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8 AARON SALAZAR, SHELIA CROMWELL, and ANDREW FORREST, and all others
similarly situated
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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SAN BERNARDINO**
12 **(UNLIMITED JURISDICTION)**

13 AARON SALAZAR, SHELIA CROMWELL,
14 and ANDREW FORREST, on behalf of
15 themselves and all others similarly situated, and
16 as “aggrieved employees” on behalf of other
“aggrieved employees” under the Labor Code
Private Attorneys General Act of 2004,

17 *Plaintiff(s),*

18 vs.
19

20 DESERT CREMATION SOCIETY, INC., a
California corporation; WIEFELS & SON II,
21 INC., a California corporation; and DOES 1–50,
22 inclusive,

23 *Defendant(s).*

Case No. CIVSB2116331

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

Action filed: June 04, 2021
Dept: S17, The Honorable Joseph
T. Ortiz

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DESERT CREMATION SOCIETY, INC. and WIEFELS & SON II, INC.

1 This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and
2 between plaintiffs Aaron Salazar, Shelia Cromwell, and Andrew Forrest (collectively
3 “Plaintiffs”) and defendants Desert Cremation Society, Inc. and Wiefels & Son II, Inc.
4 (collectively “Defendants”). The Agreement refers to Plaintiffs and Defendants collectively as
5 “Parties,” or individually as “Party.”

6 **1. DEFINITIONS.**

7 1.1. “Action” means the Plaintiffs’ lawsuit alleging wage and hour violations against
8 Desert Cremation Society, Inc. and Wiefels & Son II, Inc. captioned “Aaron Salazar, Shelia
9 Cromwell, and Andrew Forrest on behalf of themselves, and all others similarly situated, and as
10 ‘aggrieved employees’ on behalf of other ‘aggrieved employees’ under the Labor Code Private
11 Attorneys General Act of 2004, *Plaintiff(s)*, vs. Desert Cremation Society, Inc., a California
12 corporation, Wiefels & Son II, Inc., a California corporation; and DOES 1 through 50, inclusive,
13 *Defendant(s)*,” Case No. CIVSB2116331 initiated on June 04, 2021 and pending in Superior
14 Court of the State of California, County of San Bernardino.

15 1.2. “Administrator” means Simpluris, Inc., the neutral entity the Parties have agreed
16 to appoint to administer the Settlement.

17 1.3. “Administration Expenses Payment” means the amount the Administrator will be
18 paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in
19 accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection
20 with Preliminary Approval of the Settlement.

21 1.4. “Aggrieved Employee” means all of Defendants’ non-exempt decedent transport
22 drivers (also known as transport specialists), but only for the time period that the employee
23 performed transport services in California during the PAGA Period.

24 1.5. “Class” means all of Defendants’ non-exempt decedent transport drivers (also
25 known as transport specialists), but only for the time period that the employee performed transport
26 services, in California during the Class Period.

27 1.6. “Class Counsel” means David G. Spivak of The Spivak Law Firm and Walter L.
28 Haines of United Employees Law Group.

1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment”
mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and

1 expenses, respectively, incurred to prosecute the Action.

2 1.8. "Class Data" means Class Member identifying information in Defendants'
3 possession including the Class Member's name, last-known mailing address, Social Security
4 number, and number of Class Period Work Weeks and PAGA Paychecks.

5 1.9. "Class Member" or "Settlement Class Member" means a member of the Class, as
6 either a Participating Class Member or Non-Participating Class Member (including a Non-
Participating Class Member who qualifies as an Aggrieved Employee).

7 1.10. "Class Member Address Search" means the Administrator's investigation and
8 search for current Class Member mailing addresses using all reasonably available sources,
9 methods and means including, but not limited to, the National Change of Address database, skip
10 traces, and direct contact by the Administrator with Class Members.

11 1.11. "Class Notice" means the COURT APPROVED NOTICE OF CLASS ACTION
12 SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to
13 Class Members in English with a Spanish translation in the form, without material variation,
attached as Exhibit A and incorporated by reference into this Agreement.

14 1.12. "Class Period" means the period from October 12, 2017 to the earlier of
15 preliminary approval of the class action settlement or October 27, 2023.

16 1.13. "Class representatives" means the named Plaintiffs in the operative complaint in
17 the Action seeking Court approval to serve as Class Representatives.

18 1.14. "Class Representative Service Payments" means the payments to the Class
Representatives for initiating the Action and providing services in support of the Action.

19 1.15. "Court" means the Superior Court of California, County of San Bernardino.

20 1.16. "Defendants" means named Defendants Desert Cremation Society, Inc. and
21 Wiefels & Son II, Inc.

22 1.17. "Defense Counsel" means Michael C. Robinson and Orion S. Robinson of
Robinson Di Lando, A Professional Law Corporation.

23 1.18. "Effective Date" means the date by when both of the following have occurred: (a)
24 the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the
25 Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no
26 Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if
27 one or more Participating Class Members objects to the Settlement, the day after the deadline for

1 filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the
2 day after the appellate court affirms the Judgment and issues a remittitur.

3 1.19. “Final Approval” means the Court’s order granting final approval of the
4 Settlement.

5 1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final
6 Approval of the Settlement.

7 1.21. “Final Judgment” means the Judgment Entered by the Court upon Granting Final
8 Approval of the Settlement. A proposed Final Judgment form is attached as Exhibit F.

9 1.22. “Gross Settlement Amount” means \$500,000.00 which is the total amount
10 Defendants agree to pay under the Settlement except as provided in Paragraph 9 below. The Gross
11 Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments,
12 the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative
13 Service Payments and the Administrator’s Expenses.

14 1.23. “Individual Class Payment” means the Participating Class Member’s pro rata
15 share of the Net Settlement Amount calculated according to the number of Work Weeks worked
16 during the Class Period.

17 1.24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of
18 25% of the PAGA Penalties calculated according to the Aggrieved Employee’s number PAGA
19 Paychecks.

20 1.25. “Judgment” means the judgment entered by the Court based upon the Final
21 Approval.

22 1.26. “LWDA” means the California Labor and Workforce Development Agency, the
23 agency entitled, under Labor Code section 2699, subd. (i).

24 1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the
25 LWDA under Labor Code section 2699, subd. (i).

26 1.28. “Net Settlement Amount” means the Gross Settlement Amount, less the following
27 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA
28 Payment, Class Representative Service Payments, Class Counsel Fees Payment, Class Counsel
Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be
paid to Participating Class Members as Individual Class Payments.

1.29. “Non-Participating Class Member” means any Class Member who opts out of the

1 Settlement by sending the Administrator a valid and timely Request for Exclusion.

2 1.30. “Notice Packet” means the Class Notice (Exhibit A), the Election Not to
3 Participate in Settlement form (Exhibit B), the Work Week Dispute form (Exhibit C), and the
4 Objection form (Exhibit D) in English with Spanish translations.

5 1.31. “PAGA Paycheck” means any paycheck an Aggrieved Employee received from
6 Defendants for at least one day worked during the PAGA Period.

7 1.32. “PAGA Period” means the period from March 17, 2020 to the earlier of
8 preliminary approval of the class action settlement or October 27, 2023.

9 1.33. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

10 1.34. “PAGA Notice” means Plaintiffs’ March 17, 2021 letter to Defendants and the
11 LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

12 1.35. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from
13 the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$5,000.00) and the
14 75% to LWDA (\$15,000.00) in settlement of PAGA claims.

15 1.36. “Participating Class Member” means a Class Member who does not submit a valid
16 and timely Request for Exclusion from the Settlement.

17 1.37. “Plaintiffs” means Aaron Salazar, Shelia Cromwell, and Andrew Forrest the
18 named Plaintiffs in the Action.

19 1.38. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval
20 of the Settlement.

21 1.39. “Preliminary Approval Order” means the proposed Order Granting Preliminary
22 Approval and Approval of PAGA Settlement. A proposed Preliminary Approval Order form is
23 attached as Exhibit E.

24 1.40. “Released Class Claims” means the claims being released as described in
25 Paragraph 6.2 below.

26 1.41. “Released PAGA Claims” means the claims being released as described in
27 Paragraph 6.2 below.

28 1.42. “Released Parties” means: Defendants and each of their current and former
parents, owners, subsidiaries, divisions, and affiliated or related persons or entities (including but
not limited to, Aries Properties, a California Corporation), and each of their respective officers,
directors, employees, partners, shareholders, attorneys, agents, executors, and assigns

(collectively, the “Released Parties”).

1.43. “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member. An Election Not to Participate in Settlement form is attached as Exhibit B.

1.44. “Response Deadline” means 60 days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.

1.45. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

1.46. “Work Week” means any week during which a Class Member worked for Defendants as a transport driver for at least one day, during the Class Period.

1.47. A Work Week Dispute form is attached as Exhibit C.

2. RECITALS.

2.1. On June 04, 2021, Plaintiffs commenced this Action by filing a Complaint alleging causes of action against Defendants for failure to pay wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, and related claims. On October 12, 2021, Plaintiffs filed a First Amended Complaint alleging causes of action against Defendants for failure to pay wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, and related allegations. The First Amended Complaint is the operative complaint in the Action (the “Operative Complaint.”) Defendants deny the allegations in the Operative Complaint, deny any failure to comply with the laws identified in in the Operative Complaint and deny any and all liability for the causes of action alleged.

2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiffs gave timely written

1 notice to Defendants and the LWDA by sending the PAGA Notice.

2 2.3. On June 29, 2023, the Parties participated in an all-day mediation presided over
3 by Deborah Saxe which led to this Agreement to settle the Action (describe alternative means of
4 negotiation.

5 2.4. Prior to and during mediation, Plaintiffs obtained, through informal discovery,
6 the number of comparable employees, the number of workweeks, the number of paychecks,
7 average rates of pay, sample time records, sample payroll records, written policies, financial
8 records, and related information. Plaintiffs' investigation was sufficient to satisfy the criteria for
9 court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and
Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

10 2.5. The Court has not granted class certification.

11 2.6. The Parties, Class Counsel and Defense Counsel represent that they are not aware
12 of any other pending matter or action asserting claims that will be extinguished or affected by the
13 Settlement.

14 3. MONETARY TERMS.

15 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below,
16 Defendants promise to pay \$500,000.00 and no more as the Gross Settlement Amount and to
17 separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual
18 Class Payments. Defendants have no obligation to pay the Gross Settlement Amount (or any
19 payroll taxes) prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator
20 will disburse the entire Gross Settlement Amount without asking or requiring Participating Class
21 Members or Aggrieved Employees to submit any claim as a condition of payment. None of the
Gross Settlement Amount will revert to Defendants.

22 3.2. Payments from the Gross Settlement Amount. The Administrator will make and
23 deduct the following payments from the Gross Settlement Amount, in the amounts specified by
the Court in the Final Approval:

24 3.2.1. To Plaintiffs: Class Representative Service Payments to the Class
25 Representatives of not more than \$15,000.00 each (in addition to any Individual Class Payments
26 and any Individual PAGA Payments the Class Representatives are entitled to receive as
27 Participating Class Members). Defendants will not oppose Plaintiffs' request for a Class

1 Representative Service Payments that do not exceed this amount. As part of the motion for Class
2 Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiffs will seek Court
3 approval for any Class Representative Service Payments no later than 16 court days prior to the
4 Final Approval Hearing. If the Court approves a Class Representative Service Payment less than
5 the amount requested, the Administrator will retain the remainder in the Net Settlement Amount.
6 The Administrator will pay the Class Representative Service Payments using IRS Form 1099.
7 Plaintiffs assume full responsibility and liability for employee taxes owed on the Class
8 Representative Service Payments.

