

## **PAGA SETTLEMENT AND RELEASE**

1. This PAGA Settlement and Release (hereinafter “Settlement” or “Agreement”) is made and entered into by and between Plaintiff Margarita Bustamante (“Plaintiff”) individually and on behalf of all aggrieved employees, and Defendant Calwest Refrigeration, Inc. (hereinafter “Defendant” or “Calwest”). Plaintiff and Defendant are collectively referred to herein as “the Parties.”

2. This Agreement shall be binding on Plaintiff, on the Aggrieved Employees (as defined below), on the State of California and its state labor law enforcement agencies (including but not limited to the Labor and Workforce Development Agency (LWDA) and its departments, divisions, commissions, boards, agencies and employees), and on Defendant and its present and former parent companies, subsidiaries, divisions, related or affiliated companies, shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any individual or entity which could be jointly liable with Defendant, subject to the terms and conditions hereof and the approval of the Court.

### **I. DEFINITIONS**

3. “Action” refers to the civil action filed by Plaintiff Margarita Bustamante on July 8, 2021, entitled Margarita Bustamante, an individual, on behalf of herself and all other aggrieved employees, v. Calwest Refrigeration, Inc. a California Corporation; and DOES 1 through 50, inclusive, in the Superior Court of the State of California for The County of San Bernardino, Case No. CIVSB2119755.

4. “PAGA Counsel” and “Plaintiff’s Counsel” shall refer to Haig B. Kazandjian and Cathy Gonzalez of the law firm, HAIG B. KAZANDJIAN LAWYERS, APC.

5. “Counsel for Defendant” and “Defense Counsel” shall refer to Bart Kaspero and Lindley Fraley, of the law firm, SKT LAW, PC.

6. “Covered Period” shall mean the period from April 28, 2020, through the date the Court grants approval of this PAGA Settlement Agreement.

7. “PAGA Representative” or “Plaintiff” shall refer to Named Plaintiff Margarita Bustamante.

8. “Court” refers to the Superior Court of the State of California for the County of San Bernardino.

9. “Covered Claims” means claims brought in the Action pursuant to Labor Code section 2699 et seq. for PAGA penalties only based on alleged violations of California Labor Code and applicable wage laws, including: California Labor Code sections 201, 202, 203, 204, 226, 226.7, 432, 510, 512(a), 558(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 2800, 2802, California Code of Regulations, Title 8, sections 11050(5)(A), 11050(4)(C), as well as violations of the applicable IWC Wage Order, based on the facts and theories set forth in the Action for the Covered Period.

10. “Aggrieved Employees” shall mean all current and former non-exempt hourly paid individuals who were employed by Defendant and who worked for Defendant within the state of California at any time during the Covered Period. As of the date of this Agreement, there are approximately 48 Aggrieved Employees. If there is an increase of 10% or more of the number of Aggrieved Employees prior to the date the Court approves the Settlement Agreement and enters Judgment based thereon, Defendant, or Plaintiff, may, at their election, rescind the Settlement and all actions taken in its furtherance of it will be thereby null and void.

11. “Eligible Pay Periods” shall mean the total number of pay periods that an individual worked as an Aggrieved Employee during the Covered Period.

12. “Settlement” and “Agreement” shall mean this Settlement and Release Agreement.

13. “Effective Date” means the date the Court enters the order approving the settlement of the Action as described in this Agreement.

14. “Claims Administrator” means the claims administrator approved by the Court in the order approving the settlement of the Action. The Parties will request that the Court approve Simpluris as the claims administrator.

## **II. NATURE OF ACTION**

15. On April 28, 2021, Plaintiff sent the LWDA and Defendant notice of her intent to pursue a representative action against Defendant pursuant to the Private Attorneys General Act of 2004 (“PAGA”), as codified in California Labor Code § 2698 *et seq.*, on behalf of herself and the State of California as well as on behalf of a group of aggrieved employees.

