates, divisions, corporations in common control, predecessors, successors, and assigns,
as well as all past and present officers, directors, employees, partners, shareholders and agents, attorneys,
insurers, and any other successors, assigns, or legal representatives.

TERMS OF AGREEMENT

Plaintiff, on behalf of himself and the Settlement Class Members on the one hand, and
Defendant, on the other hand, agree as follows:

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1 Payment to be paid pursuant to the Settlement. The Settlement Administrator (and not the Defendant)
2 shall issue an IRS Form 1099 to Plaintiff reflecting the Class Representative Service Award. Any
3 portion of the Class Representative Service Award not awarded to Plaintiff shall be added to the Net
4 Settlement Amount.

5 38. Settlement Administration Costs. The Settlement Administration Costs shall be paid for
6 the reasonable costs of administration of the Settlement. The Settlement Administration Costs shall not
7 exceed Seven Thousand Dollars and Zero Cents (\$7,000.00) without prior written approval by both
8 parties. Any portion of the Settlement Administration Costs not allowed shall be added to the Net
9 Settlement Amount.

10 39. PAGA Settlement Amount and LWDA Payment. Subject to Court approval, the Parties
11 agree that the amount of Five Thousand Dollars and Zero Cents (\$5,000.00) from the Gross Settlement
12 Amount shall be designated for satisfaction of the PAGA claim. Pursuant to the PAGA, Seventy-Five
13 Percent (75%), i.e. Three-Thousand Seven-Hundred and Fifty Dollars and Zero Cents (\$3,750.00), of
14 the PAGA Settlement Amount shall constitute the LWDA Payment and be paid to the LWDA, and
15 Twenty-Five Percent (25%), i.e. One-Thousand Two-Hundred and Fifty Dollars and Zero Cents
16 (\$1,250.00) shall be paid out to PAGA Employees based on their comparative number of pay periods
17 worked during the PAGA Period. Any portion of the LWDA Payment not approved by the Court shall
18 be added to the Net Settlement Amount; in no event shall Defendant be required to pay in excess of the
19 Gross Settlement Amount, except as expressly provided herein (including, but not limited to, as provided
20 in Paragraphs 40 and 41).

21 40. Notice of Settlement to LWDA. In conjunction with, or prior to, their Motion for
22 Preliminary Approval, Class Counsel will submit the proposed Settlement to the LWDA, in accordance
23 with Labor Code section 2699, subdivision (l)(2).

24 41. Net Settlement Amount. The Net Settlement Amount shall be used to satisfy Individual
25 Settlement Payments to Participating Class Members from the Settlement Class in accordance with the
26 terms of this Agreement. Participating Class Members are entitled to 100% of the Net Settlement
27 Amount. Defendant maintains no reversionary right to any portion of the Net Settlement Amount.

28 42. Escalator Clause. The Gross Settlement Amount was negotiated with, and is premised

on, the understanding based on Defendant's representation that the number of Class Members is approximately one hundred and forty-four (144) individuals. If, as of the date of Preliminary Approval, the number of class members exceeds 144 by more than ten percent (10%) or more than fourteen (14) Class Members, then the Gross Settlement Amount will be increased pro rata for each additional Class Member who worked during the Class Period (*i.e.*, for each additional Class Member, the Gross Settlement Amount shall be increased by nine hundred and thirty-seven dollars and fifty cents (\$937.50) per additional Class Member.)

43. Tax Treatment of Individual Settlement Payments. All Individual Settlement Payments shall be allocated as follows: One-Third ($1/3^{\text{rd}}$) wages, for which a W-2 shall be issued, and Two-Thirds ($2/3^{\text{rd}}$) penalties, reimbursement, and interest, for which a 1099 shall be issued. Defendant shall be solely responsible for paying the employer's share of payroll taxes on any amounts allocated as wages, which amount shall be paid separately from the Gross Settlement Amount.

44. No Credit Toward Benefit Plans. The Individual Settlement Payments made to Participating Class Members under this Agreement, as well as any other payments made pursuant to this Agreement, shall not be utilized to calculate any additional benefits under any benefit plans to which any Settlement Class Members may be eligible, including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement will not affect any rights, contributions, or amounts to which any Settlement Class Members may be entitled under any benefit plans. The Parties agree that the amounts paid pursuant to this Settlement are not for days or hours worked, and are not included toward any regular rate of pay calculation, or any benefit vesting or accrual purpose.

