

Matthew C. Sgnilek, Esq. (State Bar No. 235299)
msgnilek@ohaganmeyer.com

Andrea Rosenkranz, Esq. (State Bar No. 301559)
arosenkranz@ohaganmeyer.com

O'HAGAN MEYER
3200 Park Center Drive, Suite 700
Costa Mesa, CA 92626
Telephone: (949) 942-8500
Facsimile: (949) 942-8510

Attorneys for Defendant
JIMENEZ NURSERY, INC.

[ADDITIONAL COUNSEL LISTED ON NEXT PAGE]

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA – ANACAPA DIVISION**

JOSE AGUILAR, an individual, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

JIMENEZ NURSERY, INC., a California
Corporation; and DOES 1 TO 50,

Defendants.

Case No.: 21CV01836

CLASS ACTION

**JOINT STIPULATION OF CLASS
ACTION SETTLEMENT AND
RELEASE OF CLAIMS**

*[Assigned for All Purposes to the Hon.
Colleen K. Sterne; Dept. 5]*

Complaint Filed: May 5, 2021
FAC Filed: July 22, 2021
Trial: Not Yet Set

MELMED LAW GROUP P.C.

Jonathan Melmed (SBN 290218)

jm@melmedlaw.com

1801 Century Park East, Suite 850

Los Angeles, California 90067

Phone: (310) 824-3828; Fax: (310) 862-6851

BOKHOUR LAW GROUP, P.C.

Mehrdad Bokhour (SBN 285256)

mehrdad@bokhourlaw.com

1901 Avenue of the Stars, Suite 450

Los Angeles, California 90067

Phone: (310) 975-1493; Fax: (310) 675-0861

Attorneys for Plaintiff

JOSE AGUILAR, the Proposed Classes,

and the aggrieved employees

1 This Joint Stipulation of Class Action Settlement and Release of Claims (“Settlement” or
2 “Agreement”) is made and entered into by and between Plaintiff JOSE AGUILAR (“Plaintiff” or
3 “Class Representative”), individually and on behalf of all putative class members, and Defendant
4 JIMENEZ NURSERY, INC. (“Defendant”). Plaintiff and Defendant are collectively referred to
5 herein as “the Parties.”

6 **I. DEFINITIONS**

7 The following definitions are applicable to this Settlement, in addition to other terms defined
8 elsewhere in this Settlement:

9 1. “Action” shall mean the operative Complaint of the civil action initially commenced
10 on or about May 5, 2021, filed and maintained by Plaintiff against Defendant in the Superior Court
11 of California, County of Santa Barbra, Case No. 21CV01836.

12 2. “Class” shall mean all hourly-paid, non-exempt employees who, during either the
13 Class Period, have previously been or currently are employed in California by Defendant, as an
14 hourly-paid, non-exempt employee. “Class Member” shall mean an individual who is a member of
15 the Class (or if any such person is incompetent, deceased, or unavailable due to military service, the
16 person’s legal representative or successor in interest evidenced by reasonable verification).

17 3. “Class Counsel” shall mean the attorneys representing Plaintiff in the Action,
18 Jonathan Melmed of Melmed Law Group P.C. and Mehrdad Bokhour Esq. of Bokhour Law Group,
19 P.C.

20 4. “Class Counsel Fees Payment” shall mean one third of the Maximum Settlement
21 Amount (currently estimated to be Two Hundred Fifty Thousand Dollars and Zero Cents
22 (\$250,000.00)) subject to approval by the Superior Court as Class Counsel’s attorneys’ fees
23 incurred in connection with the Action, including fees incurred in pre-filing investigation, filing of
24 the Action, and all related litigation activities, this Settlement, and all post-Settlement compliance
25 procedures.

26 5. “Class Counsel Litigation Expenses Payment” shall mean the actual litigation
27 expenses and/or costs expended by Class Counsel subject to approval by the Superior Court
28 incurred in connection with the Action, including pre-filing investigation, filing of the Action, and
all related litigation activities, this Settlement, and all post-Settlement compliance procedures. Class

1 Counsel's expenses are not to exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00).

2 6. "Class Notice" shall mean the Notice of Class Action Settlement, a sample of which
3 is attached hereto as Exhibit "A". The Class Notice shall further contain (i) a Class Member's first
4 and last name, (ii) last known address, (iii) the Class Member's Individual Workweeks, (iv) the
5 PAGA Group Member's Individual Pay Periods, if applicable; (v) the Class Member's estimated
6 amount of the Settlement Share; and (vi) the PAGA Group Member's estimated PAGA Payment
7 Share, if applicable. The Class Notice shall also provide the Class Members with instructions on
8 how to opt-out of and/or object to the Settlement.

9 7. "Class Period" shall mean the period of time from May 5, 2017, through September
10 4, 2022.

11 8. "Class Representative Payment" shall mean the special payment made to Plaintiff in
12 his capacity as Class Representative to compensate him for prosecuting the Action, and performing
13 work in support of the Action, in the amount of Ten Thousand Dollars and Zero Cents
14 (\$10,000.00), subject to approval by the Superior Court.

15 9. "Defense Counsel" shall mean the attorneys representing Defendant in the Action,
16 Matthew C. Sgnilek, Esq. and Andrea Rosenkranz, Esq. of O'Hagan Meyer.

17 10. "Effective Date" shall mean the first business day following the last of the following
18 occurrences: (i) if no Class Member both objects and also files either a timely motion to intervene
19 and/or timely motion to vacate the judgment, then thirty (30) days following the date the Court
20 enters an order granting Final Approval of the Settlement; (ii) if a Class Member both objects and
21 either files a timely motion to intervene or timely motion to vacate the judgment, then sixty-one
22 (61) days following the date the Court enters an order granting final approval, assuming no appeal is
23 filed; or (iii) if a Class Member both objects and also files a timely motion to intervene or files a
24 motion to vacate the Judgment and also files a timely appeal, then the date of final resolution of that
25 appeal (including any requests for rehearing and/or petitions for certiorari), resulting in final and
26 complete judicial approval of the Settlement in its entirety, with no further challenge to the
27 Settlement being possible. The occurrence of the Effective Date is a prerequisite to any obligation
28 of Defendant to pay any funds into the Settlement Account.

1 11. “Employer’s Payroll Taxes” shall mean Defendant’s share of all payroll taxes
2 payable to any and all government agencies incurred for any payments of Settlement Shares to
3 Participating Class Members pursuant to this Settlement. Defendant’s payment of the employer’s
4 share of payroll taxes will be made separately and shall not come from the Maximum Settlement
5 Amount.

6 12. “Final Approval Hearing” shall mean the hearing to be conducted by the Court to
7 determine whether to finally approve and implement the terms of this Settlement.

8 13. “Individual Pay Periods” shall mean the number of Pay Periods for each individual
9 PAGA Group Member.

10 14. “Individual Workweeks” shall mean the number of Workweeks for each individual
11 Class Member.

12 15. “Judgment” shall mean the Order of Final Judgment entered by the Superior Court
13 that the Parties anticipate will be entered following a Final Approval Hearing on the Settlement in
14 this Action.

15 16. “LWDA Payment” shall mean the payment to the California Labor and Workforce
16 Development Agency (“LWDA”) constituting seventy-five percent (75%) of the value assigned to
17 the claim for penalties under the California Labor Code Private Attorneys General Act, California
18 Labor Code Section 2698, *et seq.* (“PAGA”). Specifically, Eighteen Thousand, Seven Hundred and
19 Fifty Dollars and Zero Cents (\$18,750.00), which shall constitute the LWDA’s seventy-five percent
20 (75%) share of Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) in civil penalties paid
21 under this Settlement. The remaining Six Thousand, Two Hundred and Fifty Dollars and Zero
22 Cents (\$6,250.00) in civil penalties shall be distributed on a *pro rata* basis based upon the number
23 of pay periods worked by each PAGA Group Member (“PAGA Payment”).