16. After a minimum of 65 days passed without a response from the LWDA her written notice to the LWDA listed *supra*, Plaintiff commenced a representative action under the PAGA for alleged Labor Code violations (as further explained herein) on behalf of herself and other allegedly aggrieved employees, in the San Bernardino Superior Court Case No. CIVSB2119755.

17. After the case was at issue, the Parties engaged in both formal, and informal discovery and began to engage in informal arms’ length settlement discussions. Through the exchange of information and attendant discussions between the Parties, Plaintiff learned that the number of Aggrieved Employees was approximately 48 (including Plaintiff). Plaintiff reviewed time and wage records and relevant policies that applied to Defendant’s employees.

18. The Parties engaged in a full day of mediation on November 29, 2022, with a respected wage and hour mediator, Mark Lemke, Esq. which resulted in an agreement to settle the Action on the terms set out in this Agreement.

19. PAGA Counsel considered the following facts and arguments in determining that the Agreement was fair and reasonable:

a. Defendant’s Legal Defenses:

1. Defendant cited case law for the proposition that PAGA is not applicable to the nature of many of the violations alleged here.

2. Defendant cited case law for the proposition that the facts alleged do not amount to violations of certain statutes at issue.

3. Defendant also argued that Plaintiffs' PAGA claims are unmanageable and would be dismissed on that basis.

b. Defendant's Factual Defenses:

1. Defendant argued that there were no violations. Defendant argued that it had compliant wage and hour policies. Defendant also argued it had no knowledge of any off the clock work. Defendant further argued that to the extent any meal or rest breaks were taken short or late or not at all, it was based on the employee's voluntary choice and there was no violation.

2. In accordance with the PAGA (Labor Code § 2699(e)(1) and (e)(2)), the court in a PAGA action has the same discretion "to assess a civil penalty" that the Labor Commissioner would have, as well as complete discretion to "award a lesser amount than the maximum civil penalty amount specified [by PAGA] if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Defendant argued the PAGA penalties should be reduced based on Defendant's efforts to comply with wage and hour laws. Defendant also argued that after receiving notice of Plaintiff's allegations, that it improved its administration of wage-and-hour issue, factors that could mitigate in favor of reducing PAGA penalties.

3. Defendant further produced copies of its timekeeping, overtime, reimbursement, meal and rest period policies as well as all time and payroll records for Plaintiff and for the aggrieved employees in formal discovery and for purposes of settlement. Defendant argued that the time and payroll records demonstrated that Defendant generally complied with meal period laws. Moreover, Defendant argued it need not police breaks to ensure they are taken

under California law (See *Brinker*) and that any potential meal period violations would still be subject to the affirmative defense of waiver.

4. Consequently, while PAGA Counsel disagreed with Defendant's legal analysis above, PAGA Counsel anticipated that, at trial, Defendant could make a potentially persuasive argument that little to no penalties apply and/or the Court could exercise its discretion under PAGA to significantly reduce or altogether waive any penalties under PAGA. In consideration of the foregoing facts and arguments and how they might impact any judgment ultimately awarded to Aggrieved Employees if the Court was persuaded by them, PAGA counsel determined that the Agreement was fair and reasonable.

20. The Parties recognize that the issues presented in the Action are likely only to be resolved with extensive and costly pretrial and trial proceedings, and that further litigation will cause inconvenience, distraction, disruption, delay, and expense disproportionate to the potential benefits of litigation. The Parties have considered the risk and uncertainty of the outcome inherent in any litigation.

21. Plaintiff and PAGA Counsel contend that they have diligently pursued an investigation of the Aggrieved Employees' claims against Defendant through formal and informal discovery.

22. Based on their own independent investigations and evaluations, including a full day of mediation on November 29, 2022, with a respected wage and hour mediator, Mark Lemke, Plaintiff and her counsel are of the opinion that the settlement for the consideration and on the terms set forth in this Agreement is fair, reasonable, and adequate and is in the best interests of the Plaintiff, the Aggrieved Employees, the State of California, and Defendant in light of all known facts and circumstances and the risks inherent in litigation, including the potential appellate issues. Further, PAGA Counsel believes that the settlement amount entered into is in the best interests of the Aggrieved Employees and that the settlement for each

Aggrieved Employee is fair, reasonable, and adequate, given the inherent risk of litigation and the remedial steps Defendant alleges.