45. Release of Claims by Settlement Class Members. Upon the Effective Date, Plaintiff and all Participating Class Members, as well as their spouses, heirs, executors, administrators, trustees, and/or permitted assigns, hereby do and shall be deemed to have fully, finally and forever released, settled, compromised, relinquished and discharged any and all of the Released Parties of and from any and all Released Claims.

46. General Release by Named Plaintiff. Prior to the Final Approval of Settlement, Plaintiff

1 will execute a release of all claims against Defendant, which includes a waiver under California Civil
2 Code section 1542, in substantially the same form as **Exhibit B**, attached hereto. Such general release
3 will only be effective as of the Effective Date, and only if this Settlement is given Final Approval by the
4 Court.

5 47. Class Action Certification. The parties are agreeing to class certification for settlement
6 purposes only. This Agreement shall not constitute, in this or any other proceeding, an admission of any
7 kind by Defendant, including without limitation, that certification of a class for trial or any other purpose
8 is appropriate or proper or that Plaintiff can establish any of the requisite elements for class or
9 representative treatment of any of the claims in this Action.

10 If, for any reason, the Settlement is not approved, this Agreement will be void and the Parties
11 will be restored to their respective positions as if they had not entered into this Agreement; however
12 Defendant will remain liable for all Administration Costs paid up through that point. The Parties further
13 agree that this Agreement, the Settlement Term Sheet, the final Stipulation of Settlement, or any
14 documents generated or orders issued related to the Settlement, will not be admissible in this or any other
15 proceeding as evidence that either (i) a class action should be certified, or that this matter may proceed
16 as a representative action; or (ii) Defendant is liable to Plaintiff or any Settlement Class Member, other
17 than according to the Settlement's terms. In the event that the Settlement is not approved or otherwise
18 voided, Defendant expressly reserves all rights to challenge certification of a class, or Plaintiff's ability
19 to maintain a representative action, for all purposes in the Action.

20 48. Non-Admission of Liability. The Parties enter into this Agreement to resolve the dispute
21 that has arisen between them and to avoid the burden, expense and risk of continued litigation. In
22 entering into this Agreement, Defendant does not admit, and specifically denies, it has violated any
23 federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or
24 any other applicable laws, regulations or legal requirements; breached any contract; violated or breached
25 any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with
26 respect to its employees. Neither this Agreement, nor any of its terms or provisions, nor any of the
27 negotiations connected with it, shall be construed as an admission or concession by Defendant of any
28 such violations or failures to comply with any applicable law. Except as necessary in a proceeding to

1 enforce the terms of this Agreement, this Agreement and its terms and provisions shall not be offered or
2 received as evidence in any action or proceeding to establish any liability or admission on the part of
3 Defendant or to establish the existence of any condition constituting a violation of, or a non-compliance
4 with, federal, state, local or other applicable law.

5 ADMINISTRATION OF SETTLEMENT

6 49. Delivery of the Class Lists and Data. Within fifteen (15) calendar days of Preliminary
7 Approval, Defendant shall provide the Class Lists and Data to the Settlement Administrator.

8 50. Notice Packets. All Settlement Class Members will be mailed a Notice Packet, attached
9 as **Exhibit A**, which was mutually agreed upon by all Parties. It provides:

- 10 a. Information regarding the nature of the Action;
- 11 b. A summary of the Settlement's principal terms;
- 12 c. The Settlement Class definition;
- 13 d. Each Settlement Class Member's estimated Individual Settlement Payment
14 and the formula for calculating Individual Settlement Payments;
- 15 e. The dates which comprise the Class Period;
- 16 f. Instructions on how to submit a valid Notice of Objection and/or the Request
17 for Exclusion Form, attached as **Exhibit C**.
- 18 g. The Response Deadline;
- 19 h. The date for the Final Approval Hearing, and
- 20 i. The Released Claims and Released Parties.

