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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BENITO

Daniel Solano, an individual, on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

THE GROVE, HIGHWAY 156, a California
Corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. CU-21-00098

CLASS ACTION

Assigned to the Hon. J. Omar Rodriguez
(Courtroom 1)

**JOINT STIPULATION AND
SETTLEMENT AGREEMENT**

Complaint Filed: May 21, 2021
FAC Filed: July 28, 2021
Trial Date: Not Set

JOINT STIPULATION AND SETTLEMENT AGREEMENT

Subject to its terms and conditions and the approval of the Court, this Joint Stipulation and Settlement Agreement (hereinafter the “Settlement Agreement” or “Agreement”) is made and entered into by and among Plaintiff Daniel Solano (hereinafter the “Plaintiff”), individually and on behalf of the Settlement Class, as defined herein, and Defendant The Grove, Highway 156 (hereinafter the “Defendant” or “Grove”). Plaintiff and Defendant are jointly referred to in this Settlement Agreement as the “Parties,” and each of them as a “Party.”

1. **DEFINITIONS**

1.1 The term “**Agreement**” means this Settlement Agreement.

1.2 The term “**Attorneys’ Fees and Costs**” means the amount of attorneys’ fees and costs and expenses to be requested by Class Counsel, subject to Court approval, in accordance with Subsection 4.4 of this Agreement, and includes all such fees, costs, expenses incurred as of the date this Settlement Agreement is executed, as well as such fees, costs, expenses incurred in documenting the Settlement, securing approval of the Settlement, administering and obtaining a judgment in the Action before the Court. Attorneys’ Fees and Costs shall be paid from the Class Settlement Amount.

1.3 The term “**Claimant**” and “**Settlement Class Member**” means any Class Member who does not opt-out of the Settlement.

1.4 The term “**Claims Administrator**” means Phoenix Settlement Administrators (hereinafter “PSA”), the entity agreed to by the Parties, subject to Court approval, which will perform the duties of, among other things: (i) translating the Notice into Spanish; (ii) mailing the Notice in English and Spanish to Class Members; (iii) performing an NCOA search and skip-tracing; (iv) tracking and addressing Opt-Out Letters, Objections, and shift count disputes; (v) notifying the Parties regarding submitted Opt-Out Letters, Objections, and shift count disputes consistent with this Agreement; (vi) issuing payments consistent with this Agreement; and, (vii) determining any appropriate tax withholdings from the wage portion of payments to Settlement Class Members, making the appropriate payments based on withholdings and the employer’s share of payroll taxes, and issuing any required tax

paperwork.

1.5 The term “***Claims Period***” means the forty-five (45) day time-period for Settlement Class members to submit an Opt-Out Letter, an Objection to the Settlement, or to dispute the shift count listed on the Class Notice.

1.6 The term “***Claims Deadline***” is the last day of the Claims Period.

1.7 The term “***Complaint***” or “***Operative Complaint***” means the First Amended Complaint (“FAC”) filed on July 28, 2021, styled as Daniel Solano v. *The Grove, Highway 156* (Case No. CU-21-00098) in the Superior Court of the State of California, County of San Benito.

1.8 The term “***Class Counsel***” means the following counsel who, subject to Court approval, shall act as counsel for the Settlement Class: Dychter Law Offices, APC.

1.9 The term “***Class***” or “***Class Member***” means all persons who worked for Defendant The Grove, Highway 156 as a non-exempt, hourly employee at either The Grove location or the Grenada Theatre location at any time on or after May 21, 2017 *through* February 9, 2023.

1.10 The term “***Class Settlement Amount***” means the gross sum of One Hundred and Fifty Thousand Dollars (\$150,000.00), which, in addition the employer’s share of corporate payroll tax obligation set forth herein, shall be the maximum sum paid by Defendant to settle this Litigation. The Class Settlement Amount includes, without limitation, the combined total of any Attorneys’ Fees and Costs approved by the Court, any Service Enhancement approved by the Court to the named Plaintiff, any Settlement Administration Costs approved by the Court, any payment to the State of California Labor and Workforce Development Agency (“LWDA”) pursuant to the California Private Attorneys General Act (“PAGA”), and all amounts paid to Settlement Class Members. The corporate payroll tax obligation on the “wage” portion of the settlement to Settlement Class Members shall be paid by Defendant *separate and apart* from the Class Settlement Amount and is not included in the Class Settlement Amount.

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- 1.11 The term “**Court**” means the Superior Court of the State of California, County of San Benito, and any appellate court which may review any orders entered by the Court related to this Settlement.
- 1.12 The term “**Execution**” refers to the signing of this Agreement by all signatories hereto.
- 1.13 The term “**Final Judgment**” refers to the final judgment entered by the Court.
- 1.14 “**Final Approval Hearing**” means a hearing for the purpose of: (i) determining the fairness, adequacy, and reasonableness of the Settlement Agreement, including but not limited to with respect to allocations for attorneys’ fees and costs, pursuant to class action procedures and requirements; (ii) determining the good faith of the Settlement Agreement; and (iii) entering Judgment. This hearing is intended to be the final approval hearing required under California Rule of Court 3.769(a).
- 1.15 The term “**Litigation**” means *Daniel Solano v. The Grove, Highway 156 (Case No. CU-21-00098)* which is pending in the Superior Court of the State of California, County of San Benito.
- 1.16 The term “**Named Plaintiff**” means the named plaintiff in the Litigation, Mr. Daniel Solano. The Named Plaintiff will seek to be designated as Settlement Class Representative for the Settlement Class.
- 1.17 The term “**Net Settlement Amount**” means the Class Settlement Amount minus the combined total of any attorneys’ fees and costs approved by the Court, the amount for settlement administration costs approved by the Court, the Service Enhancement approved by the Court, and the payment pursuant to the PAGA, and any other costs of any kind associated with the settlement with the exception of the employer’s share of corporate payroll tax. The employer’s share of corporate payroll tax obligations on the “wage” portion of the settlement to the Settlement Class Members shall be paid *separate and apart* by Defendant. In the event that the Court reduces the Attorneys’ Fees and Costs, expenses, Service Enhancement, or either increases or decreases the amount allocated to PAGA penalties, the Net Settlement Amount shall be adjusted accordingly and allocated to Settlement Class Members.

1.18 The term “**Notice**” means a document which has been mutually agreed to by the Parties and subject to the Court’s approval and which the Claims Administrator will mail to each Settlement Class Member, in both English and Spanish, explaining the terms of the Settlement, identifying their respective shifts worked during the Class Period, their estimated share of the Net Settlement Amount, the opt-out procedure, the objection procedure, and the procedure related to disputing the stated number of eligible work shifts during the Class Period.

1.19 The term “**Notice and Administration Costs**” or “**Settlement Administration Costs**” means all costs incurred by the Claims Administrator, including but not limited to the cost to: compare the class list against the National Change of Address (“NCOA”) database maintained by the United States Postal Service; typeset, translate into Spanish, print, and mail the Notice to all Class Members in both English and Spanish; perform skip-tracing of returned mailings; calculating, tabulating, and mailing out payments to Class Members; payment of postage required to comply with this Agreement; responding to Class Member inquiries and addressing any challenges to the stated number of work shifts; and all other expenses, including tax reporting and fees to be paid by the Claims Administrator, necessary to administer the Settlement in accordance with this Agreement. Settlement Administration Costs shall not exceed \$8,000. Settlement Administration Costs shall be paid from the Class Settlement Amount.

1.20 The term “**Opt-Out Letter**” refers to a written request to “opt-out” or “exclude” oneself from the Settlement sent by any Class Member who elects to be excluded from the Settlement Class. A Class Member must submit a valid opt-out letter to the Claims Administrator to exclude himself or herself from the Settlement and from the release of claims pursuant to this Settlement. Those who submit a valid and timely Opt-Out Letter will not be considered part of the Settlement Class after their valid and timely Opt-Out Letter is received by the Claims Administrator and will have no standing to object to the Settlement. Those who submit a valid and timely Opt-Out Letter shall still be bound by the release of PAGA claims, as set forth herein.