23. The purpose of this Agreement is to settle and compromise the Action and all Covered Claims that Plaintiff and the Aggrieved Employees have against Defendant and the Releasees (as defined below) for the Covered Period.

24. In consideration of the mutual covenants, promises and representations set forth in this Agreement, Plaintiff, on behalf of herself and the Aggrieved Employees, agrees to settle and compromise the Action and the Covered Claims, subject to the terms and conditions set forth in this Agreement.

### **III. TERMS OF SETTLEMENT**

25. Neither the existence of this Agreement nor anything contained in this Agreement shall be construed or deemed as an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant. Nothing herein shall constitute an admission by Defendant that the Action was properly brought as a representative action other than for settlement purposes. Settlement of the Action, the negotiation and execution of this Agreement, and all acts performed or documents executed pursuant to or in furtherance of this Agreement or the settlement of the Action: (a) are not, shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of either Defendant or of the truth of any of the factual allegations in the operative Complaint in the Action; (b) are not, shall not be deemed to be, and may not be used as, an admission or evidence of any fault or omissions on the part of Defendant in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal; (c) are not, shall not be deemed to be, and may not be used as, an admission or evidence of the appropriateness of these or similar claims for representative treatment, class certification, or administration other than for purposes of administering this Agreement; and (d) shall not constitute or be deemed a waiver of any right to compel arbitration of any dispute with an Aggrieved Employee that is not the subject of the releases detailed in this Agreement.

26. The Parties agree that upon full execution of this Agreement, the matter is stayed in its entirety except for any filings and/or motion work necessary to attain Court approval of the Agreement. Should the Court not grant approval of the Stipulation For Approval of PAGA Representative Action Settlement, or of the Motion For Approval Of The PAGA Representative Action Settlement, the stay will be lifted thirty (30) days thereafter and the Parties will be restored to their positions prior to the Agreement and the Agreement shall be null and void.

27. The Amount of PAGA Settlement. As consideration for the settlement described herein and the release contained in this Agreement, Defendant agrees to pay a total settlement of \$70,000.00 (“Settlement Payment”), which is due from Defendant to be paid to the Claims Administrator thirty (30) days after the Effective Date. The Settlement Payment will be allocated as follows:

a. A total of \$7,000.00 to Plaintiff Margarita Bustamante, in exchange for her general release of all claims against Defendant, and as an enhancement payment, subject to Court approval, in recognition of her actions in conferring a benefit upon the State of California and her effort and work in prosecuting the Action on behalf of the PAGA Group (the “Plaintiff’s General Release, and Enhancement Payment”);

b. PAGA Counsel’s attorney fees in an amount not exceeding thirty-three point three-three percent (33.33%), which is currently estimated to be twenty-three thousand one hundred dollars and zero cents (\$23,100.00), and subject to Court Approval;

c. PAGA Counsel’s request for cost reimbursements in an amount not exceeding \$5,000.00, for costs incurred, and subject to Court Approval;

d. Administrative costs, for an amount not exceeding \$6,500.00 and subject to Court Approval to distribute monies to Aggrieved Employees;

e. the remainder of the Settlement Payment in the amount after deducting the items (a), (b), (c) and (d) herein shall be designated as “PAGA Penalties,” to be allocated

75% to the LWDA and the remaining 25% to the Aggrieved Employees pursuant to Labor Code section 2699(i) as outlined below.