21 51. Notice by First-Class U.S. Mail. Within 30 calendar days after the Court's preliminary
22 approval of the Settlement, the Settlement Administrator shall: (i) run the names of all Settlement Class
23 Members through the National Change of Address ("NCOA") database to determine any updated
24 addressed for Settlement Class Members; (ii) update the addresses of any Settlement Class Members for
25 whom an updated address was found through the NCOA search; and (iii) mail the Notice Packet
26 (including Request for Exclusion Form) to each Settlement Class Member at his or her last known
27 address or at the updated address found through the NCOA search, and retain proof of mailing.

28 52. Re-Mailing of Returned Notices. Any Notice Packets returned to the Settlement

1 Administrator as non-deliverable on or before the Response Deadline shall be re-sent promptly via
2 regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator
3 shall indicate the date of such re-mailing on the Notice Packet. If no forwarding address is provided, the
4 Settlement Administrator shall within five (5) days of receiving the returned Notice Packet, attempt to
5 determine the correct address using a skip-trace, or other search using the name, address and/or Social
6 Security number of the Settlement Class Member involved, and shall then perform a re-mailing within
7 three (3) days of obtaining the updated address. Those Settlement Class Members who receive a re-
8 mailed Notice Packet shall have the later of (i) an additional fifteen (15) days from the remailing or (ii)
9 until the Response Deadline, to respond. Notice Packets that are re-sent shall inform recipients of this
10 adjusted deadline. The Parties agree to cooperate with the Settlement Administrator to locate a more
11 recent address for Settlement Class Members, where necessary.

12 53. Request for Exclusion Procedures. Any Class Member may opt-out from the Settlement
13 by signing a written Request for Exclusion to the Settlement Administrator postmarked on or before the
14 Response Deadline. The Request for Exclusion Form will be included in the Notice Packet and in the
15 same form as **Exhibit C**. Completed Request for Exclusion Forms must:

- 16 a. Contain the name, address, telephone number, and the last four digits of the
17 Social Security number of the person requesting exclusion;
- 18 b. Clearly state that the Settlement Class Member does not wish to be included
19 in the Settlement;
- 20 c. Be signed by the Settlement Class Member;
- 21 d. Be returned by mail to the Settlement Administrator at the specified address;
22 and
- 23 e. Be postmarked on or before the Response Deadline.

24 The date of the postmark on the return mailing envelope shall be the exclusive means to
25 determine whether a Request for Exclusion has been timely submitted. By submitting such a Request
26 for Exclusion, a Settlement Class Member shall be deemed to have exercised his or her option to opt out
27 of the Settlement and not be bound by this Agreement (except that the PAGA claims relating to such
28 Member have been released). Accordingly, a Settlement Class Member that timely submits a valid

1 Request for Exclusion will not be entitled to any payments under this Settlement. A Settlement Class
2 Member who does not request exclusion from the Settlement shall be deemed a Participating Class
3 Member and will be bound by all terms of the Settlement, if the Settlement is granted final approval by
4 the Court.

5 54. Settlement Terms Bind All Settlement Class Members Who Do Not Opt-Out. Any
6 Settlement Class Member who does not affirmatively opt-out of the Settlement by submitting a timely
7 and valid Request for Exclusion shall be bound by all of its terms, including those pertaining to the
8 Released Claims, as well as any Judgment that may be entered by the Court.

9 55. Objection Procedures. Any Settlement Class Member who does not opt-out of this
10 Settlement shall be entitled to object to the Settlement on or before the Response Deadline. The Notice
11 of Objection must:

- 12 a. Contain the name, address, telephone number, and the last four digits of the
13 Social Security number of the person objecting to the Settlement;
- 14 b. Clearly state that the Settlement Class Member wishes to be included in the
15 Settlement and does not wish to opt out of the Settlement;
- 16 c. State the basis for the objection;
- 17 d. Be signed by the Settlement Class Member;
- 18 e. Be returned by mail to the Settlement Administrator at the specified address
19 (after which the Settlement Administrator shall be responsible for providing
20 the Notice of Objection to the Parties); and
- 21 f. Be postmarked on or before the Response Deadline.

22 The date of the postmark on the return mailing envelope shall be the exclusive means to
23 determine whether a Notice of Objection has been timely submitted.