- 1.21 ***“Order Granting Final Approval of Class Action Settlement”*** shall mean the order and judgment to be entered by the Court titled “Order Granting Motion for Final Approval of Class Action Settlement” and “Judgment.” The “Judgment,” shall constitute approval pursuant to California Rule of Court 3.769(a).
- 1.22 The term ***“Parties”*** means the Named Plaintiff and Defendant.
- 1.23 The term ***“PAGA”*** means the California Labor Code Private Attorneys General Act (California Labor Code §§ 2698, *et seq.*).
- 1.24 The term ***“PAGA Members”*** means those Class Members who worked at any time on or after May 21, 2020 *through* February 9, 2023.
- 1.25 The term ***“Released Claims”*** has the definition provided in ¶ 7.1, below.
- 1.26 The term ***“Service Enhancement”*** means the amount of money to be requested by Class Counsel on behalf of Named Plaintiff Daniel Solano, subject to Court approval, to compensate Named Plaintiff for the efforts and risks he undertook on behalf of the Settlement Class. Any Service Enhancement shall be paid from the Class Settlement Amount.
- 1.27 The term ***“Settlement”*** means the compromise and settlement of the Litigation, as contemplated by this Agreement.
- 1.28 The term ***“Settlement Class”*** means all Claimants.
- 1.29 The term ***“Settlement Class Period”*** means the period of time from May 21, 2017 through February 9, 2023 which is the period of time applicable to the claims being released pursuant to Section 7 hereafter.
- 1.30 The term ***“Settlement Class Representative”*** means Daniel Solano, who Class Counsel shall request be appointed by the Court as class representative for purposes of the Settlement Class.
- 1.31 The term ***“Settlement Disbursement Payment”*** means the disbursements made by the Claims Administrator to Settlement Class Members, Class Counsel, the Settlement Class Representative, the Claims Administrator, and the LWDA, pursuant to the Settlement, as specified in Section 6.3, below.

1.32 ***“Final Effective Date”*** or ***“Effective Date”*** means the latest of the following events have occurred (1) the period for filing any appeal, writ or other appellate proceeding opposing the Settlement has elapsed without any appeal, writ, or other appellate proceeding having been filed; or (2) any appeal, writ or other appellate proceeding related to the Settlement has been dismissed finally and conclusively with no right to pursue further remedies or relief; or (3) any appeal, writ or other appellate proceeding has upheld the Court’s final order with no right to pursue further remedies or relief. In this regard, it is the intention of the Parties that the Settlement shall not become effective until the Court’s order approving the Settlement is completely final, and there is no further recourse by an appellant or objector who seeks to contest the Settlement. It is further agreed by the Parties that this Settlement will not become effective if Defendant is required to pay more than the Class Settlement Amount (in addition to employer’s share of payroll tax) under any circumstances. It is further agreed by and between the Parties that this Settlement shall not become effective, and Defendant shall not have any obligation (monetary or otherwise) under the terms of this Settlement, unless and until any objections, writs and/or appeals, and any rights of appeal with respect to any objections or the judgment, have been finally exhausted and resolved upholding the terms of this Settlement.

1.33 For purposes of determining the Final Effective Date, the Parties agree that only California Courts have jurisdiction over any such appeals, except for any appellate procedure over which the United States Supreme Court may exercise jurisdiction.

2. **RECITALS**

2.1 On May 21, 2021, Plaintiff Daniel Solano filed suit in the Superior Court of the State of California, County of San Benito, against Defendant The Grove, Highway 156 (Case No. CU-21-00098) on behalf of a proposed class of all non-exempt hourly employees working in the State of California at any time since May 21, 2017 through the present date, for multiple wage and hour claims, including but not limited to, failure to pay all minimum and overtime wages for all work performed; failure to provide compliant duty-free meal breaks; failure to provide compliant duty-free rest periods; and, derivative claims for the failure to provide accurate itemized wage statements and failure to pay all

1 wages upon separation of employment; and claims under the Business & Professions
2 Code § 17200, *et seq.* (“UCL”). On May 21, 2021, Plaintiff Solano submitted a notice of
3 new claim to the Labor and Workforce Development Agency (“LWDA”) in order to
4 pursue a claim under the Private Attorneys General Act (“PAGA”) based on the same
5 claims. On July 28, 2021, after exhausting the administrative requirements under the
6 PAGA, Plaintiff filed a First Amended Complaint (“FAC”) to include his PAGA claim.
7 This case was assigned to the Honorable J. Omar Rodriguez (Courtroom 1). Counsel for
8 Defendant filed an Answer to the FAC on or about September 10, 2021.

9 Plaintiff initiated formal written discovery in August 2021, propounding Special
10 Interrogatories, Requests for Production of Documents, and Form Interrogatories-
11 General. Defendant served initial responses to the outstanding discovery in November
12 2021. Thereafter, after meeting and conferring, Defendant served amended discovery
13 responses in December 2021.

14 Thereafter, the parties began discussing private class-wide mediation of this
15 matter and eventually agreed to mediate with Mr. Michael S. Treppa, Esq. Additionally,
16 Defendant agreed to produce specific raw time-punch data, wage data, class member
17 contact information, documents, and other information requested by Plaintiff that was
18 necessary for a meaningful mediation to occur.

19 On February 9, 2023 after Plaintiff received the necessary data and information
20 and retained the services of a consulting firm to assist in the analysis thereof, the Parties
21 attended a full-day mediation before a well-respected and experienced wage and hour
22 class action mediator, Michael S. Treppa, Esq. Although the mediation session did not
23 result in a resolution, on February 10, 2023, the mediator presented the parties with a
24 “Mediator’s Proposal” which was eventually accepted by the Parties resulting in an “all-
25 in” non-reversionary settlement amount of One Hundred and Fifty Thousand Dollars
26 (\$150,000.00), with the corporate payroll tax obligation on the "wage" portion of the
27 Settlement to the Settlement Class Members to be paid separate and apart by Defendant
28 from the Class Settlement Amount.

1 2.2 Named Plaintiff and his Counsel believe this Litigation is meritorious based on applicable
2 law or an extension thereof. Class Counsel represents that they have conducted a thorough
3 investigation into the facts of this case and have diligently pursued an investigation of the
4 claims against Defendant. Based on their own independent investigation and evaluation,
5 Class Counsel are of the opinion that the Settlement is fair, reasonable, and adequate and
6 is in the best interest of the Class Members in light of all known facts and circumstances,
7 including the risk of significant delay, the defenses asserted by Defendant, class
8 certification risk, trial risk, and appellate risk.

9 2.3 Defendant has also actively investigated the facts surrounding the claims brought by the
10 Plaintiff on behalf of the putative class and has actively and aggressively defended itself
11 from said claims. Defendant denies any liability or wrongdoing of any kind associated
12 with the claims alleged. Defendant further asserts that it has complied with all applicable
13 provisions of California statutory, regulatory, and common law and had a good faith belief
14 based on existing law that its practices were and are in compliance. Defendant also has
15 denied and continues to deny, *inter alia*, the allegations that the Class Members have
16 suffered damage; that Defendant in any way failed to pay Class Members for all hours
17 worked and at the lawful rate of pay; that Defendant violated any laws regarding
18 compensation; that Defendant failed to timely pay Class Members all wages owed upon
19 termination/resignation or otherwise when due; that Defendant failed to comply with the
20 law with respect to itemized wage statements; that Defendant violated the law regarding
21 meal breaks and rest periods; that Defendant engaged in any unlawful, unfair or fraudulent
22 business practices; that Defendant engaged in any wrongful conduct as alleged in the
23 Litigation; or that Class Members were harmed by the conduct alleged in the Litigation.
24 Neither this Agreement, nor any document referred to or contemplated herein, nor any
25 action taken to carry out this Agreement, is, may be construed as, or may be used as an
26 admission, concession or indication by or against Defendant of any fault, wrongdoing or
27 liability whatsoever.

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2.4 The entry of Final Judgment in this Litigation shall resolve all claims that were alleged in the operative FAC filed in the Litigation, or which could have been alleged based upon the facts set forth in the operative FAC, with the exception of any claims which might be retained by Settlement Class Members who exclude themselves from the Settlement. The Parties agree to cooperate and take all steps necessary and appropriate to obtain Preliminary Approval and Final Approval of this Settlement, and to effectuate its terms.

2.5 Each of the forgoing Recitals is incorporated into this Agreement as if fully set forth in the body of the Agreement.