8 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than
9 33.33%, which is currently estimated to be \$166,666.66 and a Class Counsel Litigation Expenses
10 Payment of not more than \$25,000.00. Defendants will not oppose requests for these payments
11 provided that they do not exceed these amounts. Plaintiffs and/or Class Counsel will file a motion
12 for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court
13 days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment
14 and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the
15 Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall
16 have no liability to Class Counsel or any other Plaintiffs' Counsel arising from any claim to any
17 portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The
18 Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment
19 using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for
20 taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses
21 Payment and holds Defendants harmless, and indemnifies Defendants, from any dispute or
22 controversy regarding any division or sharing of any of these Payments.

21 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed
22 \$10,000.00 except for a showing of good cause and as approved by the Court. To the extent the
23 Administration Expenses are less or the Court approves payment less than \$10,000.00, the
24 Administrator will retain the remainder in the Net Settlement Amount.

24 3.2.4. To Each Participating Class Member: An Individual Class Payment
25 calculated by (a) dividing the Net Settlement Amount by the total number of Work Weeks worked
26 by all Participating Class Members during the Class Period and (b) multiplying the result by each
27 Participating Class Member's Work Weeks.

1 3.2.4.1. Tax Allocation of Individual Class Payments. 20.00% of
2 each Participating Class Member's Individual Class Payment will be allocated to settlement of
3 wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be
4 reported on an IRS W-2 Form. The 80.00% of each Participating Class Member's Individual
5 Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage
6 Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on
7 IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any
employee taxes owed on their Individual Class Payment.

8 3.2.4.2. Effect of Non-Participating Class Members on Calculation
9 of Individual Class Payments. Non-Participating Class Members will not receive any Individual
10 Class Payments. The Administrator will retain amounts equal to their Individual Class Payments
in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

11 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the
12 amount of \$20,000.00 to be paid from the Gross Settlement Amount, with 75% (\$15,000.00)
13 allocated to the LWDA PAGA Payment and 25% (\$5,000.00) allocated to the Individual PAGA
14 Payments.

15 3.2.5.1. The Administrator will calculate each Individual PAGA Payment
16 by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties \$5,000.00
17 by the total number of PAGA Paychecks of all Aggrieved Employees but only for the time period
18 that the employee performed transport services during the PAGA Period and (b) multiplying the
19 result by each Aggrieved Employee's PAGA Paychecks. Aggrieved Employees assume full
responsibility and liability for any taxes owed on their Individual PAGA Payment.

20 3.2.5.2. If the Court approves PAGA Penalties of less than the amount
21 requested, the Administrator will allocate the remainder to the Net Settlement Amount. The
22 Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

23 **4. SETTLEMENT FUNDING AND PAYMENTS.**

24 4.1. Class Work Weeks and Aggrieved Employee Paychecks. Based on a review of
25 their records to date, Defendants estimate there are 100 Class Members who collectively worked
26 a total of 5,000.00 Work Weeks, and 53 Aggrieved Employees who received a total 1,157 of
PAGA Paychecks.

27 4.2. Class Data. Not later than 15 days after the Court grants Preliminary Approval

1 of the Settlement, Defendants will simultaneously deliver the Class Data to the Administrator, in
2 the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the
3 Administrator must maintain the Class Data in confidence, use the Class Data only for purposes
4 of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator
5 employees who need access to the Class Data to effect and perform under this Agreement.
6 Defendants have a continuing duty to immediately notify Class Counsel if they discover that the
7 Class Data omitted class member identifying information and to provide corrected or updated
8 Class Data as soon as reasonably feasible. Without any extension of the deadline by which
9 Defendants must send the Class Data to the Administrator, the Parties and their counsel will
10 expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related
11 to missing or omitted Class Data.

12 4.3. Funding of Gross Settlement Amount. Defendants shall fully fund the Gross
13 Settlement Amount, and also fund the amounts necessary to fully pay Defendants' share of payroll
14 taxes by transmitting the funds to the Administrator no later than twelve months after Final
15 Approval.

16 4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendants
17 fund the Gross Settlement Amount, the Administrator will mail checks for all Individual Class
18 Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration
19 Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
20 Payment, and the Class Representative Service Payments. Disbursement of the Class Counsel
21 Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative
22 Service Payments shall not precede disbursement of Individual Class Payments and Individual
23 PAGA Payments.

24 4.4.1. The Administrator will issue checks for the Individual Class Payments
25 and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail,
26 postage prepaid. The face of each check shall prominently state the date (not less than 180 days
27 after the date of mailing) when the check will be voided. The Administrator will cancel all checks
28 not cashed by the void date. The Administrator will send checks for Individual Settlement
Payments to all Participating Class Members (including those for whom Notice Packet was
returned undelivered). The Administrator will send checks for Individual PAGA Payments to all
Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved

1 Employees (including those for whom Notice Packet was returned undelivered). The
2 Administrator may send Participating Class Members a single check combining the Individual
3 Class Payment and the Individual PAGA Payment. Before mailing any checks, the Administrator
4 must update the recipients' mailing addresses using the National Change of Address Database.

5 4.4.2. The Administrator must conduct a Class Member Address Search for all
6 other Class Members whose checks are returned undelivered without USPS forwarding address.
7 Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS
8 forwarding address provided or to an address ascertained through the Class Member Address
9 Search. The Administrator need not take further steps to deliver checks to Class Members whose
10 re-mailed checks are returned as undelivered. The Administrator shall promptly send a
11 replacement check to any Class Member whose original check was lost or misplaced, requested
12 by the Class Member prior to the void date.

13 4.4.3. For any Class Member whose Individual Class Payment check or
14 Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator
15 shall transmit the funds represented by such checks to the California Controller's Unclaimed
16 Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to
17 the requirements of California Code of Civil Procedure Section 384, subd. (b).

18 4.4.4. The payment of Individual Class Payments and Individual PAGA
19 Payments shall not obligate Defendants to confer any additional benefits or make any additional
20 payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in
21 this Agreement.

22 **5. [OMITTED]**

23 **6. RELEASES OF CLAIMS.** Effective on the date when Defendants fully fund the entire
24 Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the
25 Individual Class Payments, Plaintiffs, Class Members, and Class Counsel will release claims
26 against all Released Parties as follows:

27 6.1 Plaintiffs' Release. Plaintiffs and their respective former and present spouses,
28 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release
and discharge Released Parties from all claims, transactions, or occurrences that occurred during
the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have
been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims

1 that were, or reasonably could have been, alleged based on facts contained in the Operative
2 Complaint, Plaintiffs' PAGA Notice, or ascertained during the Action and released under 6.2,
3 below. ("Plaintiffs' Release.") Plaintiffs' Release does not extend to any claims or actions to
4 enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability
5 benefits, social security benefits, workers' compensation benefits that arose at any time, or based
6 on occurrences outside the Class Period. Plaintiffs acknowledge that Plaintiffs may discover facts
7 or law different from, or in addition to, the facts or law that Plaintiffs now know or believe to be
8 true but agrees, nonetheless, that Plaintiffs' Release shall be and remain effective in all respects,
9 notwithstanding such different or additional facts or Plaintiffs' discovery of them.

10 6.1.1 Plaintiffs' Waiver of Rights Under California Civil Code Section 1542. For
11 purposes of Plaintiffs' Release, Plaintiffs expressly waive and relinquish the provisions, rights,
12 and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

17 6.2 Release by Participating Class Members: All Participating Class Members, on
18 behalf of themselves and their respective former and present representatives, agents, attorneys,
19 heirs, administrators, successors, and assigns, release Released Parties from all claims stated in
20 the Operative Complaint and those based solely upon the facts alleged in the Operative
21 Complaint. Except as set forth in Section 6.3 of this Agreement, Participating Class Members do
22 not release any other claims, including claims for vested benefits, wrongful termination, violation
23 of the Fair Employment and Housing Act, unemployment insurance, disability, social security,
24 workers' compensation, or claims based on facts occurring outside the Class Period.

25 6.3 Release of PAGA Claim. Plaintiffs on behalf of themselves and the Aggrieved
26 Employees release all claims for civil penalties that could have been sought by the Labor
27 Commissioner for the violations identified in Plaintiffs' pre-filing letter to the LWDA; Plaintiffs
28 do not release the claim for wages or damages of any Aggrieved Employee unless such Aggrieved
Employee is a Participating Class Member.

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2 **7. MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and
3 file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies with
4 the Court’s current checklist for Preliminary Approvals. A Preliminary Approval Order form is
5 attached as Exhibit E.

6 7.1 OMITTED

7 7.2 Plaintiffs’ Responsibilities. Plaintiffs will prepare and deliver to Defense
8 Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the
9 notice, and memorandum in support, of the Motion for Preliminary Approval that includes an
10 analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement
11 under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary
12 Approval and Approval of PAGA Settlement; (iii) a draft proposed Notice Packet; (iv) a signed
13 declaration from the Administrator attaching its “not to exceed” bid for administering the
14 Settlement and attesting to its willingness to serve; competency; operative procedures for
15 protecting the security of Class Data; amounts of insurance coverage for any data breach,
16 defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of
17 interest with Class Members; and the nature and extent of any financial relationship with
18 Plaintiffs, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiffs confirming
19 willingness and competency to serve and disclosing all facts relevant to any actual or potential
20 conflicts of interest with Class Members, and/or the Administrator; (v) a signed declaration from
21 each Class Counsel firm attesting to its competency to represent the Class Members; its timely
22 transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor
23 Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)),
24 this Agreement (Labor Code section 2699, subd. (l)(2)); (vi) a redlined version of the parties’
25 Agreement showing all modifications made to the Model Agreement ready for filing with the
26 Court; and (vii) all facts relevant to any actual or potential conflict of interest with Class Members,
27 the Administrator and/or the Cy Pres Recipient. In their Declarations, Plaintiffs and Class
28 Counsel Declaration shall aver that they are not aware of any other pending matter or action
asserting claims that will be extinguished or adversely affected by the Settlement.

7.3 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly
responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later

1 than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the
2 Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion
3 for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary
4 Approval to the Administrator.

5 7.4 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion
6 for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and
7 Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person
8 or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant
9 Preliminary Approval or conditions Preliminary Approval on any material change to this
10 Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of
11 the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and
12 otherwise satisfy the Court's concerns.

13 **8. SETTLEMENT ADMINISTRATION.**

14 8.1 Selection of Administrator. The Parties have jointly selected Simpluris, Inc. to
15 serve as the Administrator and verified that, as a condition of appointment, Simpluris, Inc. agrees
16 to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this
17 Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel
18 represent that they have no interest or relationship, financial or otherwise, with the Administrator
19 other than a professional relationship arising out of prior experiences administering settlements.

20 8.2 Employer Identification Number. The Administrator shall have and use its own
21 Employer Identification Number for purposes of calculating payroll tax withholdings and
22 providing reports state and federal tax authorities.

23 8.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund
24 that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury
25 Regulation section 468B-1.

26 8.4 Notice to Class Members.

27 8.4.1 No later than three (3) business days after receipt of the Class Data, the
28 Administrator shall notify Class Counsel that the list has been received and state the number of
Class Members, PAGA Members, Work Weeks, and PAGA Paychecks in the Class Data.

8.4.2 Using best efforts to perform as soon as possible, and in no event later than

1 14 days after receiving the Class Data, the Administrator will send to all Class Members identified
2 in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Notice Packet
3 with Spanish translation, if applicable substantially in the forms attached to this Agreement as
4 **Exhibits A, B, C, and D.** The first page of the Class Notice shall prominently estimate the dollar
5 amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class
6 Member, and the number of Work Weeks and PAGA Paychecks (if applicable) used to calculate these
7 amounts. Before mailing Notice Packets, the Administrator shall update Class Member addresses
8 using the National Change of Address database.