28. Allocation and Calculation of the PAGA Penalties. Each Aggrieved Employee shall receive a portion of the PAGA Penalties on a pro-rata basis as set forth below. The anticipated total “PAGA Penalty Fund” will be \$28,400.00. Seventy-Five percent (75%) of the PAGA Penalty Fund (anticipated to be \$21,300.00) will be paid to the LWDA as required by Labor Code section 2699(i). The remaining Twenty-Five percent (25%) of the PAGA Penalty Fund (anticipated to be \$7,100.00) will be distributed to Aggrieved Employees on a pro-rata basis based on the formula set forth below. Each Aggrieved Employee’s pro-rata share of the PAGA Penalty Fund represents their Individual Settlement Payment.

a. Individual Settlement Calculation. The Aggrieved Employees shall receive a pro rata share of the PAGA Penalty Fund allocated to Aggrieved Employees (anticipated to be \$7,100.00). Each Aggrieved Employee shall receive a pro rata value equal to the ratio of (a) the number of Eligible Pay Periods worked by that employee to (b) the total number of Eligible Pay Periods worked by all employees included in the Aggrieved Employee group. All Individual Settlement Payments made to Aggrieved Employees will be reported on an IRS Form 1099.

b. Fair Formula. The Parties recognize and agree that the precise value of each Aggrieved Employee’s Individual Settlement Payment is subject to a variety of differing calculations and formulas. The Parties hereby agree that the formula for allocating payments as provided herein is reasonable and designed to provide a fair settlement to the Aggrieved Employees.

29. PAGA Counsel’s Fees and Costs. As part of the request for approval of this Agreement, PAGA Counsel will request Court approval of up to 1/3 (33.33%) of the Settlement Payment (anticipated to be \$23,100.00) in attorneys’ fees. PAGA Counsel will request cost reimbursement in an amount of up to \$5,000, for costs incurred by PAGA Counsel. If the Court approves a lesser amount for attorneys’ fees and/or costs, the difference shall be allocated to the

PAGA Penalty Fund and distributed pro rata accordingly. Any attorneys' fees and costs awarded to PAGA Counsel, hereinafter referred to as "PAGA Counsel Fees & Costs," shall fully compensate and reimburse PAGA Counsel for any and all of the work already performed in connection with the litigation of Covered Claims and all work remaining to be performed in fully and finally resolving the litigation of Covered Claims, including but not limited to securing Court approval of the settlement, appearing at hearings, making sure that the settlement is fairly and properly administered, appearing at any post-approval matter, all other work that PAGA Counsel has performed or will perform, and all costs that PAGA Counsel has incurred or will incur. Defendant agrees not to oppose the request for PAGA Counsel Fees & Costs in the amounts listed herein, or in lesser amounts.

30. Tax Treatment of Settlement Amounts. With regard to settlement payments to Aggrieved Employees and Plaintiff, IRS Form 1099s will be issued. Nothing in this Agreement is intended to constitute legal advice regarding federal, state, and/or local tax obligations. Plaintiff acknowledges that she has obtained no tax advice from Defendant, or from PAGA Counsel, and that neither PAGA Counsel, nor Defendant, nor its attorneys, have made any representation concerning the tax consequences, if any, of the Settlement Amount in this Agreement or any payment to be made pursuant to this Agreement. To the extent that this Agreement or any of its attachments is interpreted to contain or constitute advice regarding any state or federal tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding penalties under the Internal Revenue Code. Neither PAGA Counsel, nor Defendant, are responsible for any employee tax obligations regarding the allocation of the settlement payments. Payment of PAGA Counsel Fees & Costs will be reflected in a Form 1099 to PAGA Counsel who shall assume full responsibility and liability for the payment of taxes due on such payments.

#### IV. RELEASE

31. Release of Claim:

a. Release of Claims By All Aggrieved Employees. Upon the approval by the Court and non-objection by the LWDA of this Agreement this release shall be effective on the date checks are mailed to Aggrieved Employees pursuant to paragraph 36, below, the LWDA, and each Aggrieved Employee (including Plaintiff), shall, for the Covered Period, fully release and forever release and discharge Defendant, its past or present officers, directors, shareholders, members, owners, board members, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and its respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys, if any, and any individual or entity which could be jointly liable with Defendant (all such released persons and entities, collectively, “Releasees”) from any and all PAGA penalties that have been or could have been asserted in the Action or in the notice letter that Plaintiff sent to the Labor and Workforce Development Agency regarding the claims against Defendants based on the facts and legal theories asserted therein, including claims for penalties under PAGA for alleged violations of California Labor Code sections 201, 202, 203, 204, 226, 226.7, 432, 510, 512(a), 558(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 2800, 2802, California Code of Regulations, Title 8, sections 11050(5)(A), 11050(4)(C), as well as violations of the applicable IWC Wage Order, for the time period starting on April 28, 2020, and ending on the Effective Date.