3. CERTIFICATION OF SETTLEMENT CLASS

3.1 The Settlement Class shall consist of *all persons who worked for Defendant The Grove, Highway 156 as a non-exempt, hourly employee at either The Grove location or the Grenada Theatre location at any time on or after May 21, 2017 through February 9, 2023.*

3.2 The Parties and Class Counsel agree that, if approved, certification of the Settlement Class is a conditional certification for settlement purposes only, and that if, for any reason, the Court does not grant final approval of the Settlement, or if final approval is not given following the appeal of any order by the Court, or if for any reason the Settlement Effective Date does not occur, the certification of the Settlement Class for settlement purposes shall be deemed null and void without further action by the Court or any of the Parties, each Party shall retain all of their respective rights and shall be returned to their relative legal positions as they existed prior to execution of this Agreement, and neither this Agreement, nor any of its accompanying exhibits or any orders entered by the Court in connection with this Agreement shall be admissible or used for any purpose in this Litigation or any other legal proceeding, except for the enforcement of same.

3.3 The Parties and Class Counsel agree that, if approved, certification of the Settlement Class for settlement purposes is in no way an admission by Defendant that class certification is proper in any other wage and hour litigation, or any other litigation, against Defendant.

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1 **4. TERMS OF SETTLEMENT**

2 4.1 Subject to the other terms and conditions contained in this Agreement, and in consideration
3 of the contemplated pleadings, releases and dismissals set forth in this Agreement, and
4 subject to Court approval, Defendant agrees that the Class Settlement Amount shall be One
5 Hundred and Fifty Thousand Dollars (\$150,000.00).

6 4.1.1 Defendant will provide the Claims Administrator with all names, last known home
7 mailing addresses, social security numbers, dates of employment, and shift counts
8 for each Class Member within five (5) business days of the Court granting
9 Preliminary Approval of the Settlement.

10 4.2 Except for those Class Members who opt-out of the Settlement, all Settlement Class
11 Members shall recover a share of the Net Settlement Amount. The Net Settlement Amount
12 shall be allocated as set forth below:

13 4.2.1 Each Settlement Class Member shall be awarded a pro-rata share based
14 upon a percentage equal to the number of each Class Member's shifts
15 worked during the Class Period divided by the total of all Settlement Class
16 Members' shifts worked during the Class Period. Each Settlement Class
17 Member's respective share of the Net Settlement Amount shall be
18 calculated by multiplying the Net Settlement Amount, by a fraction, the
19 numerator of which is the individual class member's shifts worked during
20 the Class Period, and the denominator of which is the total of all aggregate
21 shifts worked during the Class Period by all members of the Settlement
22 Class during the Settlement Class Period. The resulting number shall be
23 the amount that each member of the Settlement Class is eligible to receive.

24 4.2.2 The anticipated share of each Class Member who elects to "opt-out" of
25 the Settlement shall be re-distributed on a *pro rata* basis to all
26 participating, Settlement Class Members.

27 4.3 Class Counsel may request, subject to Court approval, that the Settlement Class
28 Representative be paid a maximum Service Enhancement of up to Five Thousand Dollars

1 (\$5,000.00), which shall be paid from the Class Settlement Amount. This request shall not
2 be opposed by Defendant. In the event the Court does not award the full requested Service
3 Enhancement, the remainder shall be re-distributed on a *pro rata* basis to all participating
4 Settlement Class Members. The Service Enhancement shall be paid to Plaintiff in addition
5 to his *pro rata* share of the Net Settlement.

6 4.4 Class Counsel shall apply to the Court for an award of Attorneys' Fees and Costs, which
7 shall be paid from the Class Settlement Amount. Defendant will not oppose Class
8 Counsel's application for an award of Attorneys' Fees in an amount up to one-third
9 (33.33%) of the Class Settlement Amount comprising Fifty Thousand Dollars
10 (\$50,000.00), plus Costs not to exceed Thirteen Thousand Dollars (\$13,000.00). In the
11 event the Court does not award the full requested Attorneys' Fees or Costs, the
12 remainder(s) shall be re-distributed on a *pro rata* basis to all participating Settlement Class
13 Members.

14 4.4.1 The Parties agree that the Court's approval or denial of any request for
15 Attorneys' Fees and Costs or the Named Plaintiff's Service Enhancement
16 are not conditions to this Agreement and are to be considered by the Court
17 separately from the fairness, reasonableness, adequacy, and good faith of
18 the settlement. Any order or proceeding relating to the application by Class
19 Counsel of an award for Attorneys' Fees and Costs or for Service
20 Enhancement shall not operate to terminate or cancel this Agreement, but
21 in no event shall Defendant be required to pay more than the Class
22 Settlement Amount.

23 4.4.2 Class Counsel agree that they are responsible for allocating the Attorneys'
24 Fees and Costs approved by the Court among themselves and any other
25 counsel that may have any other agreement with them. If a lien is asserted,
26 the Claims Administrator will tender the Attorneys' Fees and Cost award to
27 the Court and shall thereafter be released from any claim related to those
28 payments. Class Counsel warrants and represents that there are no liens on

1 the amounts to be paid pursuant to the terms of this Agreement and that no
2 assignments of the claims to be released or the Attorneys' Fees and Costs
3 to be paid pursuant to this Agreement have been made or attempted. Class
4 Counsel agrees to defend, indemnify and hold harmless Defendant from any
5 liability resulting from a breach of these representations and/or any lien or
6 assignment.

7 4.5 The Parties agree that, subject to Court approval, payment to the Claims Administrator
8 shall not exceed Eight Thousand Dollars (\$8,000.00). The Claims Administration Costs
9 shall be paid from the Class Settlement Amount. In the event the Settlement Effective Date
10 does not occur, any portion of the Settlement Administration Costs already incurred by the
11 Claims Administrator shall be allocated so that Class Counsel and Defendant will each be
12 responsible for one-half of said expenses. Any dispute relating to the Claims
13 Administrator's ability and need to perform its duties shall be referred to the Court if it
14 cannot be resolved by the Parties. The Claims Administrator shall regularly and accurately
15 report to the Parties, in written form when requested, on the substance of the work
16 performed. To the extent that the Claims Administrator Costs ultimately exceed \$8,000.00
17 and are approved by the Court, any additional amount will be deducted from the Class
18 Settlement Amount.

19 4.6 The Parties agree that Claims paid to Claimants shall be correctly and appropriately
20 allocated as follows:

21 4.6.1 Of the Net Settlement Amount remaining and to be distributed *pro rata* based on
22 shifts worked, 20% shall be allocated to "wages" and 80% shall be allocated to
23 "penalties and interest," such that 20% shall be characterized as W-2 income and
24 80% shall be characterized as 1099 income. Defendant's share of any employer-
25 side payroll taxes allocated to the payment of "wages" will be calculated based on
26 the portion allocated to the payment of "wages" and paid by Defendant separate
27 and apart from the Class Settlement Amount. The Claims Administrator will be
28 responsible for calculating and paying the payroll taxes and withholdings owed,

after informing Defendant of the specific amount required to be paid for the corporate payroll tax obligation.

4.6.2. Tax Liability. Defendant makes no representation as to the tax treatment or legal effect of the payments called for hereunder, and Settlement Class Representative is not relying on any statement or representation by Defendant in this regard. Settlement Class Representative understands and agrees that Class Members will be solely responsible for the sufficiency of the payment of employee's taxes predicated on the payments described herein, with the understanding that the Claims Administrator is distributing the payroll tax withholdings and employers' share of the wage portion of the payments, but making any tax payment for the penalties / interest.

4.6.3. Tax Reporting. The Settlement Administrator will be solely responsible for all tax reporting, including issuing to each Class Member an Internal Revenue Service Form W-2 and comparable state forms with respect to the wage allocation and a Form 1099 with respect to the penalties and interest allocations.

4.7 The Parties agree to allocate a total of Five Thousand Dollars (\$5,000.00) towards PAGA penalties. The Claims Administrator shall issue and mail a check to the State of California LWDA in the amount of Three Thousand Seven Hundred and Fifty Dollars (\$3,750.00) (*i.e.* 75% share). The allocated PAGA penalties shall be paid from the Class Settlement Amount. Should the Court at the Preliminary Approval hearing, or the LWDA, deem that additional PAGA penalties need to be allocated, the Parties agree to revise the allocated PAGA penalties amount as deemed necessary without the need for a revised Settlement Agreement, the funds of which shall be paid from the Class Settlement Amount. The PAGA Members shall receive their *pro rata* share of the PAGA Amount (*i.e.* the 25% share or \$1,250.00) based on the number of pay periods they were employed by Defendant during the PAGA Period (*i.e.* May 21, 2020 through February 9, 2023).

