

11/13/2024

Clad Files, Executive Officer/Clerk of the Court

By: *A. Scoggins* Deputy
A. Scoggins

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Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

TONY BANKS, individually, and on behalf of
aggrieved employees pursuant to the Private
Attorneys General Act ("PAGA");

Plaintiff,

v.

SUBLIME MACHINING INC. DBA
SUBLIME CANNA, a California corporation;
and DOES 1 through 100, inclusive;

Defendants.

Case No.: 21CV000754

Assigned for All Purposes to:
Honorable Peter Borkon
Department 15

**[PROPOSED] ORDER AND
JUDGMENT GRANTING APPROVAL
OF PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698, ET SEQ.)
SETTLEMENT AGREEMENT**

[Reservation ID: 748338470359]

Hearing Date: October 31, 2024
Hearing Time: 2:30 p.m.
Hearing Place: Department 15

Complaint Filed: October 22, 2021
Trial Date: None Set

1 This matter has come before the Honorable Peter Borkon in Department 15 of the Alameda
2 County Superior Court located at 1221 Oak Street, Oakland, California 94612, on Plaintiff Tony
3 Bank's ("Plaintiff") Further Renewed Motion for Approval of Private Attorneys General Act
4 (Labor Code § 2698, *et seq.*) Settlement Agreement. This Court reviewed the papers submitted
5 by Plaintiff in support of approval of the Amended Settlement Agreement and Release
6 ("Settlement Agreement," "Settlement," and "Agreement") pursuant to Labor Code section
7 2698, *et seq.* (Private Attorneys General Act of 2004 ("PAGA")). The Settlement Agreement is
8 attached hereto as **Exhibit 1**. Based upon this review, and the findings below, the Court finds
9 good cause to enter this Order and Judgment.

10 **FINDINGS:**

11 Unless otherwise specified, defined terms in this Order and Judgment have the same
12 definition as the terms in the Settlement Agreement.

13 The Court has jurisdiction over the subject matter of this litigation brought by Plaintiff,
14 individually and in his capacity as a private attorney general proxy or agent of the State, against
15 Defendant Sublime Machining Inc. d/b/a Sublime Canna ("Defendant").

16 On July 30, 2021, Plaintiff served a notice letter to the California Labor and Workforce
17 Development Agency ("LWDA") and Defendant, pursuant to Labor Code section 2699.3, to
18 notify the LWDA and Defendant of the alleged Labor Code violations.

19 On October 22, 2021, Plaintiff filed this representative PAGA action against Defendant,
20 individually and on behalf of California and all Settlement Group Members.

21 The Parties expressly acknowledge the Settlement Agreement is entered solely for the
22 purpose of compromising the significantly disputed PAGA claim and that nothing contained
23 therein is an admission of liability or wrongdoing by Defendant.

24 The Court finds the Settlement was entered in good faith and that the Parties have satisfied
25 the standards and applicable requirements for approval of a settlement of the PAGA claim.

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1 The Court finds, pursuant to Labor Code sections 2699(1)(2) and (1)(4), the LWDA was
2 given timely notice of the Agreement. On April 12, 2024, Plaintiff submitted a Notice of
3 Settlement to the LWDA, attached to which was a copy of the Agreement. Plaintiff's Notice of
4 Settlement complied with the requirements of Labor Code section 2699(1)(2).

5 The Court, having reviewed the evidence and papers submitted, and considered any
6 argument of counsel, hereby grants the motion and approves the terms of the settlement as set
7 forth in the Settlement under Labor Code section 2699(1)(2) as fair, adequate, and reasonable.

8 **IT IS HEREBY ORDERED THAT:**

9 1. The "Settlement Group Members" are defined as all current or former
10 hourly-paid or non-exempt employees of Defendant who worked for Defendant within the State
11 of California at any time during the period from July 30, 2020, through June 30, 2022
12 ("Settlement Group," "Settlement Group Members," and "Settlement Period").

13 2. Phoenix Class Action Administration Solutions is hereby appointed as the
14 Settlement Administrator.

15 3. Defendant shall pay the Gross Settlement Amount of \$150,000 in
16 accordance with the Settlement Agreement.