b. Release of All Claims By Plaintiff. Except as otherwise provided herein, in exchange for the consideration described herein, Plaintiff Margarita Bustamante, on her own behalf and on behalf of her descendants, dependents, heirs, executors, administrators, agents, assigns, and successors (collectively, “Releasor”), hereby covenants not to sue and fully and unconditionally forever releases and discharges the Releasees from and against any and all claims, causes of action, judgments, liens,

demands, damages, obligations, suits, contracts, liabilities, losses, costs, penalties, and expenses, including, but not limited to, attorneys' fees and disbursements, or offsets of any nature whatsoever (collectively, "Claims") that Releasor now has, has had, or may hereafter have against Defendant and/or the Releasees arising out of the Parties' relationship or the cessation of their relationship, including but not limited to those claims arising out of or relating to (i) Plaintiffs' performance and reputation, (ii) harassment, (iii) discrimination, (iv) retaliation, (v) rights arising out of alleged violations of any contracts, express or implied; (vi) any covenant of good faith and fair dealing, express or implied; (vii) any tort; (viii) any legal restrictions on Defendant's right to terminate employees; and (ix) any Claims arising under any federal, state or other governmental statute, regulation or ordinance, including, without limitation: Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Federal Rehabilitation Act, the Employee Retirement Income Security Act, the Family and Medical Leave Act, the Fair Labor Standards Act, the California Fair Employment and Housing Act, the California Family Rights Act, the California Labor Code, the California Government Code, the California Business and Professions Code, and any other applicable state or federal law in effect prior to the Effective Date. This General Release is intended to be interpreted as broadly as possible and to apply to any and all claims known and unknown available to Plaintiff in any forum, including, but not limited to, any claims for unpaid wages, expense reimbursement, unpaid penalties or premiums, liquidated damages, class or representative actions governing employment (to the fullest extent allowed by applicable law), constructive termination, negligent or intentional infliction of emotional distress, harassment, discrimination, wrongful termination, negligent or intentional infliction of emotional distress, harassment, discrimination, wrongful termination, negligence, breach of contract, breach of the covenant of good faith and fair dealing, promissory estoppel, fraud, negligent or intentional misrepresentation, negligent or intentional interference

with contract or prospective economic advantage, unfair business practices, defamation, libel, slander, personal injury; assault, battery, invasion of privacy, false imprisonment, conversion, disability benefits, claims under Labor Code section 132(a), violation of any provision of federal or state law governing employment, and any claim for attorneys' fees or costs. All such claims are forever barred and by this Agreement and Plaintiff Margarita Bustamante acknowledges her familiarity with California Civil Code § 1542, which is expressly waived by Plaintiff Margarita Bustamante. California Civil Code § 1542 reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

c. However, this release shall not apply to claims for workers' compensation benefits or unemployment insurance benefits or any other claims that Plaintiff cannot, by statute, lawfully waive by this agreement.

d. Defendant's Release of Claims Against Plaintiff. Defendant also agrees to release any and all claims it may have against Plaintiff of any kind, whether known or unknown, which arose prior to the execution of this Settlement Agreement.