4.8 The payments made to Claimants pursuant to this Agreement are not being made for any other purpose and shall not be construed as compensation for purposes of determining

1 eligibility for any health and welfare benefits or unemployment compensation, and no
2 benefit, including but not limited to pension and/or 401(k), shall increase or accrue as a
3 result of any payment made as a result of this Settlement or Agreement.

4 4.9 Subject to Court Approval, checks issued to Claimants pursuant to this Agreement shall
5 remain negotiable for a period of one hundred fifty days (150) calendar days from the date
6 of mailing by the Claims Administrator. Thereafter, the Claims Administrator shall cancel
7 any uncashed checks and the corresponding amount shall be sent in the Claimant's name
8 to the Controller of the State of California to be held pursuant to the Unclaimed Property
9 Law, California Code of Civil Procedure §§ 1500, *et seq.*, in the name of the Claimant and
10 for the benefit of the Claimant until the Claimant claims his or her property. The Parties
11 agree that this disposition results in no "unpaid residue or unclaimed or abandoned class
12 member funds" as discussed in California Code of Civil Procedure section 384, subd.(b).
13 The Parties agree and acknowledge that such uncashed funds shall be in a non-interest
14 bearing Qualified Settlement Fund Account created pursuant to Internal Revenue Code
15 Section 1.468B-1 up until the time of disbursement to the Controller of the State of
16 California. No interest will have accrued prior to disbursement because the account has to
17 be a checking account (non-interest bearing) in order to disburse. The Parties understand
18 and agree that because no interest will have accrued on the uncashed funds prior to
19 disbursement there will be no obligation on the part of Defendant, the Claims
20 Administrator, or any other person to pay any interest upon disbursement of the uncashed
21 funds to the Controller of the State of California under California Code of Civil Procedure
22 Section 384.

23 **5. NOTICE OF THE SETTLEMENT**

24 5.1 Within five (5) business days after the Court grants Preliminary Approval of this
25 Settlement, Defendant shall provide to the Claims Administrator a listing of all Class
26 Members, including the following information/data, in a Microsoft Excel spreadsheet: 1)
27 full name; 2) last known mailing address; 3) telephone number (*if available*); 4) Social
28 Security Number; 5) dates of employment; and 6) shift count as a Class Member. The

1 “Class List” shall be based on the data kept in the ordinary course of business in
2 Defendant’s business records. The Parties agree that the contents of the Class List are
3 confidential and shall not be shared with third parties other than the Claims Administrator,
4 who shall also agree to maintain the confidentiality of the Class List and agree the Class
5 List shall not be used for any purpose other than to administer the Class Settlement.

6 5.2 Subject to Court approval, the “Notice” shall be sent by the Claims Administrator to all
7 Class Members, in both English and Spanish, by first class mail within seven (7) business
8 days of receipt of the Class List, except that the Notice relating to Named Plaintiff shall be
9 e-mailed to Class Counsel.

10 5.3 Prior to mailing the Notice, the Claims Administrator shall process the Class List against
11 the National Change of Address (“NCOA”) Database maintained by the United States
12 Postal Service (“USPS”). It shall be conclusively presumed that if the Notice is not
13 returned as “undeliverable,” the Settlement Class Member received the Notice Packet.
14 With respect to Notice Packets that are returned as “undeliverable,” if a forwarding address
15 is provided by the USPS, the Claims Administrator shall re-mail the Notice within three
16 (3) business days. If a Notice is “undeliverable” and no forwarding address is provided,
17 the Claims Administrator shall employ a more substantive skip-tracing procedure in order
18 to obtain updated address information and shall re-mail the Notice to those Settlement
19 Class Members for whom a new address is located. All such re-mailing shall occur within
20 five (5) days of the Administrator’s receipt of the returned notice and no later than the last
21 day of the Claims Period. If the Notice is returned after skip-tracing and re-mailing occurs,
22 there shall be no further skip-tracing but the Settlement Class Member shall still be bound
23 by the release set forth in Paragraph 7.1 and all other terms of this Settlement.

24 5.4 It will be conclusively presumed that if an envelope has not been returned within thirty
25 (30) days of the mailing that the Settlement Class Member received the Notice.

26 **6. OPT-OUT, OBJECTION, AND DISTRIBUTION PROCESS**

27 6.1 The Notice shall set a date of forty-five (45) calendar days from the original mailing date
28 as the deadline by which members of the Settlement Class may submit their Opt-Out Letter,

1 Objection to the Settlement, or Dispute related to the stated shift count during the Class
2 Period. No opt-out requests or objections will be honored if postmarked after the Claims
3 Deadline. All written Opt-Out Letters shall be sent to the Claims Administrator only. All
4 written Objections shall be sent to the Claims Administrator, Class Counsel, and
5 Defendant's Counsel. If a claimant mistakenly sends a written Opt-Out Letter to Class
6 Counsel, or to Defendant's Legal Counsel, the respective party will forward the documents,
7 including the mailing envelope evidencing the postmark date, to the Claims Administrator
8 as soon as possible.

9 6.2 Each Class Member who does not opt-out of the Settlement shall automatically be entitled
10 to their respective share of the Settlement. The amount that each Settlement Class Member
11 is eligible to receive under this Settlement shall be determined in accordance with the
12 formula set forth in Subsection 4.2.

13 6.3 Defendant will provide the Claims Administrator with sufficient funds via wire transfer to
14 pay the Class Settlement Amount within three (3) business days of the Final Effective Date.
15 No later than seven (7) business days after Defendant provides the Claims Administrator
16 with sufficient funds via wire transfer to pay the Class Settlement Amount, the Claims
17 Administrator shall disburse the Settlement Disbursement Payments, as specified in this
18 Agreement and approved by the Court.

19 6.4 Three (3) business days before the Settlement Disbursement Payment, Class Counsel shall
20 deliver to the Claims Administrator written instructions signed by Class Counsel that
21 describe the manner and mode of payment of such attorneys' fees and costs (and, in the
22 absence of such instructions, such attorneys' fees and costs shall be sent by U.S. Mail), and
23 a fully-executed Form W-9 with respect to each entity to whom the attorney's fees and
24 costs shall be paid. The Claims Administrator will issue to Class Counsel an IRS Form
25 1099 for such amounts paid for attorneys' fees under this Settlement.

26 6.5 No person shall have any claim against Defendant, Defense Counsel, Plaintiff, Class
27 Counsel, or the Settlement Administrator based on mailings, distributions, payments or
28

reports made in accordance with or pursuant to this Agreement. This provision does not, however, prevent a Party from seeking enforcement of this Agreement.

6.6 Without prejudice to any other remedies, the Settlement Administrator shall agree to be responsible for any breach of its obligations (whether committed by the Settlement Administrator or its agents) and to indemnify and hold the Parties and their counsel harmless from and against all liabilities, claims, causes of action, costs and expenses (including legal fees and expenses) arising out of any breach committed by the Settlement Administrator or its agents

6.7 Opt-Out Letters.

6.7.1 A Class Member who wishes to opt-out from this Settlement, and from the release of claims pursuant to this Settlement, shall submit a signed, written "Opt-Out Letter" directly to the Claims Administrator. The Opt-Out Letter must include the Settlement Class Member's full legal name, home address, telephone number, and last four digits of their social security number (*for identity verification purposes*) and must state in substance: "I have read the Notice and I wish to opt out of the Settlement reached in the Solano case against The Grove, Highway 156 (Case No. CU-21-00098). I understand that by opting out of the Settlement I will not be bound by any judgment in the case and will not be entitled to receive any payment from the Settlement." Opt-Out Letters must also include a statement that that he/she has received the Notice and that he/she understands that he/she is still bound by the release of the PAGA claims upon final approval of the Settlement, and a signature under penalty of perjury of the Settlement Class Member requesting exclusion. The Opt-Out Letter must be returned by mail to the Settlement Administrator at the specified address. Any such Request must be made in accordance with the terms set forth in the Notice. A Opt-Out Letter will be timely only if postmarked by the Claims Deadline unless the Parties otherwise agree in writing. A Opt-Out Letter may not be submitted on behalf of a group. Any Settlement Class Member who timely requests exclusion in compliance with these requirements: (i) will not have

1 any rights under this Agreement, including the right to object, appeal, or comment
2 on the Settlement; (ii) will not be entitled to receive any payments under this
3 Agreement; and (iii) will not be bound by this Agreement, or the Judgment, except
4 as to the release of PAGA claims herein. The Parties to this Agreement and their
5 counsel agree that they will not solicit or encourage Class Members to opt-out or
6 to object to this Settlement Agreement. Upon request, the Claims Administrator
7 shall promptly send a copy/scan of any Opt-Out Letter (including a copy/scan of
8 the mailing envelope) to Class Counsel and Defense Counsel. For an Opt-Out
9 Letter to be accepted it must be timely and valid. To be timely it must be
10 postmarked by the Claims Deadline.