24 17. “Maximum Settlement Amount” shall mean the maximum settlement amount of
25 Seven Hundred and Fifty Thousand Dollars and Zero Cents (\$750,000.00) payable by Defendant as
26 provided by this Agreement, unless that amount is increased pursuant to Paragraph 18 below,
27 exclusive of the normal employer’s share of any payroll taxes attributable to the Settlement Share
28 payments allocated to wages. Defendant’s payment of the normal employer’s share of payroll taxes
will be made separately, according to each Defendant’s agreed upon proportionate share of the

1 Maximum Settlement Amount and shall not come from the Maximum Settlement Amount.

2 18. Defendant represents that as of June 30, 2022, the number of Workweeks worked
3 by Settlement Class Members during the Class Period is approximately 29,214. If it is
4 determined that the Workweeks through September 4, 2022, that number exceeds 32,136 (29,214
5 plus 10% of 29,214), then Defendant shall have the option of either (i) increasing the Net
6 Settlement Amount by an amount determined by the following formula: $([\text{Actual Number of}$
7 $\text{Workweeks} - 32,136] \div 29,214) \times \text{Net Settlement Amount}$; or (ii) changing the end date of the
8 Class Period to a date for which there are no more than 32,136 workweeks.

9 19. "Net Settlement Amount" shall mean the Maximum Settlement Amount, less (i) the
10 Class Representative Payment approved by the Superior Court; (ii) the Class Counsel Fees Payment
11 approved by the Superior Court; (iii) the Class Counsel Litigation Expenses Payment approved by
12 the Superior Court; (iv) the LWDA Payment approved by the Superior Court; (v) the PAGA
13 Payment approved by the Superior Court; (vi) the Settlement Administrator Payment approved by
14 the Superior Court; and (vii) any other fees or expenses (other than Class Counsel Fees Payment
15 and Class Counsel Litigation Expenses Payment) incurred in implementing the terms and conditions
16 of this Agreement as approved by the Superior Court.

17 20. "Non-Participating Class Member" shall mean a Class Member who submits a
18 complete, valid, and timely request to be excluded from the Settlement pursuant to the instructions
19 provided in the Class Notice.

20 21. "PAGA Group" mean all hourly-paid, non-exempt employees who, during the
21 PAGA Period, have previously been or currently are employed in California by Defendant. "PAGA
22 Group Member" shall mean an individual who is a member of the PAGA Group (or if any such
23 person is incompetent, deceased, or unavailable due to military service, the person's legal
24 representative or successor in interest evidenced by reasonable verification).

25 22. "PAGA Payment Share" shall mean the value of each PAGA Group Member's share
26 of the PAGA Payment as provided by this Agreement.

27 23. "PAGA Period" shall mean the period of time from May 5, 2020, through
28 September 4, 2022.

1 24. “Participating Class Member” shall mean all Class Members who have not submitted
2 a complete, valid, and timely request to be excluded from the Settlement pursuant to the instructions
3 provided in the Class Notice.

4 25. “Pay Period” shall mean any pay period in which a Class Member received payment
5 from Defendant as an hourly-paid, non-exempt employee.

6 26. “Preliminary Approval Order” shall mean the Superior Court’s preliminary approval
7 of the Settlement without material change that the Parties anticipate will be made following
8 submission of this Agreement to the Court.

9 27. “Settlement Administrator” shall mean CPT Group, Inc. proposed by the Parties and
10 appointed by the Superior Court to administer the Settlement.

11 28. “Settlement Administrator Payment” shall mean the payment to the Settlement
12 Administrator for its fees and expenses in administering this Settlement.

13 29. “Settlement Share” shall mean the value of each Participating Class Member’s share
14 of the Net Settlement Amount as provided by this Agreement.

15 30. “Superior Court” shall mean the Superior Court of California for the County of Santa
16 Barbara.

17 31. “Workweek” shall mean any week in which a Class Member actually performed paid
18 work for Defendant during the Class Period as an hourly-paid, non-exempt employee.

19 **II. RECITALS**

20 32. On May 5, 2021, Class Counsel, on behalf of Plaintiff and the PAGA Group, gave
21 written notice to the Labor Workforce and Development Agency (“LWDA”) of the Labor Code
22 violations Defendant are alleged to have violated (“LWDA Exhaustion Letter”).

23 33. On May 5, 2021, Plaintiff filed a Class Action Complaint against Defendant in the
24 Santa Barbra County Superior Court, Case No. 21CV01836. In his Complaint, Plaintiff pled causes
25 of action for: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Wages; (3) Failure to
26 Provide Meal Periods or Pay Meal Period Premiums; (4) Failure to Provide Rest Breaks or Pay Rest
27 Break Premiums; (5) Failure to Maintain Accurate Employment Records; (6) Failure to Timely Pay
28 Wages During Employment; (7) Failure to Timely Pay Final Wages; (8) Failure to Furnish Accurate
Itemized Wage Statements; and (9) Unlawful Competition.

1 34. On July 22, 2021, Plaintiff amended his Complaint to add a tenth cause of action for
2 Civil Penalties pursuant to PAGA for the underlying Labor Code violations.

3 35. Defendant denies and continues to deny all of Plaintiff's material allegations.
4 Specifically, Defendant contend (1) it did not fail to pay the Class the minimum, straight time,
5 and/or overtime wages; (2) it paid the Class for all hours worked; (3) it provided the Class with all
6 meal periods according to law; (4) it provided the Class with all rest periods according to law; (5) it
7 did not fail to timely pay the Class wages due and owing during employment and/or upon
8 separation; (6) it provided the Class with accurate itemized wage statements, consistent with Labor
9 Code Section 226; (7) it properly maintained all payroll records; (8) it did not violate Business &
10 Professions Code Section 17200, *et seq.*; (9) the PAGA Group is not entitled to penalties under
11 PAGA; and (10) Defendant is not liable for damages, including unpaid wages, liquidated damages,
12 statutory penalties, attorneys' fees, or costs of litigation to the Class.

13 36. In connection with the Action, and in order to work toward a mediated resolution
14 without the time and expense of formal discovery, the Parties produced voluminous documents and
15 data (including, by Defendant, human resources documents and policies, time records, and payroll
16 data during the Class Period) which were reviewed, investigated, and analyzed by Class Counsel.

17 37. On July 6, 2022, the Parties in Action participated in a full day of mediation before
18 an experienced employment and class action mediator, Steve Serratore, Esq. (the "Mediation") and
19 the Parties reached a settlement pursuant to a mediator's proposal.

20 38. The Settlement described in this Agreement represents a compromise and settlement
21 of highly disputed claims. Nothing in this Settlement is intended or will be construed as an
22 admission by Defendant that Plaintiff's claims in the Action have any merit or that they have any
23 liability to Plaintiff, the Class, the PAGA Group or the State on those claims, or as an admission by
24 Plaintiff that Defendant's defenses in Action have any merit. This Settlement is intended to fully,
25 finally, and forever compromise, release, resolve, discharge, and settle the released claims subject to
26 the terms and conditions set forth in this Settlement.

27 39. Based on its own thorough, independent investigation and evaluation of this case,
28 Class Counsel is of the opinion that the Settlement of this Action with Defendant for the
consideration and on the terms set forth in this Settlement is fair, reasonable, adequate, and in the

best interest of the Class in light of all known facts and circumstances, including the risk of significant costs and delay, the risk of non-certification of the Class, the defenses asserted by Defendant including the risks of adverse determinations on the merits and numerous potential appellate issues. Although Defendant contend that they have no liability in the Action, Defense Counsel shares Class Counsel's belief that the Settlement represents a fair and adequate settlement given the respective risks associated with the case.

40. Based on the foregoing Recitals, the Parties agree as follows:

III. PROCEDURE FOR APPROVING SETTLEMENT

41. **Motion for Preliminary Approval of Settlement by the Superior Court.** Plaintiff will move the Superior Court for an order granting Preliminary Approval of the Settlement, setting a date for the Final Approval Hearing no earlier than 110 days from the date of the order granting Preliminary Approval of the Settlement, and approving the Class Notice (attached as Exhibit "A" to this Stipulation) ("Motion for Preliminary Approval"). Any unresolved disagreement among the Parties concerning the Class Notice or other documents necessary to implement the Settlement will be referred first to Steve Serratore, Esq., and if no resolution is reached, then to the Superior Court.

42. At the hearing on the Motion for Preliminary Approval, the Parties anticipate that they will jointly appear, support the granting of the Motion for Preliminary Approval, and obtain the Preliminary Approval Order, granting approval of the Class Notice, and setting a date for the Final Approval Hearing no earlier than 110 days from the date of the order granting Preliminary Approval.

43. Should the Superior Court require any amendments to this Agreement or the Motion for Preliminary Approval, the Parties agree to work together to resolve any issues in order to secure the Superior Court's Preliminary Approval.

