



FILED
Superior Court of California
County of San Francisco

SEP 11 2024

CLERK OF THE COURT
BY: [Signature]
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
DEPARTMENT 613

JORGE LUIS DIAZ BERNAL, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

GACHINA LANDSCAPE MANAGEMENT,
INC., a California Corporation; and DOES 1–10,
inclusive,

Defendants.

Case No. CGC-21-591923

ORDER GRANTING MOTION FOR FINAL
APPROVAL

Plaintiff Jorge Luis Diaz Bernal (“Plaintiff”) and Defendant Gachina Landscape Management, Inc. (“Defendant”) have entered into a settlement subject to this Court’s approval. The terms of the settlement, including releases of claims, are set forth in “First Amended Class Action and PAGA Settlement Agreement and Class Notice” (attached as Exhibit 1 to Declaration of H. Scott Leviant in Support of Plaintiff’s Motion for Final Approval of Class and Representative Action Settlement (filed on August 9, 2024) (“Settlement Agreement”)¹, attached hereto as **Exhibit A**.

This matter came on regularly for hearing on September 11, 2024, in Department 613, the Honorable Andrew Y.S. Cheng presiding. H. Scott Leviant (Moon Law Group, PC) appeared for Plaintiff.

¹ This Order hereby incorporates by reference the definitions of the Settlement Agreement as though fully set forth herein, and all terms used herein shall have the same meaning as set forth in the Settlement.

1 Having considered the papers filed in support of Plaintiff's motion for final approval, and for good
2 cause appearing, the Court finds and orders as follows:

3 1. The Court approves the settlement as fair, reasonable, and adequate. The Settlement shall
4 be consummated in accordance with the terms and provisions of the Settlement Agreement.

5 2. The Court certifies, for settlement purposes only, a Settlement Class consisting of: All
6 California persons currently or formerly employed by Defendant as hourly-paid non-exempt employees in
7 the State of California at any time during the Class Period, namely from June 1, 2017, to August 3, 2023.

8 The "Aggrieved Employees" are all persons currently or formerly employed by Defendant as
9 hourly-paid non-exempt employees in the State of California who worked at any time between June 1,
10 2020 and August 3, 2023.

11 3. For the reasons set forth in the Court's order granting preliminary approval, the Court finds
12 that the applicable requirements of California Code of Civil Procedure section 382 and California Rule of
13 Court 3.769 have been satisfied for the purposes of this settlement in that common questions of law and
14 fact predominate, the Settlement Class is so numerous that a class action is superior to other available
15 means for the fair and efficient adjudication of the controversy, plaintiff's claims are typical of those in
16 the Settlement Class, and plaintiff has fairly and adequately represented and protected the interests of the
17 Settlement Class.

18 4. The Court appoints plaintiffs Jorge Luis Bernal as the Class Representative of the
19 Settlement Class.

20 5. The Court appoints Moon Law Group PC—inclusive of attorneys Kane Moon, H. Scott
21 Leviant, and Mariam Ghazaryan—as Class Counsel.

22 6. No Class Members objected to the Settlement Agreement.

23 7. Jesus Avila Flores, Jose Valencia Gonsalez, and Miguel Lopez Hernandez submitted
24 timely and valid request for exclusion and shall therefore be excluded from the Settlement.

25 8. The manner and form of the notice as previously approved and ordered by the Court in its
26 Order granting preliminary approval was reasonably calculated to fully and accurately inform members of
27 the Settlement Class of all material elements of the settlement and of their opportunity to object or
28 comment thereon or to exclude themselves from the Settlement Class, was the best notice practicable

1 under the circumstances, was valid, due, and sufficient notice to all members of the Settlement Class and
2 complied fully with California law and due process.

3 9. The manner of providing notice substantially complied with the Court's Order granting
4 preliminary approval.

5 10. Phoenix Settlement Administrators shall disperse all amounts in accordance with the terms
6 of the Settlement Agreement.

7 11. All Released Parties are released in accordance with the Settlement Agreement.

8 12. Upon the Effective Date, the Class Representative and each Settlement Class Member who
9 did not submit a valid request for exclusion shall be deemed to have, and by operation of this Order shall
10 have, finally and forever released all Released Claims against the Released Parties, whether or not such
11 Settlement Class Member shares in the Gross Settlement Amount, and whether or not such Settlement
12 Class Member objected to the Settlement.

13 13. Class Counsel requested one third of the Gross Settlement Amount, or \$416,666.67, in
14 attorneys' fees. This case did not involve substantial motions practice or appeals. Counsel does not
15 identify any novel or difficult question of law or fact impacting the merits of the claims. The fact that
16 counsel can list off a large number of cases in a declaration does not aid the Court in making findings
17 about the level of skill possessed or utilized by counsel generally or in this particular case. Even without
18 implementing a lodestar cross-check, the Court is concerned by the percentage of the fund requested
19 given the limited information presented on novelty and difficulty, skill, and hours worked as well as the
20 limited litigation history. Employment counsel are not automatically entitled to one third of every
21 common fund. Rather, California courts have largely followed federal courts in using a 25 percent
22 benchmark and lodestar cross-check. (See, e.g., *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545,
23 557, n. 13.) While 33 percent or one third of a common fund is often cited as an *average* award, this
24 figure is not often verified with modern statistics nor does the existence of this average figure support the
25 proposition that an award of 33 percent is a *median* figure that should constitute the starting point for a
26 court's analysis. The Court awards Class Counsel the attorneys' fees in the amount of \$312,500.00². The
27

28 ² The \$2,500.00 increase in costs to Phoenix Settlement Administrators shall be paid out of Class
Counsel's award of attorney's fees as stated by Class Counsel. (Leviat Decl., ¶ 34.)

1 award shall be paid from the Gross Settlement Amount subject to the terms, conditions and obligations of
2 the Settlement Agreement.

3 14. The Court awards Class Counsel reimbursement of their litigation costs and expenses in
4 the amount of \$19,774.81. The Court finds that the amount requested is reasonable and was reasonably
5 incurred in the prosecution of this action. The award shall be paid from the Gross Settlement Fund
6 subject to the terms, conditions and obligations of the Settlement Agreement.

7 15. Plaintiff requested a service award of \$7,500.00. The declaration presented does not justify
8 the award. (See generally *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 194–95
9 [describing factors to be considered by courts when making service awards].) The limited information
10 presented does not reflect that the Named Plaintiff was even deposed nor does the limited litigation and
11 motions practice in this case otherwise reflect substantial effort, involvement, and time expenditure by the
12 Named Plaintiff. Consequently, Named Plaintiff do not substantiate his request for a \$7,500.00 service
13 award across the board. (Bernal Decl.) The Court orders a service award of \$3,500.00 to Named Plaintiff,
14 which is reasonable and justified in light of his contributions to the case and the risks Plaintiff undertook
15 in serving as Named Plaintiff. This award is separate from and in addition to any award to which Named
16 Plaintiff may be entitled to as a Settling Plaintiff. This award shall be paid from the Gross Settlement
17 Amount subject to the terms, conditions, and obligations of the Settlement Agreement.