17 4. The Court approves the Attorneys' Fees Award to Plaintiff's Counsel of
18 up to \$50,000 (1/3 of the Gross Settlement Amount), Litigation Costs Award to Plaintiff's
19 Counsel of \$14,588.90, and Administration Costs to the Settlement Administrator of up to
20 \$5,000, all payable from the Gross Settlement Amount. The Court finds the amounts requested
21 are fair and reasonable.

22 5. After deducting the above-mentioned payments, the balance of the
23 settlement amount will be \$80,411.10 ("PAGA Penalties Fund"). Under the terms of the
24 Settlement, seventy-five (75%) of the PAGA Penalties Fund (\$60,308.33) will be paid to the
25 LWDA ("LWDA PAGA Payment"), and the remaining twenty-five percent (25%) of the PAGA
26 Penalties Fund (\$20,102.77) will be paid to the Settlement Group Members ("Net Settlement
27 Amount") as their Individual Settlement Awards using the formula set forth in the Settlement.

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1 6. The Court authorizes the Settlement Administrator to calculate and pay the
2 Individual Settlement Awards in accordance with the terms set forth in the Settlement.

3 7. Within fifteen (15) calendar days of the Effective Date (as defined in the
4 Settlement Agreement), Defendant shall provide to the Settlement Administrator a list of
5 Settlement Group Members that identifies each of their Social Security Numbers, last known
6 addresses, home telephones and phone numbers, and number of pay periods actively worked
7 for Defendant during the Settlement Period.

8 8. Funding of the Settlement shall be made via monthly installment payments
9 in the form of twenty-four (24) checks. The twenty-four (24) installment payments will begin
10 within thirty (30) calendar days after the Effective Date. Thereafter, payments will be made over
11 a two (2) year period in equal monthly installments, provided that all Parties have signed the
12 Agreement. This payment plan is crucial for Defendant due to its current financial condition
13 and financial hardships it has been experiencing in recent years.

14 9. Within fourteen (14) calendar days of the full funding of the Settlement by
15 Defendant, the Settlement Administrator will issue the payments required by Section 7 of the
16 Agreement to the appropriate entities or persons.

17 10. Individual Settlement Award checks will remain negotiable for one
18 hundred twenty (120) calendar days after the date of their issuance ("Check Stale Date"). Any
19 Individual Settlement Award checks that are not cashed, deposited, or negotiated after the Check
20 Stale Date will be void, and the amount of those checks will be directed to the California State
21 Controller for deposit in the Unclaimed Property Fund in the name of the employee.

22 11. Any checks to the Settlement Group returned as undeliverable on or before
23 the Check Stale Date will be sent promptly via regular First-Class U.S. Mail to the forwarding
24 address affixed thereto. If no forwarding address is provided, the Settlement Administrator will
25 attempt to determine the correct address using a skip trace or other reasonable method and will
26 then perform a single remailing.

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1 12. The Court hereby approves, as to form and content, the explanatory letter
2 attached as **Exhibit A** to the Agreement, which is attached hereto as **Exhibit 1**. Each Individual
3 Settlement Award check will be accompanied by a copy of the explanatory letter.

4 13. Effective on the date when Defendant fully funds the entire Gross
5 Settlement Amount, the Agreement and the judgment to be entered by the Court following the
6 Agreement forever bar Plaintiff, LWDA, and any other representative, proxy, or agent thereof,
7 including, but not limited to, any and all allegedly aggrieved employees, from pursuing any
8 action against Defendant under PAGA based on or arising out of violations of Labor Code
9 sections alleged in the lawsuit, and claims that could have been asserted in the lawsuit based
10 upon the facts alleged in the operative complaint and PAGA Notice through the end of the
11 Settlement Period.

12 14. Plaintiff's Counsel will not seek or be entitled to any attorneys' fees and/or
13 expenses related to the claims encompassed by the Agreement, other than those set forth above.

14 15. Plaintiff's compliance with the notice procedures described in the
15 Settlement Agreement shall constitute due and sufficient notice to the LWDA and shall be
16 deemed to satisfy any requirement of due process. Nothing else shall be required of, or done by,
17 the Parties, Plaintiff's Counsel, or Defendant's counsel to provide notice of the settlement.

18 16. Pursuant to Code of Civil Procedure section 664.6, the Court shall fully
19 retain continuing jurisdiction over this matter and the Parties necessary to enforce and effectuate
20 the terms and intent of the Agreement.