11 6.7.2 A Settlement Class Member who submits an Opt-Out Letter is not eligible to
12 recover a share of the Net Settlement Amount. Further, a Settlement Class Member
13 who submits an Opt-Out Letter shall have no standing to object to the Settlement,
14 or to appear at the Final Approval Hearing.

15 6.7.3 The Claims Administrator shall maintain a list of persons who have excluded
16 themselves and shall provide such list to Class Counsel and Defense Counsel
17 promptly upon request. The Claims Administrator shall retain the originals of all
18 Opt-Out Letters (including the envelopes with the postmarks) received and shall
19 make copies or the originals available to Class Counsel or Defendant's Counsel
20 upon request.

21 6.7.4 All members of the Settlement Class who are not included in the exclusion list
22 approved by the Court shall be bound by this Settlement, and all their claims shall
23 released as provided for herein, even if they never received actual notice of the
24 Action or this proposed Settlement. Notwithstanding the submission of a timely
25 Opt-Out Letter, Class Members will still be bound by the settlement and release of
26 the PAGA claims or remedies under the Final Judgment pursuant to *Arias v.*
27 *Superior Court* (2009) 46 Cal. 4th 969. Opt-Out Letters do not apply to the PAGA
28 claims.

1 6.7.5 Except for those Settlement Class Members who exclude themselves in compliance
2 with the procedures set forth above, all Settlement Class Members will: (i) be
3 deemed to be Releasing Class Members for all purposes under this Agreement; (ii)
4 will be bound by the terms and conditions of this Agreement, the Judgment, and
5 the releases set forth herein; and (iii) except as otherwise provided herein, will be
6 deemed to have waived all objections and oppositions to the fairness,
7 reasonableness, and adequacy of the Settlement.

8 6.8 Objection to Settlement. A Settlement Class Member who has not opted-out of the
9 Settlement who wishes to object to the Settlement must notify the Claims Administrator of
10 their objection, in writing, on or before the Claims Deadline. The right to object to the
11 proposed Settlement must be exercised individually by a Class Member or through counsel,
12 and not as a member of a group, subgroup, class, or subclass. The objection must state the
13 Settlement Class Member's: (i) full legal name, home address, telephone number, last four
14 digits of their social security number (*for identity verification purposes*); (ii) the words
15 "Notice of Objection" or "Formal Objection"; (iii) in clear and concise terms the legal and
16 factual arguments supporting the objection; (iv) a list identifying the witness(es) the
17 objector may call to testify at the Final Approval Hearing; and (v) true and correct copies
18 of any exhibit(s) the objector intends to offer at the Final Approval Hearing. If any
19 Objecting Class Member wishes to speak at the Final Approval Hearing, that Objecting
20 Class Member's written submission must include a request to be heard, and the Court will
21 determine whether Objecting Class Members will be permitted to speak. Any Settlement
22 Class Member who fails to make an objection at the Final Approval Hearing shall be
23 deemed to have waived his or her right to object to the Settlement. Any Settlement Class
24 Member whose objection is overruled will be deemed to be subject to the terms of this
25 Settlement and the Court's Order of Final Approval. Any Class Member who "opts-out"
26 of the Settlement shall not have standing to "object" to the Settlement, or to appear at the
27 Final Approval hearing. The Settlement Administrator shall provide objections, if any, to
28 Class Counsel and Defense Counsel within three (3) days of receipt, and the Settlement

1 Administrator shall attach the same to its declaration of due diligence that will be filed with
2 the Court prior to the Final Approval Hearing. Any Class Member who files an objection
3 remains eligible to receive monetary compensation from the Settlement. Plaintiff and
4 Defendant shall not be responsible for any fees, costs, or expenses incurred by any Class
5 Member and/or his or her counsel related to any objections to the Settlement. Submitting
6 an objection does not preserve the right to appeal a final judgment. Rather, the right to
7 appeal is preserved by becoming a party of record by timely and properly intervening or
8 filing a motion to vacate the judgment under Code of Civil Procedure § 663. Any
9 Settlement Class Member who does not timely and properly become a party of record by
10 intervening or filing a motion to vacate the judgment waives any and all rights to appeal
11 from the Judgment, including all rights to any post-judgment proceeding and appellate
12 proceeding, such as a motion to vacate judgment, motion for new trial, a motion under
13 California Code of Civil Procedure section 473, and extraordinary writs. Counsel for the
14 Parties may file a response to any objections submitted by Objecting Class Members at
15 least five (5) court days before the date of the Final Approval Hearing.

16 6.9 All Class Members who do not timely request exclusion from the Settlement will
17 automatically receive payment under this Settlement as described above in Subsection 4.2,
18 which will be in the form of a Settlement Payment check and shall be bound by the release
19 set forth in section 7 and all other pertinent terms of the Settlement.

20 6.10 Disputes Regarding Class Data. Class Members are deemed to participate in the
21 Settlement, unless they opt-out. The Notice will inform Class Members of his/her
22 estimated individual settlement amount and the number of Shifts Worked during the Class
23 Period. Class Members may dispute their Shifts Worked if they feel they worked more
24 shifts in the Class Period in California than Defendant's records show by timely submitting
25 evidence to the Settlement Administrator. Defendant's records will be presumed
26 determinative absent reliable evidence to rebut Defendant's records, but the Settlement
27 Administrator will evaluate the evidence submitted by the Class Member and provide the
28 evidence submitted to Class Counsel and Defense Counsel who agree to meet and confer

1 in good faith about the evidence to determine the Class Member's actual number of Shifts
2 Worked and estimated individual settlement amount. If Class Counsel and Defense
3 Counsel are unable to agree, they agree to submit the dispute to the Settlement
4 Administrator to render a final decision. Class Members will have until the Claims
5 Deadline to dispute Shifts Worked, unless extended by the Court. In the event that the
6 Settlement Administrator increases the number of Shifts Worked for any Settlement Class
7 Member, then the Settlement Administrator will recalculate all individual settlement
8 amounts; accordingly, in no event will Defendant be required to increase the Class
9 Settlement Amount.

10 6.11 In the event that Final Approval of this Settlement Agreement is not granted by the Court,
11 neither the Settlement Agreement, nor any documents related to this Settlement or
12 negotiations leading to the Settlement may be used as evidence for any purpose, and
13 Defendant shall retain the right to challenge all claims and allegations in the Litigation,
14 including but not limited to challenging class certification for any purpose other than
15 settlement, and to assert all applicable defenses.

16 6.12 Should the Court decline to approve this Agreement in any material respect (except for
17 approval of the award of Class Counsel's Attorneys' Fees and Costs or the class
18 representative Service Enhancement, or the amount allocated to PAGA), Defendant shall
19 have no obligation to make any payment under this Agreement, and in the event that
20 Defendant has made any such payment, such monies shall be returned promptly by the
21 Claims Administrator to Defendant (minus Defendant's one-half share of any
22 Administration Costs already reasonably incurred by the Claims Administrator; the other
23 one-half share of any Administration Costs to be paid by Class Counsel).