18 16. The Court approves and orders payment in the amount of \$12,500.00 to Phoenix
19 Settlement Administrators for performance of its services as the Settlement Administrator. This award
20 shall be paid from the Gross Settlement Amount subject to the terms, conditions, and obligations of the
21 Settlement Agreement. In addition, Phoenix Settlement Administrators shall receive \$2,500.00 from Class
22 Counsel from Class Counsel's attorney's fees award, resulting in compensation to Phoenix Settlement
23 Administrators in the aggregate amount of \$15,000.00.

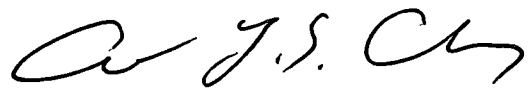
24 17. The Court sets a Compliance Hearing for **March 21, 2025, at 9:00 a.m.** in Department
25 613 of this Court. At least **one week** prior to the hearing, Class Counsel and Phoenix Settlement
26 Administrators shall submit a summary accounting, identifying distributions made as ordered herein, the
27 number and value of any uncashed settlement checks, the status of any unresolved issues, if any, and any
28 other matters appropriate to bring to the Court's attention.

1 18. Without affecting the finality of this Order in any way, this Court retains continuing
2 jurisdiction over: (a) implementation of this Settlement and any award or distribution of the Gross
3 Settlement Fund, including interest earned thereon; (b) disposition of the Gross Settlement Fund;
4 (c) hearing and determining applications for attorneys' fees, interest and expenses in the Action; and
5 (d) all Parties hereto for the purpose of construing, enforcing, and administering the Settlement
6 Agreement.

7 19. A copy of this Order and the accompanying Judgment shall be promptly served upon the
8 LWDA by Class Counsel.

9
10 IT IS SO ORDERED.

11
12 Dated: September 11, 2024



ANDREW Y.S. CHENG
Judge of the Superior Court

EXHIBIT A

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

JORGE LUIS DIAZ BERNAL, individually,
and on behalf all others similarly situated,

Plaintiff,

vs.

GACHINA LANDSCAPE MANAGEMENT,
INC., a California corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No.: CGC-21-591923

*[Assigned for all purposes to the Hon. Andrew
Y.S. Cheng]*

CLASS ACTION

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

Complaint filed: June 1, 2021
Trial date: Not set

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

This First Amended Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiff JORGE LUIS DIAZ BERNAL (“Plaintiff”) and Defendant GACHINA LANDSCAPE MANAGEMENT, INC. (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Defendant captioned *Bernal, et al. v. Gachina Landscape Management, Inc., et al.*, Case No.: CGC-21-591923, initiated on June 1, 2021 and pending in Superior Court of the State of California, County of San Francisco.
- 1.2. “Administrator” means Phoenix Class Action Administration Solutions, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Aggrieved Employee” means all persons currently or formerly employed by Defendant as hourly-paid non-exempt employees in the State of California at any time during the PAGA Period.
- 1.5. “Class” means all California persons currently or formerly employed by Defendant as hourly-paid non-exempt employees in the State of California at any time during the Class Period.
- 1.6. “Class Counsel” means Moon Law Group, PC.
- 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 expenses, respectively, incurred to prosecute the Action.

- 1.8. "Class Data" means Class Member identifying information in Defendant's possession including the Class Member's name, last-known mailing address, Social Security number, and dates of employment and/or number of Class Period Workweeks and PAGA Pay Periods, if applicable.
- 1.9. "Class Member" or "Settlement Class Member" means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).
- 1.10. "Class Member Address Search" means the Administrator's investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address ("NCOA") database, skip traces, and direct contact by the Administrator with Class Members.
- 1.11. "Class Notice" means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English with a Spanish translation, in the form, without material variation unless otherwise agreed by the Parties, attached as Exhibit A and incorporated by reference into this Agreement. The Parties, through counsel, may agree to modifications to the Class Notice required to correct errors or effectuate changes required by the Court without the need to amend this Agreement, and the revised Class Notice shall be incorporated herein in place of the original Exhibit A.
- 1.12. "Class Period" means the period from June 1, 2017 to August 3, 2023.
- 1.13. "Class Representative" means the Plaintiff Jorge Luis Diaz Bernal named in the operative complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.14. "Class Representative Service Payment" means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.15. "Court" means the Superior Court of California, County of San Francisco.
- 1.16. "Defendant" means named Defendant Gachina Landscape Management, Inc.
- 1.17. "Defense Counsel" means Rona P. Layton of Layton Law Firm.
- 1.18. "Effective Date" means the date by when both of the following have occurred: (a) the

1 Court enters a Judgment on its order granting final approval of the Settlement; and (b) the
2 Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if
3 no Participating Class Member objects to the Settlement, the day the Court enters
4 Judgment; (b) if one or more Participating Class Members objects to the Settlement, the
5 day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal
6 from the Judgment is filed, the day after the appellate court affirms the Judgment and
7 issues a remittitur.

8 1.19. "Final Approval" means the Court's order granting final approval of the Settlement.

9 1.20. "Final Approval Hearing" means the Court's hearing on the motion for final approval of
10 the Settlement.

11 1.21. "Gross Settlement Amount" means \$1,250,000.00 which is the total amount Defendant
12 agree to pay under the Settlement except as provided in Paragraphs 3.1 and 8 below. The
13 Gross Settlement Amount will be used to pay Individual Class Payments, Individual
14 PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class
15 Counsel Litigation Expenses Payment, Class Representative Service Payment and the
16 Administration Expenses Payment.

17 1.22. "Individual Class Payment" means the Participating Class Member's pro rata share of the
18 Net Settlement Amount calculated according to the number of Workweeks worked during
19 the Class Period.

20 1.23. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of
21 the PAGA Penalties calculated according to the number of Pay Periods worked during the
22 PAGA Period.

23 1.24. "Judgment" means the judgment entered by the Court based upon the Final Approval.

24 1.25. "LWDA" means the California Labor and Workforce Development Agency, the agency
25 entitled to 75% of the PAGA Penalties, under Labor Code § 2699(i).

26 1.26. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA
27 under Labor Code § 2699(i).

28 1.27. "Net Settlement Amount" means the Gross Settlement Amount, less the following

1 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA
2 PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment,
3 Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment.

4 The remainder is to be paid to Participating Class Members as Individual Class Payments.

5 1.28. "Non-Participating Class Member" means any Class Member who opts out of the Class
6 portion of the Settlement by sending the Administrator a valid and timely Request for
7 Exclusion.

8 1.29. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked
9 for Defendant for at least one day during the PAGA Period.