21 17. Nothing in this Order and Judgment or Agreement shall be construed as
22 evidence of an admission or concession by any of the Parties. This Order and Judgment and
23 Agreement simply represent a compromise of significantly disputed allegations.

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1 18. The Court sets a nonappearance case review for May 14, 2027 at 2:30 p.m.
2 in Department 15. Within five (5) court days before this hearing, Plaintiff shall file a compliance
3 status report. Pursuant to Code of Civil Procedure section 384, the compliance status report shall
4 specify the total amount paid to Settlement Group Members and the residual of the unclaimed
5 settlement funds that will be paid to the entity identified as the recipient of such funds in the
6 Settlement Agreement, along with a proposed amended judgment to facilitate this payment.

7 19. Within ten (10) calendar days from the full funding of the entire Gross
8 Settlement Amount and payments of all sums required by the Agreement, Plaintiff will file a
9 request for dismissal with prejudice of all claims and causes of action asserted in the lawsuit,
10 including the PAGA causes of action on behalf of Plaintiff and all Settlement Group Members.

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12 **IT IS SO ORDERED.**

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14 Dated: 11/13/2024



HONORABLE PETER BORKON
JUDGE OF THE SUPERIOR COURT
Peter Borkon / Judge

EXHIBIT 1

AMENDED SETTLEMENT AGREEMENT AND RELEASE

Subject to approval by the Superior Court of California, County of Alameda (“Court”), this Amended Settlement Agreement and Release (“Agreement”) is made and entered by and between Plaintiff Tony Banks (“Plaintiff”), on behalf of himself and as a representative aggrieved employee pursuant to Labor Code section 2698 *et seq.* (Private Attorneys General Act of 2004 (“PAGA”)), and Defendant Sublime Machining Inc. d/b/a Sublime Canna (“Defendant”) to settle the civil action entitled *Banks v. Sublime Machining Inc. d/b/a Sublime Canna*, Case Number 21CV000754 (“Lawsuit”). Plaintiff and Defendant are collectively referred to herein as the “Parties,” and each may be individually referred to herein as a “Party.”

RECITALS

This Agreement is made in consideration of the following facts:

- A. Plaintiff is former hourly-paid, non-exempt employee of Defendant.
- B. Plaintiff contends he suffered one or more violations of the Labor Code during his employment with Defendant and that he is “aggrieved employee” under PAGA. Pursuant to PAGA, an “aggrieved employee” may, after exhausting administrative remedies with the California Labor and Workforce Development Agency (“LWDA”), act as an agent of the State of California to bring an action to recover civil penalties from his or her former employer on behalf of himself or herself and other current or former employees for violations of the Labor Code.
- C. Pursuant to PAGA, on July 30, 2021, Plaintiff submitted a letter to the LWDA (“PAGA Notice”) alleging that Defendant subjected him and other current and former hourly-paid or non-exempt employees of Defendant within the State of California to certain violations under the Labor Code, including sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. These violations were premised upon Defendant’s alleged failure to compensate its hourly-paid or non-exempt employees for all hours worked, failure to pay all minimum wages and overtime wages, failure to properly pay sick leave, failure to provide, authorize, and/or permit meal and rest breaks (or pay premiums in lieu thereof), failure to keep and provide complete and accurate wage statements, failure to reimburse employees for all necessary business expenses and related costs, failure to timely pay all wages due during employment and upon termination, and failure to maintain accurate and complete payroll records, all of which are collectively referred to herein as the “PAGA Claims.”
- D. The Lawsuit includes the complaint Plaintiff filed on October 22, 2021 that seeks to recover civil penalties and attorneys’ fees based on the PAGA Claims.
- E. Defendant denies all the allegations in the Lawsuit and any contention that Defendant committed any misconduct, wrongdoing, or any other actionable conduct of any kind, including any violation of the Labor Code.

F. The Parties have each independently analyzed and investigated the facts and law relevant to the Lawsuit through discovery. Pursuant to discovery, Defendant produced, and Plaintiff reviewed, a substantial number of documents and data, including, but not limited to, information pertaining to the employment policies, practices, and procedures implicated by the PAGA Claims. This included Defendant's meal and rest breaks, overtime, timekeeping, and payroll policies; sampling of timekeeping and payroll records; wage statements for Plaintiff and other hourly-paid or non-exempt employees on whose behalf Plaintiff brought the PAGA Claims asserted in the Lawsuit; and summaries of data pertaining to the number of employees allegedly affected by the PAGA Claims.