8 8.4.3 Not later than 3 business days after the Administrator’s receipt of any
9 Notice Packet returned by the USPS as undelivered, the Administrator shall re-mail the Notice
10 Packet using any forwarding address provided by the USPS. If the USPS does not provide a
11 forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail
12 the Notice Packet to the most current address obtained. The Administrator has no obligation to
13 make further attempts to locate or send Notice Packet to Class Members whose Notice Packet is
14 returned by the USPS a second time.

14 8.4.4 The deadlines for Class Members’ written objections, Challenges to Work
15 Weeks and/or PAGA Paychecks (disputes), and Requests for Exclusion will be extended an
16 additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class
17 Members whose notice is re-mailed. The Administrator will inform the Class Member of the
18 extended deadline with the re-mailed Notice Packet.

18 8.4.5 If the Administrator, Defendants or Class Counsel is contacted by or
19 otherwise discovers any persons who believe they should have been included in the Class Data
20 and should have received Notice Packet, the Parties will expeditiously meet and confer in person
21 or by telephone, and in good faith. in an effort to agree on whether to include them as Class
22 Members. If the Parties agree, such persons will be Class Members entitled to the same rights as
23 other Class Members, and the Administrator will send, via email or overnight delivery, a Class
24 Notice requiring them to exercise options under this Agreement not later than 14 days after receipt
25 of Class Notice, or the deadline dates in the Class Notice, which ever are later.

25 **8.5 Requests for Exclusion (Opt-Outs).**

26 8.5.1 Class Members who wish to exclude themselves (opt-out of) the Class
27 Settlement must send the Administrator, by fax, email, or mail, a signed written Request for

1 Exclusion not later than 60 days after the Administrator mails the Notice Packet (plus an
2 additional 14 days for Class Members whose Notice Packet is re-mailed). A Request for
3 Exclusion is a letter from a Class Member or his/her representative that reasonably communicates
4 the Class Member's election to be excluded from the Settlement and includes the Class Member's
5 name, address and email address or telephone number. To be valid, a Request for Exclusion must
6 be timely faxed, emailed, or postmarked by the Response Deadline. An Election Not to Participate
in Settlement form, attached as Exhibit B, may be used for this purpose but is not required.

7 8.5.2 The Administrator may not reject a Request for Exclusion as invalid
8 because it fails to contain all the information specified in the Class Notice. The Administrator
9 shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the
10 identity of the person as a Class Member and the Class Member's desire to be excluded. The
11 Administrator's determination shall be final and not appealable or otherwise susceptible to
12 challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion,
13 the Administrator may demand additional proof of the Class Member's identity. The
14 Administrator's determination of authenticity shall be final and not appealable or otherwise
susceptible to challenge.

15 8.5.3 Every Class Member who does not submit a timely and valid Request for
16 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all
17 benefits and bound by all terms and conditions of the Settlement, including the Participating Class
18 Members' Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless of whether the
Participating Class Member actually receives the Class Notice or objects to the Settlement.

19 8.5.4 Every Class Member who submits a valid and timely Request for
20 Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment
21 or have the right to object to the class action components of the Settlement. Aggrieved Employees
22 are eligible for an Individual PAGA Payment.

23 8.6 Challenges to Calculation of Work Weeks. Each Class Member shall have 60
24 days after the Administrator mails the Notice Packet (plus an additional 14 days for Class
25 Members whose Notice Packet is re-mailed) to challenge the number of Class Work Weeks and
26 PAGA Paychecks (if any) allocated to the Class Member in the Class Notice. This is also known
27 as a dispute. A Work Week Dispute form, attached as Exhibit C, may be used for this purpose
but is not required. The Class Member may challenge the allocation by communicating with the

Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Work Weeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Work Weeks and/or PAGA Paychecks shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Work Weeks and/or PAGA Paychecks to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

8.7 Objections to Settlement.

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

8.7.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 60 days after the Administrator's mailing of the Notice Packet (plus an additional 14 days for Class Members whose Notice Packet was re-mailed). An The Objection form attached as Exhibit D may be used for this purpose but is not required.

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

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

8.8.1 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Notice Packet, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payments, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address

1 and a toll-free telephone number to receive Class Member calls, faxes and emails.

2 8.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator
3 will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not
4 later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the
5 Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names
6 and other identifying information of Class Members who have timely submitted valid Requests
7 for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class
8 Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for
9 Exclusion from Settlement submitted (whether valid or invalid).

10 8.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide
11 written reports to Class Counsel and Defense Counsel that, among other things, tally the number
12 of: Notice Packets mailed or re-mailed, Notice Packets returned undelivered, Requests for
13 Exclusion (whether valid or invalid) received, objections received, challenges to Work Weeks
14 and/or PAGA Paychecks received and/or resolved, and checks mailed for Individual Class
15 Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include
16 provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies
17 of all Requests for Exclusion and objections received.

18 8.8.4 Work Week and/or PAGA Paycheck Challenges. The Administrator has
19 the authority to address and make final decisions consistent with the terms of this Agreement on
20 all Class Member challenges over the calculation of Work Weeks and/or PAGA Paychecks. The
21 Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.

22 8.8.5 Administrator’s Declaration. Not later than 14 days before the date by
23 which Plaintiffs are required to file the Motion for Final Approval of the Settlement, the
24 Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable
25 for filing in Court attesting to its due diligence and compliance with all of its obligations under
26 this Agreement, including, but not limited to, its mailing of the Notice Packets, the Notice Packets
27 returned as undelivered, the re-mailing of Notice Packets, attempts to locate Class Members, the
28 total number of Requests for Exclusion from Settlement it received (both valid or invalid), the
number of written objections and attach the Exclusion List. The Administrator will supplement
its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible
for filing the Administrator’s declaration(s) in Court.

1 8.8.6 Final Report by Administrator. Within 10 days after the Administrator
2 disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel
3 and Defense Counsel with a final report detailing its disbursements by employee identification
4 number only of all payments made under this Agreement. At least 15 days before any deadline
5 set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense
6 Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all
7 payments required under this Agreement. Class Counsel is responsible for filing the
8 Administrator's declaration in Court.

9 **9. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE.** Based on their records,
10 Defendants estimate that, as of the date of this Settlement Agreement, (1) there are 100 Class
11 Members and 5,000 total Work Weeks during the Class period and (2) there were 53 Aggrieved
12 Employees who received 1,157 PAGA Paychecks during the PAGA Period. If the Work Weeks
13 and/or Class Members as of the date the Court approves the settlement exceeds the referenced
14 5,000 Work Weeks and/or 100 Class Members by more than 10.00%, the Gross Settlement
15 Amount, including the Class Counsel Fees Payment, the Class Representative Service Payments,
16 and the LWDA payment, will increase proportionally according to the number of additional Work
17 Weeks or Class Members, whichever results in a higher increase in the Gross Settlement Amount.
18 Alternatively, Defendant may elect to end the Class Period on the date on which the number of
19 workweeks reached 5,500.

20 **10. DEFENDANTS' RIGHT TO WITHDRAW.** If the number of valid Requests for
21 Exclusion identified in the Exclusion List exceeds 5.00% of the total of all Class Members,
22 Defendants may, but are not obligated, elect to withdraw from the Settlement. The Parties agree
23 that, if Defendants withdraw, the Settlement shall be void ab initio, have no force or effect
24 whatsoever, and that neither Party will have any further obligation to perform under this
25 Agreement; provided, however, Defendants will remain responsible for paying all Settlement
26 Administration Expenses incurred to that point. Defendants must notify Class Counsel and the
27 Court of their election to withdraw not later than 7 days after the Administrator sends the final
28 Exclusion List to Defense Counsel; late elections will have no effect.

1 **11. MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared
2 Final Approval Hearing, Plaintiffs will file in Court, a motion for final approval of the Settlement
3 that includes a request for approval of the PAGA settlement under Labor Code section 2699,
4 subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively “Motion for
5 Final Approval”). Plaintiffs shall provide drafts of these documents to Defense Counsel not later
6 than 7 days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel
7 will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any
disagreements concerning the Motion for Final Approval.

8 11.1 Response to Objections. Each Party retains the right to respond to any objection
9 raised by a Participating Class Member, including the right to file responsive documents in Court
10 no later than 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted
by the Court.

11 11.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final
12 Approval on any material change to the Settlement (including, but not limited to, the scope of
13 release to be granted by Class Members), the Parties will expeditiously work together in good
14 faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final
15 Approval. The Court’s decision to award less than the amounts requested for the Class
16 Representative Service Payments, Class Counsel Fees Payment, Class Counsel Litigation
17 Expenses Payment and/or Administrator Expenses Payment shall not constitute a material
modification to the Agreement within the meaning of this paragraph.

18 11.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of
19 Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for
20 purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement
21 administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

22 11.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms
23 and conditions of this Agreement, specifically including the Class Counsel Fees Payment and
24 Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their
25 respective counsel, and all Participating Class Members who did not object to the Settlement as
26 provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to
27 post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions
for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver

1 of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the
2 Parties' obligations to perform under this Agreement will be suspended until such time as the
3 appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect
4 the amount of the Net Settlement Amount.

5 11.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If
6 the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a
7 material modification of this Agreement (including, but not limited to, the scope of release to be
8 granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless
9 expeditiously work together in good faith to address the appellate court's concerns and to obtain
10 Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration
11 Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify
12 the Court's award of the Class Representative Service Payments or any payments to Class
13 Counsel shall not constitute a material modification of the Judgment within the meaning of this
14 paragraph, as long as the Gross Settlement Amount remains unchanged.

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

18 **13. ADDITIONAL PROVISIONS.**

19 13.1 No Admission of Liability, Class Certification or Representative Manageability
20 for Other Purposes. This Agreement represents a compromise and settlement of highly disputed
21 claims. Nothing in this Agreement is intended or should be construed as an admission by
22 Defendants that any of the allegations in the Operative Complaint have merit or that Defendants
23 have any liability for any claims asserted; nor should it be intended or construed as an admission
24 by Plaintiffs that Defendants' defenses in the Action have merit. The Parties agree that class
25 certification and representative treatment is for purposes of this Settlement only. If, for any reason
26 the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendants
27 reserve the right to contest certification of any class for any reasons, and Defendants reserve all
28 available defenses to the claims in the Action, and Plaintiffs reserve the right to move for class
certification on any grounds available and to contest Defendants' defenses. The Settlement, this

1 Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be
2 admissible in connection with, any litigation (except for proceedings to enforce or effectuate the
3 Settlement and this Agreement).

4 13.2 Confidentiality Prior to Preliminary Approval. Plaintiffs, Class Counsel,
5 Defendants and Defense Counsel separately agree that, until the Motion for Preliminary Approval
6 of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or
7 cause or permit another person to disclose, disseminate or publicize, any of the terms of the
8 Agreement directly or indirectly, specifically or generally, to any person, corporation, association,
9 government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses,
10 all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter;
11 (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a
12 court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal
13 government agency.

14 Each Party agrees to immediately notify each other Party of any judicial or agency
15 order, inquiry, or subpoena seeking such information. Plaintiffs, Class Counsel, Defendants and
16 Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other
17 communication, before the filing of the Motion for Preliminary Approval, any with third party
18 regarding this Agreement or the matters giving rise to this Agreement except to respond only that
19 "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's
20 communications with Class Members in accordance with Class Counsel's ethical obligations
21 owed to Class Members.

22 13.3 No Solicitation. The Parties separately agree that they and their respective
23 counsel and employees will not solicit any Class Member to opt out of or object to the Settlement,
24 or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class
25 Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical
26 obligations owed to Class Members.

27 13.4 Integrated Agreement. Upon execution by all Parties and their counsel, this
28 Agreement together with its attached exhibits shall constitute the entire agreement between the
Parties relating to the Settlement, superseding any and all oral representations, warranties,
covenants, or inducements made to or by any Party.