10 1.30. "PAGA Period" means the period from June 1, 2020 to August 3, 2023.

11 1.31. "PAGA" means the Labor Code Private Attorneys General Act (Labor Code §§ 2698. *et*
12 *seq.*).

13 1.32. "PAGA Notice" means Plaintiff Jorge Luis Diaz Bernal's May 27, 2021 letter to
14 Defendant and the LWDA providing notice pursuant to Labor Code § 2699.3(a) and
15 attached hereto as Exhibit B.

16 1.33. "PAGA Penalties" means \$100,000, which is the total amount of PAGA civil penalties to
17 be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees
18 (\$25,000) and the 75% to LWDA (\$75,000) in settlement of PAGA claims.

19 1.34. "Participating Class Member" means a Class Member who does not submit a valid and
20 timely Request for Exclusion from the Class portion of the Settlement.

21 1.35. "Plaintiff" means Jorge Luis Diaz Bernal, the named plaintiff in the Action.

22 1.36. "Preliminary Approval" means the Court's order granting preliminary approval of the
23 Class portion of the Settlement.

24 1.37. "Preliminary Approval Order" means the proposed order granting preliminary approval of
25 the Class portion of the Settlement.

26 1.38. "Released Class Claims" means the claims being released as described in Paragraph 5.2
27 below.

28 1.39. "Released PAGA Claims" means the claims being released as described in Paragraph 5.3

below.

1.40. "Released Parties" means: Defendant, and any predecessor, successor, subsidiary, parent, affiliated or related entity, and each of their owners, employees, agents, directors, and/or officers.

1.41. "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.

1.42. "Response Deadline" means 60 days after the Administrator mails the Class 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 Class portion of the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. The Response Deadline for Class Members to whom the Class Notice are resent after having been returned undeliverable to the Administrator shall be extended by 14 calendar days beyond the original Response Deadline.

1.43. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.

1.44. "Workweek" means any week during which a Class Member worked for Defendant for at least one day, during the Class Period.

2. RECITALS.

2.1. On June 1, 2021, Plaintiff Jorge Luis Diaz Bernal commenced this Action by filing a Complaint alleging causes of action against Defendant Gachina Landscape Management, Inc. for failure to pay minimum and regular rate wages, failure to pay overtime compensation, failure to provide meal periods, failure to authorize and provide rest breaks, failure to timely pay final wages at termination, failure to provide accurate itemized wage statements, and Unfair Business Practices. On September 17, 2021, Plaintiff filed a First Amended Class and Representative Action Complaint alleging causes of action against Defendant for failure to pay minimum and regular rate wages, failure to pay overtime compensation, failure to provide meal periods, failure to authorize and permit rest breaks,

1 failure to timely pay final wages at termination, failure to provide accurate itemized wage
2 statements, unfair business practices, and civil penalties under PAGA. The First Amended
3 Class and Representative Action Complaint is the operative complaint in the Action (the
4 “Operative Complaint.”). Defendant denies the allegations in the Operative Complaint,
5 denying any failure to comply with the laws identified in in the Operative Complaint and
6 deny any and all liability for the causes of action alleged.

7 2.2. Pursuant to Labor Code § 2699.3(a), Plaintiff gave timely written notice to Defendant and
8 the LWDA by sending the PAGA Notice.

9 2.3. On February 28, 2023, the Parties participated in a mediation with Kelly Knight, Esq.,
10 which did not result in a settlement of the matter. On August 3, 2023, the Parties
11 participated in a second all-day mediation presided over by Marc Feder, Esq., which led to
12 this Agreement to settle the Action.

13 2.4. Prior to mediation, Plaintiff propounded formal discovery, and obtained, through formal
14 and informal discovery, policy documents, a sampling of Class Members’ time and payroll
15 records, and other relevant data points and information. Plaintiff’s investigation was
16 sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail,*
17 *Inc.*, 48 Cal. App. 4th 1794, 1801 (1996) and *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.
18 App. 4th 116, 129-130 (2008) (“*Dunk/Kullar*”).

19 2.5. The Court has not granted class certification.

20 2.6. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any
21 other pending matter or action asserting claims that will be extinguished or affected by the
22 Settlement.

23
24 **3. MONETARY TERMS.**

25 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, Defendant
26 promises to pay \$1,250,000.00 and no more as the Gross Settlement Amount, and to
27 separately pay any and all employer payroll taxes owed on the Wage Portions of the
28 Individual Class Payments. Defendant has no obligation to pay the Gross Settlement

1 Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this
2 Agreement. The Administrator will disburse the entire Gross Settlement Amount without
3 asking or requiring Participating Class Members or Aggrieved Employees to submit any
4 claim as a condition of payment. None of the Gross Settlement Amount will revert to
5 Defendant.

6 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the
7 following payments from the Gross Settlement Amount, in the amounts specified by the
8 Court in the Final Approval:

9 3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of
10 not more than \$7,500.00 (in addition to any Individual Class Payment and any
11 Individual PAGA Payment the Class Representative is entitled to receive as a
12 Participating Class Member). Defendant will not oppose Plaintiff's request for a
13 Class Representative Service Payment that does not exceed this amount. As part of
14 the motion for Class Counsel Fees Payment and Class Litigation Expenses
15 Payment, Plaintiff will seek Court approval for any Class Representative Service
16 Payments no later than 16 court days prior to the Final Approval Hearing. If the
17 Court approves a Class Representative Service Payment less than the amount
18 requested, the Administrator will retain the remainder in the Net Settlement
19 Amount. The Administrator will pay the Class Representative Service Payment
20 using IRS Form 1099. Plaintiff assumes full responsibility and liability for
21 employee taxes owed on the Class Representative Service Payment.

22 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than one-third (1/3)
23 of the Gross Settlement Amount, which is currently estimated to be \$416,666.67
24 and a Class Counsel Litigation Expenses Payment of not more than \$24,000.00.
25 Defendant will not oppose requests for these payments provided that they do not
26 exceed these amounts. Plaintiff and/or Class Counsel will file a Motion for Final
27 Approval of the Settlement that includes a request for the Class Counsel Fees
28 Payment and the Class Litigation Expenses Payment no later than 16 court days

1 prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees
2 Payment and/or a Class Counsel Litigation Expenses Payment less than the
3 amounts requested, the Administrator will allocate the remainder to the Net
4 Settlement Amount. Released Parties shall have no liability to Class Counsel or
5 any other Plaintiff's Counsel arising from any claim to any portion any Class
6 Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The
7 Administrator will pay the Class Counsel Fees Payment and Class Counsel
8 Litigation Expenses Payment using one or more IRS 1099 Forms. Class Counsel
9 assumes full responsibility and liability for taxes owed on the Class Counsel Fees
10 Payment and the Class Counsel Litigation Expenses Payment and holds Defendant
11 harmless, and indemnifies Defendant, from any dispute or controversy regarding
12 any division or sharing of any of these Payments.