G. After evaluating the strengths and weaknesses of their positions; considering the time, expense, and risk associated with litigating the Lawsuit to judgment; and engaging in arm's-length settlement negotiations at an all-day mediation session with the mediator Jeff Ross, an experienced and well-respected mediator, the Parties desire, and have agreed, to fully and finally settle any and all claims in the Lawsuit up to and through the Settlement Period (as defined herein).

NOW, THEREFORE, in consideration of the promises and agreements contained herein, the Parties agree to, and, pursuant to Labor Code section 2699(l)(2), seek approval of, the following settlement terms.

SETTLEMENT TERMS

1. **Court Approval of the Agreement.** In accordance with Labor Code section 2699(l)(2), the Parties will present this Agreement to the Court for its review and approval via a noticed motion.

2. **Delivery of Agreement to the LWDA.** As required by Labor Code section 2699(l)(2), Plaintiff will cause this Agreement to be submitted to the LWDA at the same time that this Agreement is submitted to the Court for approval.

3. **Effective Date.** This Agreement shall become fully effective the later of either: (a) thirty (30) days after the Court approves the Settlement; or (b) if the LWDA files an objection, thirty (30) days after the date of a final resolution of the objection or appeal.

4. **No Admission of Liability.** The Parties acknowledge and agree this Agreement is the result of, and evidences, a compromise and settlement of disputed claims in the Lawsuit and that this Agreement is made and entered without any admission of liability or wrongdoing of any kind whatsoever by Defendant, who expressly denies and disclaims any liability or wrongdoing whatsoever. Accordingly, neither the execution of this Agreement, its creation, the payment of any sum or consideration hereunder, nor the performance of any obligation required by this Agreement is, or shall be construed as, an admission of wrongdoing or liability on the part of Defendant. Additionally, neither the execution of this Agreement, its creation, payment of any sum or consideration hereunder, nor performance of any obligation required by this Agreement is, or shall be construed as, an admission of the truth or accuracy of any allegation made by Plaintiff or Plaintiff's Counsel in the Lawsuit.

5. **Persons and Entities Covered by this Agreement.**

(a) **The Settlement Period.** This Agreement shall cover the period from July 30, 2020, through June 30, 2022 (“Settlement Period”).

(b) **The Settlement Group.** This Agreement shall cover all current or former hourly-paid or non-exempt employees of Defendant who worked for Defendant within the State of California at any time during the Settlement Period. Such employees shall be collectively referred to herein as the “Settlement Group.” Each employee within the Settlement Group may be individually referred to herein as a “Settlement Group Member.” The Parties agree that there will be no right of Settlement Group Members to opt out of or object to the Settlement. There will be no claims process and no reversion. It is estimated that there are approximately two hundred (200) Settlement Group Members and 2,208 pay periods within the Settlement Period.

6. **Settlement Administration.**

(a) The Parties will retain Phoenix Class Action Administration Solutions, to act as the “Settlement Administrator” with respect to this Agreement.

(b) The Settlement Administrator shall be responsible for establishing a qualified settlement fund pursuant to 26 U.S.C. section 486B, making all payments required by this Agreement, handling all required tax withholding and reporting related thereto to the extent necessary, and issuing all appropriate tax forms to Plaintiff, Plaintiff’s Counsel, Settlement Group, and LWDA resulting from the settlement payments under this Agreement.

(c) Any disputes concerning administration of the Agreement may be submitted to the mediator who facilitated the negotiation of this Agreement. If the Parties cannot resolve their dispute with the mediator’s assistance, the dispute may be submitted to and resolved by the Court.

7. **Settlement Payments.**

(a) **Gross Settlement Amount.** In consideration of, and subject to, the promises, terms, and conditions set forth in this Agreement – including the releases set forth in Section 9 of this Agreement – Defendant shall pay the maximum gross sum of \$150,000 (“Gross Settlement Amount”), in the manner and method set forth in this Agreement, to fully, finally, and completely settle the Lawsuit and PAGA Claims alleged therein on behalf of the Settlement Group, including any and all associated claims for civil penalties, attorneys’ fees, and litigation costs and expenses. Nothing in this Agreement shall require Defendant to pay, or make Defendant liable for, more than the Gross Settlement Amount to fully, finally, and completely settle the Lawsuit and all claims alleged therein.