44. Should the Superior Court decline to preliminarily approve any material aspects of the Settlement, the Settlement will be null and void and the Parties will have no further obligations under it. In such event, the Parties shall be returned to their respective positions as of the date and time immediately prior to the execution of this Agreement, and the Parties shall proceed in all respects as if this Agreement had not been executed.

45. **Class Notice.** After the Superior Court enters its order granting Preliminary

1 Approval, every Class Member will be provided with the Class Notice (in English and Spanish)
2 which will include the Class Notice completed to reflect the order granting Preliminary Approval of
3 the Settlement and the Class Member's information as follows:

4 (a) Within fourteen (14) days after the Motion for Preliminary Approval is
5 granted, Defendant will provide to the Settlement Administrator the "Class Members' Data," which
6 shall consist of an electronic database containing (i) each Class Member's first and last name, (ii)
7 last known mailing address, (iii) the Class Member's Social Security number or Tax ID, (iv) the
8 Class Member's total number of Individual Workweeks, and (v) the Class/PAGA Group Members'
9 total number of Individual Pay Periods, if applicable. If any or all of the Class Members' Data are
10 unavailable to Defendant, Defendant will so inform Class Counsel prior to the date on which
11 Defendant are required to submit the Class Members' Data to the Settlement Administrator and the
12 Parties will make their best efforts to reconstruct or otherwise agree upon the Class Members' Data
13 prior to when it must be submitted to the Settlement Administrator. If the Parties are unable to
14 agree, the dispute will be resolved by the Settlement Administrator as provided in Paragraph 48.
15 This information will otherwise remain confidential and will not be disclosed to anyone, except as
16 required to applicable taxing authorities, as required to carry out the reasonable efforts to identify
17 Class Member information as described in Paragraph 45(c), pursuant to Defendant's express written
18 authorization, or by order of the Superior Court.

19 (b) Within seven (7) days after receiving the Class Members' Data, or as soon
20 thereafter as it is able to do so, the Settlement Administrator will mail the Class Notice to all
21 identified Class Members via first-class U.S. Mail using the mailing address information provided
22 by Defendant, unless modified by any updated address information that the Settlement
23 Administrator obtains in the course of administration of the Settlement.

24 (c) If a Class Notice is returned by the U.S. Postal Service because of an
25 incorrect address, the Settlement Administrator will promptly, and not later than five (5) days from
26 receipt of the returned packet, search for a more current address for the Class Member and re-mail
27 the Class Notice to the Class Member. The Settlement Administrator will use the Class Members'
28 Data and otherwise work with Defense Counsel or utilize its own resources such as skip traces to
find a more current address. The Settlement Administrator will be responsible for taking reasonable

1 steps, consistent with its agreed-upon job parameters, court orders, and fee, to trace the mailing
2 address of any Class Member for whom a Class Notice is returned by the U.S. Postal Service.
3 These reasonable steps shall include the tracking of all undelivered mail; performing address
4 searches for all mail returned without a forwarding address; and promptly re-mailing to Class
5 Members for whom new addresses are found. Any such Class Members who failed to receive a
6 Class Notice, or who were subject to a re-mailing of the Class Notice as described herein shall be
7 given an additional fourteen (14) days to opt out or object to the Settlement.

8 (d) The Settlement Administrator will inform Class Counsel and Defense
9 Counsel of the number of returned Class Notices it receives, and Class Notices re-mailed in a
10 weekly status report.

11 (e) Not later than twenty-five (25) court days prior to the Final Approval
12 Hearing, the Settlement Administrator will serve on the Parties a declaration of due diligence setting
13 forth its compliance with its obligations under this Settlement. The declaration will be filed with
14 the papers submitted with the Motion for Final Approval. Prior to the Final Approval Hearing, the
15 Settlement Administrator will supplement its declaration of due diligence if any material changes
16 occur from the date of the filing of its prior declaration.

17 **46. Participating Class Members; Requests for Exclusion from Class Settlement;**
18 **and Objections to Settlement.** Class Members may submit requests to be excluded from the effect
19 of the Settlement; or objections to the Settlement, pursuant to the following procedures:

20 (a) **Participating Class Members.** Each Class Member shall be deemed to be a
21 Participating Class Member unless they submit a complete, timely, and valid request to be excluded
22 from the effect of the Settlement as provided below. All Participating Class Members shall be
23 bound by the provisions and releases contained in this Settlement.

24 (b) **Request for Exclusion from Settlement.** Class Members who wish to
25 exclude themselves from the Settlement (“opt out” of the Settlement) must submit to the Settlement
26 Administrator, not later than forty-five (45) days after the date that the Settlement Administrator
27 first mails the Class Notices, an Exclusion Request (“the Exclusion Period”). Exclusion Requests
28 may be submitted to the Settlement Administrator via U.S. Mail only. Class Members must
complete, sign, date, and timely return an Exclusion Request to the Settlement Administrator to

1 exclude themselves from the Settlement, setting forth their (i) name, (ii) address, (iii) last four digits
2 of their Social Security number, and (iv) the following statement or a similar statement: "I wish to
3 exclude myself from the settlement reached in the matter of *Aguilar v. Jimenez Nursery, Inc., et al.*
4 I understand that by excluding myself, I will not receive any money from the Class settlement
5 reached in this matter." A Class Member who does not complete and submit a valid and timely
6 Exclusion Request in the manner and by the conclusion of the Exclusion Period will remain a
7 Participating Class Member and, if the Court approves the Settlement, will be bound by all terms
8 and conditions of the Settlement and by the Judgment. A Class Member who timely submits a valid
9 Exclusion Request will not participate in, or be bound by, the Settlement of the Judgment and will
10 not receive any payment pursuant to the Settlement except for a payment from the portion of the
11 PAGA Payment to the PAGA Group if the Class Member is a PAGA Group Member, and will not
12 be bound by the terms of the Settlement, except for the release of the PAGA Group Released
13 Claims if the Class Member is a PAGA Group Member, and will not have any right to object,
14 appeal, or comment thereon. To be valid, Exclusion Requests must be completed in full, signed,
15 and returned to the Settlement Administrator before the expiration of the Exclusion Period. Non-
16 Participating Class Members will not be permitted to file objections to the Settlement and/or appear
17 at the Final Approval Hearing to voice any objections to the Settlement. Members of the PAGA
18 Group cannot seek to exclude themselves from the Settlement of the PAGA claim but retain all
19 rights to exclude themselves from the Class Settlement as delineated herein. The Settlement
20 Administrator will provide Class Counsel, Defense Counsel, and the Superior Court with only the
21 names of the Non-Participating Class Members.

22 (c) **Objections to Settlement.** The Class Notice will provide that any Class
23 Member who does not request exclusion from the Settlement and who wishes to object to the
24 Settlement must serve on the Settlement Administrator, not later than forty-five (45) days after the
25 Settlement Administrator initially mails the Class Notice, a written objection to the Settlement
26 which sets forth the grounds for the objection and the other information required by Paragraph
27 46(d). The objection must be served as follows:

Aguilar v. Jimenez Nursery, Inc., et al.

1 c/o _____

2 _____

3 _____

4

5 (d) The written objection must state the Class Member's (i) name, (ii) address,

6 (iii) last four digits of their Social Security number, and (iv) the dates of the Class Member's

7 employment with Defendant. The written objection must state the basis for each objection in clear

8 and concise terms. The written objection shall also state whether the Class Member intends to

9 appear and object at the Final Approval Hearing. A Class Member who does not serve a written

10 objection in the manner and by the deadline specified may appear at the Final Approval Hearing to

11 state their objection to the Settlement. If a Class Member fails to submit a written objection or to

12 appear at the Final Approval hearing to make an oral objection, the Class Member will be deemed

13 to have waived all objections and will be foreclosed from making any objections – whether by

14 appeal or otherwise – to the Settlement.

15 (e) If a Class Member submits both a Request for Exclusion and a written

16 objection, the Settlement Administrator shall attempt to contact and determine whether the Class

17 Member would like to withdraw either the Request for Exclusion or the objection. If the Class

18 Member does not withdraw the Request for Exclusion or if the Settlement Administrator cannot

19 contact a Class Member who submits both a Request for Exclusion and an objection, the Request

20 for Exclusion shall be valid, and it shall be presumed that the Class Member does not wish to

21 participate in the Settlement.