13 3.2.3. To the Administrator: An Administration Expenses Payment not to exceed
14 \$30,000.00 except for a showing of good cause and as approved by the Court. To
15 the extent the Administration expenses are less or the Court approves payment less
16 than \$30,000.00, the Administrator will retain the remainder in the Net Settlement
17 Amount.

18 3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by
19 (a) dividing the Net Settlement Amount by the total number of Workweeks worked
20 by all Participating Class Members during the Class Period and (b) multiplying the
21 result by each Participating Class Member's Workweeks.

22 3.2.4.1. Tax Allocation of Individual Class Payments. 20% of each Participating
23 Class Member's Individual Class Payment will be allocated to settlement
24 of wage claims (the "Wage Portion"). The Wage Portions are subject to tax
25 withholding and will be reported on an IRS W-2 Form. 40% of each
26 Participating Class Member's Individual Class Payment will be allocated to
27 the settlement of claims for penalties, and 40% of each Participating Class
28 Member's Individual Class Payment will be allocated to settlement of

1 claims for interest. (the "Non-Wage Portion"). The Non-Wage Portions are
2 not subject to wage withholdings and will be reported on IRS 1099 Forms.
3 Participating Class Members assume full responsibility and liability for any
4 employee taxes owed on their Individual Class Payment.

5 3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual

6 Class Payments. Non-Participating Class Members will not receive any
7 Individual Class Payments. The Workweeks of Non-Participating Class
8 Members are not included in the calculation of payments to Participating
9 Class Members and therefor have no effect on the calculation of Individual
10 Class Payments paid from the Net Settlement Amount.

11 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of
12 \$100,000.00 to be paid from the Gross Settlement Amount, with 75% (\$75,000.00)
13 allocated to the LWDA PAGA Payment and 25% (\$25,000.00) allocated to the
14 Individual PAGA Payments.

15 3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a)
16 dividing the amount of the Aggrieved Employees' 25% share of PAGA
17 Penalties \$25,000.00 by the total number of PAGA Pay Periods worked by
18 all Aggrieved Employees during the PAGA Period and (b) multiplying the
19 result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved
20 Employees assume full responsibility and liability for any taxes owed on
21 their Individual PAGA Payment.

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

1 **4. SETTLEMENT FUNDING AND PAYMENTS.**

2 4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records
3 to date, Defendant estimates there are approximately 875 Class Members who collectively
4 worked approximately 105,000 Workweeks, and approximately 750 Aggrieved
5 Employees.

6 4.2. Class Data. Not later than 15 days after the Court grants Preliminary Approval of the
7 Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a
8 Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator
9 must maintain the Class Data in confidence, use the Class Data only for purposes of this
10 Settlement and for no other purpose, and restrict access to the Class Data to Administrator
11 employees who need access to the Class Data to effect and perform under this Agreement.
12 Defendant has a continuing duty to immediately notify Class Counsel if it discovers that
13 the Class Data omitted class member identifying information and to provide corrected or
14 updated Class Data as soon as reasonably feasible. Without any extension of the deadline
15 by which Defendant must send the Class Data to the Administrator, the Parties and their
16 counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise
17 resolve any issues related to missing or omitted Class Data.

18 4.3. Funding of Gross Settlement Amount. Defendant will fund the GSA and the employer's
19 share of payroll taxes no later than 14 days after the Effective Date, or 12 months after
20 August 3, 2023, whichever is later.

21 4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendant funds the
22 Gross Settlement Amount, the Administrator will mail checks for all Individual Class
23 Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the
24 Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel
25 Litigation Expenses Payment, and the Class Representative Service Payment.
26 Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
27 Payment and the Class Representative Service Payment shall not precede disbursement of
28 Individual Class Payments and Individual PAGA Payments.

1 4.4.1. The Administrator will issue checks for the Individual Class Payments and/or
2 Individual PAGA Payments and send them to the Class Members via First Class
3 U.S. Mail, postage prepaid. The face of each check shall prominently state the
4 date (not less than 180 days after the date of mailing) when the check will be
5 voided. The Administrator will cancel all checks not cashed by the void date. The
6 Administrator will send checks for Individual Settlement Payments to all
7 Participating Class Members (including those for whom Class Notice was returned
8 undelivered). The Administrator will send checks for Individual PAGA Payments
9 to all Aggrieved Employees including Non-Participating Class Members who
10 qualify as Aggrieved Employees (including those for whom Class Notice was
11 returned undelivered). The Administrator may send Participating Class Members a
12 single check combining the Individual Class Payment and the Individual PAGA
13 Payment. Before mailing any checks, the Settlement Administrator must update
14 the recipients' mailing addresses using the NCOA database.

15 4.4.2. The Administrator must conduct a Class Member Address Search for all other
16 Class Members whose checks are returned undelivered without a United States
17 Postal Service ("USPS") forwarding address. Within 7 days of receiving a
18 returned check the Administrator must re-mail checks to the USPS forwarding
19 address provided or to an address ascertained through the Class Member Address
20 Search. The Administrator need not take further steps to deliver checks to Class
21 Members whose re-mailed checks are returned as undelivered. The Administrator
22 shall promptly send a replacement check to any Class Member whose original
23 check was lost or misplaced, requested by the Class Member prior to the void date.

24 4.4.3. For any Class Member whose Individual Class Payment check or Individual
25 PAGA Payment check is uncashed and cancelled after the void date, the
26 Administrator shall transmit the funds represented by such checks to the California
27 Controller's Unclaimed Property Fund in the name of the Class Member thereby
28 leaving no "unpaid residue" subject to the requirements of California Code of Civil

1 Procedure § 384(b).

2 4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall
3 not obligate Defendant to confer any additional benefits or make any additional
4 payments to Class Members (such as 401(k) contributions or bonuses) beyond
5 those specified in this Agreement.

6 **5. RELEASES OF CLAIMS.**

7 Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all
8 employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class
9 Members, and Class Counsel will release claims against all Released Parties as follows:

10 5.1. Plaintiff's Release.

11 5.1.1. Scope of Plaintiff's Release. Plaintiff and his or her respective former and present
12 spouses, representatives, agents, attorneys, heirs, administrators, successors, and
13 assigns generally, release and discharge Released Parties from all claims,
14 transactions, or occurrences, including, but not limited to: (a) all claims that were,
15 or reasonably could have been, alleged, based on the facts contained, in the
16 Operative Complaint; (b) all PAGA claims that were, or reasonably could have
17 been, alleged based on facts contained in the Operative Complaint, and Plaintiff's
18 PAGA Notice; (c) and any and all claims, demands, obligations, causes of action of
19 any nature whatsoever, whether based on tort, including but not limited to
20 wrongful termination, public policy, constructive discharge, negligent or
21 intentional tort; contract (implied, oral or written), or breach thereof; fraud; or
22 statute, including the California Fair Employment and Housing Act; or any other
23 theory of recovery or claim either in equity or in law, whether or not now known,
24 suspected or unsuspected, or claimed, which Plaintiff ever had or now has or
25 claims to have, arising out of or in any way connected with Plaintiff's employment
26 with or separation from Defendant. ("Plaintiff's Release.") Plaintiff acknowledges
27 that Plaintiff may discover facts or law different from, or in addition to, the facts or
28 law that Plaintiff now knows or believes to be true but agrees, nonetheless, that

1 Plaintiff's Release shall be and remain effective in all respects, notwithstanding
2 such different or additional facts or Plaintiff's discovery of them.