24 56. Notwithstanding any other term of this Settlement, all Settlement Class Members who do
25 not opt-out from this Settlement will have a right to appear at the Final Approval Hearing in order to
26 have their objections heard by the Court, at their own expense. At no time shall any of the Parties or
27 their counsel seek to solicit or otherwise encourage Settlement Class Members to submit written
28 objections to the Settlement or appeal from the Order and Judgment. Neither Class Counsel nor Defense

Counsel shall represent any Settlement Class Members with respect to any such objections to this Settlement. Any Settlement Class Member who opts-out of this Settlement shall not be allowed to object to this Settlement. If any Settlement Class Member both submits a Request for Exclusion and objects, the Request for Exclusion shall be disregarded and the Settlement Class Member shall be deemed a Participating Class Member whose objection shall be addressed.

57. Defendant's Right To Rescind. If more than five percent (5%) of the Settlement Class Members opt out of the settlement by submitting valid and timely Requests For Exclusion, Defendant has the unilateral right in its sole and absolute discretion to rescind and void the Parties' Settlement by giving written notice to Class Counsel at least ten (10) business days prior to the final approval hearing. The Parties agree that they will not encourage any Settlement Class Member to object to, or to opt out of, the Settlement. In the event Defendant exercises this option to rescind, Defendant shall be solely responsible for all costs incurred by the Settlement Administrator up to the date of Defendant's notice to rescind.

58. Certification Reports Regarding Administration of Settlement. The Settlement Administrator shall provide Defendant's counsel and Class Counsel a weekly report that certifies the number of Settlement Class Members who have submitted valid Requests for Exclusion and Notices of Objection. Additionally, the Settlement Administrator will provide to counsel for both Parties any updated reports regarding the administration of the Settlement as needed or reasonably requested.

59. Distribution and Timing of Individual Settlement Payments. Within five (5) business days of Defendant funding the Gross Settlement Amount, the Settlement Administrator shall issue the following payments:

- a. Individual Settlement Payments to Participating Class Members;
- b. Class Representative Service Award to Plaintiff;
- c. Settlement Administration Costs to itself;
- d. The LWDA Payment to the LWDA;
- e. Class Counsel's Fee Award to Class Counsel; and
- f. Class Counsel's Cost Award to Class Counsel.

60. Uncashed Settlement Payment Checks. Any checks issued by the Settlement

1 Administrator to Participating Class Members will be negotiable for one-hundred eighty (180) calendar
2 days. After one-hundred eighty (180) calendar days from the date of mailing, the checks shall become
3 null and void, and any monies remaining in the distribution account shall be distributed to the Controller
4 of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code §
5 1500 *et seq.*, for the benefit of those Settlement Class members who did not cash their checks until such
6 time that they claim their property. The Settling Parties agree that this disposition results in no “unpaid
7 residue” under California Civil Procedure Code § 384, as the entire Net Settlement Amount will be paid
8 out to Participating Settlement Class Members, whether or not they all cash their checks representing
9 their Individual Settlement Payments. In such event, those Participating Class Members will
10 nevertheless remain bound by the Settlement.

11 61. Certification of Completion. Upon completion of administration of the Settlement, the
12 Settlement Administrator shall provide a written declaration under oath to certify such completion to the
13 Court and counsel for all Parties.

14 62. Administration Costs if Settlement Fails. If the Settlement does not ultimately receive
15 Final Approval by the Court, or is voided or rescinded by Defendant, any costs incurred by the Settlement
16 Administrator shall be borne by Defendant.

17 63. Administration of Taxes by the Settlement Administrator. The Settlement Administrator
18 shall be responsible for issuing to Plaintiff, Participating Class Members, and Class Counsel, W-2 forms,
19 1099 forms, or other tax forms as may be required by law, for all amounts paid pursuant to this
20 Agreement.

21 64. Tax Liability. Defendant makes no representation as to the tax treatment or legal effect
22 of the payments called for hereunder, and Plaintiff and Participating Class Members are not relying on
23 any statement, representation, or calculation by Defendant or by the Settlement Administrator in this
24 regard. Plaintiff and Participating Class Members understand and agree that they will be solely
25 responsible for the payment of any taxes and penalties assessed on their respective payments described
26 herein and will defend, indemnify, and hold Defendant free and harmless from and against any claims
27 resulting from treatment of such payments as non-taxable damages.

28 65. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant

1 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
2 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause
3 of action or right herein released and discharged.