22 (f) If the Superior Court rejects the Class Member's objection, or if the Superior

23 Court approves the settlement despite any objections, the Class Member will be deemed to be a

24 Participating Class Member and will be bound by the terms of this Settlement.

25 (g) A Class Member who timely submits a valid Exclusion Request will not

26 participate in, or be bound by, the Settlement of the Judgment and will not receive any payment

27 pursuant to the Settlement except for a payment from the portion of the PAGA Payment to the

28 PAGA Group if the Class Member is a PAGA Group Member, and will not be bound by the terms

of the Settlement and Judgment, except for the release of the PAGA Group Released Claims if the

1 Class Member is a PAGA Group Member, and will not have any right to object, appeal, or
2 comment thereon.

3 47. **Report.** Not later than seven (7) days after the deadline for submission of requests
4 to be excluded and/or objections, the Settlement Administrator will provide the Parties and their
5 counsel with a complete and accurate list of names for all Non-Participating Class Members and all
6 Class Members who objected to the settlement. The report shall also be accompanied by a redacted,
7 itemized calculation of the Settlement Shares for each Participating Class Member. The Settlement
8 Administrator shall also provide both Parties with a report identifying the number of Participating
9 Class Members, the number of Non-Participating Class Members, the number of PAGA Group
10 Members, and the number of Class Members who submitted a valid, timely, and complete
11 objection. Defendant and its counsel shall also be provided with a complete and accurate list of
12 names for all Participating Class Members and all PAGA Group Members.

13 48. **Resolution of Class Member and PAGA Group Member Disputes.** If a Class
14 Member and/or PAGA Group Member disputes the number of his or her Individual Workweeks
15 and/or Individual Pay Periods stated in their Class Notice, the Class Member and/or PAGA Group
16 Member must, within forty-five (45) days after the Settlement Administrator initially mails the
17 Class Notice, ask the Settlement Administrator to resolve the matter by returning the Class Notice
18 with a statement of the number of Workweeks and/or Pay Periods that he or she contends were
19 worked and include any documentation the Class Member and/or PAGA Group Member has to
20 support their contention. The Settlement Administrator shall notify Defendant of the dispute and
21 provide them with a copy of the Class Notice and any documentation received in support of the
22 dispute within three (3) court days of receipt thereof. Defendant shall review their payroll and
23 personnel records and verify the correct number of Workweeks and/or Pay Periods within five (5)
24 court days of the Settlement Administrator's notification. Defendant's records will have a
25 rebuttable presumption of accuracy. After consultation with Class Counsel, Defense Counsel, and
26 the applicable Class Member and/or PAGA Group Member, the Settlement Administrator will,
27 within three (3) court days of Defendant's verification, make a determination of the Class Member's
28 and/or PAGA Group Member's number of Workweeks and/or Pay Periods and that determination
will be final, binding on the Parties and the Class Member and/or PAGA Group Member, and is not

1 appealable.

2 49. **No Solicitation of Objection; Right to Void.** Neither the Parties, nor their
3 respective counsel, will directly or indirectly solicit or otherwise encourage any Class Member to
4 exclude him or herself from the Settlement, object to the Settlement, and/or appeal from the
5 Judgment. If ten percent (10%) or more of the Class Members submit a complete, valid, and timely
6 request to be excluded from the Settlement and are deemed to be Non-Participating Class Members,
7 then Defendant shall have the unilateral right to void this Settlement. Defendant may do so by
8 giving notice to Plaintiff and the Court of its election to void the Settlement not later than fourteen
9 (14) days after the Settlement Administrator issues its report identifying the number of Participating
10 Class Members, the number of Non-Participating Class Members, and the number of Class
11 Members who objected to the settlement as described in Paragraph 46(c). Notwithstanding any
12 other provisions in this Settlement, no sums shall be payable by Defendant in the event that this
13 Settlement is voided as provided for herein.

14 50. **Additional Briefing and Final Approval.**

15 (a) Not later than sixteen (16) court days before the Final Approval Hearing, the
16 Plaintiff will prepare and file with the Superior Court and serve on Defendant a Motion for Final
17 Approval of the Settlement, including payment of the Settlement Administrator's Payment, and a
18 memorandum in support of their motion ("Motion for Final Approval") that will also include a
19 request for Awards of the Class Representative Payments, Class Counsel Fees Payment, and the
20 Class Counsel Litigation Expenses Payment, pursuant to this Settlement. Absent the escalator
21 provisions outlined in Paragraph 26, if applicable, Plaintiff will not seek additional fees from
22 Defendant or an increase in the Maximum Settlement Amount as part of the Motion for awards of
23 the Class Representative Payments, Class Counsel Fees Payment, and the Class Counsel Litigation
24 Expenses Payment.

25 (b) Not later than five (5) court days before the Final Approval Hearing, the
26 Parties shall be entitled to file and serve a response to any Class Member's objection to the
27 Settlement and/or reply in support of their Motion for Final Approval, to the extent that any
28 opposition to said Motion is filed. Plaintiff and Class Counsel may file a reply in support of their
Motion for Awards of the Class Representative Payments, Class Counsel Fees Payment, and the

1 Class Counsel Litigation Expenses Payment, to the extent that any opposition to said Motion is
2 filed.

3 (c) If the Superior Court ultimately does not grant final approval of the
4 Settlement or grants final approval conditioned on any material change to the Settlement that is not
5 agreed to by one of the Parties, then any Party will have the right to void the Settlement. If the
6 Settlement is voided in this manner, the Parties will have no further obligations under the
7 Settlement, including any obligation by Defendant to pay any amounts that otherwise would have
8 been payable under this Settlement, except that the voiding Party will pay the Settlement
9 Administrator's reasonable fees and expenses incurred as of the date that the Party exercises the
10 right to void the Settlement under this Paragraph. An award by the Superior Court of a lesser
11 amount than that sought by Plaintiff and Class Counsel for the Class Representative Payments, the
12 Class Counsel Fees Payment, and/or the Class Counsel Litigation Expenses Payment, will not
13 constitute a material change to the Settlement within the meaning of this Paragraph.

14 (d) Upon final approval of the Settlement by the Superior Court at or after the
15 Final Approval Hearing, the Parties will present for the Superior Court's approval and entry a
16 Proposed Final Order and Judgment. The entry of the Final Order and Judgment shall permanently
17 bar all Participating Class Members from prosecuting against Defendant any claims or causes of
18 action of any kind up through the date of Final Approval, which were or could have been brought in
19 this Action, whether known or unknown, as well as all claims as set forth in the Release contained
20 in Section V of this Agreement.

21 (e) After entry of the Judgment, the Superior Court will have continuing
22 jurisdiction over the Action and the Settlement solely for purposes of (i) enforcing this Settlement,
23 (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as
24 may be appropriate under court rules or applicable law.

25 51. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms
26 and conditions of this Settlement, Plaintiff, Participating Class Members, Defendant, and their
27 respective counsel hereby waive any and all rights to appeal from the Judgment, including all rights
28 to any post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment, a
motion for new trial, a motion under Code of Civil Procedure Section 473, and any extraordinary

1 writ, and the Judgment therefore will become non-appealable by them at the time it is entered. The
2 waiver of appeal does not include any waiver of the right to oppose any appeal, appellate
3 proceedings, or post-judgment proceedings. If an appeal is taken from the Judgment, the time for
4 consummation of the Settlement (including making payments under the Settlement) will be
5 suspended until such time as the appeal is finally resolved and the Judgment, consistent with the
6 terms of this Settlement, becomes Final.

7 **52. Vacating, Reversal, or Material Modification of Judgment on Appeal or**
8 **Review.** If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other
9 motion, petition, writ, or application, the reviewing court vacates, reverses, or modifies the
10 Judgment such that there is a material modification to the Settlement, and that court's decision is
11 not completely reversed and the Judgment is not fully affirmed on review by a higher court, then
12 either Party will have the right to void the Settlement, which the Party must do by giving written
13 notice to the other Parties, the reviewing court, and the Superior Court, not later than fourteen (14)
14 days after the reviewing court's decision vacating, reversing, or materially modifying the Judgment
15 becomes final. A vacation, reversal, or modification of the Superior Court's award of the Class
16 Representative Payments, the Class Counsel Fees Payment, and/or Class Counsel Litigation
17 Expenses Payment will not constitute a vacation, reversal, or material modification of the Judgment
18 within the meaning of this Paragraph.