3 5.1.2. Exclusions from Plaintiff's Release. Plaintiff's Release does not extend to any
4 claims or actions to enforce this Agreement, or to any claims for vested benefits,
5 unemployment benefits, disability benefits, social security benefits, workers'
6 compensation benefits that arose at any time, or based on occurrences outside the
7 Class Period.

8 5.1.3. Plaintiff's Waiver of Rights Under California Civil Code § 1542. For purposes of
9 Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions,
10 rights, and benefits, if any, of Section 1542 of the California Civil Code, which
11 reads:

12 **A general release does not extend to claims that the creditor**
13 **or releasing party does not know or suspect to exist in his or**
14 **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.

15 5.2. Release by Participating Class Members: All Participating Class Members, on behalf of
16 themselves and their respective former and present representatives, agents, attorneys, heirs,
17 administrators, successors, and assigns, release Released Parties from (i) all claims that
18 were alleged, or reasonably could have been alleged, based on the Class Period facts stated
19 in the Operative Complaint, including:

- 20 a. Failure to Pay Minimum Wages [Lab. Code §§ 204, 1194, 1194.2, and 1197];
21 b. Failure to Pay Overtime Compensation [Lab. Code §§ 1194 and 1198];
22 c. Failure to Provide Meal Periods [Lab. Code §§ 226.7, 512];
23 d. Failure to Authorize and Permit Rest Breaks [Lab. Code §§ 226.7];
24 e. Failure to Indemnify Necessary Business Expenses [Lab. Code § 2802];
25 f. Failure to Timely Pay Final Wages at Termination [Lab. Code §§ 201-203];
26 g. Failure to Provide Accurate Itemized Wage Statements [Lab. Code § 226];
27 h. Unfair Business Practices [Bus. & Prof. Code §§ 17200, et seq.]; and

28 Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not

1 release any other claims, including claims for vested benefits, wrongful termination,
2 violation of the Fair Employment and Housing Act, unemployment insurance, disability,
3 social security, workers' compensation, or claims based on facts occurring outside the
4 Class Period.

5 5.3. Release by Class Members Who Are Aggrieved Employees: All Class Members who are
6 Aggrieved Employees are deemed to release, on behalf of themselves and their respective
7 former and present representatives, agents, attorneys, heirs, administrators, successors, and
8 assigns, the Released Parties from all claims for PAGA penalties that were alleged, or
9 reasonably could have been alleged, based on the PAGA Period facts stated in the
10 Operative Complaint, and the PAGA Notice.

11
12 **6. MOTION FOR PRELIMINARY APPROVAL.**

13 The Parties agree to jointly prepare and file a motion for preliminary approval ("Motion for Preliminary
14 Approval") that complies with the Court's current checklist for preliminary approvals, to the extent the
15 Court maintains such a checklist.

16 6.1. Defendant's Declaration in Support of Preliminary Approval. Within 7 days of the full
17 execution of this Agreement, Defendant will prepare and deliver to Class Counsel a signed
18 declaration from Defendant and/or Defense Counsel disclosing all facts relevant to any
19 actual or potential conflicts of interest with the Administrator, *if any such actual or*
20 *potential conflicts exist*. Similarly, if any other pending matter or action asserting claims
21 will be extinguished or adversely affected by the Settlement, Defendant shall prepare and
22 deliver to Class Counsel a signed declaration from Defendant and/or Defense Counsel
23 identifying any other pending matter or action asserting claims that will be extinguished or
24 adversely affected by the Settlement. Alternatively, if such other actions are filed between
25 the execution of this Agreement and the filing of the Motion for Preliminary Approval and
26 become known to Defendant and Defense Counsel, Defense Counsel will advise Class
27 Counsel.

28 6.2. Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all

documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code § 2699(f)(2)); (ii) a draft proposed order granting preliminary approval and approval of PAGA settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and the Administrator; (vi) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code § 2699.3(a)), Operative Complaint (Labor Code § 2699(l)(1)), this Agreement (Labor Code § 2699(l)(2)); and, (vii) all facts relevant to any actual or potential conflict of interest with Class Members, and/or the Administrator. In their declarations, Plaintiff and Class Counsel 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.

6.3. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court’s Preliminary Approval Order to the Administrator.

6.4. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel

1 and Defense Counsel will expeditiously work together on behalf of the Parties by meeting
2 in person or by telephone, and in good faith, to resolve the disagreement. If the Court does
3 not grant Preliminary Approval or conditions Preliminary Approval on any material
4 change to this Agreement, Class Counsel and Defense Counsel will expeditiously work
5 together on behalf of the Parties by meeting in person or by telephone, and in good faith, to
6 modify the Agreement and otherwise satisfy the Court's concerns.

7
8 **7. SETTLEMENT ADMINISTRATION.**

9 7.1. Selection of Administrator. The Parties have jointly selected Phoenix Class Action
10 Administration Solutions ("Phoenix") to serve as the Administrator and verified that, as a
11 condition of appointment, Phoenix agrees to be bound by this Agreement and to perform,
12 as a fiduciary, all duties specified in this Agreement in exchange for payment of
13 Administration Expenses. The Parties and their Counsel represent that they have no
14 interest or relationship, financial or otherwise, with the Administrator other than a
15 professional relationship arising out of prior experiences administering settlements.

16 7.2. Employer Identification Number. The Administrator shall have and use its own Employer
17 Identification Number for purposes of calculating payroll tax withholdings and providing
18 reports state and federal tax authorities.

19 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets
20 the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation §
21 468B-1.

22 7.4. Notice to Class Members.

23 7.4.1. No later than three (3) business days after receipt of the Class Data, the
24 Administrator shall notify Class Counsel that the list has been received and state
25 the number of Class Members, Aggrieved Employees, Workweeks, and PAGA
26 Pay Periods reflected in the Class Data.

27 7.4.2. Using best efforts to perform as soon as possible, and in no event later than 14 days
28 after receiving the Class Data, the Administrator will send to all Class Members

1 identified in the Class Data, via first-class USPS mail, the Class Notice with
2 Spanish translation substantially in the form attached to this Agreement as Exhibit
3 A. The first page of the Class Notice shall prominently estimate the dollar amounts
4 of each Individual Class Payment and/or Individual PAGA Payment payable to the
5 Class Member and/or Aggrieved Employee, and the number of Workweeks and
6 PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing
7 Class Notices, the Administrator shall update Class Member addresses using the
8 NCOA database.