## **V. APPROVAL STIPULATION**

32. The Parties recognize that in accordance with Labor Code Section 2699(l), Court approval is required in the event of a settlement of a PAGA action on a representative basis. However, as explained in *Arias v. Superior Court* (2009) 46 Cal.4th 969, the Parties are not obligated to follow the class action procedural rules in PAGA cases and therefore need not obtain approval of the PAGA settlement through a motion for preliminary or final approval. Instead, in order to comply with the requirements of Labor Code Section 2699(l), the Parties shall submit a joint stipulation ("Approval Stipulation"), or if the Court rejects the joint

stipulation, then a motion to the Court, identifying the key terms of this Agreement and requesting that the Court approve the amount of PAGA penalties provided for in the Agreement. This Agreement is contingent upon the approval by the Court. If the Court should fail to approve this Agreement in the form agreed to by the Parties, the Parties agree to coordinate efforts to address the Court's questions or concerns and resubmit the Approval Stipulation or motion. If (a) the Parties are unable, following good faith efforts, to obtain approval of the terms of the Agreement, or (b) the Court's approval of this Agreement is reversed, modified, or declared or rendered void, then (i) this Agreement shall be considered null and void; (ii) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect; and (iii) all Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had been neither entered into nor filed with the Court. Invalidity of any material portion of this Agreement, except for the amount of attorneys' fees and costs, Enhancement Payment, PAGA Penalty Fund, or administrative costs, shall invalidate this Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

## **VI. ADMINISTERING THE SETTLEMENT**

33. Subject to the Court approval of this Agreement, the Settlement Payment shall be paid as follows:

34. No later than ten (10) calendar days after the Effective Date, Defendant shall provide the Claims Administrator a list of Aggrieved Employees ("Aggrieved Employee List") containing their (1) name; (2) last known home address and telephone number; (3) social security number; and (4) the number of pay periods for each Aggrieved Employee during the Covered Period. Neither the Aggrieved Employee List nor any information contained therein shall be distributed to PAGA Counsel at any time.

35. No later than thirty (30) calendar days after the Effective Date, Defendant will fund to the Claims Administrator a total of \$70,000 ("Settlement Payment").

36. Not later than ten (10) calendar days after the Settlement Payment has been funded, the Claims Administrator will cause payment of checks for:

- a. \$7,000.00 (or such other amount as the Court may approve) to Plaintiff Margarita Bustamante as her general release and enhancement payment.
- b. \$23,100.00 (or such other amount as the Court shall approve) paid to PAGA Counsel for attorneys' fees;
- c. \$ 5,000.00, for costs incurred, (or such other amount as the Court shall approve) paid to PAGA Counsel for costs;
- d. \$6,500.00 (or such other amount as the Court shall approve) paid to the Claims Administrator for administrative costs for distributing monies to the Aggrieved Employees
- e. Seventy-Five percent (75%) of the PAGA Penalty Fund (as defined in paragraph 28 above) to the LWDA; and
- f. Twenty-Five percent (25%) of the PAGA Penalty Fund (as defined in paragraph 28 above) to the Aggrieved Employees in accordance with the formula set out in paragraph 28.

37. Concurrently with sending each Aggrieved Employee their share of the Settlement Amount, the Claims Administrator will include a "Notice of PAGA Action Settlement" (attached hereto as **Exhibit A**) along with each Aggrieved Employee's check. The Claims Administrator shall send each Aggrieved Employee their check via U.S. First Class mail to each Aggrieved Employee's address with directions to the Postmaster to return all undeliverable mail to the Claims Administrator. For each returned check/notice that is returned as undeliverable, the Claims Administrator shall promptly attempt to locate the Aggrieved Employee's by using an address refresher database.

38. Settlement checks shall remain valid and negotiable for one hundred eighty (180) calendar days from the date of their issuance. If there are uncashed checks following this period, the Claims Administrator will send the uncashed funds to the State of California Department of

Industrial Relations Unclaimed Wages Fund in the name of the Aggrieved Employee who did not cash his or her check.

## **VII. DUTIES OF THE PARTIES PRIOR TO APPROVAL**

39. Promptly upon execution of this Agreement, the Parties shall jointly apply to the Court for an Order seeking Approval of the PAGA Representative Action Settlement via Stipulation. Plaintiff's Counsel shall draft the Stipulation. If the Court requires a motion, then Plaintiff shall file a Motion for Approval of PAGA Representative Action Settlement. Plaintiff's Counsel shall draft any such motion, and Defendant agrees not to oppose such motion other than to the extent it deviates from this Agreement. In addition, Plaintiff's Counsel shall be responsible for providing timely notice of the settlement to the LWDA in accordance with Labor Code section 2699(1)(2).