19 **53. Establishment of Settlement Account.** The Settlement Administrator shall
20 establish a Settlement Account within ten (10) days of the Effective Date and notify the Parties
21 when the Settlement Account has been established. The Settlement Administrator shall also
22 provide Defendant with an itemized statement for the total amount to be deposited into the
23 Settlement Account, which shall equal the Maximum Settlement Amount ("Settlement Account
24 Deposit") and the employer payroll taxes. Within ten (10) days after receiving notification of the
25 Settlement Account and statement for the Settlement Account Deposit, Defendant shall pay into the
26 Settlement Account an amount equal to the Settlement Account Deposit. Defendant shall have no
27 obligation to pay any additional funds into the Settlement Account.

28 **54. Payment of Settlement Shares.** The Settlement Administrator shall pay to each

1 Participating Class Member his or her Settlement Share from the Settlement Account. The
2 Settlement Administrator shall pay each Settlement Share by sending a check in the appropriate
3 amount after withholdings to the Participating Class Member at the address indicated in the Class
4 Member's Data. Such payment shall be sent by the Settlement Administrator via U.S. Mail within
5 fourteen (14) days of its receipt of the Settlement Account Deposit from Defendant.

6 **55. Payment of PAGA Payment Shares.** The Settlement Administrator shall pay to
7 each PAGA Group Member his or her PAGA Payment Share from the Settlement Account. The
8 Settlement Administrator shall pay each PAGA Payment Share by sending a check in the
9 appropriate amount to the PAGA Group Member at the address indicated in the PAGA Group
10 Member's Data. Such payment shall be sent by the Settlement Administrator via U.S. Mail within
11 fourteen (14) days of its receipt of the Settlement Account Deposit from Defendant.

12 **56. Uncashed Settlement Share and PAGA Payment Share Checks.** Any checks
13 paid to Participating Class Members and/or PAGA Group Members shall be negotiable for one
14 hundred and eighty (180) calendar days from the date of their issuance. A Participating Class
15 Member must cash his or her Settlement Share check within one hundred and eighty (180) calendar
16 days after it is mailed to him or her. A PAGA Group Member must cash his or her PAGA Payment
17 Share check within one hundred and eighty (180) calendar days after it is mailed to him or her. If a
18 check remains uncashed after one hundred and eighty (180) calendar days from the initial mailing,
19 or if a check is returned to the Settlement Administrator as undeliverable during the one hundred
20 eighty-day period, the Settlement Administrator shall take all reasonable efforts to identify the
21 Participating Class Member's and/or PAGA Group Member's correct address, including the
22 performance of a "skip-trace." If an updated address can be identified, the Settlement
23 Administrator shall issue another check to the Participating Class Member and/or PAGA Group
24 Member and mail it to the Participating Class Member and/or PAGA Group Member at his or her
25 updated address. If an updated address for the Participating Class Member and/or PAGA Group
26 Member cannot be identified, if a reissued check is once again returned to the Settlement
27 Administrator as undeliverable, or if the reissued check remains uncashed after one hundred eighty
28 (180) calendar days, the Settlement Administrator will keep an accounting of such funds and shall
give notice to the Parties of the total balance of uncashed Settlement Shares and/or PAGA Payment

1 Shares. A Participating Class Member who fails to negotiate or receive their Settlement Share
2 check despite the procedures described above shall nevertheless remain bound by the Settlement
3 and the releases contained herein. A PAGA Group Member who fails to negotiate or receive their
4 PAGA Payment Share check despite the procedures described above shall nevertheless remain
5 bound by the Settlement and the releases contained herein.

6 57. The funds represented by Settlement Share and/or PAGA Payment Share checks
7 remaining uncashed for more than one hundred and eighty (180) calendar days after issuance shall
8 be voided and then shall be transmitted to the Controller of the State of California to be held
9 pursuant to the Unclaimed Property Law, California Civil Code Section 1500, *et seq.*, in the names
10 of those Participating Class Members and/or PAGA Group Members who did not cash their checks
11 until such time they claim their property. The Parties agree that this disposition results in no “unpaid
12 residue” under California Civil Procedure Code § 384, as the entire Net Settlement Amount will be
13 paid out to Participating Class Members, whether or not they all cash their settlement checks.

14 58. **Final Report by Settlement Administrator to Superior Court.** Within ten (10)
15 days after final disbursement of all funds from the Settlement Account, the Settlement
16 Administrator will serve on the Parties and file with the Superior Court a declaration providing a
17 final summary report on the disbursements of all funds from the Settlement Account. Within ten
18 (10) days after transmission of any remaining unclaimed funds to Controller of the State of
19 California the Settlement Administrator will serve on the Parties and file with the Superior Court a
20 declaration providing a final summary report on the transmission of any remaining unclaimed funds
21 to Controller of the State of California as outlined Paragraph 56.

22 **IV. SETTLEMENT TERMS AND CONDITIONS**

23 59. **Conditional Certification for Settlement Purposes.** Solely for the purposes of
24 effectuating this Settlement, and subject to Court approval, the Parties hereby stipulate to the
25 conditional certification of the following Settlement Class: “all hourly-paid, non-exempt employees
26 who, during either the Original Class Period and/or the Acquisition Class Period, have previously
27 been or currently are employed in California by Defendant, as an hourly-paid, non-exempt
28 employee.” The Parties agree that if for any reason the Settlement is not preliminarily and/or finally
approved, the conditional certification of the Settlement Class will be of no force or effect, does not

1 constitute an admission by Defendant that class certification is proper, and will not be deemed
2 admissible in this or any other proceeding, and that the Parties will litigate the issue of class
3 certification.

4 **60. Settlement Shares.** Subject to the terms and conditions of this Settlement, the
5 Settlement Administrator will calculate the Settlement Shares for each Class Member within ten
6 (10) days after Defendant provide the Settlement Administrator with the Class Members' Data. The
7 Settlement Share for each Class Member will be calculated as follows, understanding that the
8 formulas below do not constitute an admission by either Party, and are intended only to provide a
9 practical means to simplify and administer the claims process:

10 **(a) Number of Class Members and Workweeks.** Defendant shall determine
11 the total number of Class Members and the aggregate number of Workweeks for those Class
12 Members as of the time of Preliminary Approval. This information shall be provided to the
13 Settlement Administrator along with the Class Members' Data as described in Paragraph 49(a)
14 above.

15 **(b) Calculation of the Workweek Value.** The Settlement Administrator shall
16 determine the value of a Workweek ("Workweek Value") by taking the Net Settlement Amount and
17 dividing it by the sum of all Class Members' Workweeks who do not opt out of the Settlement.

18 **(c) Calculation of Settlement Shares.** The Settlement Administrator shall
19 assign to each Participating Class Member a Settlement Share which shall be equal to the
20 Workweek Value multiplied by each Participating Class Member's Individual Workweeks. Upon
21 calculation of the Participating Class Members' Settlement Shares, the Settlement Administrator
22 shall furnish to Class Counsel and Defense Counsel a worksheet containing a list of employee
23 identification numbers for the Class Members with their corresponding Individual Workweeks and
24 Settlement Shares.

25 **61. PAGA Payment Shares.** Subject to the terms and conditions of this Settlement, the
26 Settlement Administrator will calculate the PAGA Payment Shares for each PAGA Group Member
27 within ten (10) days after Defendant provide the Settlement Administrator with the PAGA Group
28 Members' Data. The PAGA Payment Share for each PAGA Group Member will be calculated as
follows, understanding that the formulas below do not constitute an admission by either Party, and

are intended only to provide a practical means to simplify and administer the claims process:

(a) **Number of PAGA Group Members and Pay Periods.** Defendant shall determine the total number of PAGA Group Members and the aggregate number of Pay Periods for those PAGA Group Members as of the time of Preliminary Approval. This information shall be provided to the Settlement Administrator along with the Class Members' Data as described in Paragraph 45(a) above.

(b) **Calculation of the Pay Period Value.** The Settlement Administrator shall determine the value of a Pay Period ("Pay Period Value") by taking the PAGA Payment amount and dividing it by the sum of all PAGA Group Members' Pay Periods.