24 **7. COMPREHENSIVE WAIVER AND RELEASE**

25 7.1 Subject to final approval by the Court of the Settlement and upon the Settlement Effective
26 Date, Named Plaintiff and Settlement Class Members (collectively, "*Releasing Settlement*
27 *Class Members*"), will each be deemed to have, and by operation of the Order of Final
28 Approval will have, expressly and irrevocably released, acquitted, and forever discharged

1 Defendant, its members, shareholders, officers, directors, agents, current and former
2 employees, partners, attorneys, insurers, ERISA plan administrators, subsidiaries,
3 affiliates, and their respective predecessors, successors, and assigns (collectively referred
4 to as the “Released Parties”) from any and all claims, rights, demands, damages, debts,
5 accounts, duties, costs including attorneys’ fees (other than those costs and fees required
6 to be paid pursuant to this Settlement Agreement), liens, charges, complaints, causes of
7 action, obligations, liabilities, penalties, interest, or causes of action arising between May
8 21, 2017 and February 9, 2023, and that were alleged in the operative FAC in the matter
9 of *Daniel Solano v. The Grove, Highway 156* (Case No. CU-21-00098), or that could have
10 been alleged or otherwise raised based on the factual allegations pled in the operative
11 pleading in the Lawsuit, including claims that have been or could have been pled as wage
12 and hour violations under California law based on the factual allegations set forth in the
13 operative pleading in the Lawsuit, including without limitation: (1) Failure to Pay Wages
14 (Labor Code §§ 200-204, 510, 558, 1194, 1198); (2) Failure to Provide Meal and Rest
15 Periods (Labor Code §§ 226.7, 512); (3) Failure to Pay Overtime Wages (Labor Code §§
16 510, 1194, 1198); (4) Failure to Provide Accurate Itemized Wage Statements (Labor Code
17 § 226); (5) Failure to Pay Wages Due at Separation of Employment (Labor Code § 203);
18 (6) Violation of Business and Professions Code § 17200; and (7) Civil Penalties Pursuant
19 to the Private Attorney General Act (“PAGA”); and (8) all damages, penalties, interest,
20 costs (including attorneys’ fees) and other amounts recoverable under said claims or causes
21 of action as to the facts and/or legal theories alleged or which could have been pled as wage
22 and hour violations under California law based on the factual allegations set forth in the
23 operative Complaint (collectively, the “Released Claims”). The Releasing Settlement
24 Class Members will be deemed to have specifically acknowledged that this Release reflects
25 a compromise of disputed claims.

26 7.1.1 With regard to the Released Claims, the Releasing Settlement Class Members also
27 waive and release all claims for attorneys’ fees and costs incurred by Releasing
28 Settlement Class Members or by Class Counsel in connection with the Litigation

1 and the Settlement of the Litigation.

2 7.1.2 Each Releasing Settlement Class Member will be deemed to have made the
3 foregoing Release as if by manually signing it.

4 7.1.3 Named Plaintiff Daniel Solano, on behalf of himself and the Releasing Settlement
5 Class Members, acknowledge and agree that the claims for unpaid wages in the
6 Action, and untimely payment of wages in the Action, are disputed, and that the
7 payments set forth herein constitute payment of all sums allegedly due. Named
8 Plaintiff Daniel Solano, on behalf of himself and the Settlement Class,
9 acknowledges and agrees that California Labor Code Section 206.5 is not
10 applicable to the Parties hereto. Section 206.5 provides in pertinent part as follows:
11 An employer shall not require the execution of any release of any claim or right on
12 account of wages due, or to become due, or made as an advance on wages to be
13 earned, unless payment of those wages has been made.

14 7.1.4 Plaintiff and Defendant intend that the Settlement described in this Agreement will
15 release and preclude any further claim, whether by lawsuit, administrative claim or
16 action, arbitration, demand, or other action of any kind, by each and all of the
17 Releasing Class Members to obtain a recovery based on, arising out of, and/or
18 related to any and all of the Released Claims. This paragraph does not apply to any
19 Class Member who timely and validly opt's-out of the Settlement.

20 7.1.1.1. In addition to Named Plaintiff's release of the Released Claims, as a
21 material term of this Agreement, Named Plaintiff Daniel Solano in his
22 individual capacity and with respect to his individual claims only, hereby
23 agrees to release the Released Parties from all claims, demands, rights,
24 liabilities and causes of action of any and every nature and description
25 whatsoever, known or unknown, suspected or unsuspected, asserted or
26 that might have been asserted, whether in tort, contract, or for violation of
27 any state or federal statute, rule or regulation arising out of, relating to, or
28 in connection with any act or omission by or on the part of any of the

1 Released Parties committed or omitted prior to the execution hereof,
2 including a waiver of California Civil Code § 1542.

3 This General Release includes any unknown claims that Named
4 Plaintiff Daniel Solano does not know or suspect to exist in his favor at
5 the time of the General Release, which, if known by him, might have
6 affected her Settlement with, and release of, the Released Parties or might
7 have affected his decision not to object to this Settlement or the General
8 Release.

9 With respect to the General Release, Named Plaintiff Daniel Solano
10 stipulates and agrees that, upon the execution of this Agreement, he shall
11 be deemed to have, and by operation of the Final Judgment shall have,
12 expressly waived and relinquished, to the fullest extent permitted by law,
13 the provisions, rights and benefits of Section 1542 of the California Civil
14 Code, or any other similar provision under state or federal law as to the
15 generally released claims. Named Plaintiff Daniel Solano acknowledges,
16 understands and agrees that this Settlement is binding notwithstanding
17 any facts of which he may later become aware, any change in the law that
18 might have affected his decision to enter into this Settlement or any
19 discovery that the facts or the law relative to the matters released herein
20 are different from what were understood at the time of signing this
21 Settlement. Section 1542 provides as follows:

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

Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge of all parties, Named Plaintiff Daniel Solano and Class Counsel expressly acknowledge that this Settlement Agreement is intended to include in its effect, without limitation, all claims that Class Representative knew of, as well as all claims that he does not know or suspect to exist in his favor against the Released Parties, or any of them, for the time period from the beginning of time to the execution of this Settlement Agreement, and that this Settlement Agreement contemplates the extinguishment of any such Class Representative's claims.

8. DUTIES OF THE PARTIES PRIOR TO PRELIMINARY COURT APPROVAL

8.1 Upon execution of this Agreement, Class Counsel shall apply to the Court for the entry of an order granting Preliminary Approval of the Settlement substantially in the following form:

8.1.1 Scheduling a Final Approval hearing on the question of whether the proposed Settlement should be finally approved as fair, reasonable, and adequate as to the proposed Settlement Class;

8.1.2 Approving as to form and content the proposed Class "Notice;"

8.1.3 Directing the mailing of the Notice by first class mail, in English and Spanish, to the Settlement Class Members;

8.1.4 Preliminarily approving the Settlement; and

8.1.5 Approving Dychter Law Offices, APC as Class Counsel, approving Mr. Daniel Solano as Settlement Class Representative, and approving Phoenix Settlement Administrators, as the Claims Administrator.

8.2 Defendant and their counsel shall cooperate with Class Counsel as necessary to obtain Preliminary Approval and Final Approval of this Settlement.

8.3 In addition, concurrent with applying to the Court for the entry of an order granting Preliminary Approval of the Settlement, Class Counsel shall take all necessary steps to

1 inform the LWDA of the Settlement Agreement in accordance with Labor Code section
2 2699(1)(2).

3 **9. DUTIES OF THE PARTIES FOLLOWING PRELIMINARY COURT**
4 **APPROVAL**

5 9.1 Following Preliminary Approval by the Court of the Settlement, Class Counsel will submit
6 a proposed Final Judgment. The proposed Final Judgment shall:

7 9.1.1 Approve the Settlement, adjudging the terms thereof to be fair, reasonable, and
8 adequate and directing consummation of its terms and provisions;

9 9.1.2 Approve an award of attorneys' fees and reimbursement of costs to Class Counsel;

10 9.1.3 Approve any Service Enhancement to the Settlement Class Representative;

11 9.1.4 Certify the Settlement Class for settlement purposes only in accordance with
12 Section 3 of this Agreement; and,

13 9.1.5 Permanently bar the Settlement Class Representative and all Releasing Settlement
14 Class Members from further prosecuting any of the Released Claims against
15 Defendant. Named Plaintiff Daniel Solano shall have been deemed to have
16 executed a full and final release, pursuant to Civil Code Section 1542, and shall not
17 be permitted to submit an opt-out or objection to the Settlement.

18 9.2 Defendant and their Counsel shall cooperate with Class Counsel as necessary to obtain
19 Final Approval and the Court's final judgment.

20 9.3 Within ten (10) calendar days after either (1) Final Approval, if the Settlement is approved
21 or (2) entry of order denying the Settlement, if the Court does not approve the Settlement,
22 Plaintiff's Counsel will provide a copy of the Court's judgment or order to the LWDA
23 pursuant to Labor Code Section 2699(1)(3).