9 7.4.3. Not later than 3 business days after the Administrator's receipt of any Class Notice
10 returned by the USPS as undelivered, the Administrator shall re-mail the Class
11 Notice using any forwarding address provided by the USPS. If the USPS does not
12 provide a forwarding address, the Administrator shall conduct a Class Member
13 Address Search, and re-mail the Class Notice to the most current address obtained.
14 The Administrator has no obligation to make further attempts to locate or send
15 Class Notice to Class Members whose Class Notice is returned by the USPS a
16 second time.

17 7.4.4. The deadlines for Class Members' written objections, challenges to Workweeks
18 and/or pay periods, and Requests for Exclusion will be extended an additional 14
19 days beyond the 60 days otherwise provided in the Class Notice for all Class
20 Members whose notices are re-mailed. The Administrator will inform the Class
21 Member of the extended deadline with the re-mailed Class Notice.

22 7.4.5. If the Administrator, Defendant or Class Counsel is contacted by or otherwise
23 discovers any persons who believe they should have been included in the Class
24 Data and should have received Class Notice, the Parties will expeditiously meet
25 and confer in person or by telephone, and in good faith, in an effort to agree on
26 whether to include them as Class Members. If the Parties agree, such persons will
27 be Class Members entitled to the same rights as other Class Members, and the
28 Administrator will send, via email or overnight delivery, a Class Notice requiring

1 them to exercise options under this Agreement not later than 14 days after receipt
2 of Class Notice, or the deadline dates in the Class Notice, which ever are later.

3 7.5. Requests for Exclusion (Opt-Outs).

4 7.5.1. Class Members who wish to exclude themselves (opt-out of) the Class portion of
5 the Settlement must send the Administrator, by fax, email, or mail, a signed written
6 Request for Exclusion not later than 60 days after the Administrator mails the Class
7 Notice (plus an additional 14 days for Class Members whose Class Notice is re-
8 mailed). A Request for Exclusion is a letter from a Class Member or his/her
9 representative that reasonably communicates the Class Member's election to be
10 excluded from the Class portion of the Settlement and includes the Class Member's
11 name, address and email address or telephone number. To be valid, a Request for
12 Exclusion must be timely faxed, emailed, or postmarked by the Response
13 Deadline.

14 7.5.2. The Administrator may not reject a Request for Exclusion as invalid because it
15 fails to contain all the information specified in the Class Notice. The Administrator
16 shall accept any Request for Exclusion as valid if the Administrator can reasonably
17 ascertain the identity of the person as a Class Member and the Class Member's
18 desire to be excluded. The Administrator's determination shall be final and not
19 appealable or otherwise susceptible to challenge. If the Administrator has reason to
20 question the authenticity of a Request for Exclusion, the Administrator may
21 demand additional proof of the Class Member's identity. The Administrator's
22 determination of authenticity shall be final as to the Parties, but a Class Member
23 whose Request for Exclusion is rejected by the Administrator may present a
24 challenge to that determination to the Court.

25 7.5.3. Every Class Member who does not submit a timely and valid Request for
26 Exclusion is deemed to be a Participating Class Member under this Agreement,
27 entitled to all benefits and bound by all terms and conditions of the Settlement,
28 including the Participating Class Members' Releases under Paragraphs 5.2 and 5.3

1 of this Agreement, regardless whether the Participating Class Member actually
2 receives the Class Notice or objects to the Settlement.

3 7.5.4. Every Class Member who submits a valid and timely Request for Exclusion is a
4 Non-Participating Class Member and shall not receive an Individual Class
5 Payment or have the right to object to the class action components of the
6 Settlement. Because future PAGA claims are subject to claim preclusion upon
7 entry of the Judgment, Non-Participating Class Members who are Aggrieved
8 Employees are deemed to release the claims identified in Paragraph 5.3 of this
9 Agreement and are eligible for an Individual PAGA Payment.

10 7.6. Challenges to Calculation of Workweeks. Each Class Member shall have 60 days after the
11 Administrator mails the Class Notice (plus an additional 14 days for Class Members whose
12 Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay
13 Periods (if any) allocated to the Class Member in the Class Notice. The Class Member
14 may challenge the allocation by communicating with the Administrator via fax, email or
15 mail. The Administrator must encourage the challenging Class Member to submit
16 supporting documentation. In the absence of any contrary documentation, the
17 Administrator is entitled to presume that the Workweeks contained in the Class Notice are
18 correct so long as they are consistent with the Class Data. The Administrator's
19 determination of each Class Member's allocation of Workweeks and/or PAGA Pay
20 Periods shall be final as to the Parties (although Defendant shall retain the right to correct
21 erroneous Class Data if subsequently discovered), but a Class Member whose Workweek
22 and/or Pay Period challenge is rejected by the Administrator may present the same
23 evidence supporting the Workweek and/or Pay Period challenge to the Court for review.
24 The Administrator shall promptly provide copies of all challenges to calculation of
25 Workweeks and/or PAGA Pay Periods to Defense Counsel and Class Counsel and the
26 Administrator's determinations as to the challenges.

27 7.7. Objections to Settlement.

28 7.7.1. Only Participating Class Members may object to the class action components of

1 the Settlement and/or this Agreement, including contesting the fairness of the
2 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class
3 Counsel Litigation Expenses Payment and/or Class Representative Service
4 Payment.

5 7.7.2. Participating Class Members may send written objections to the Administrator, by
6 fax, email, or mail. In the alternative, Participating Class Members may appear in
7 Court (or hire an attorney to appear in Court) to present verbal objections at the
8 Final Approval Hearing. A Participating Class Member who elects to send a
9 written objection to the Administrator must do so not later than 60 days after the
10 Administrator's mailing of the Class Notice (plus an additional 14 days for Class
11 Members whose Class Notice was re-mailed).

12 7.7.3. Non-Participating Class Members have no right to object to any of the class action
13 components of the Settlement.

14 7.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be
15 performed or observed by the Administrator contained in this Agreement or otherwise.

16 7.8.1. Website, Email Address and Toll-Free Number. The Administrator will establish
17 and maintain and use an internet website to post information of interest to Class
18 Members including the date, time and location for the Final Approval Hearing, the
19 Preliminary Approval Order, the Class Notice, the Final Approval Order, and the
20 Judgment. The Administrator will also maintain and monitor an email address and
21 a toll-free telephone number to receive Class Member calls, faxes and emails.