(b) **Allocation of Gross Settlement Amount.** The Gross Settlement Amount shall consist of the following categories of payments: proposed award of attorneys’ fees to Plaintiff’s Counsel (“Attorneys’ Fees Award”), proposed award of litigation costs and expenses to Plaintiff’s Counsel (“Litigation Costs Award”), proposed payment of settlement administration

costs to the Settlement Administrator (“Administration Costs”), and proposed payments of civil penalties to the LWDA and Settlement Group (“PAGA Penalties Fund”). Subject to approval by the Court, these amounts shall be paid and allocated as set forth below in Sections 7(b)(i) through 7(b)(v) of this Agreement.

(i) **Attorneys’ Fees Award.**

(A) Plaintiff’s attorneys in the Lawsuit – Douglas Han and Shunt Tatavos-Gharajeh of Justice Law Corporation (“Plaintiff’s Counsel”) – may submit a combined application to the Court for an award of attorneys’ fees in an amount not to exceed the gross sum of \$50,000 (1/3 of the Gross Settlement Amount). Defendant will not oppose or object to this application.

(B) Any Attorneys’ Fees Award approved by the Court will be paid by Defendant out of the Gross Settlement Amount and shall constitute a full and complete satisfaction of all claims Plaintiff may have for attorneys’ fees arising out of the Lawsuit through the Effective Date of this Agreement, including work not yet performed.

(C) This Agreement is not contingent upon the Court approving an Attorneys’ Fees Award in an amount equal to the maximum amount authorized by Section 7(b)(i)(A) of this Agreement. This Agreement shall remain fully effective and enforceable notwithstanding any decision by the Court to approve an Attorneys’ Fees Award that is less than the amount authorized by Section 7(b)(i)(A) of this Agreement or the amount requested by Plaintiff’s Counsel.

(D) If any portion of the Attorneys’ Fees Award authorized by Section 7(b)(i)(A) of this Agreement is not approved by the Court, only the approved amount shall be paid to Plaintiff’s Counsel out of the Gross Settlement Amount, and the payment of that amount shall constitute satisfaction of Defendant’s obligations with respect to the Attorneys’ Fees Award. Additionally, any difference between the Attorneys’ Fees Award authorized by Section 7(b)(i)(A) and Attorneys’ Fees Award approved by the Court will become part of the PAGA Penalties Fund.

(ii) **Litigation Costs Award.**

(A) Plaintiff’s Counsel may submit an application to the Court for an award for reimbursement of litigation costs and expenses incurred by Plaintiff’s Counsel in connection with the Lawsuit that is currently estimated not to exceed the combined gross sum of \$15,000 (“Litigation Costs Award”). Defendant will not oppose or object to this application.

(B) Any Litigation Costs Award approved by the Court will be paid by Defendant out of the Gross Settlement Amount and shall constitute a full and complete satisfaction of all claims Plaintiff may have for litigation costs and expenses arising out of the Lawsuit through the Effective Date of this Agreement, including litigation costs and expenses not yet incurred.

(C) This Agreement is not contingent upon the Court approving a Litigation Costs Award in an amount equal to the maximum amount authorized by Section 7(b)(ii)(A) of this Agreement. This Agreement shall remain fully effective and enforceable notwithstanding any decision by the Court to approve a Litigation Costs Award that is less than the amount authorized by Section 7(b)(ii)(A) of this Agreement, or the amount requested by Plaintiff's Counsel.

(D) If any portion of the Litigation Costs Award authorized by Section 7(b)(ii)(A) of this Agreement is not approved by the Court, only the approved amount shall be paid to Plaintiff's Counsel out of the Gross Settlement Amount, and the payment of that amount shall constitute satisfaction of Defendant's obligations with respect to the Litigation Costs Award. Additionally, any difference between the Litigation Costs Award authorized by Section 7(b)(ii)(A) and Litigation Costs Award approved by the Court will become part of the PAGA Penalties Fund.