24 **10. MUTUAL FULL COOPERATION**

25 10.1 The Parties agree to cooperate fully with each other to accomplish the terms of this
26 Settlement, including but not limited to, execution of all necessary documents and to take
27 such other action as may reasonably be necessary to implement the terms of this Settlement.
28 The Parties 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 the terms of this Settlement. As soon as practicable after execution of this Agreement Class Counsel shall, with the assistance and cooperation of Defendant and their counsel, take all necessary steps to secure the Court's Final Judgment.

10.2 If a Party cannot reasonably comply with an obligation under this Agreement by the deadline set forth herein applicable to that obligation, that Party may apply to the Court for a reasonable extension of time to fulfill that obligation. Consent to such a request for an extension will not be unreasonably withheld by the other Party.

11. **STATEMENT OF NO ADMISSION**

11.1 Nothing contained in this Agreement shall be construed or deemed an admission of liability, culpability, or wrongdoing on the part of Defendant and Defendant denies liability therefor. Nor shall this Agreement constitute an admission by Defendant as to any interpretation of laws or as to the merits, validity, or accuracy of any claims made against it in the Litigation or the propriety of class certification for any purpose other than settlement. Likewise, nothing in this Agreement shall be construed or deemed an admission with regards to the validity of any of Defendant's defenses or affirmative defenses. Each of the Parties has entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses.

11.2 This Agreement, and all related documents, and all other actions taken in implementation of the Settlement, including any statements, discussions, or communications, and any materials prepared, exchanged, issued, or used during the course of the negotiations leading to this Agreement are settlement documents and shall be inadmissible in evidence and shall not be used for any purpose in any judicial, arbitral, administrative, investigative, or other court, tribunal, forum, or proceeding, including any wage and hour or other litigation against Defendant, for any purpose, except in an action or proceeding to approve, interpret, or enforce the terms of this Agreement, and except as required by Court Order.

11.3 The Notice, Opt-Out Letters, and any other evidence produced or created by any Settlement Class Member in connection with the claims procedures pursuant to this Settlement, and

any actions taken by Defendant in response to such Opt-Out Letters, the calculations by the Claims Administrator, or other evidence, do not constitute, are not intended to constitute, and will not be deemed to constitute an admission by Defendant of any violation of any federal, state, or local law, statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law or in equity.

11.4 In the event that this Agreement is not approved by the Court, any appellate court, or otherwise fails to become effective and enforceable, or is terminated, Defendant will not be deemed to have waived, limited, or affected in any way any of its objections or defenses in the Litigation.

12. VOIDING THE AGREEMENT

12.1 In the event that this Settlement is not approved, or if for any reason the Settlement Effective Date does not occur, the Settlement shall be deemed null, void and unenforceable and shall not be used nor shall it be admissible in any subsequent proceedings either in this Court or in any other judicial, arbitral, administrative, investigative, or other court, tribunal, forum, or other proceeding, including without limitation any wage and hour, or other litigation against Defendant. In any such event, all orders entered in connection with the Settlement, including the certification of the Settlement Class, shall be vacated without prejudice to any Party's position on the issue of class certification, or any other issue, in this Action or any other action, and the Parties shall be restored to their litigation positions existing on the date of execution of this Settlement; and all matters covered by this Settlement and the releases contained herein shall be null and void. In such event, nothing in this Settlement or any draft thereof, or of the discussion, negotiation, documentation, or other part or aspect of the Parties' settlement discussions leading to the execution of this Settlement shall have any effect, nor shall any such matter be admissible in evidence for any purpose in the Action or in any other proceeding or forum nor shall any such matter be used or construed by or against any Party as a determination, admission, or concession of any issue of law or fact in this or any other litigation or proceeding, and the Parties do not waive, and instead expressly reserve, their respective rights with respect to the prosecution

1 and defense of the Action as if this Settlement never existed. Except for purposes of this
2 settlement, Defendant expressly reserves all rights to contest all class action allegations at
3 any time and in any proceeding or forum.

4 12.2 If the Settlement is voided or fails for any reason, Plaintiff and Defendant will have no
5 further obligations under the Settlement, including any obligation by Defendant to pay the
6 Class Settlement Amount, or any amounts that otherwise would have been owed under
7 this Settlement. However, if the Settlement is voided or fails for any reason, any costs
8 incurred by the Settlement Administrator shall be borne by Defendant.

9 12.3 In the event that Defendant has already provided funds to the Settlement Administrator in
10 accordance with this Settlement Agreement, and (i) the Settlement is not approved, is
11 overturned, or is materially modified by the Court or on appeal, (ii) the Judgment does not
12 become Final, or (iii) this Settlement is terminated, cancelled, or fails to become effective
13 for any reason, then within five (5) business days after written notice is provided by
14 Defendant's counsel to the Settlement Administrator, all funds provided pursuant to this
15 Settlement, less any Settlement Administration Costs already incurred but not yet paid,
16 shall be returned to Defendant.

17 12.4 In the event that the Court does not approve the Attorneys' Fees and Costs in the amount
18 requested by Class Counsel, or in the event that the Attorneys' Fees and Costs requested
19 by Class Counsel are reduced, that finding shall not be a basis for rendering the entire
20 Agreement null, void, or unenforceable. Class Counsel retains their right to appeal any
21 decision by the Court regarding the Attorneys' Fees and Costs.

22 12.5 If Class Members representing more than ten percent (10%) of the total pay periods in the
23 Class Period submit valid and timely Opt-Out Letters, then Defendant, at their sole option,
24 may withdraw from this Settlement by giving notice to Class Counsel and the Claims
25 Administrator within three (3) business days of receipt by Defendant's Counsel of the final
26 report of the number of opt-outs from the Claims Administrator after the Opt-Out
27 Submission Deadline. If Defendant exercises such option, they will be solely responsible
28

for all settlement administration costs incurred. Defendant shall not be responsible for paying any of the Attorneys' Fees and Costs set forth in this Settlement, or any other fees and/or costs incurred by Class Counsel to effectuate this Settlement. Defendant's termination of this Settlement shall have the same effect as would non-approval of the Settlement by the Court: the Parties shall revert to their previous positions, with all parties to this Settlement to stand in the same position, without prejudice, as if this Settlement had been neither entered into nor filed with the Court.

12.6 Defendant certifies that there are 588 persons who meet the definition of the proposed class, and the number of shifts worked by the Settlement Class Period is 54,571 ("Certified Pay Period Amount"). If the actual number of shifts worked by Class Members exceeds the Certified Pay Period Amount by more than five percent (5%), Plaintiff may solely exercise the option to withdraw from the Settlement by giving notice to Class Counsel and the Claims Administrator within three (3) business days of receipt of the finalized Class List data from the Settlement Administrator. If Plaintiff exercises such option, they will be solely responsible for all settlement administration costs incurred. Plaintiff's termination of this Settlement shall have the same effect as would non-approval of the Settlement by the Court: the Parties shall revert to their previous positions, with all parties to this Settlement to stand in the same position, without prejudice, as if this Settlement had been neither entered into nor filed with the Court.

13. **PARTIES' AUTHORITY**

13.1 The respective signatories to this Agreement each represent that they are fully authorized to enter into this Settlement and bind the respective Parties to its terms and conditions.

14. **NO PRIOR ASSIGNMENTS**

14.1 The Parties 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 right released and discharged in this Settlement.

15. **NOTICES**

15.1 Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of: (i) the date given, if given by hand delivery; (ii) within one business day, if sent by overnight delivery services such as Federal Express or similar courier; or (iii) on the third business day after mailing by United States registered or certified mail, return receipt requested. All notices given under this Agreement shall be addressed as follows:

15.1.1 **To the Class:**

Alexander I. Dychter, Esq.
Dychter Law Offices, APC
180 Broadway, Suite 1835
San Diego, CA 92101-5064
Telephone: (619) 487-0777
Facsimile: (619) 330-1827
E-Mail: Alex@DychterLaw.com

15.1.2 **To Defendant:**

Marie Trimble Holvick, Esq.
Alexandra M. Romero, Esq.
Gordon Rees Scully Mansukhani, LLP
275 Battery Street, Suite 2000
San Francisco, California 94111
Telephone: (415) 986-5900
Facsimile: (415) 986-8054
E-Mail: mholvick@grsm.com
E-Mail: aromero@grsm.com

16. **CONFIDENTIALITY**

16.1 Named Plaintiff and Class Counsel agree that prior to the filing of the Motion for Preliminary Approval, they will keep the terms of this Settlement confidential except for purposes of communicating with Defendant, the Court, or a prospective Settlement Administrator. Except as set forth in Paragraph 16.2 below, any confidentiality associated with the terms of this Settlement shall expire upon the filing by Class Counsel of the Motion for Preliminary Approval with the Court, except that the negotiations and discussions preceding submission of the Settlement to the Court for preliminary approval shall remain strictly confidential, unless otherwise agreed to by the Parties or unless otherwise ordered by the Court.