22 7.8.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will
23 promptly review on a rolling basis Requests for Exclusion to ascertain their
24 validity. Not later than 5 days after the expiration of the deadline for submitting
25 Requests for Exclusion, the Administrator shall email a list to Class Counsel and
26 Defense Counsel containing (a) the names and other identifying information of
27 Class Members who have timely submitted valid Requests for Exclusion
28 ("Exclusion List"); (b) the names and other identifying information of Class

1 Members who have submitted invalid Requests for Exclusion; and (c) copies of all
2 Requests for Exclusion from the Settlement submitted by the Class Members
3 (whether valid or invalid).

4 7.8.3. Weekly Reports. The Administrator must, on a weekly basis, provide written
5 reports to Class Counsel and Defense Counsel that, among other things, tally the
6 number of: Class Notices mailed or re-mailed, Class Notices returned undelivered,
7 Requests for Exclusion (whether valid or invalid) received, objections received,
8 and challenges to Workweeks and/or PAGA Pay Periods received and/or resolved
9 (“Weekly Report”). The Weekly Reports must include provide the Administrator’s
10 assessment of the validity of Requests for Exclusion and attach copies of all
11 Requests for Exclusion and objections received. In addition to the Weekly Reports,
12 the Administrator shall report to the Parties when it has completed the initial
13 distribution of the Individual Class Payments and Individual PAGA Payments to
14 all individuals with valid addresses.

15 7.8.4. Workweek and/or Pay Period Challenges. The Administrator has the authority to
16 address and make decisions consistent with the terms of this Agreement on all
17 Class Member challenges over the calculation of Workweeks and/or PAGA Pay
18 Periods. The Administrator’s decision shall be final and not appealable or
19 otherwise susceptible to challenge.

20 7.8.5. Administrator’s Declaration. Not later than 14 days before the date by which
21 Plaintiff is required to file the Motion for Final Approval of the Settlement, the
22 Administrator will provide to Class Counsel and Defense Counsel, a signed
23 declaration suitable for filing in Court attesting to its due diligence and compliance
24 with all of its obligations under this Agreement, including, but not limited to, its
25 mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing
26 of Class Notices, attempts to locate Class Members, the total number of Requests
27 for Exclusion from Settlement it received (both valid or invalid), the number of
28 written objections and attach the Exclusion List. The Administrator will

1 supplement its declaration as needed or requested by the Parties and/or the Court.

2 Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

3 7.8.6. Final Report by Settlement Administrator. Within 14 days after the Administrator
4 disburses all funds in the Gross Settlement Amount, the Administrator will provide
5 Class Counsel and Defense Counsel with a final report detailing its disbursements
6 by employee identification number only of all payments made under this
7 Agreement. At least 14 days before any deadline set by the Court, the
8 Administrator will prepare, and submit to Class Counsel and Defense Counsel, a
9 signed declaration suitable for filing in Court attesting to its disbursement of all
10 payments required under this Agreement. Class Counsel is responsible for filing
11 the Administrator's declaration in Court.

12 **8. ESCALATOR CLAUSE**

13 If the number of workweeks in the Class Period (June 1, 2017 to August 3, 2023) exceeds 105,000 by
14 more than 12.5%, Defendant will increase the Gross Settlement Amount in the exact proportionate amount
15 as to any additional workweeks above 12.5% (i.e., 14.5% more workweeks than estimated will result in a
16 2% proportionate increase in the Gross Settlement Amount).

17
18 **9. DEFENDANT'S RIGHT TO WITHDRAW.**

19 If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 5% of the total of all
20 Class Members, Defendant may, but is not obligated to, withdraw from the Settlement. The Parties agree
21 that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and
22 that neither Party will have any further obligation to perform under this Agreement; provided, however,
23 Defendant will remain responsible for paying all Settlement administration expenses incurred to that point.
24 Defendant must notify Class Counsel and the Court of its election to withdraw not later than 10 calendar
25 days after the Settlement Administrator ends the final Exclusion List to Defense Counsel; late elections
26 will have no effect.

1 **10. MOTION FOR FINAL APPROVAL.**

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

9 10.1. Response to Objections. Each Party retains the right to respond to any objection raised by
10 a Participating Class Member, including the right to file responsive documents in Court no
11 later than five court days prior to the Final Approval Hearing, or as otherwise ordered or
12 accepted by the Court.

13 10.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final
14 Approval on any material change to the Settlement (including, but not limited to, the scope
15 of release to be granted by Class Members), the Parties will expeditiously work together in
16 good faith to address the Court’s concerns by revising the Agreement as necessary to
17 obtain Final Approval. The Court’s decision to award less than the amounts requested for
18 the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel
19 Litigation Expenses Payment and/or Administration Expenses Payment shall not constitute
20 a material modification to the Agreement within the meaning of this paragraph.

21 10.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the
22 Court will retain jurisdiction over the Parties, Action, and the Settlement solely for
23 purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement
24 administration matters, and (iii) addressing such post-Judgment matters as are permitted by
25 law.

26 10.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
27 conditions of this Agreement, specifically including the Class Counsel Fees Payment and
28 Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the

Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to 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 of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

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

11. AMENDED JUDGMENT.

If any amended judgment is required under Code of Civil Procedure § 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

12. ADDITIONAL PROVISIONS.

12.1. No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed

1 claims. Nothing in this Agreement is intended or should be construed as an admission by
2 Defendant that any of the allegations in the Operative Complaint have merit or that
3 Defendant has any liability for any claims asserted, and Defendant specifically denies that
4 any of the allegations have merit and that it has any liability. Nor should this Agreement
5 be intended or construed as an admission by Plaintiff that Defendant's defenses in the
6 Action have merit. The Parties agree that class certification and representative treatment is
7 for purposes of this Settlement only. If, for any reason the Court does not grant
8 Preliminary Approval, Final Approval or enter Judgment, Defendant reserves the right to
9 contest certification of any class for any reasons, and Defendant reserves all available
10 defenses to the claims in the Action, and Plaintiff reserves the right to move for class
11 certification on any grounds available and to contest Defendant's defenses. The
12 Settlement, this Agreement and Parties' willingness to settle the Action will have no
13 bearing on, and will not be admissible in connection with, any litigation (except for
14 proceedings to enforce or effectuate the Settlement and this Agreement).

15 12.2. No Solicitation. The Parties separately agree that they and their respective counsel and
16 employees will not solicit any Class Member to opt out of or object to the Settlement, or
17 appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class
18 Counsel's ability to communicate with Class Members in accordance with Class Counsel's
19 ethical obligations owed to Class Members.

20 12.3. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement
21 together with its attached exhibits shall constitute the entire agreement between the Parties
22 relating to the Settlement, superseding any and all oral representations, warranties,
23 covenants, or inducements made to or by any Party.

24 12.4. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and
25 represent that they are authorized by Plaintiff and Defendant, respectively, to take all
26 appropriate action required or permitted to be taken by such Parties pursuant to this
27 Agreement to effectuate its terms, and to execute any other documents reasonably required
28 to effectuate the terms of this Agreement including any amendments to this Agreement.