13.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant

1 and represent that they are authorized by Plaintiffs and Defendants, respectively, to take all
2 appropriate action required or permitted to be taken by such Parties pursuant to this Agreement
3 to effectuate its terms, and to execute any other documents reasonably required to effectuate the
4 terms of this Agreement including any amendments to this Agreement.

5 13.6 Cooperation. The Parties and their counsel will cooperate with each other and
6 use their best efforts, in good faith, to implement the Settlement by, among other things,
7 modifying the Settlement Agreement, submitting supplemental evidence and supplementing
8 points and authorities as requested by the Court. In the event the Parties are unable to agree upon
9 the form or content of any document necessary to implement the Settlement, or on any
10 modification of the Agreement that may become necessary to implement the Settlement, the
11 Parties will seek the assistance of a mediator and/or the Court for resolution.

12 13.7 No Prior Assignments. The Parties separately represent and warrant that they
13 have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer,
14 or encumber to any person or entity and portion of any liability, claim, demand, action, cause of
15 action, or right released and discharged by the Party in this Settlement.

16 13.8 No Tax Advice. Neither Plaintiffs, Class Counsel, Defendants nor Defense
17 Counsel are providing any advice regarding taxes or taxability, nor shall anything in this
18 Settlement be relied upon as such within the meaning of United States Treasury Department
19 Circular 230 (31 CFR Part 10, as amended) or otherwise.

20 13.9 Modification of Agreement. This Agreement, and all parts of it, may be
21 amended, modified, changed, or waived only by an express written instrument signed by all
22 Parties or their representatives, and approved by the Court.

23 13.10 Agreement Binding on Successors. This Agreement will be binding upon, and
24 inure to the benefit of, the successors of each of the Parties.

25 13.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will
26 be governed by and interpreted according to the internal laws of the state of California, without
27 regard to conflict of law principles.

28 13.12 Cooperation in Drafting. The Parties have cooperated in the drafting and
preparation of this Agreement. This Agreement will not be construed against any Party on the
basis that the Party was the drafter or participated in the drafting.

13.13 Confidentiality. To the extent permitted by law, all agreements made, and orders

1 entered during Action and in this Agreement relating to the confidentiality of information shall
2 survive the execution of this Agreement.

3 13.14 Use and Return of Class Data. Information provided to Class Counsel pursuant
4 to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class
5 Counsel by Defendants in connection with the mediation, other settlement negotiations, or in
6 connection with the Settlement, may be used only with respect to this Settlement, and no other
7 purpose, and may not be used in any way that violates any existing contractual agreement, statute,
8 or rule of court. Not later than 90 days after the date when the Court discharges the
9 Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement
10 funds, Plaintiffs shall destroy, all paper and electronic versions of Class Data received from
11 Defendants unless, prior to the Court's discharge of the Administrator's obligation, Defendants
12 make a written request to Class Counsel for the return, rather than the destructions, of Class Data.

13 13.15 Headings. The descriptive heading of any section or paragraph of this Agreement
14 is inserted for convenience of reference only and does not constitute a part of this Agreement.

15 13.16 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement
16 shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
17 weekend or federal legal holiday, such date or deadline shall be on the first business day
18 thereafter.

19 13.17 Notice. All notices, demands or other communications between the Parties in
20 connection with this Agreement will be in writing and deemed to have been duly given as of the
21 third business day after mailing by United States mail, or the day sent by email or messenger,
22 addressed as follows:

23 To Plaintiff:
24 David G. Spivak, Esq.
25 The Spivak Law Firm
26 8605 Santa Monica Bl
27 PMB 42554
28 West Hollywood, CA 90069
david@spivaklaw.com

To Defendant:
Orion S. Robinson, Esq.
Robinson Di Lando, A Professional Law Corporation
801 South Grand Avenue

Suite 500
Los Angeles, CA 90017
orobinson@rdwlaw.com

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

13.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

Dated: 10 / 16 / 2023

By: 
AARON SALAZAR

Dated: 10 / 12 / 2023

By: 
SHELIA CROMWELL

Dated: 10 / 12 / 2023

By: 
ANDREW FORREST

Dated: _____

By: _____

Desert Cremation Society, Inc. and
Wiefels & Son II, Inc.

///

Suite 500
Los Angeles, CA 90017
orobinson@rdwlaw.com

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

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Dated: _____

By: _____
AARON SALAZAR

Dated: _____

By: _____
SHELIA CROMWELL

Dated: _____

By: _____
ANDREW FORREST

Dated: 10/11/23

By: 
LORI W. MATTHEWS
Desert Cremation Society, Inc. and
Wiefels & Son II, Inc.

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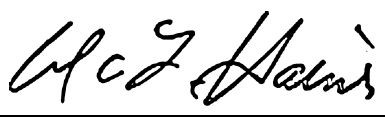
THE SPIVAK LAW FIRM

Dated: 10 / 13 / 2023

By: 
DAVID G. SPIVAK, Attorneys for
Plaintiff(s), AARON SALAZAR,
SHELIA CROMWELL, and ANDREW
FORREST, and all others similarly
situated

UNITED EMPLOYEES LAW GROUP

Dated: 10 / 12 / 2023

By: 
WALTER L. HAINES, Attorneys for
Plaintiff(s), AARON SALAZAR,
SHELIA CROMWELL, and ANDREW
FORREST, and all others similarly
situated

ROBINSON DI LANDO, A
PROFESSIONAL LAW CORPORATION

Dated: _____

By: _____
ORION S. ROBINSON, Attorneys for
Defendant(s), DESERT CREMATION
SOCIETY, INC. AND WIEFELS &
SON II, INC.

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THE SPIVAK LAW FIRM

Dated: _____

By: _____
DAVID G. SPIVAK, Attorneys for
Plaintiff(s), AARON SALAZAR,
SHELIA CROMWELL, and ANDREW
FORREST, and all others similarly
situated

UNITED EMPLOYEES LAW GROUP

Dated: _____

By: _____
WALTER L. HAINES, Attorneys for
Plaintiff(s), AARON SALAZAR,
SHELIA CROMWELL, and ANDREW
FORREST, and all others similarly
situated

ROBINSON DI LANDO, A
PROFESSIONAL LAW CORPORATION

Dated: 10-12-23

By: 
ORION S. ROBINSON, Attorneys for
Defendant(s), DESERT CREMATION
SOCIETY, INC. AND WIEFELS &
SON II, INC.

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EXHIBIT A

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

(case name: *Aaron Salazar, et al. v. Desert Cremation Society, Inc., et al.*, and number
CIVSB2116331)

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

You may be eligible to receive money from an employee class action lawsuit (“Action”) against Desert Cremation Society, Inc. and Wiefels & Son II, Inc. (“Defendants”) for alleged violations of California’s labor laws. The Action was filed by Defendants’ employees Aaron Salazar, Shelia Cromwell, and Andrew Forrest (“Plaintiffs”) and seek payment of (1) wages and other relief for a class of decedent transport drivers (“Class Members”) Defendants during the Class Period (October 12, 2017 to the earlier of preliminary approval of the class action settlement or October 27, 2023); and (2) penalties under the California Private Attorney General Act (“PAGA”) for hourly, non-exempt decedent transport driver employees who worked for Defendants during the PAGA Period (March 17, 2020 to the earlier of preliminary approval of the class action settlement or October 27, 2023) (“Aggrieved Employees”).

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

Based on Defendants’ records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$<<IndividualClassPaymentAmount>> (less withholding) and your Individual PAGA Payment is estimated to be \$<<IndividualPAGAPaymentAmount>>.** The estimated dollar value of a Work Week is <<\$increment type value>> and a PAGA Paycheck is <<@PayPeriodValue>>. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendants’ records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.) The individual payments amounts will vary. However, the average Individual Class Payment to a Class Member is estimated to be <<\$Average Individual Class Payment Amount>>. The average Individual PAGA Payment to a Class Member is estimated to be <<\$Average Individual PAGA Payment Amount>>. The highest Individual Class Payment to a Class Member is estimated to be <<\$Highest Individual Class Payment Amount>> and the lowest is estimated to be <<\$Lowest Individual Class Payment Amount>>. The highest Individual PAGA Payment to a Class Member is estimated to be <<\$Highest Individual PAGA Payment Amount>> and the lowest is estimated to be <<\$Lowest Individual PAGA Payment Amount>>.

The above estimates are based on Defendants’ records showing that **you worked <<__>> Work Weeks** during the Class Period and **you had <<__>> PAGA Paychecks** during the PAGA Period. If you believe that you worked more Work Weeks and/or PAGA Paychecks, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. The Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate, and reasonable, and that any final determination of those issues will be made at the Final Approval Hearing. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiffs and Plaintiffs' attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires Defendants to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendants.

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

(1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against Defendants.

(2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting a written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period claims for California labor law violations against Defendants, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

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

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the claims against Defendants that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. You can use the enclosed Election Not To Participate In Settlement form for this purpose. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating
The Opt-out Deadline is <<RESPONSE DEADLINE>>	

	Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendants must pay Individual PAGA Payments to all Aggrieved Employees and Plaintiffs release Defendants from civil penalties they may owe to the Aggrieved Employees.
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by <<RESPONSE DEADLINE>>	All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed Settlement. You can use the enclosed Objection form for this purpose. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiffs who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiffs, but every dollar paid to Class Counsel and Plaintiffs reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiffs if you think they are unreasonable. See Section 7 of this Notice.
You Can Participate in the <<FinalApprovalHearingDate>> Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on <<FinalApprovalHearingDate>>. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing whether or not they submitted a written objection. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Work Week / PAGA Paychecks Written Challenges Must be Submitted by <<RESPONSE DEADLINE>>	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many Work Weeks you worked at least one day during the Class Period and how many PAGA Paychecks you received at least one day during the PAGA Period, respectively. The number Class Period Work Weeks and number of PAGA Paychecks you received according to Defendants’ records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by <<RESPONSE DEADLINE>>. See Section 4 of this Notice. You can use the enclosed Work Weeks Dispute form for this purpose.

1. WHAT IS THE ACTION ABOUT?

Plaintiffs are former employees of Defendants. The Action accuses Defendants of violating California labor laws by failure to pay wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, and related violations of the Labor Code. Based on the same claims, Plaintiffs have also asserted a claim for civil penalties under the PAGA (Labor Code

1 section 2698 and sections that follow) (“PAGA”). Plaintiffs are represented by attorneys in the
2 Action: David G. Spivak of The Spivak Law Firm and Walter L. Haines of United Employees
Law Group (“Class Counsel.”)

3 Defendants strongly deny violating any laws or failing to pay any wages and contend they
4 complied with all applicable laws.

5 **2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?**

6 So far, the Court has made no determination whether Defendants or Plaintiffs are correct on the
7 merits. In the meantime, Plaintiffs and Defendants hired ☐ an experienced, neutral mediator ☐ a
8 retired judge ☐ (describe alternative means of negotiation) in an effort to resolve the Action by
9 negotiating an to end the case by agreement (settle the case) rather than continuing the expensive
10 and time-consuming process of litigation. The negotiations were successful. By signing a lengthy
11 written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a
judgment ending the Action and enforcing the Agreement, Plaintiffs and Defendants have
12 negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree
the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendants
do not admit any violations or concede the merit of any claims.

13 Plaintiffs and Class Counsel strongly believe the Settlement is a good deal for you because they
14 believe that: (1) Defendants have agreed to pay a fair, reasonable and adequate amount
15 considering the strength of the claims and the risks and uncertainties of continued litigation; and
16 (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court
preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this
Notice, and scheduled a hearing to determine Final Approval.