4 **APPROVAL OF SETTLEMENT**

5 66. Nullification of Settlement. In the event that the Settlement does not become a Final
6 Judgment for any reason, then this Agreement, and any documents generated to bring it into effect, shall
7 be null and void. Any order or judgment entered by the Court in furtherance of this Agreement shall
8 likewise be treated as void from the beginning.

9 67. Preliminary Approval Hearing. Plaintiff shall obtain a hearing before the Court to request
10 the Preliminary Approval of the Settlement, and the entry of a Preliminary Approval Order: (i)
11 preliminarily approving the proposed Settlement and (ii) setting a date for a Final Approval/Settlement
12 Fairness Hearing. The Preliminary Approval Order shall provide for the Notice Packet to be sent to all
13 Settlement Class Members as specified herein. In conjunction with the Preliminary Approval hearing,
14 Plaintiff shall submit this Agreement, which sets forth the terms of this Settlement, and will include the
15 proposed Notice Packet, attached to this Agreement as **Exhibit A**.

16 68. Final Settlement Approval Hearing. Upon expiration of the Response Deadline, and with
17 the Court's permission, a Final Approval/Settlement Fairness Hearing shall be conducted to determine
18 the Final Approval of the Settlement along with the amounts properly payable for:

- 19 a. Individual Settlement Payments;
- 20 b. Class Representative Service Award;
- 21 c. Settlement Administration Costs;
- 22 d. LWDA Payment;
- 23 e. Class Counsel's Fee Award; and
- 24 f. Class Counsel's Cost Award.

25 Class Counsel will be responsible for drafting all documents necessary to obtain Final Approval.
26 Class Counsel will also be responsible for drafting the attorneys' fees and costs application to be heard
27 at the Final Approval Hearing.

28 69. Entry of Judgment and Continued Jurisdiction. Concurrent with the Motion for Final

1 Approval, the Parties shall also jointly seek the entry of Judgment consistent with the terms of this
2 Agreement. After entry of the Judgment, the Court shall have continuing jurisdiction solely for purposes
3 of addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii) Settlement
4 administration matters, and (iii) such post-judgment matters as may be appropriate under court rules or
5 as set forth in this Agreement.

6 7 **MISCELLANEOUS PROVISIONS**

8 70. Exhibits Incorporated by Reference. The terms of this Agreement include the terms set
9 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth herein.
10 Any Exhibits to this Agreement are an integral part of the Settlement.

11 71. Confidentiality Preceding Preliminary Approval. The Parties and their counsel agree that
12 they will not issue any press releases, initiate any contact with the press, respond to any press inquiry,
13 or have any communication with the press about the fact, amount, or terms of the Settlement before the
14 Court preliminarily approves the Settlement, and that they will not initiate any contact with, but are free
15 to respond to inquiries from, the press after the Court grants preliminary approval. Nothing in this
16 Agreement shall limit communications between Plaintiffs or Class Counsel and absent class members.

17 72. Entire Agreement. This Agreement and any attached Exhibits constitute the entirety of
18 the Parties' settlement terms. No other prior or contemporaneous written or oral agreements may be
19 deemed binding on the Parties.

20 73. Disputes Regarding This Agreement. If the Parties have a dispute with regard to the
21 language of the Agreement, the Parties agree to informally resolve the dispute by engaging Steve Pearl
22 to mediate such dispute. Any costs incurred as a result of retaining Mr. Pearl to resolve any such dispute
23 shall be borne equally by Defendant and Plaintiff, unless otherwise specified in this Agreement.

24 74. Amendment or Modification. This Agreement may be amended or modified only by a
25 written instrument signed by the Parties or their successors-in-interest.

26 75. Authorization to Enter Into Agreement. Counsel for all Parties warrant and represent that
27 they are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take
28 all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to

1 effectuate its terms and to execute any other documents required to effectuate the terms of this
2 Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to
3 effect the implementation of the Settlement. If the Parties are unable to reach agreement on the form or
4 content of any document needed to implement the Settlement, or on any supplemental provisions that
5 may become necessary to effectuate the terms of this Settlement, the Parties agree to informally resolve
6 the dispute by engaging Steve Pearl to mediate such dispute. Any costs incurred as a result of retaining
7 Mr. Pearl to resolve any such dispute shall be borne equally by Defendant and Plaintiff, unless otherwise
8 specified in this Agreement.