(iii) **Administration Costs.**

(A) Subject to approval by the Court, an amount currently estimated at \$5,000 will be paid to the Settlement Administrator out of the Gross Settlement Amount to cover the costs of the settlement administration process ("Administration Costs"). If the actual costs of the settlement administration process are less than the amount approved by the Court, the balance will become part of the PAGA Penalties Fund.

(B) Any Administration Costs approved by the Court will be paid out of the Gross Settlement Amount and shall constitute a full and complete satisfaction of any settlement administration costs.

(C) This Agreement is not contingent upon the Court approving Administration Costs in an amount equal to the maximum amount authorized by Section 7(b)(iii)(A) of this Agreement. This Agreement shall remain fully effective and enforceable notwithstanding any decision by the Court to approve Administration Costs in an amount that is less than the amount authorized by Section 7(b)(iii)(A) of this Agreement.

(D) If any portion of the Administration Costs authorized by Section 7(b)(iii)(A) of this Agreement is not approved by the Court, no more than the approved amount shall be paid to the Settlement Administrator out of the Gross Settlement Amount. Additionally, any difference between the Administration Costs authorized by Section 7(b)(iii)(A) and Administration Costs approved by the Court will become part of the PAGA Penalties Fund.

(iv) **PAGA Penalties Fund.** The portion of the Gross Settlement Amount remaining after the Attorneys' Fees Award, Litigation Costs Award, and Administration Costs are paid shall be designated the "PAGA Penalties Fund," from which payments deemed to constitute a full and complete satisfaction of any and all claims in the Lawsuit for civil penalties under PAGA shall be made. Subject to approval by the Court, the PAGA Penalties Fund shall be allocated and paid as follows:

(A) **The LWDA Payment.** Seventy-five percent (75%) of the PAGA Penalties Fund will be paid to the LWDA for enforcement of labor laws, including the administration of PAGA and for education of employers and employees about their rights and responsibilities under the Labor Code.

(B) **Individual Settlement Awards.** Twenty-five percent (25%) of the PAGA Penalties Fund shall be designated as the “Net Settlement Amount” and will be paid to the Settlement Group on a pro rata basis. Each Settlement Group Member will receive a pro-rated share of the Net Settlement Amount based on the total number of pay periods the Settlement Group Member worked as an hourly-paid or non-exempt employee of Defendant during the Settlement Period. The maximum amount that each Settlement Group Member is entitled to receive (“Individual Settlement Award”) is determined by multiplying the Net Settlement Amount by a ratio that is determined by dividing the total number of pay periods worked by the Settlement Group Member for Defendant in California during the Settlement Period by the total number of pay periods worked by all Settlement Group Members for Defendant in California during the Settlement Period, as expressed in the following formula:

(1) Individual Settlement Award = Net Settlement Amount multiplied by the total number of pay periods worked by the Settlement Group Member divided by the total number of pay periods worked by all Settlement Group Members.

(2) The Parties intend the Net Settlement Amount shall be sufficient to pay all valid claims of Settlement Group Members in accordance with the formula set forth above. If for any reason the total value of payments to Settlement Group Members exceeds this amount, then payments to each Settlement Group Member will be adjusted on a pro-rata basis so that the total payout to Settlement Group Members does not exceed the Net Settlement Amount.

(c) **No Effect on Employee Benefits.** The payments made to Settlement Group Members pursuant to this Agreement shall not be utilized to calculate any additional benefits under any benefit plans to which any Settlement Group Members may be eligible, including, but not limited to, any profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, or other benefit plans available to the Settlement Group. It is the Parties’ intention that this Agreement will not affect any rights, contributions, or amounts to which any Settlement Group Members may be entitled under any benefit plans.

(i) **Payments to Plaintiff’s Counsel.** The Attorneys’ Fees Award and Litigation Costs Award shall be treated as IRS Form 1099 income. Accordingly, the Settlement Administrator shall issue an IRS Form 1099 to Plaintiff’s Counsel in connection with its Attorneys’ Fees Award and Litigation Costs Award.

(ii) **Payments to the LWDA.** The seventy-five percent (75%) of the PAGA Penalties Fund payable to the LWDA under Section 7(b)(iv)(A) of this Agreement shall be deemed to consist entirely of civil penalties recovered under PAGA and subject to treatment as IRS Form 1099 income.