17 **3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?**

18 A. Gross Settlement Amount. Defendants Will Pay \$500,000.00 as the Gross
19 Settlement Amount (Gross Settlement). Defendants have agreed to deposit the Gross Settlement
20 into an account controlled by the Administrator of the Settlement. The Administrator will use the
21 Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class
22 Representative Service Payments, Class Counsel’s attorney’s fees and expenses, the
23 Administrator’s expenses, and penalties to be paid to the California Labor and Workforce
Development Agency (“LWDA”). Assuming the Court grants Final Approval, Defendants will
fund the Gross Settlement not more than 14 days after the Judgment entered by the Court become
final. The Judgment will be final on the date the Court enters Judgment, or a later date if
Participating Class Members object to the proposed Settlement or the Judgment is appealed.

24 B. Court Approved Deductions from Gross Settlement. At the Final Approval
25 Hearing, Plaintiffs and/or Class Counsel will ask the Court to approve the following deductions
26 from the Gross Settlement, the amounts of which will be decided by the Court at the Final
Approval Hearing:

- 27 1. Attorney Fees and Costs. Up to \$166,666.66 (33.33% of the Gross

1 Settlement to Class Counsel for attorneys' fees and up to \$25,000.00 for their litigation expenses.
2 To date, Class Counsel have worked and incurred expenses on the Action without payment.

3 2. Class Representative Service Payment. Up to \$15,000.00 as a Class
4 Representative Service Payment for filing the Action, working with Class Counsel and
5 representing the Class. A Class Representative Service Payment will be the only monies Plaintiffs
6 will receive other than Plaintiffs' Individual Class Payments and any Individual PAGA Payments.

7 3. Administration Expenses. Up to \$10,000.00 to the Administrator for
8 services administering the Settlement.

9 4. PAGA Penalties. Up to \$20,000.00 for PAGA Penalties, allocated 75% to
10 the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees
11 based on their PAGA Paychecks.

12 Participating Class Members have the right to object to any of these deductions. The Court
13 will consider all objections.

14 Based on their records, Defendants estimated that, as of the date of the Settlement, (1)
15 there are 100 Class Members and 5,000.00 Total Work Weeks during the Class period and (2)
16 there were 53 Aggrieved Employees who received 1,157 PAGA Paychecks during the PAGA
17 Period. If the Work Weeks and/or Class Members as of the date the Court approves the settlement
18 exceeds the referenced 5,000.00 Work Weeks and/or 100 Class Members by more than 10.00%,
19 the Gross Settlement Amount, including the Class Counsel Fees Payment, the Class
20 Representative Service Payments, and the LWDA payment, will increase proportionally
21 according to the number of additional Work Weeks or Class Members, whichever results in a
22 higher increase in the Gross Settlement Amount.

23 C. Net Settlement Distributed to Class Members. After making the above deductions
24 in amounts approved by the Court, the Administrator will distribute the rest of the Gross
25 Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class
26 Members based on their Class Period Work Weeks.

27 D. Taxes Owed on Payments to Class Members. Plaintiffs and Defendants are asking
28 the Court to approve an allocation of 20.00% of each Individual Class Payment to taxable wages
("Wage Portion") and 80.00% to interest and penalties ("Non-Wage Portion."). The Wage Portion
is subject to withholdings and will be reported on IRS W-2 Forms. Defendants will separately
pay employer payroll taxes they owe on the Wage Portion. The Individual PAGA Payments are
counted as penalties rather than wages for tax purposes. The Administrator will report the
Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS
1099 Forms.

Although Plaintiffs and Defendants have agreed to these allocations, neither side is giving
you any advice on whether your Payments are taxable or how much you might owe in taxes. You
are responsible for paying all taxes (including penalties and interest on back taxes) on any

1 Payments received from the proposed Settlement. You should consult a tax advisor if you have
2 any questions about the tax consequences of the proposed Settlement.

3 E. Need to Promptly Cash Payment Checks. The front of every check issued for
4 Individual Class Payments and Individual PAGA Payments will show the date when the check
5 expires (the void date). If you don't cash it by the void date, your check will be automatically
6 cancelled, and the monies will be deposited with the California Controller's Unclaimed Property
7 Fund (https://www.sco.ca.gov/search_upd.html) in your name.

8 If the monies represented by your check is sent to the Controller's Unclaimed Property Fund, you
9 should consult the rules of the Fund for instructions on how to retrieve your money. You can
10 contact the Unclaimed Property Fund at (800) 992-4647.

11 F. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated
12 as a Participating Class Member, participating fully in the Class Settlement, unless you notify the
13 Administrator in writing, not later than <<RESPONSE DEADLINE>>, that you wish to opt-out.
14 The easiest way to notify the Administrator is to email, fax, or mail a written and signed Request
15 for Exclusion by the <<RESPONSE DEADLINE>> Response Deadline. The Request for
16 Exclusion should be a letter from a Class Member or his/her representative setting forth a Class
17 Member's name, present address, telephone number, and a simple statement electing to be
18 excluded from the Settlement. You may use the enclosed Election Not To Participate In
19 Settlement form for this purpose. Excluded Class Members (i.e., Non-Participating Class
20 Members) will not receive Individual Class Payments, but will preserve their rights to personally
21 pursue claims against Defendants for violations of California's labor laws.

22 You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude
23 themselves from the Class Settlement (Non-Participating Class Members) remain eligible for
24 Individual PAGA Payments and Plaintiffs release Defendants from civil penalties they may owe
25 to the Aggrieved Employees.

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

H. Administrator. The Court has appointed a neutral company, Simpluris, Inc. (the
"Administrator") to send this Notice, calculate and make payments, and process Class Members'
Requests for Exclusion. The Administrator will also decide Class Member Challenges over Work
Weeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to
administer the Settlement. The Administrator's contact information is contained in Section 9 of
this Notice.

I. Participating Class Members' Release. After the Judgment is final and Defendants
have fully funded the Gross Settlement (and separately paid all employer payroll taxes),
Participating Class Members will be legally barred from asserting any of the claims released under

1 the Settlement. This means that unless you opted out by validly excluding yourself from the Class
2 Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants or
3 their officers, directors, employees, and agents for wages based on the Class Period facts and
PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this
Settlement.

4 The Participating Class Members will be bound by the following release:

5 All Participating Class Members, on behalf of themselves and their respective
6 former and present representatives, agents, attorneys, heirs, administrators,
7 successors, and assigns, release Released Parties from all claims stated in the
8 Operative Complaint and those based solely upon the facts alleged in the Operative
Complaint. Except as set forth in Section 6.3 of the Settlement Agreement,
9 Participating Class Members do not release any other claims, including claims for
vested benefits, wrongful termination, violation of the Fair Employment and
10 Housing Act, unemployment insurance, disability, social security, workers'
compensation, or claims based on facts occurring outside the Class Period.

11 J. The PAGA Release. After the Court's judgment is final, and Defendants have paid
12 the Gross Settlement (and separately paid the employer-side payroll taxes), Plaintiffs release all
13 claims for civil penalties that could have been sought by the Labor Commissioner for the
violations identified in Plaintiffs' pre-filing letter to the LWDA; Plaintiffs do not release the
14 claim for wages or damages of any Aggrieved Employee unless such Aggrieved Employee is a
Participating Class Member.

15 **4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?**

16 A. Individual Class Payments. The Administrator will calculate Individual Class
17 Payments by (a) dividing the Net Settlement Amount by the total number of Work Week worked
by all Participating Class Members, and (b) multiplying the result by the number of Work Week
18 worked by each individual Participating Class Member.

19 B. Individual PAGA Payments. The Administrator will calculate Individual PAGA
20 Payments by (a) dividing \$5,000.00 by the total number of PAGA Paychecks of all Aggrieved
Employees and (b) multiplying the result by the number of PAGA Paychecks of each individual
21 Aggrieved Employee.

22 C. Work Week/ PAGA Paycheck Challenges. The number of Class Work Weeks you
23 worked during the Class Period and the number of PAGA Paychecks you received during the
PAGA Period, as recorded in Defendants' records, are stated in the first page of this Notice. You
24 have until <<RESPONSE DEADLINE>> to challenge the number of Work Weeks and/or PAGA
Paychecks credited to you. You can submit your challenge by signing and sending a letter to the
25 Administrator by email, fax or regular U.S. mail. You can use the enclosed Dispute form for this
purpose. Section 9 of this Notice has the Administrator's contact information.
26
27
28

1 You need to support your challenge by submitting copies of pay stubs or other records.
2 The Administrator will accept Defendants' calculation of Work Weeks and/or PAGA Paychecks
3 based on Defendants' records as accurate unless you send copies of records containing contrary
4 information. You should send copies rather than originals because the documents will not be
5 returned to you. The Administrator will resolve Work Week and/or PAGA Paycheck challenges
6 based on your submission and on input from Class Counsel (who will advocate on behalf of
7 Participating Class Members) and Defendants' Counsel. The Administrator's decision is final.
8 You can't appeal or otherwise challenge its final decision.

6 5. HOW WILL I GET PAID?

7 A. Participating Class Members. The Administrator will send, by U.S. mail, a single
8 check to every Participating Class Member (i.e., every Class Member who doesn't opt-out)
9 including those who also qualify as Aggrieved Employees. The single check will combine the
10 Individual Class Payment and the Individual PAGA Payment.

11 B. Non-Participating Class Members. The Administrator will send, by U.S. mail, a
12 single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class
13 Settlement (i.e., every Non-Participating Class Member).

14 **Your check will be sent to the same address as this Notice. If you change your
15 address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has
16 the Administrator's contact information.**

15 6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

16 Email, fax, or mail a written and signed letter with your name, present address, telephone
17 number, and a simple statement that you do not want to participate in the Settlement. You may
18 use the enclosed Election Not To Participate In Settlement form for this purpose. The
19 Administrator will exclude you based on any writing communicating your request be excluded.
20 Be sure to personally sign your request, identify the Action as *Aaron Salazar vs. Desert
21 Cremation Society, Inc.*, Case No. CIVSB2116331, and include your identifying information (full
22 name, address, telephone number, approximate dates of employment, and social security number
23 for verification purposes). You must make the request yourself. If someone else makes the
24 request for you, it will not be valid. You should send your Request for Exclusion to the
25 Administrator by email, fax, or send by regular U.S. mail. **The Administrator must be sent
26 your request to be excluded by <<RESPONSE DEADLINE>>, or it will be invalid.** Section
27 9 of the Notice has the Administrator's contact information. If you are an Aggrieved Employee,
28 you will still receive an Individual PAGA Payment.

24 7. HOW DO I OBJECT TO THE SETTLEMENT?

25 Only Participating Class Members have the right to object to the Settlement. Before deciding
26 whether to object, you may wish to see what Plaintiffs and Defendants are asking the Court to
27 approve. At least 16 days before the Final Approval Hearing, Class Counsel and/or Plaintiffs will
28 file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why

1 the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award
2 stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and
3 (ii) the amount Plaintiffs are requesting as a Class Representative Service Payment. Upon
4 reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will
5 send you copies of these documents at no cost to you. You can also view them and the Settlement
6 Agreement on the Administrator's Website <<ADMINISTRATOR WEBSITE>> or the Court's
7 website <<COURT WEBSITE>>.

8 A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for
9 Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to
10 object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class
11 Counsel or Plaintiffs are too high or too low. **The deadline for sending written objections to
12 the Administrator is <<RESPONSE DEADLINE>>.** Be sure to tell the Administrator what
13 you object to, why you object, and any facts that support your objection. Make sure you identify
14 the Action, *Aaron Salazar vs. Desert Cremation Society, Inc.*, case no. CIVSB2116331, and
15 include your name, current address, telephone number, and approximate dates of employment for
16 Defendants and sign the objection. Section 9 of this Notice has the Administrator's contact
17 information. You may use the enclosed Objection form for this purpose. You should send your
18 objection to the Administrator by email, fax, or send by regular U.S. mail.