(c) **Calculation of PAGA Payment Shares.** The Settlement Administrator shall assign to each PAGA Group Member a PAGA Payment Share which shall be equal to the Pay Period Value multiplied by each PAGA Group Member's Individual Pay Periods. Upon calculation of the PAGA Group Members' PAGA Payment Shares, the Settlement Administrator shall furnish to Class Counsel and Defense Counsel a worksheet containing a list of employee identification numbers for the PAGA Group Members with their corresponding Individual Pay Periods and PAGA Payment Shares.

62. **Taxes and Withholdings.** Each Settlement Share is intended to settle the Class Members' claims for unpaid wages and penalties. Accordingly, ten percent (10%) of each Settlement Share shall represent unpaid wages and the remaining ninety percent (90%) of each Settlement Share shall represent penalties and interest. The portion of the Settlement Share representing unpaid wages shall be paid to each Participating Class Member subject to any applicable employee-side tax withholdings and deductions, and the Settlement Administrator shall issue an IRS Form W-2 to each Participating Class Member for that amount. The portion of the Settlement Share representing penalties shall be paid to the Participating Class Member in full without deductions or withholdings, and the Settlement Administrator shall issue an IRS Form 1099 to each Participating Class Member for that amount. Each Participating Class Member shall be individually responsible for their own share of applicable income tax withholdings and deductions from the Settlement Share attributable to the portion of the settlement for which an IRS Form 1099 will be issued. Defendant's payment of the Employer Payroll Tax attributable to the Settlement

1 Share payments constituting wages will be made separately, according to each Defendant's agreed
2 upon proportionate share of the Maximum Settlement Amount and shall not come from the
3 Maximum Settlement Amount. The Parties agree and understand that Defendant have not made any
4 representations regarding the tax obligations or consequences, if any, related to this Settlement. The
5 Parties agree that Defendant and each Participating Class Member are solely responsible for
6 determining the tax consequences of payments made pursuant to this Settlement and for paying
7 taxes, if any, which are determined to be owed by each of them on such payments (including
8 penalties and interest related thereto) by any taxing authority, whether state, local, or federal.

9 63. Each PAGA Payment Share is intended to settle the PAGA Group Members' claims
10 for civil penalties. Accordingly, one hundred percent (100%) of each PAGA Payment Share shall
11 represent civil penalties. The PAGA Payment Share shall be paid to the PAGA Group Member in
12 full without deductions or withholdings, and the Settlement Administrator shall issue an IRS Form
13 1099 to each PAGA Group Member for that amount, to the extent the PAGA Group Member's
14 PAGA Payment Share is greater than or equal to Six Hundred Dollars and Zero Cents (\$600.00).
15 Each PAGA Group Member shall be individually responsible for their own share of applicable
16 income tax withholdings and deductions for his or her PAGA Payment Share.

17 64. **Total Payment Amount.** In no event will Defendant be required to pay more than
18 the Maximum Settlement Amount (unless that amount is increased pursuant to Paragraph 26 above)
19 for distribution to the Plaintiff, Class Counsel, Participating Class Members, PAGA Group
20 Members, LWDA, Settlement Administrator, or for any other costs or expenses not otherwise
21 enumerated. However, Defendant's payment of the Employer Payroll Tax attributable to the
22 Settlement Share payments constituting wages will be made separately, according to each
23 Defendant's agreed upon proportionate share of the Maximum Settlement Amount, and shall not
24 come from the Maximum Settlement Amount.

25 65. **Payments to Plaintiff and Class Counsel and Others.** Subject to the terms and
26 conditions of this Settlement, the Settlement Administrator will make the following payments out of
27 the Maximum Settlement Amount as follows:

28 (a) **To Plaintiff:** In addition to their respective Settlement Shares, Plaintiff will

1 apply to the Superior Court for Class Representative Payments in an amount not to exceed Ten
2 Thousand Dollars and Zero Cents (\$10,000.00). Defendant will not oppose this payment. The
3 Settlement Administrator will pay the Class Representative Payment approved by the Court out of
4 the Maximum Settlement Amount. Payroll tax withholding and deductions will not be taken from
5 the Class Representative Payments and an IRS Form 1099 will be issued to Plaintiff for this
6 payment.

7 (b) **To Class Counsel:** Class Counsel will apply to the Superior Court for the
8 Class Counsel Fees Payment in an amount not to exceed one third of the Maximum Settlement
9 Amount (currently estimated to be Two Hundred Fifty Thousand Dollars and Zero Cents
10 (\$250,000.00)). Class Counsel will also submit to the Superior Court a memorandum of costs for
11 the Class Counsel Litigation Expenses Payment in an amount not to exceed Twenty Thousand
12 Dollars and Zero Cents (\$20,000.00) as request reasonable costs of suit to be paid from the
13 Maximum Settlement Amount. Defendant will not oppose these requests. The Settlement
14 Administrator will pay the amounts approved by the Superior Court out of the Maximum Settlement
15 Amount. Withholding and deductions will not be taken from the Class Counsel Fees Payment or
16 Class Counsel Litigation Expenses Payment and one or more IRS Forms 1099 will be issued to
17 Class Counsel with respect to those payments.

18 (c) **To the LWDA:** As part of their Motions for Preliminary and Final
19 Approval, the Parties will jointly apply to the Superior Court for approval of the LWDA Payment in
20 the amount of Eighteen Thousand, Seven Hundred and Fifty Dollars and Zero Cents (\$18,750.00),
21 which shall constitute the LWDA's seventy-five percent (75%) share of Twenty-Five Thousand
22 Dollars and Zero Cents (\$25,000.00) in civil penalties paid under this Settlement. The remaining
23 Six Thousand, Two Hundred and Fifty Dollars and Zero Cents (\$6,250.00) in civil penalties shall
24 be distributed on a *pro rata* basis based upon the number of pay periods worked by each PAGA
25 Group Member ("PAGA Payment").

26 (d) **To the Settlement Administrator:** The Settlement Administrator will be
27 paid from the Maximum Settlement Amount its reasonable fees and expenses as approved by the
28 Superior Court, which are estimated not to exceed Eight Thousand Dollars (\$8,000).

1 **66. Appointment of Settlement Administrator.** The Parties will ask the Court to
2 appoint CPT Group, Inc., a qualified and experienced administrator based in California where the
3 Action is venued, to serve as the Settlement Administrator, which, as a condition of appointment,
4 will agree to be bound by this Agreement with respect to the performance of its duties and its
5 compensation. The Settlement Administrator's duties will include (i) calculating Settlement Shares
6 and PAGA Payment Shares; (ii) preparing, translating into Spanish, printing, and mailing the Class
7 Notice to all Class Members; (iii) using reasonable measures to contact all Class Members,
8 including conducting a National Change of Address search on all Class Members before mailing the
9 Class Notice to each Class Member's address; (iv) re-mailing the Class Notice to the Class
10 Member's new address for those Class Members whose address had changed; (v) setting up a toll-
11 free telephone number to receive calls from Class Members; (vi) receiving requests for exclusion
12 and objections to the Settlement; (vii) providing the Parties with weekly status reports about the
13 delivery of Class Notices and any requests for exclusion and objections; (viii) issuing the checks to
14 effectuate the payments due under the Settlement; (ix) using reasonable measures to deliver issued
15 checks to Participating Class Members, including use of a "skip-trace" for undeliverable checks;
16 and (x) otherwise administering the Settlement pursuant to this Agreement including paying and
17 reporting the employer's share of the payroll taxes to the appropriate taxing agency. The Settlement
18 Administrator will have the final authority to resolve all disputes concerning the calculation of a
19 Participating Class Member's Settlement Share and/or PAGA Group Member's PAGA Payment
20 Share, subject to the terms set forth in this Agreement.

21 **V. RELEASE OF CLAIMS**

22 **67. Plaintiff's Released Claims.** Plaintiff, individually and on behalf of Plaintiff's
23 heirs, executors, administrators, representatives, attorneys, successors and assigns knowingly and
24 voluntarily releases and forever discharges Defendant, including any and all parent corporations,
25 affiliates, subsidiaries, managers, predecessors, insurers, successors and assigns, including but not
26 limited to each of their current and former attorneys officers, directors and agents thereof, both
27 individually and in their business capacities, (collectively, "Plaintiff's Released Parties"), to the
28 fullest extent permitted by law, of and from any and all claims, known and unknown, asserted and
unasserted, which Plaintiff has or may have against the Plaintiff's Released Parties as of the date of

1 execution of this Settlement Agreement. Plaintiff is not waiving any rights Plaintiff may have to:
2 (i) Plaintiff's own vested accrued employee benefits under the Defendant's health, welfare or
3 retirement benefits plans, if any, as of the date of execution of this Settlement Agreement; (ii)
4 benefits or rights to seek benefits under applicable workers' compensation (except as to claims
5 under Labor Code §§ 132a and 4553 which are expressly released herein) or unemployment
6 insurance or indemnification statutes; (iii) pursue claims which by law cannot be waived by signing
7 this Settlement Agreement; and (iv) enforce this Settlement Agreement.