1 16.2 Plaintiff and Class Counsel agree that they will not initiate or have any contact with the
2 press, respond to any press inquiry or have any communication with the press about this
3 case until after Final Approval. Plaintiff's counsel will not communicate with other wage-
4 hour plaintiff's counsel about this settlement, nor utilize it in any way in their marketing
5 or advertising materials or website until after Final Approval.

6 17. **MISCELLANEOUS PROVISIONS**

7 17.1 Interim Stay of Proceedings. Pending completion of all of the prerequisites necessary to
8 effectuate this Settlement, the Parties agree, subject to Court approval, to a stay of all
9 proceedings in the Litigation except such as are necessary to effectuate the Settlement,
10 including amending the operative complaint.

11 17.2 Declaration of Due Diligence. The Settlement Administrator shall provide counsel for the
12 Parties, at least twenty-five (25) days prior to the final approval hearing, a declaration of
13 due diligence and proof of mailing with regard to the mailing of the Notice.

14 17.3 Res Judicata. The Released Parties shall have the right to file this Settlement, the Final
15 Approval Order and Judgment, and any other documents or evidence relating to the
16 Settlement in any action that may be brought against them in order to support a defense or
17 counterclaim based on principles of res judicata, collateral estoppel, release, good-faith
18 settlement, judgment bar, reduction, or any other theory of claim preclusion or issue
19 preclusion or similar defense or counterclaim.

20 17.4 Dispute Resolution. Prior to instituting legal action to enforce the provisions of this
21 Agreement or to declare rights and/or obligations under this Agreement, a Party shall
22 provide written notice to the other Party and allow an opportunity to cure the alleged
23 deficiencies, and Plaintiff and Defendant agrees to seek the help of the mediator to
24 resolve any dispute they are unable to resolve informally. During this period, the Parties
25 shall bear their own attorneys' fees and costs. This provision shall not apply to any legal
26 action or other proceeding instituted by any person or entity other than Plaintiff or
27 Defendant.

28 ///

- 1 17.5 Construction. The Parties agree that the terms and conditions of this Agreement are the
2 result of lengthy, intensive arms-length negotiations between the Parties and that this
3 Agreement shall not be construed in favor of or against any party by reason of the extent
4 to which any party or her or his counsel participated in the drafting of this Agreement.
- 5 17.6 Captions and Interpretations. Paragraph titles or captions contained in this Agreement are
6 a matter of convenience and for reference, and in no way define, limit, extend, or describe
7 the scope of this Settlement or any provision. Each term of this Agreement is contractual
8 and not merely a recital.
- 9 17.7 Modification. This Settlement may not be changed, altered, or modified, except in a
10 writing signed by the Parties, and approved by the Court. Notwithstanding the forgoing,
11 the Parties agree that any dates contained in this Agreement may be modified by
12 agreement of the Parties without Court approval if the Parties agree and cause exists for
13 such modification. This Settlement may not be discharged except by performance in
14 accordance with its terms or by a writing signed by the Parties.
- 15 17.8 Integration Clause. This Agreement and any other documents delivered pursuant hereto
16 contain the entire agreement between the Parties relating to the resolution of the Litigation,
17 and all prior or contemporaneous agreements, understandings, representations, and
18 statements, whether oral or written and whether by a Party or such Party's legal counsel,
19 are merged in this Agreement. No rights under this Settlement may be waived except in
20 writing and signed by the Party against whom such waiver is to be enforced.
- 21 17.9 Binding on Assigns. This Settlement shall be binding upon, and inure to the benefit of,
22 the Parties and their respective heirs, trustees, executors, administrators, successors, and
23 assigns.
- 24 17.10 Class Counsel and Settlement Class Representative Signatories. It is agreed that because
25 the Settlement Class Members are so numerous, it is impossible or impractical to have
26 each Settlement Class Member execute this Settlement. The Notice will provide all
27 Settlement Class Members with a summary of the Settlement and will advise all
28 Settlement Class Members of the binding nature of the release. The Notice shall have the

1 same force and effect as if this Settlement were executed by each Settlement Class
2 Member.

3 17.11 Counterparts and Electronic Signatures. This Agreement may be executed by facsimile
4 signature, *pdf* signature, or signature in compliance with the Uniform Electronic
5 Transaction Act, and in any number of counterparts, and when each party has signed and
6 delivered at least one such counterpart, each counterpart shall be deemed an original, and,
7 when taken together with other signed counterparts, shall constitute one and the same
8 Agreement, which shall be binding upon and effective as to all Parties.

9 17.12 Applicable Law. This Agreement shall be governed by California law without regard to
10 its choice of law or conflicts of law principles or provisions.

11 17.13 Enforcement of the Settlement Agreement. In the event that one or more of the Parties to
12 this Settlement Agreement institutes any legal action, arbitration, or other proceeding
13 against any other party or Parties to enforce the provisions of this Settlement Agreement
14 or to declare rights and/or obligations under this Settlement Agreement, the successful
15 Party or Parties shall be entitled to recover from the unsuccessful Party or Parties
16 reasonable attorneys' fees and costs, including expert witness fees incurred in connection
17 with any enforcement actions.

18 17.14 Retention of Jurisdiction by the Court. Following approval of the Settlement and the
19 Court's entry of the Order of Final Approval, the Court shall retain jurisdiction for the
20 purpose of addressing any issues which may arise with respect to the administration of the
21 Settlement or the enforcement of the Settlement's terms pursuant to California Code of
22 Civil Procedure section 664.6.

23 ***[Signature Pages Follow]***
24
25
26
27
28

1 **IT IS SO STIPULATED:**

2 **Individually and on behalf of the Class**

3 Dated: May 2, 2023

4 
Daniel Solano (May 2, 2023 14:02 PDT)

Daniel Solano

5
6 Dated: _____

Defendant The Grove, Highway 156

7
8 By: _____

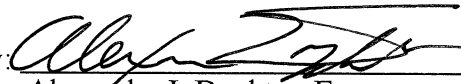
Frank Leal
CEO

9
10 **APPROVED AS TO FORM AND CONTENT ONLY:**

11 **On Behalf of Plaintiff and the Class**

12 Dated: MAY 2, 2023

DYCHTER LAW OFFICES, APC

13
14 By: 
Alexander I. Dychter, Esq.

15
16 **On Behalf of Defendant**

17 Dated: _____

Gordon Rees Scully Mansukhani, LLP

18
19 By: _____

Marie Trimble Holvick, Esq.
Alexandra M. Romero, Esq.

Counsel for Defendant
The Grove, Highway 156

1 **IT IS SO STIPULATED:**

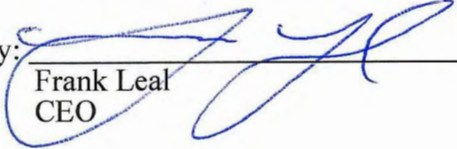
2 **Individually and on behalf of the Class**

3
4 Dated: _____

Daniel Solano

5
6 Dated: 5.26.2023

Defendant The Grove, Highway 156

7
8 By: 
Frank Leal
CEO

9
10 **APPROVED AS TO FORM AND CONTENT ONLY:**

11 **On Behalf of Plaintiff and the Class**

12 Dated: _____

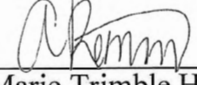
DYCHTER LAW OFFICES, APC

13
14 By: _____
Alexander I. Dychter, Esq.

15
16 **On Behalf of Defendant**

17 Dated: June 1, 2023

Gordon Rees Scully Mansukhani, LLP

18
19 By: 
Marie Trimble Holvick, Esq.
Alexandra M. Romero, Esq.

20
21 Counsel for Defendant
The Grove, Highway 156