19 Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at
20 your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready
21 to tell the Court what you object to, why you object, and any facts that support your objection.
22 See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval
23 Hearing.

24 **8. CAN I ATTEND THE FINAL APPROVAL HEARING?**

25 You can, but don't have to, attend the Final Approval Hearing on <<FINAL APPROVAL
26 HEARING DATE>> at <<FINAL APPROVAL HEARING TIME>> in Department S17 of the San
27 Bernardino County Superior Court, located at San Bernardino Justice Center, 247 West Third
28 Street, San Bernardino, CA 92415. At the Hearing, the judge will decide whether to grant Final
Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel,
Plaintiffs, and the Administrator. The Court will invite comment from objectors, Class Counsel
and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either
personally or virtually by <<CourtConnect/CourtCall/MicrosoftTeams>>
(https://www.<<CourtVirtualAppearanceLink>>). Check the Court's website for the most current
information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the
Administrator's website <<ADMINISTRATOR WEBSITE>> beforehand or contact Class Counsel
to verify the date and time of the Final Approval Hearing.

29 **9. HOW CAN I GET MORE INFORMATION?**

1 The Agreement sets forth everything Defendants and Plaintiffs have promised to do under the
2 proposed Settlement. The easiest way to read the Agreement, the Judgment or any other
3 Settlement documents is to go to the Administrator's website at <<CLERK OF COURT'S PHONE
4 NUMBER>>. You can also telephone or send an email to Class Counsel or the Administrator
5 using the contact information listed below, or consult the Superior Court website by going to
6 (<http://www.<<COURT'S WEBSITE>>.aspx>) and entering the Case Number for the Action, Case
7 No. CIVSB2116331. You can also make an appointment to personally review court documents
8 in the Clerk's Office at the San Bernardino Justice Center by calling <<CLERK OF COURT'S
9 PHONE NUMBER>>.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

Class Counsel:

10 Name of Attorney: David G. Spivak
11 Email Address: david@spivaklaw.com
12 Name of Firm: The Spivak Law Firm
13 Mailing Address: 8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
14 Telephone: (213) 725-9094

Administrator:

15 Name of Company: Simpluris, Inc.
16 Email Address: _____
17 Mailing Address: _____
18 Telephone: _____
Fax Number: _____

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

20 If you lose or misplace your settlement check before cashing it, the Administrator will replace it
21 as long as you request a replacement before the void date on the face of the original check. If
22 your check is already void

23 ☐ you should consult the Unclaimed Property Fund (https://www.sco.ca.gov/search_upd.html) for
24 instructions on how to retrieve the funds. You can contact the Unclaimedx Property Fund at (800)
25 992-4647.

26 ☐ you will have no way to recover the money.

11. WHAT IF I CHANGE MY ADDRESS?

27 To receive your check, you should immediately notify the Administrator if you move or otherwise
28 change your mailing address.

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EXHIBIT B

1 *Salazar, et al. v. Desert Cremation Society, Inc., et al.*
2 **Superior Court of the State of California, County of San Bernardino**
3 Case No. CIVSB2116331

4 **ELECTION NOT TO PARTICIPATE IN SETTLEMENT FORM**

5 **IF YOU WANT TO BE INCLUDED IN THIS CLASS ACTION SETTLEMENT AND BE ELIGIBLE FOR**
6 **A SHARE OF THE SETTLEMENT PROCEEDS,**
7 **DO NOT FILL OUT THIS FORM.**

8 **IF YOU DO NOT WANT TO BE INCLUDED IN THE SETTLEMENT, YOU MUST COMPLETE AND**
9 **SIGN THIS DOCUMENT AND MAIL IT TO THE ADDRESS BELOW, EMAILED, FAXED, OR**
10 **POSTMARKED NOT LATER THAN <<RESPONSE DEADLINE>>:**

11 *Salazar, et al. v. Desert Cremation Society, Inc., et al. Class Action Administrator*
12 c/o _____
13 _____
14 _____

15 I declare as follows: I have received notice of the proposed settlement in this action and I wish to be
16 excluded from the class and ***not*** to participate in the proposed settlement. I understand this means that I will not be
17 bound by the Settlement and also will not share in the settlement proceeds. I understand that exclusion from the
18 Class Settlement will not result in exclusion from the PAGA portion of the Settlement. If I am an Aggrieved
19 Employee under the Settlement, I will still receive an Individual PAGA Payment.

20 _____
21 (Typed or Printed Name)

22 _____
23 (Address)

24 _____
25 (City, State, Zip Code)

26 _____
27 (Telephone Number, Including Area Code)

28 _____
(Identification Number)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and
correct and was executed on ____.

Dated: ____.
(Signature)

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EXHIBIT C

1 **WORK WEEK DISPUTE FORM**

2 Superior Court of The State of California
3 For The County of San Bernardino
4 *Aaron Salazar, et al. v. Desert Cremation Society, Inc., et al.*, Case No. CIVSB2116331

5 Indicate Name/Address Changes, if any:

6 <<Name>>

7 <<Address>>

8 <<City>>, <<State>> <<Zip Code>>

9 XX - XX -

10 TO _____ FROM OCTOBER 12, 2017 THROUGH THE EARLIER OF
11 PRELIMINARY APPROVAL OF THE CLASS ACTION SETTLEMENT OR OCTOBER 27,
12 2023.

13 The amount of your estimated Individual Class Payment and Individual PAGA Payment
14 (settlement award or settlement share) is based upon the number of Work Weeks you worked
15 between October 12, 2017 and the earlier of preliminary approval of the class action settlement
16 or October 27, 2023 and Work Weeks you worked between March 17, 2020 and the earlier of
17 preliminary approval of the class action settlement or October 27, 2023. "Individual Class Work
18 Weeks" are defined as any Work Week in which you worked at least one (1) day as an hourly,
19 non-exempt decedent transport driver of Desert Cremation Society, Inc. and Wiefels & Son II,
20 Inc. ("Defendant") in California during the calendar week. "Individual PAGA Paychecks" are
21 defined as any Paycheck you received with at least one (1) day as an hourly, non-exempt decedent
22 transport driver of Desert Cremation Society, Inc. and Wiefels & Son II, Inc. ("Defendants") in
23 California during the calendar week during the period of March 17, 2020 through the earlier of
24 preliminary approval of the class action settlement or October 27, 2023. The number of Class
25 Work Weeks and PAGA Paychecks applicable to your claim are set forth below.

26 **YOUR ELIGIBLE WORK WEEKS**

27 Defendants' records indicate that you worked <<number of Work Weeks>> Work Weeks
28 between October 12, 2017 and the earlier of preliminary approval of the class action settlement
or October 27, 2023 and <<number of Paychecks>> PAGA Paychecks between March 17, 2020
through the earlier of preliminary approval of the class action settlement or October 27, 2023.

29 **YOUR ESTIMATED SETTLEMENT AWARD AND DISPUTE PROCEDURE**

30 Under the terms of the Class Action Settlement, you are entitled to receive a settlement payment
31 in the approximate estimated amount of <<\$Settlement Share Amount>>, minus all applicable
32 payroll and tax deductions, after the Court approves the Settlement and it goes into effect. This
33 process may take six months or more. You will receive a Form W-2 reflecting the payment to

1 you. Your settlement share reflected on this Notice is only an estimate. The exact amount of the
2 payment could vary, up or down.

3 If you wish to dispute the number of October 12, 2017 credited to you, or anything else about
4 your employment status, you must complete and return this form by indicating what you believe
5 is incorrect on the blank lines below and return it on or before <<RESPONSE DEADLINE>> to
6 the Administrator by email, fax, or regular U.S. Mail with proof of the submission date (such as
7 a postmark or delivery service date stamp). You may use this Work Weeks Dispute form for this
8 purpose. You must also send any documents or other information that you contend supports your
9 belief that the information set forth above is incorrect. The Administrator will resolve any dispute
10 based upon Defendants' records and any information you provide. Please be advised that the
11 information on this Work Weeks Dispute Form is presumed to be correct unless the documents
12 you submit are company records from Defendants.

13 _____
14 _____
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16 _____

17 **UNLESS YOU ARE FILING A DISPUTE REGARDING THE NUMBER OF WORK**
18 **WEEKS, RECEIPT OF A SETTLEMENT PAYMENT, OR YOUR EMPLOYMENT**
19 **STATUS, YOU DO NOT NEED TO TAKE ANY ACTION**

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EXHIBIT D

1 **OBJECTION FORM**

2 ***Aaron Salazar, et al. v. Desert Cremation Society, Inc., et al.***
3 **Superior Court of the State California, County of San Bernardino**
4 **Case No. CIVSB2116331**

5 Please verify and/or complete any missing identifying information:

6 CPT ID: <<CPT ID>>

7 <<Name>>

8 <<Address1>>

<<Address2>>

<<City>>, <<State>> <<Zip>>

CORRECT NAME AND ADDRESS HERE:

Telephone Number: (_____) _____ - _____

10 **THIS FORM IS TO BE USED ONLY IF YOU WANT TO PARTICIPATE IN THE**
11 **SETTLEMENT, BUT YOU OBJECT TO THE TERMS OF THE SETTLEMENT. IF**
12 **YOU OBJECT TO THE SETTLEMENT, YOU SHOULD SIGN AND COMPLETE THIS**
13 **FORM ACCURATELY AND IN ITS ENTIRETY (OR ONE LIKE IT), AND YOU**
14 **SHOULD EMAIL IT TO <<_____@_____.COM>>, FAX IT TO <<XXX-XXX-**
15 **XXXX>>, OR MAIL IT BY FIRST CLASS U.S. MAIL TO THE ADMINISTRATOR SO**
16 **THAT IT IS POSTMARKED ON OR BEFORE <<RESPONSE DEADLINE>>. THE**
17 **ADDRESS FOR THE ADMINISTRATOR IS NOTED ON PAGE TWO OF THIS FORM.**

15 **IF YOU DO NOT OBJECT TO THE SETTLEMENT, DO NOT SUBMIT THIS FORM.**
16 **THE ADMINISTRATOR WILL SEND THIS OBJECTION AND ANY SUPPORTING**
17 **DOCUMENTS TO THE ATTORNEYS FOR THE PARTIES. THE ATTORNEYS FOR**
18 **THE PARTIES WILL FILE THE OBJECTION WITH THE COURT.**

18 The Court will consider your objection at the Final Approval Hearing if you timely submit it.
19 Include any and all evidence and supporting papers (including, without limitation, all briefs,
20 written evidence, and declarations) that you would like the Court to consider. However, you may
21 speak to the Court at the final approval hearing whether or not you submit a timely objection.

21 [] I OBJECT to the *Aaron Salazar, et al. v. Desert Cremation Society, Inc., et al.*
22 Settlement on the following grounds (if additional space necessary, please include additional
23 sheets of paper):

23 _____

24 _____

25 _____

26 _____

27 _____

[] I am or will be represented by an attorney (provide name and address of attorney on lines below if applicable):

Executed on _____, 2023

(Signature)

<<Name>>

(Printed Name)

EMAIL TO THE ADMINISTRATOR: <<____@____.COM>>

FAX TO THE ADMINITRATOR: <<(XXX) XXX-XXXX>>

MAIL TO THE SETTLEMENT ADMINISTRATOR, BY U.S. MAIL
POSTMARKED NOT LATER THAN <<RESPONSE DEADLINE>>:

Aaron Salazar, et al. v. Desert Cremation Society, Inc., et al. Administrator
[ADDRESS]

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EXHIBIT E

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO
(UNLIMITED JURISDICTION)

AARON SALAZAR, SHELIA CROMWELL,
and ANDREW FORREST, on behalf of
themselves and all others similarly situated, and
as “aggrieved employees” on behalf of other
“aggrieved employees” under the Labor Code
Private Attorneys General Act of 2004,

Plaintiff(s),

vs.