40. The motion for approval, and/or the stipulation for an order, will request Court approval of the following:

- a. Approving the amount of PAGA Penalties;
- b. Dismissing the entire Action with prejudice; and
- c. Waiving all rights to appeal; and
- d. Approving Plaintiff's General Release and Enhancement Payment; and
- e. Approving the PAGA Counsel Attorney fees and costs;
- f. Approving the Claim Administration costs; and
- g. Approving the Releases provided in exchange for the PAGA Penalties and Enhancement Payments.

41. In conjunction with the motion for approval, and/or the stipulation for an order, the Parties will submit a proposed order requesting approval of the PAGA Penalties provided for in the Agreement. Plaintiff's Counsel will draft the proposed order.

## **VIII. PARTIES' AUTHORITY**

42. The signatories hereto hereby represent that they are fully authorized to enter into this Agreement and bind the Parties hereto to the terms and conditions hereof.

## **IX. MUTUAL FULL COOPERATION**

43. The Parties agree to fully cooperate with each other to accomplish the terms of this Agreement, including, but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Agreement and the terms set forth herein. As soon as practicable after execution of this Agreement, PAGA Counsel shall, with the assistance and cooperation of Defendant and its counsel, take all necessary steps to secure the approval of this Agreement from the Court.

## **X. NO PRIOR ASSIGNMENTS**

44. The Parties hereto represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein. None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party, Aggrieved Employee, PAGA Counsel (which includes Plaintiff's Counsel), or Defense Counsel without the express written consent of each other Party and their respective counsel. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under this Agreement, and shall not be construed to confer any right or to avail any remedy to any other person.

## **XI. NO ADMISSION**

45. Nothing contained herein nor is the consummation of this Agreement to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant or any of the Releasees. Each of the Parties hereto has entered into this Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience and expense. Defendant denies that it has engaged in any unlawful activity, that it has failed to comply with the law in any material respect, or that it has any liability to anyone under the claims asserted in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or shall be construed as an admission of liability or wrongdoing by Defendant.

## **XII. NON-EVIDENTIARY USE**

46. Whether or not the Effective Date occurs, neither this Agreement nor any of its terms nor the Agreement itself shall be: (a) construed as, offered, or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Defendant or any other of the Releasees, including but not limited to, evidence of a presumption, concession, indication, or admission by Defendant or by any of the Releasees of any liability, fault, wrongdoing, omission, concession, or damage, or (b) disclosed, referred to, or offered in evidence against Defendant or against any of the Releasees in any further proceeding in the Action, or any other civil, criminal, or administrative action or proceeding except for the purposes of effectuating the Agreement pursuant to this Agreement or for Defendant to establish that an Aggrieved Employee has resolved any of his/her claims released through this Agreement.

## **XIII. NULLIFICATION**

47. If (a) the LWDA timely objects or (b) the Court should for any reason fail to approve this Agreement in the form agreed to by the Parties (except for the amount of attorneys' fees or costs), or (c) the Court's approval of this Agreement is reversed, modified, or declared or

rendered void, then (i) this Agreement shall be considered null and void; (ii) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect; and (iii) all Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had been neither entered into nor filed with the Court. Invalidation of any material portion of this Agreement, except for the amount of attorneys' fees and costs, shall invalidate this Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

#### **XIV. ATTORNEYS' FEES, COSTS AND EXPENSES**

48. Except as specifically set forth herein, each Party shall bear its/his/her own attorneys' fees, costs, and expenses, taxable or otherwise, incurred by him/her/it arising out of the Action, and shall not seek reimbursement thereof from any other party to this Agreement.