- 1 12.5. Cooperation. The Parties and their counsel will cooperate with each other and use their
2 best efforts, in good faith, to implement the Settlement by, among other things, modifying
3 the Settlement Agreement, submitting supplemental evidence and supplementing points
4 and authorities as requested by the Court. In the event the Parties are unable to agree upon
5 the form or content of any document necessary to implement the Settlement, or on any
6 modification of the Agreement that may become necessary to implement the Settlement,
7 the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 8 12.6. No Prior Assignments. The Parties separately represent and warrant that they have not
9 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
10 encumber to any person or entity and portion of any liability, claim, demand, action, cause
11 of action, or right released and discharged by the Party in this Settlement.
- 12 12.7. No Tax Advice. Neither Plaintiff, Class Counsel, Defendant, nor Defense Counsel are
13 providing any advice regarding taxes or taxability, nor shall anything in this Settlement be
14 relied upon as such within the meaning of United States Treasury Department Circular 230
15 (31 CFR Part 10, as amended) or otherwise.
- 16 12.8. Modification of Agreement. This Agreement, and all parts of it, may be amended,
17 modified, changed, or waived only by an express written instrument signed by all Parties
18 or their representatives, and approved by the Court.
- 19 12.9. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the
20 benefit of, the successors of each of the Parties.
- 21 12.10. Applicable Law. All terms and conditions of this Agreement and its exhibits will be
22 governed by and interpreted according to the internal laws of the state of California,
23 without regard to conflict of law principles.
- 24 12.11. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of
25 this Agreement. This Agreement will not be construed against any Party on the basis that
26 the Party was the drafter or participated in the drafting.
- 27 12.12. Confidentiality. To the extent permitted by law, all agreements made, and orders entered
28 during Action and in this Agreement relating to the confidentiality of information shall

1 survive the execution of this Agreement.

2 12.13. Use and Return of Class Data. Information provided to Class Counsel pursuant to
3 Evidence Code § 1152, and all copies and summaries of the Class Data provided to Class
4 Counsel by Defendant in connection with the mediation, other settlement negotiations, or
5 in connection with the Settlement, may be used only with respect to this Settlement, and no
6 other purpose, and may not be used in any way that violates any existing contractual
7 agreement, statute, or rule of court. Not later than 90 days after the date when the Court
8 discharges the Administrator's obligation to provide a Declaration confirming the final pay
9 out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class
10 Data received from Defendant unless, prior to the Court's discharge of the Administrator's
11 obligation, Defendant makes a written request to Class Counsel for the return, rather than
12 the destructions, of Class Data.

13 12.14. Headings. The descriptive heading of any section or paragraph of this Agreement is
14 inserted for convenience of reference only and does not constitute a part of this
15 Agreement.

16 12.15. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be
17 to calendar days. In the event any date or deadline set forth in this Agreement falls on a
18 weekend or federal legal holiday, such date or deadline shall be on the first business day
19 thereafter.

20 12.16. Notice. All notices, demands or other communications between the Parties in connection
21 with this Agreement will be in writing and deemed to have been duly given as of the third
22 business day after mailing by United States mail, or the day sent by email or messenger,
23 addressed as follows:

To Plaintiff:

Kane Moon (SBN 249834)
kmoon@moonlawgroup.com
H. Scott Leviant (SBN 200834)
hsleviant@moonlawgroup.com
Mariam Ghazaryan (SBN 341119)
mghazaryan@moonlawgroup.com
MOON LAW GROUP, PC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125

To Defendant:

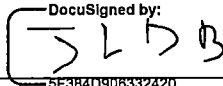
Rona P. Layton (SBN 121238)
rlayton@laytonlawfirm.com
LAYTON LAW FIRM
111 North Market Street, #300
San Jose, CA 95113
Telephone: (408) 892-9870
Facsimile: (408) 332-5857

12.17. 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.

12.18. 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 Code of Civil Procedure § 583.330 to extend the date to bring a case to trial under Code of Civil Procedure § 583.310 for the entire period of this settlement process.

Plaintiff and Class Representative:

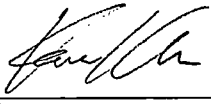
Dated: 5/6/2024

By: 
PLAINTIFF JORGE LUIS DIAZ BERNAL

Plaintiff's Counsel:

Dated: 5/6/2024

MOON LAW GROUP, PC

By: 

Kane Moon
H. Scott Leviant
Mariam Ghazaryan

Attorneys for Plaintiff

Defendant:

Dated: _____

GACHINA LANDSCAPE MANAGEMENT, INC.

By: _____
Print Name

Signature

Title

[SIGNATURES CONTINUE ON NEXT PAGE]

Defendant's Counsel:

Dated: _____

LAYTON LAW FIRM

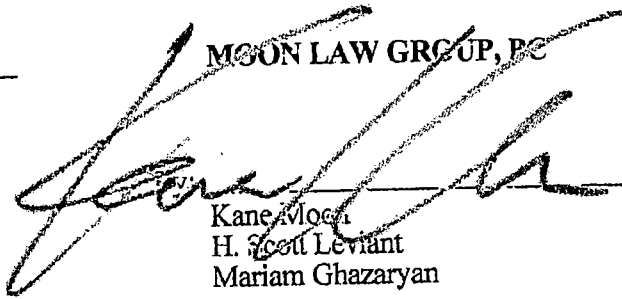
By: _____
Rona P. Layton

Attorneys for Defendant

Plaintiff's Counsel:

Dated: 5/6/2024

MOON LAW GROUP, PC



Kane Moon
H. Scott Leviant
Mariam Ghazaryan

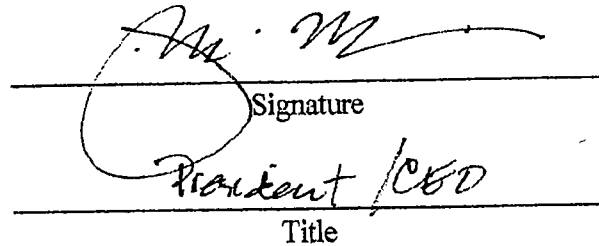
Attorneys for Plaintiff

Defendant:

Dated: 5/6/24

GACHINA LANDSCAPE MANAGEMENT, INC.

By: H. Jocelyn Khumara - Gachina
Print Name



Signature

President / CEO
Title

[SIGNATURES CONTINUE ON NEXT PAGE]

Defendant's Counsel:

Dated: 5-6-24

LAYTON LAW FIRM

By: Rona P. Layton
Rona P. Layton

Attorneys for Defendant

CERTIFICATE OF ELECTRONIC SERVICE
(CCP 1010.6(6) & CRC 2.251)

I, Sean Kane, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On September 11, 2024, I electronically served the attached document via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: September 11, 2024

Brandon E. Riley, Court Executive Officer

By: 
Sean Kane, Deputy Clerk