DESERT CREMATION SOCIETY, INC., a
California corporation; WIEFELS & SON II,
INC., a California corporation; and DOES 1–50,
inclusive,

Defendant(s).

Case No. CIVSB2116331

[PROPOSED] ORDER
PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT

Action filed: June 04, 2021
Dept: S17, The Honorable Joseph
T. Ortiz

The Motion of Plaintiffs Aaron Salazar, Shelia Cromwell, and Andrew Forrest (hereafter referred to as “Plaintiffs”) for Preliminary Approval of a Class Action Settlement (the “Motion”) was considered by the Court, The Honorable Joseph T. Ortiz presiding. The Court having

considered the Motion, the Class Action and PAGA Settlement Agreement and Class Notice (“Settlement” or “Settlement Agreement”), and supporting papers, HEREBY ORDERS THE FOLLOWING:

1. The Court grants preliminary approval of the Settlement and the Settlement Class based upon the terms set forth in the Settlement filed as an Exhibit to the Motion for Preliminary Approval. All terms herein shall have the same meaning as defined in the Settlement. The Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate, and reasonable, and that any final determination of those issues will be made at the final hearing. The Court will make a determination at the hearing on the motion for final approval of class action settlement (the “Final Approval Hearing”) as to whether the Settlement is fair, adequate and reasonable to the Settlement Class.

2. For purposes of this Preliminary Approval Order, the “Settlement Class” means Defendant’s decedent transport drivers but only for the period that the employee performed transport services (collectively “Class Members”), who worked anytime during the Class Period. The “Class Period” shall mean the period of time from October 12, 2017, through the earlier of preliminary approval of the class action settlement or October 27, 2023.

3. Based on its records, Defendants estimate that, as of the date of the Settlement Agreement, (1) there are 100 Class Members and 5,000.00 Total Work Weeks during the Class period and (2) there were 53 Aggrieved Employees who received 1,157 PAGA Paychecks during the PAGA Period. If the Work Weeks and/or Class Members as of the date the Court approves the settlement exceeds the referenced 5,000.00 Work Weeks and/or 100 Class Members by more than 10.00%, the Gross Settlement Amount, including the Class Counsel Fees Payment, the Class Representative Service Payments, and the LWDA payment, will increase proportionally

1 according to the number of additional Work Weeks or Class Members, whichever results in a
2 higher increase in the Gross Settlement Amount. Alternatively, Defendant may elect to
3 end the Class Period on the date on which the number of workweeks reached 5,500.
4

5 4. “Effective Date” means the date by when both of the following have occurred: (a)
6 the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the
7 Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no
8 Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if
9 one or more Participating Class Members objects to the Settlement, the day after the deadline for
10 filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the
11 day after the appellate court affirms the Judgment and issues a remittitur.
12

13 5. This action is provisionally certified pursuant to section 382 of the California Code
14 of Civil Procedure and Rule 3.760, et seq. of the California Rules of Court as a class action for
15 purposes of settlement only with respect to the proposed Settlement Class.

16 6. Not later than 15 days after the Court grants Preliminary Approval of the
17 Settlement, Defendants will simultaneously deliver the Class Data to the Administrator, in the
18 form of a Microsoft Excel spreadsheet. To protect Class Members’ privacy rights, the
19 Administrator must maintain the Class Data in confidence, use the Class Data only for purposes
20 of the Settlement and for no other purpose, and restrict access to the Class Data to Administrator
21 employees who need access to the Class Data to effect and perform under the Settlement
22 Agreement. Defendants have a continuing duty to immediately notify Class Counsel if they
23 discover that the Class Data omitted class member identifying information and to provide
24 corrected or updated Class Data as soon as reasonably feasible. Without any extension of the
25 deadline by which Defendants must send the Class Data to the Administrator, the Parties and their
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1 counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any
2 issues related to missing or omitted Class Data.

3 7. No later than three (3) business days after receipt of the Class Data, the
4 Administrator shall notify Class Counsel that the list has been received and state the number of
5 Class Members, PAGA Members, Work Weeks, and PAGA Paychecks in the Class Data.

6 8. Using best efforts to perform as soon as possible, and in no event later than 14
7 days after receiving the Class Data, the Administrator will send to all Class Members identified
8 in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Notice Packet
9 with Spanish translation, if applicable substantially in the forms attached to this order as **Exhibits**
10 **A, B, C, and D**. The first page of the Class Notice shall prominently estimate the dollar amounts
11 of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member,
12 and the number of Work Weeks and PAGA Paychecks (if applicable) used to calculate these amounts.
13 Before mailing Notice Packets, the Administrator shall update Class Member addresses using the
14 National Change of Address database.
15

16 9. Not later than 3 business days after the Administrator’s receipt of any Notice
17 Packet returned by the USPS as undelivered, the Administrator shall re-mail the Notice Packet
18 using any forwarding address provided by the USPS. If the USPS does not provide a forwarding
19 address, the Administrator shall conduct a Class Member Address Search, and re-mail the Notice
20 Packet to the most current address obtained. The Administrator has no obligation to make further
21 attempts to locate or send Notice Packet to Class Members whose Notice Packet is returned by
22 the USPS a second time.
23

24 10. Class Counsel’s contact information is David G. Spivak, Esq., The Spivak Law
25 Firm, 8605 Santa Monica Bl, PMB 42554, West Hollywood, CA 90069. Defense Counsel’s
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1 contact information is Orion S. Robinson, Esq., Robinson Di Lando, A Professional Law
2 Corporation, 801 South Grand Avenue, Suite 500, Los Angeles, CA, 90017.

3 11. The deadlines for Class Members' written objections, Challenges to Work Weeks
4 and/or PAGA Paychecks (disputes), and Requests for Exclusion will be extended an additional
5 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose
6 notice is re-mailed. The Administrator will inform the Class Member of the extended deadline
7 with the re-mailed Notice Packet.
8

9 12. If the Administrator, Defendants or Class Counsel is contacted by or otherwise
10 discovers any persons who believe they should have been included in the Class Data and should
11 have received Notice Packet, the Parties will expeditiously meet and confer in person or by
12 telephone, and in good faith, in an effort to agree on whether to include them as Class Members.
13 If the Parties agree, such persons will be Class Members entitled to the same rights as other Class
14 Members, and the Administrator will send, via email or overnight delivery, a Notice Packet
15 requiring them to exercise options under the Settlement Agreement not later than 14 days after
16 receipt of Notice Packet, or the deadline dates in the Notice Packet, which ever are later.
17

18 13. Requests for Exclusion. Class Members who wish to exclude themselves (opt-out
19 of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written
20 Request for Exclusion not later than 60 days after the Administrator mails the Notice Packet (plus
21 an additional 14 days for Class Members whose Notice Packet is re-mailed). A Request for
22 Exclusion is a letter from a Class Member or his/her representative that reasonably communicates
23 the Class Member's election to be excluded from the Settlement and includes the Class Member's
24 name, address and email address or telephone number. To be valid, a Request for Exclusion must
25 be timely faxed, emailed, or postmarked by the Response Deadline. An Election Not to Participate
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1 in Settlement form, attached as Exhibit B, may be used for this purpose but is not required.

2 14. The Administrator may not reject a Request for Exclusion as invalid because it
3 fails to contain all the information specified in the Class Notice. The Administrator shall accept
4 any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of
5 the person as a Class Member and the Class Member's desire to be excluded. The Administrator's
6 determination shall be final and not appealable or otherwise susceptible to challenge. If the
7 Administrator has reason to question the authenticity of a Request for Exclusion, the
8 Administrator may demand additional proof of the Class Member's identity. The Administrator's
9 determination of authenticity shall be final and not appealable or otherwise susceptible to
10 challenge.
11

12 15. Every Class Member who does not submit a timely and valid Request for Exclusion
13 is deemed to be a Participating Class Member under the Settlement Agreement, entitled to all
14 benefits and bound by all terms and conditions of the Settlement, including the Participating Class
15 Members' Releases under Paragraphs 6.2 and 6.3 of the Settlement, regardless whether the
16 Participating Class Member actually receives the Class Notice or objects to the Settlement.
17

18 16. Every Class Member who submits a valid and timely Request for Exclusion is a
19 Non-Participating Class Member and shall not receive an Individual Class Payment or have the
20 right to object to the class action components of the Settlement. Plaintiffs release all claims for
21 civil penalties that could have been sought by the Labor Commissioner for the violations
22 identified in Plaintiffs' pre-filing letter to the LWDA; Plaintiffs do not release the claim for wages
23 or damages of any Aggrieved Employee unless such Aggrieved Employee is a Participating Class
24 Member.
25

26 17. Challenges to Calculation of Work Weeks. Each Class Member shall have 60 days
27

1 after the Administrator mails the Notice Packet (plus an additional 14 days for Class Members
2 whose Notice Packet is re-mailed) to challenge the number of Class Work Weeks and PAGA
3 Paychecks (if any) allocated to the Class Member in the Class Notice. This is also known as a
4 dispute. A Work Week Dispute form, attached as Exhibit C, may be used for this purpose but is
5 not required. The Class Member may challenge the allocation by communicating with the
6 Administrator via fax, email or mail. The Administrator must encourage the challenging Class
7 Member to submit supporting documentation. In the absence of any contrary documentation, the
8 Administrator is entitled to presume that the Work Weeks contained in the Class Notice are
9 correct so long as they are consistent with the Class Data. The Administrator's determination of
10 each Class Member's allocation of Work Weeks and/or PAGA Paychecks shall be final and not
11 appealable or otherwise susceptible to challenge. The Administrator shall promptly provide
12 copies of all challenges to calculation of Work Weeks and/or PAGA Paychecks to Defense
13 Counsel and Class Counsel and the Administrator's determination the challenges.

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

20 19. Participating Class Members may send written objections to the Administrator, by
21 fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire
22 an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A
23 Participating Class Member who elects to send a written objection to the Administrator must do
24 so not later than 60 days after the Administrator's mailing of the Notice Packet (plus an additional
25 14 days for Class Members whose Notice Packet was re-mailed). An The Objection form attached
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1 as Exhibit D may be used for this purpose but is not required.

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

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

15
16 22. The Court approves, as to form and content, the Class Notice in substantially the
17 form attached as Exhibit A to this Order, the Election Not to Participate in Settlement form in
18 substantially the form attached as Exhibit B to this Order, the Work Weeks Dispute form in
19 substantially the form attached as Exhibit C to this Order, and the Objection form in substantially
20 the form attached as Exhibit D to this Order.

21
22 23. The Court approves, for settlement purposes only, David G. Spivak of The Spivak
23 Law Firm and Walter L. Haines of United Employees Law Group as Class Counsel.

24 24. The Court approves, for settlement purposes only, Aaron Salazar as the Class
25 Representative.

26 25. The Court approves Simpluris, Inc. as the Administrator.
27

26. The Court preliminarily approves Class Counsel's request for attorneys' fees and costs subject to final review by the Court.

27. The Court preliminarily approves the estimated Administrator costs payable to the Administrator subject to final review by the Court.

28. The Court preliminarily approves Plaintiffs' Class Representative Service Payments subject to final review by the Court.

29. A Final Approval Hearing shall be held on ____ at ____.m. in Department S17 of the Superior Court for the State of California, County of San Bernardino, located at the San Bernardino Justice Center, 247 West Third Street, San Bernardino, CA 92415 to consider the fairness, adequacy and reasonableness of the proposed Settlement preliminarily approved by this Preliminary Approval Order, and to consider the application of Class Counsel for attorneys' fees and costs and the Class Representative Service Payments to the Class Representatives. The notice of motion and all briefs and materials in support of the motion for final approval of class action settlement and motion for attorneys' fees and litigation costs shall be served and filed with this Court on or before _____. Plaintiffs' counsel must give notice to any objecting party of any continuance of the hearing of the motion for final approval.