#### **XV. CONSTRUCTION**

49. The Parties hereto agree that the terms and conditions of this Agreement are the result of lengthy, intensive, arms-length negotiations between the Parties and that this Agreement constitutes the entire agreement between Plaintiff (on behalf of herself and all other Aggrieved Employees) and Defendant regarding actual or potential claims asserted by Plaintiff against Releasees. Excluding any Arbitration or Confidentiality Agreement executed by Plaintiff with Defendant, if any, both of which will remain in full force and effect, this Agreement supersedes all prior agreements, written or oral, between or among the Parties regarding those claims or potential claims and the resolution of those claims. Consequently, no other agreement, statement, or promise made by one Party to another as to any matter addressed in this Agreement shall be binding or valid.

## **XVI. CAPTIONS AND INTERPRETATIONS**

50. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any provision hereof. Each term of this Agreement is contractual and not merely a recital.

## **XVII. MODIFICATION**

51. This Agreement may not be amended, changed, altered, or modified, except in writing and signed by the Parties (or their successors-in-interest) hereto. This Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

## **XVIII. MISCELLANEOUS**

52. This Agreement contains the entire agreement between the Parties relating to the settlement of the Covered Claims and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing. The Parties have made such investigation of the facts and the law pertaining to the matters described herein and to this Agreement as they deem necessary, and have not relied, and do not rely, on any statement, promise, or representation of fact or law, made by any of the other Parties, or any of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted rights, or with regard to the advisability of making and executing this Agreement, or with respect to any such matters that would alter or change the terms of this Agreement. No representations, warranties, or inducements have been made to any Party concerning this Agreement other than those expressly set forth or referred to herein.

53. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors, and assigns. This

Agreement shall be binding on all aggrieved employees and the State of California who will be barred from relitigating the Covered Claims released in this Agreement.

54. This Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to all Parties. The counterparts may be transmitted electronically (PDF) or by facsimile, and may be signed using DocuSign.

55. This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California, irrespective of the State of California's choice of law principles.

56. The Parties have cooperated in the negotiation and preparation of this Agreement. This Agreement shall not be construed against any Party on the basis that the Party, or the Party's counsel, was the drafter or participated in the drafting of this Agreement.

57. The Los Angeles County Superior Court shall retain jurisdiction to enforce this Agreement pursuant to California Code of Civil Procedure section 664.6. The Court shall retain continuing jurisdiction over this Action and over all Parties and Aggrieved Employees, to the fullest extent to enforce and effectuate the terms and intent of this Agreement.

58. This Agreement shall not be subject to collateral attack by any Aggrieved Employee. Such prohibited collateral attack shall include, but not be limited to, claims that the Aggrieved Employee failed, for any reason, to timely receive his or her Individual Settlement Payment.

THE PARTIES HAVE READ THE FOREGOING AGREEMENT. THEY HAVE CONSULTED WITH LEGAL COUNSEL REGARDING THE FOREGOING AGREEMENT AND KNOW THE CONTENTS THEREOF AND SIGN THE SAME AS THEIR FREE, KNOWING, AND VOLUNTARY ACT AND DEED, BEING FULLY AWARE OF ITS CONSEQUENCES AND ITS FINAL AND BINDING EFFECT.

DATED: 02 / 09 / 2023

*Margarita Bustamante*

Margarita Bustamante, for herself and as a  
Representative of other Aggrieved Employees

DATED: 02/01/2023

CALWEST REFRIGERATION, INC.,  
a California Corporation

By: 

Title & Name: Anas Milbes, CEO

APPROVED AS TO FORM ONLY:

HAIG B. KAZANDJIAN LAWYERS, APC

DATED: 2/9/23

By: *Haig B. Kazandjian*

Haig B. Kazandjian, Esq.  
Cathy Gonzalez, Esq.  
Attorney for Plaintiff and Aggrieved Employees

DATED: Feb. 1, 2023

SKT L<sup>A</sup> W<sup>Y</sup> R<sup>S</sup>

By: 

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Lindley Fraley, Esq.  
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REFRIGERATION, INC.