8 68. To affect a full and complete general release as described above, Plaintiff expressly
9 waives and relinquishes all rights and benefits of § 1542 of the Civil Code of the State of California
10 and does so understanding and acknowledging the significance and consequence of specifically
11 waiving § 1542. Thus, notwithstanding the provisions of § 1542, and to implement a full and
12 complete release and discharge of all parties, Plaintiff expressly acknowledges this Settlement
13 Agreement is intended to include in its effect, without limitation, all claims Plaintiff does not know
14 or suspect to exist in Plaintiff's favor at the time of signing this Settlement Agreement, and that this
15 Settlement Agreement contemplates the extinguishment of any such claims. Plaintiff warrants
16 Plaintiff has read this Settlement Agreement, including this waiver of California Civil Code § 1542,
17 and that Plaintiff has consulted with or had the opportunity to consult with counsel of Plaintiff's
18 choosing about this Settlement Agreement and specifically about the waiver of § 1542, and that
19 Plaintiff understands this Settlement Agreement and the § 1542 waiver, and so Plaintiff freely and
20 knowingly enters into this Settlement Agreement. Plaintiff further acknowledges that Plaintiff later
21 may discover facts different from or in addition to those Plaintiff now knows or believes to be true
22 regarding the matters released or described in this Settlement Agreement, and even so Plaintiff
23 agrees that the releases and agreements contained in this Settlement Agreement shall remain
24 effective in all respects notwithstanding any later discovery of any different or additional facts.
25 Plaintiff expressly assume any and all risk of any mistake in connection with the true facts involved
26 in the matters, disputes or controversies released or described in this Settlement Agreement or with
27 regard to any facts now unknown to Plaintiff relating thereto.

28 69. **Participating Class Members Released Claims.** As of the date of the Judgment,
each Participating Class Member, and without the need to manually sign a release document, shall

1 release the Released Parties from all causes of action and claims that were alleged in the Action or
2 reasonably could have been alleged based on the facts and legal theories contained in the Action,
3 including all of the following claims for relief: (i) failure to pay all regular wages, minimum wages
4 and overtime wages due (Lab. Code §§ 510, 558, 1194, 1194.2, 1197, 1197.1, & 1198); (ii) failure
5 to provide compliant meal periods (Lab. Code §§ 226.7 & 512); (iii) failure to provide compliant
6 rest breaks (Lab. Code § 226.7); (iv) failure to timely pay wages during employment (Lab. Code §§
7 204 & 210); (v) failure to provide complete, accurate wage statements (Lab. Code § 226); (vi)
8 failure to maintain accurate employment and payroll records (Lab. Code §§ 1174 & 1174.5); (vii)
9 failure to pay wages timely at time of termination or resignation (Lab. Code §§ 201-203); (viii)
10 unfair business practices that could have been premised on the claims, causes of action or legal
11 theories of relief described above or any of the claims, causes of action or legal theories of relief
12 pleaded in the operative complaint (Cal. Bus. & Prof. Code § 17200, *et seq.*); (ix) any claim for
13 costs and attorneys' fees and expenses; and (x) any claim arising from the claims described above
14 under applicable federal, state, local or territorial law as well as applicable regulations and Wage
15 Orders (collectively, the "Released Claims"). Participating Class Members who cash their checks
16 are deemed to have waived all Released Claims inclusive of claims under the Fair Labor Standards
17 Act. Participating Class Members who do not cash their checks shall be deemed to waive all
18 Released Claims except for a claim under the Fair Labor Standards Act. Released Claims for Class
19 Members who worked for Defendant in California during the Class Period shall have their claims
20 released during the Class Period.

21 **70. PAGA Group Released Claims.** As of the date of the Judgment, each PAGA Group
22 Member, and without the need to manually sign a release document, shall release the Released
23 Parties and the State of California for claims for civil penalties pursuant to PAGA based upon all
24 causes of action and claims that were alleged in the Action or reasonably could have been alleged
25 based on the facts and legal theories contained in the Action, and/or the LWDA Exhaustion Letter
26 including all of the following claims for relief: (i) failure to pay all regular wages, minimum wages
27 and overtime wages due (Lab. Code §§ 510, 558, 1194, 1194.2, 1197, 1197.1, & 1198); (ii) failure
28 to provide compliant meal periods (Lab. Code §§ 226.7 & 512); (iii) failure to provide compliant
rest breaks (Lab. Code § 226.7); (iv) failure to timely pay wages during employment (Lab. Code §§

204 & 210); (v) failure to provide complete, accurate wage statements (Lab. Code § 226); (vi) failure to maintain accurate employment and payroll records (Lab. Code §§ 1174 & 1174.5); (vii) failure to pay wages timely at time of termination or resignation (Lab. Code §§ 201-203); (viii) all claims under the California Labor Code Private Attorneys General Act of 2004 that could have been premised on the claims, causes of action or legal theories described above or any of the claims, causes of action or legal theories of relief pleaded in the Action; (ix) any claim for costs and attorneys' fees and expenses; and (x) any claim arising from the claims described above under applicable federal, state, local or territorial law as well as applicable regulations and Wage Orders (collectively, the "PAGA Released Claims"). PAGA Released Claims for PAGA Group Members who worked for Defendant in California during the PAGA Period shall have their claims released during the PAGA Period.

71. Released Parties includes Defendant and their past, present and/or future, direct and/or indirect, officers, directors, members, managers, agents, representatives, attorneys, including but not limited to O'Hagan Meyer, affiliates, predecessors, and successors.

72. In light of the binding nature of a PAGA judgment on non-party employees pursuant to *Arias v. Sup. Ct. (Angelo Dairy)* (2009) 46 Cal.4th 969 and *Cardenas v. McLane Foodservice, Inc.* (2011) 796 F.Supp.2d 1246, individuals otherwise meeting the definition of a Class Member who exclude themselves from the Settlement shall nonetheless receive a payment for the amount of each such individual's estimated share of the PAGA Payment and shall be bound by the released PAGA claims, as outlined in Paragraph 70.

73. The Released Claims and PAGA Released Claims described in Paragraphs 69 and 70 expressly exclude all claims made by a Participating Class Member and/or PAGA Group Member for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, claims while classified as exempt, and claims outside of the Class Period and/or PAGA Period.

74. **Class Counsel.** As of the Effective Date, and except as otherwise provided by this Settlement, Class Counsel and any counsel associated with Class Counsel waive any further claims to costs and attorneys' fees and expenses against Defendant or the Released Parties arising from or related to the Action, including but not limited to claims based on the Labor Code, the Code of Civil

1 Procedure, PAGA, the Fair Labor and Standards Act, the Business and Professions Code, or any
2 other contract, statute or law (“Class Counsel Released Claims”).

3 75. **No Effect on Other Benefits.** The payment of Settlement Shares and/or PAGA
4 Payment Shares will not result in any additional employee benefit payments (such as 401(k),
5 vacation, or bonus) and shall not have any effect on the eligibility for, or calculation of, any
6 employee benefit.

7 **VI. DUTIES OF THE PARTIES**

8 76. **Mutual Full Cooperation.** The Parties agree to cooperate fully with one another to
9 accomplish and implement the terms of this Stipulation. Such cooperation shall include, but not be
10 limited to, execution of such other documents and the taking of such other actions as may
11 reasonably be necessary to fulfill the terms of this Settlement unless the Court denies the Settlement
12 with prejudice. The Parties shall use their best efforts, including all efforts contemplated by this
13 Stipulation and any other efforts that may become necessary by court order or otherwise, to
14 effectuate this Stipulation and the terms set forth herein. The Parties will work together to make
15 any non-material modifications of the Settlement requested by the Court to obtain approval of the
16 Parties’ Settlement.

17 77. **Duty to Support and Defend the Class Settlement.** The Parties agree to abide by
18 all of the terms of the Settlement in good faith and to support the Settlement fully and to use their
19 best efforts to defend this Settlement from any legal challenge, whether by appeal or collateral
20 attack.