30. If for any reason the Court does not execute and file a Final Approval Order and judgment, or if the Effective Date, as defined in the Settlement, does not occur for any reason, the proposed Settlement that is the subject of this order, and all evidence and proceedings had in connection therewith, shall be without prejudice to the status quo ante rights of the Parties to the litigation, as more specifically set forth in the Settlement.

31. The Court expressly reserves the right to adjourn or continue the Final Approval Hearing from time to time without further notice to members of the Class. The Plaintiffs shall

1 give prompt notice of any continuance to Settlement Class Members who object to the Settlement.

2 **IT IS SO ORDERED.**

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5 **DATE**

THE HONORABLE JOSEPH T. ORTIZ
JUDGE OF THE SUPERIOR COURT

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EXHIBIT F

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO
(UNLIMITED JURISDICTION)

AARON SALAZAR, SHELIA CROMWELL,
and ANDREW FORREST, on behalf of
themselves and all others similarly situated, and
as “aggrieved employees” on behalf of other
“aggrieved employees” under the Labor Code
Private Attorneys General Act of 2004,

Plaintiff(s),

vs.

DESERT CREMATION SOCIETY, INC., a
California corporation; WIEFELS & SON II,
INC., a California corporation; and DOES 1–50,
inclusive,

Defendant(s).

Case No. CIVSB2116331

**[PROPOSED] FINAL ORDER AND
JUDGMENT APPROVING CLASS
ACTION SETTLEMENT**

Action filed: June 04, 2021

Dept: S17, The Honorable Joseph
T. Ortiz

This matter came on for hearing on ____ at ____m. in Department S17 of the above-captioned court on Plaintiffs’ Motion for Final Approval of a Class Action Settlement pursuant to California Rules of Court, Rule 3.769, as set forth in the Joint Stipulation of Class Action Settlement and Release of Claims (the “Settlement”) filed herewith which provides for a Gross Settlement Amount (“GSA”) of up to \$500,000.00 in compromise of all disputed claims on behalf of decedent transport drivers during the period of October 12, 2017 to the earlier of preliminary

1 approval of the class action settlement or October 27, 2023 (“Settlement Class Period”). All
2 capitalized terms used herein shall have the same meaning as defined in the Settlement.

3 In accordance with the Court’s prior Order Granting Preliminary Approval of Class
4 Action Settlement, Class Members have been given notice of the terms of the Settlement and the
5 opportunity to submit a claim, request exclusion, comment upon or object to it or to any of its
6 terms. Having received and considered the Settlement, the supporting papers filed by the Parties,
7 and the evidence and argument received by the Court in conjunction with the motions for
8 preliminary and final approval of the Settlement, the Court grants final approval of the Settlement
9 and HEREBY ORDERS, ADJUDGES, DECREES AND MAKES THE FOLLOWING
10 DETERMINATIONS¹:

11
12 1. The Court has jurisdiction over the subject matter of the Action and over all Parties
13 to the Action, including all Class Members. Pursuant to this Court’s Order Granting Preliminary
14 Approval of Class Action Settlement of ___, the Notice Packet was sent to each Class Member
15 by First Class U.S. mail. The Notice Packet informed Class Members of the terms of the
16 Settlement, their right to receive their proportional share of the Settlement, their right to request
17 exclusion, their right to comment upon or object to the Settlement, and their right to appear in
18 person or by counsel at the final approval hearing and be heard regarding final approval of the
19 Settlement. Adequate periods of time were provided by each of these procedures. No member of
20 the Settlement Class presented written objections to the proposed Settlement as part of this notice
21 process, stated an intention to appear, or actually appeared at the final approval hearing.
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25
26 ¹ A true and correct copy of the Court’s ruling on the Motion for Final Approval of Class Action
27 Settlement entered on [REDACTED] is attached hereto as **Exhibit A** and incorporated by reference. A true
28 and correct copy of the Court’s Minute Order dated [REDACTED] is attached hereto as **Exhibit B** and
incorporated by reference.

2. For purposes of this Final Order and Judgment, the Class Members are Defendants' decedent transport drivers during the Class Period. at any time during the period of October 12, 2017 to the earlier of preliminary approval of the class action settlement or October 27, 2023 ("Settlement Class Period").

3. The Court finds and determines that the notice procedure afforded adequate protections to Class Members and provides the basis for the Court to make an informed decision regarding final approval of the Settlement based on the responses of Class Members. The Court finds and determines that the notice provided in this case was the best notice practicable, which satisfied the requirements of law and due process as to all persons entitled to such notice.

Release by Plaintiffs and Class Members. The Parties agree that it is their intent that the resolution set forth in this Settlement will release and discharge the Released Claims by way of any further attempt, by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind by each and all of the Settlement Class Members (including participation to any extent in any representative or collective action) against the Released Parties. This release will not take effect until Defendants have paid the Gross Settlement Amount in full per this Settlement Agreement.

PAGA Release. Plaintiffs on behalf of themselves and the Aggrieved Employees release all claims for civil penalties that could have been sought by the Labor Commissioner for the violations identified in Plaintiffs' pre-filing letter to the LWDA; Plaintiffs do not release the claim for wages or damages of any Aggrieved Employee unless such Aggrieved Employee is a Participating Class Member.

“**Released Claims**” shall mean all claims stated in the Operative Complaint and based solely on the facts alleged in the Operative Complaint. “**Released Parties**” shall mean

1 Defendants, their officers, directors, employees and agents.

2 2. The Court further finds and determines that the terms of the Settlement are fair,
3 reasonable and adequate, that the Settlement is ordered finally approved, and that all terms and
4 provisions of the Settlement, including the release of claims contained therein, should be and
5 hereby are ordered to be consummated, and directs the Parties to effectuate the Settlement
6 according to its terms. As of the Effective Date of Settlement, and for the duration of the
7 Settlement Class Period, all Class Members are hereby deemed to have waived and released all
8 Released Claims and are forever barred and enjoined from prosecuting the Released Claims
9 against the Released Parties as fully set forth in the Settlement. No objections were received by
10 the Parties or the Court through the date of this Final Order and Judgment. The Court finds ____
11 Class Member(s) - ____ - submitted a request for exclusion from the Settlement as determined by
12 the Administrator and therefore is/are not in the Settlement Class.
13

14 3. The Court finds and determines that (a) the Settlement Shares to be paid to
15 Participating Class Members and (b) the LWDA payment as civil penalties under the California
16 Labor Code Private Attorneys General Act of 2004, as amended, California Labor Code sections
17 2699 *et seq.*, as provided for by the Settlement are fair and reasonable. The Court hereby grants
18 final approval to, and orders the payment of, those amounts be made to the Participating Class
19 Members and to the California Labor & Workforce Development Agency (“LWDA”), in
20 accordance with the terms of the Settlement.
21

22 4. The Court further grants final approval to and orders that the following payments
23 be made in accordance with the terms of the Settlement:
24

25 a. Class Counsel fees & costs of \$166,666.66 in attorneys’ fees and
26 \$25,000.00 in litigation costs to Class Counsel;
27

b. \$15,000.00 as a Class Representative Service Payment award payable to each Plaintiff for their services as Class Representatives;

c. \$10,000.00 in costs of the Administrator payable to Simpluris, Inc. for its services as the Administrator; and

d. Payment of \$15,000.00 (75% of the (\$20,000.00 PAGA penalty) to the LWDA.

7. The settlement shall proceed as directed in the Settlement, and no payments pursuant to the Settlement shall be distributed until after the Effective Date of Settlement. Without affecting the finality of this Final Order and Judgment in any way, the Court retains jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation and enforcement of this Final Order and Judgment and the Settlement pursuant to California Rule of Court 3.769(h).

8. Within twelve months of Final Approval, Defendants shall deposit the Settlement proceeds in an account designated by the Administrator: (i) the total amount of all Individual Class Payments to Participating Class Members, (ii) the Court approved Class Counsel fees & costs, (iii) the Court-approved Class Representative Service Payments, (iv) the Court-approved costs of the Administrator, (v) the payment to the LWDA, and (vi) (i) the total amount of all Individual PAGA Payments to Aggrieved Employees.

9. Other than their employer side payroll taxes, Defendants' payment of such sums shall be the sole financial obligation of Defendants under the Settlement, and shall be in full satisfaction of all claims released herein, including, without limitation, all claims for wages, penalties, interest, attorneys' fees, costs and expenses.

10. Pursuant to CCP 384 and the Settlement, Participating Class Members shall have

1 ninety (90) days from the date of the check's issuance to cash their Settlement Share check. After
2 the expiration of the 180-day period, on Defendants' behalf, the Administrator shall remit any
3 amounts from voided settlement checks and otherwise unclaimed, plus interest on the Residue at
4 the legal rate of interest from the date of entry of the initial judgement to the California Unclaimed
5 Property Fund.

6
7 11. The Parties shall file a final accounting report by _____. A non-appearance case
8 review re submission of a final report is scheduled for _____ at _____.m. in **Department S17**. The
9 Parties shall also prepare and file a stipulation and proposed order and proposed Amended Final
10 Order and Judgment by _____ which includes the amount of distribution of unpaid cash Residue,
11 and unclaimed or abandoned funds to the non-party, the accrued interest on that sum. The
12 stipulation shall be signed by counsel for the class and defense counsel in accord with the
13 proposed Amended Final Order and Judgment. If there are objections by any party or non-party,
14 class counsel shall immediately notify the Court and the matter will be set for further hearing. A
15 non-appearance hearing for the lodging of the stipulation and proposed order and separate
16 amended judgment is scheduled for _____ at _____.m. in **Department S17**.

17
18 12. Nothing in this Final Order and Judgment shall preclude any action to enforce the
19 Parties' obligations under the Settlement or hereunder, including the requirement that Defendants
20 deposit funds for distribution by the Administrator to Participating Class Members in accordance
21 with the Settlement.

22
23 13. The Court hereby enters final judgment in this case in accordance with the terms
24 of the Settlement, Order Granting Preliminary Approval of Class Action Settlement, and this Final
25 Order and Judgment.

26 14. The Parties are hereby ordered to comply with the terms of the Settlement.
27

15. The Parties shall bear their own costs and attorneys' fees except as otherwise provided by the Settlement and this Final Order and Judgment.

16. The Settlement is not an admission by Defendants nor is this Final Order and Judgment a finding of the validity of any claims in the Action or of any wrongdoing by Defendants. Furthermore, the Settlement is not a concession by Defendants and shall not be used as an admission of any fault, omission, or wrongdoing by Defendants. Neither this Final Order and Judgment, the Settlement, any document referred to herein, any exhibit to any document referred to herein, any action taken to carry out the Settlement, nor any negotiations or proceedings related to the Settlement are to be construed as, or deemed to be evidence of, or an admission or concession with regard to, the denials or defenses of Defendants, and shall not be offered in evidence in any proceeding against the Parties hereto in any Court, administrative agency, or other tribunal for any purpose whatsoever other than to enforce the provisions of this Final Order and Judgment. This Final Order and Judgment, the Settlement and exhibits thereto, and any other papers and records on file in the Action may be filed in this Court or in any other litigation as evidence of the settlement by Defendants to support a defense of res judicata, collateral estoppel, release, or other theory of claim or issue preclusion or similar defense as to the Released Claims.

17. This document shall constitute a Judgment for purposes of California Rule of Court 3.769(h).

IT IS SO ORDERED, ADJUDGED AND DECREED.

DATE _____

THE HONORABLE JOSEPH T. ORTIZ
JUDGE OF THE SUPERIOR COURT