9 76. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure to
10 the benefit of, the successors or assigns of the Parties hereto, as previously defined.

11 77. California Law Governs. All terms of this Agreement and Exhibits hereto shall be
12 governed by and interpreted according to the laws of the State of California.

13 78. Execution and Counterparts. This Agreement is subject only to the execution of all
14 Parties. However, the Agreement may be executed in one or more counterparts. All executed
15 counterparts and each of them, including facsimile and scanned copies of the signature page, shall be
16 deemed to be one and the same instrument provided that counsel for the Parties shall exchange among
17 themselves original signed counterparts.

18 79. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this
19 Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this Settlement
20 after arms-length negotiations and in the context of adversarial litigation, taking into account all relevant
21 factors, present and potential. The Parties further acknowledge that they are each represented by
22 competent counsel and that they have had an opportunity to consult with their counsel regarding the
23 fairness and reasonableness of this Agreement.

24 80. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid,
25 the Court shall first attempt to construe the provision as valid to the fullest extent possible consistent
26 with applicable precedents so as to find all provisions of this Agreement valid and enforceable. Any
27 invalid, illegal, or unenforceable provision determined by the Court shall in no way affect any other
28 provision if Defendant and Class Counsel, on behalf of the Parties and the Settlement Class, mutually

1 elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included
2 in this Agreement.

3 81. Waiver of Certain Appeals. The Parties agree to waive appeals; except, however, that
4 Plaintiff or Class Counsel may appeal any reduction in the Class Counsel's Fee or Cost Award below
5 the amount Class Counsel requests, and either party may appeal any order that materially alters the
6 Agreement's terms.

7 82. Captions. The captions and section numbers in this Agreement are inserted for the
8 reader's convenience, and in no way define, limit, construe or describe the scope or intent of the
9 provisions of this Agreement.

10 83. Waiver. No waiver of any condition or covenant contained in this Agreement or failure
11 to exercise a right or remedy by any of the Parties hereto shall be considered to imply or constitute a
12 further waiver by such party of the same or any other condition, covenant, right or remedy.

13 84. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and
14 conditions of this Agreement. Accordingly, this Agreement shall not be construed more strictly against
15 one party than another merely by virtue of the fact that it may have been prepared by counsel for one of
16 the Parties, it being recognized that, because of the arms-length negotiations between the Parties, all
17 Parties have contributed to the preparation of this Agreement.

18 85. Representation By Counsel. The Parties acknowledge that they have been represented
19 by counsel throughout all negotiations that preceded the execution of this Agreement, and that this
20 Agreement has been executed with the consent and advice of counsel. Further, Plaintiff and Class
21 Counsel warrant and represent that there are no liens on the Agreement.

22 86. Cooperation and Execution of Necessary Documents. All Parties shall cooperate in good
23 faith and execute all documents to the extent reasonably necessary to effectuate the terms of this
24 Agreement.

25 87. Binding Agreement. The Parties warrant that they understand and have full authority to
26 enter into this Agreement, and further intend that this Agreement shall be fully enforceable and binding
27 on all Parties, and agree that it shall be admissible and subject to disclosure in any proceeding to enforce
28 its terms.

1 IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Class
2 Action and Settlement Release Between Plaintiff and Defendant as of the date(s) set forth below:

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4 **[SIGNATURE PAGE FOLLOWS]**
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SIGNATURES

READ THE ENTIRE AGREEMENT CAREFULLY BEFORE SIGNING

PLAINTIFF

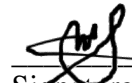
Dated: September 20, 2021


Plaintiff Alexander Nataren

DEFENDANT:

SEMIOS USA, INC.

Dated: September 21, 2021


Signature

Michael Gilbert

Please Print Name of Authorized Signatory

APPROVED AS TO FORM

Dated: September 20, 2021

ADVOCATES FOR WORKER RIGHTS LLP



Eric S. Trabucco
Attorney for Plaintiff
Alexander Nataren

DATED: September 21, 2021

DORSEY & WHITNEY LLP



Gabrielle Wirth
Erica Chen
Attorneys for Defendant
Semios USA, Inc.