21 78. **Duties Prior to Court Approval.** Class Counsel shall promptly submit this
22 Stipulation to the Court for preliminary approval and determination by the Court as to its fairness,
23 adequacy, and reasonableness. Promptly upon execution of this Stipulation, Class Counsel shall
24 apply to the Court for the entry of a preliminary order, scheduling a hearing on the question of
25 whether the proposed Class Settlement should be approved as fair, reasonable, and adequate as to
26 the Class Members, approving as to form and content the proposed Class Notice attached hereto as
27 Exhibit “A”, respectively, and directing the mailing of the Class Notice to Settlement Class
28 Members.

79. **Non-Monetary Relief and Catalyzation of Policy Change.** Although Defendant

denies any liability of any kind associated with the claims alleged in the Lawsuit, denies any liability or intentional wrongdoing, Defendant revised and updated their wage and hour policies and practices, including but not limited to their timekeeping and meal period and rest break policies and procedures.

VII. MISCELLANEOUS TERMS

80. **No Admission of Liability.** Defendant denies that it has engaged in any unlawful activity, has failed to comply with the law in any respect, or has any liability to anyone under the claims asserted in the Action. This Settlement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Settlement is intended or will be construed as an admission of liability or wrongdoing by Defendant, an admission by Plaintiff that any of his claims were non-meritorious, or any defense asserted by Defendant was meritorious. This Settlement and the fact that Plaintiff and Defendant were willing to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with the Settlement).

81. The Parties also agree that this release constitutes a resolution of a good faith dispute concerning wages and complies with Labor Code Section 206.5, which reads in part:

“Execution of release of claim or right on account of wages due.

No employer shall require the execution of any release of any claim or right on account of wages due, or to become due, or made, or made as an advance on wages to be earned, unless payment of those wages has been made.”

82. Whether or not the Judgment becomes Final, neither the Settlement, any document, statement, proceeding or conduct related to the Settlement, nor any reports or accounting of those matters, will be (i) construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Defendant or any of the Released Parties, including, but not limited to, evidence of a presumption, concession, indication or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or offered in evidence against any of the Released Parties, or any other civil, criminal or administrative action or proceeding except for purposes of effectuating this Settlement.

1 83. Notwithstanding Paragraph 82 of this Settlement, any and all provisions of this
2 Settlement may be admitted in evidence and otherwise used in any and all proceedings to enforce
3 any or all terms of this Settlement, or in defense of any claims released or barred by this Settlement.

4 84. **Non-Disparagement.** Plaintiff and Class Counsel agree not to make any untruthful,
5 malicious, disparaging or defamatory statements, allegations, comments or communications,
6 regardless of form (whether written, oral, electronic, including but not limited to Glassdoor, Yelp,
7 or otherwise), regarding the Released Parties. Plaintiff and Class Counsel further agree not to
8 encourage authorize or permit any such statements, allegations, comments or communications to be
9 made by others on their behalf. To the extent Plaintiff and/or Class Counsel have posted any
10 negative comments about the Released Parties on Glassdoor, Yelp, or other websites, Plaintiff
11 and/or Class Counsel agree to request that these comments be removed and to provide a copy of
12 such request to Defense Counsel within 30 days of the execution of this Agreement.

13 85. **Waiver of Reemployment.** Plaintiff acknowledges that he has no intent to apply for
14 employment and/or re-employment with Defendant. Plaintiff further acknowledges that Defendant
15 or any related, successor, parent, or subsidiary companies has the right to refuse rehire Plaintiff for
16 non-discriminatory and non-retaliatory reasons and Plaintiff acknowledge that Defendant's position
17 is that such legitimate non-discriminatory and non-retaliatory reasons exist.

18 86. **Integrated Agreement.** After this Settlement is signed and delivered by all Parties
19 and their counsel, this Settlement and its exhibits will constitute the entire agreement between the
20 Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties,
21 covenants, or inducements have been made to any Party concerning this Settlement or its exhibits
22 other than the representations, warranties, covenants, and inducements expressly stated in this
23 Settlement and its exhibits.

24 87. **Attorney Authorization.** Class Counsel and Defense Counsel warrant and represent
25 that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action
26 required or permitted to be taken by such Parties pursuant to this Settlement to effectuate its terms,
27 and to execute any other documents required to effectuate the terms of this Settlement. The Parties
28 and their counsel will cooperate with each other and use their best efforts to affect the
implementation of the Settlement. In the event the Parties are unable to reach agreement on the

1 form or content of any document needed to implement the Settlement, or on any supplemental
2 provisions that may become necessary to effectuate the terms of this Settlement, the Parties will
3 seek the assistance of mediator Steve Serratore, Esq., and if no resolution is reached the Superior
4 Court, and in all cases all such documents, supplemental provisions and assistance of the court will
5 be consistent with this Settlement.

6 88. **Modification of Agreement.** This Agreement, and any and all parts of it, may be
7 amended, modified, changed, or waived only by an express written instrument signed by all Parties,
8 their successors-in-interest, and/or the Parties' respective counsel, as authorized.

9 89. **Settlement Binding on Successors.** This Settlement Agreement will be binding
10 upon, and inure to the benefit of, the successors of each of the Parties.

11 90. **Applicable Law.** All terms and conditions of this Settlement and its exhibits will be
12 governed by and interpreted according to the laws of the State of California, without giving effect to
13 any conflict of law principles or choice of law principles.

14 91. **Cooperation in Drafting.** The Parties have cooperated in the drafting and
15 preparation of this Settlement. This Settlement will not be construed against any Party on the basis
16 that the Party was the drafter or participated in the drafting.

17 92. **Fair Settlement.** The Parties and their respective counsel believe and warrant that
18 this Settlement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at
19 this Settlement through arms-length negotiations, taking into account all relevant factors, current
20 and potential.

21 93. **Headings.** The descriptive heading of any section or Paragraph of this Settlement is
22 inserted for convenience of reference only and does not constitute a part of this Settlement.

23 94. **Notice.** All notices, demands or other communications given under this Settlement
24 will be in writing and deemed to have been duly given as of the third business day after mailing by
25 U.S. Mail, addressed as follows:

26 *To Class Counsel:*

MELMED LAW GROUP P.C.
Jonathan Melmed
1801 Century Park East, Suite 850
Los Angeles, California 90067

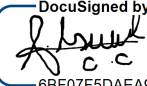
BOKHOUR LAW GROUP, P.C.
 Mehrdad Bokhour
 1901 Avenue of the Stars, Suite 450
 Los Angeles, California 90067

To the Defendant's Counsel: Matthew C. Sgnilek, Esq.
 Andrea Rosenkranz, Esq.
 O'HAGAN MEYER
 3200 Park Center Drive, Suite 700
 Costa Mesa, CA 92626

95. **Execution in Counterpart.** This Settlement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile signatures, scanned PDF signatures, and electronic signatures will be presumptive evidence of execution of the original, which shall be produced on reasonable request. Any executed counterpart will be admissible to prove the existence and contents of this Settlement.

DATED: 8/24/2022

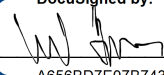
JOSE AGUILAR

DocuSigned by:

 6BF07F5DAEA94E1...

DATED: 9/1/2022

JIMENEZ NURSERY, INC.

By:

DocuSigned by:

 A656BD7E07B7439...

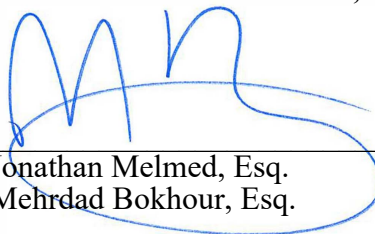
Its:

President

DATED: August 24, 2022

MELMED LAW GROUP P.C.
BOKHOUR LAW GROUP, P.C.

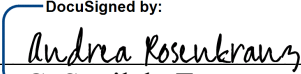
By:


 Jonathan Melmed, Esq.
 Mehrdad Bokhour, Esq.

Attorneys for Plaintiff
 JOSE AGUILAR

1 DATED: 8/26/2022

O'HAGAN MEYER

2
3 By: 
4 Matthew C. Smilek, Esq.
5 Andrea Rosenkranz, Esq.

6 Attorneys for Defendant
7 JIMENEZ NURSERY, INC.
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