(iii) **Payments to the Settlement Group.** Individual Settlement Awards shall be deemed to consist entirely of civil penalties recovered under PAGA and subject to treatment as IRS Form 1099 income. An IRS Form 1099 will be issued to each Settlement Group Member in connection with his or her Individual Settlement Award if it is \$600 or more.

(d) **Tax Indemnification.** Plaintiff, Plaintiff's Counsel, Settlement Group, and applicable governmental authorities (including the LWDA) are solely responsible for all tax obligations, including all reporting and payment obligations, attributable to them that may arise as a consequence of this Agreement and the payment of the amounts set forth above in Section 7(b). Neither Defendant nor Defendant's counsel make any express or implied promise, representation, or warranty regarding the tax consequences or tax treatment under federal or state tax laws for any sum paid pursuant to this Agreement. If a Party assigned or transferred, or purported to assign or transfer, any claim, dispute, or other matter herein released, such Party shall indemnify the other Party or Parties and hold harmless such other Party or Parties from and against any loss, cost, claim, or expense, including, but not limited to, all costs related to the defense of any action and reasonable attorneys' fees based upon, arising out of, or incurred as a result of any such claim, assignment, or transfer.

8. **Distribution of Settlement Payments.**

(a) **Funding of Settlement by Defendant.** Funding of the Settlement shall be made via monthly installment payments in the form of twenty-four (24) checks. The twenty-four (24) installment payments will begin within thirty (30) calendar days after the Effective Date. Thereafter, payments will be made over a two (2) year period in equal monthly installments, provided that all Parties have signed this Agreement. Defendant shall deliver to the Settlement Administrator installment checks for the share of the Gross Settlement Amount that will be divided among the Settlement Group Members together with a confidential list containing Settlement Group Members' Social Security Numbers, last known addresses, home telephones and phone numbers, and number of pay periods actively worked for Defendant during the Settlement Period along with the attached notice letter.

(b) **Timing of Payment by Settlement Administrator.** Within fourteen (14) calendar days of the full funding of the Settlement by Defendant, the Settlement Administrator will issue the payments required by Section 7 of this Agreement to the appropriate entities or persons. The Settlement Administrator shall obtain approval from all counsel of the calculations before mailing Individual Settlement Awards.

(c) **Payment of Individual Settlement Awards.**

(i) Within fifteen (15) calendar days of the Effective Date, Defendant shall provide to the Settlement Administrator a list of Settlement Group Members that identifies each of their Social Security Numbers, last known addresses, home telephones and phone numbers, and number of pay periods actively worked for Defendant during the Settlement Period. Defendant agrees to consult with the Settlement Administrator as required to provide the list in a format reasonably acceptable for the performance of the duties of the Settlement Administrator. The Settlement Administrator will keep the list confidential, use it only for the purposes described

herein, take adequate safeguards to protect confidential or private information, and return or certify the destruction of the information upon completion of the Settlement Administration process. The list of Settlement Group Members shall not be shared with Plaintiff or Plaintiff's Counsel.

(ii) Individual Settlement Awards will be paid in the form of a check delivered to each Settlement Group Member at the last known address on file with Defendant or as updated by the Settlement Administrator. Each Individual Settlement Award will be accompanied by an explanatory letter in English and Spanish, mutually approved by the Parties, substantially in the form attached hereto as **Exhibit A**.

(iii) Individual Settlement Award checks will remain negotiable for one hundred twenty (120) calendar days after the date of their issuance ("Check Stale Date"). Any Individual Settlement Award checks that are not cashed, deposited, or negotiated after the Check Stale Date will be void, and the amount of those checks will be directed to the California State Controller for deposit in the Unclaimed Property Fund in the name of the employee.

(iv) Any checks to the Settlement Group returned as undeliverable on or before the Check Stale Date will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will attempt to determine the correct address using a skip trace or other reasonable method and will then perform a single remailing. Any Settlement Group Member who cannot be located after the above procedures are followed will continue to be bound by this Agreement, but the funds associated with his or her Individual Settlement Award will be directed to the California State Controller for deposit in the Unclaimed Property Fund in the name of the employee.

9. **Releases.**

(a) **Release of PAGA Claims.** Effective on the date when Defendant fully funds the entire Gross Settlement Amount, this Agreement and the judgment to be entered by the Court following this Agreement forever bar Plaintiff, LWDA, and any other representative, proxy, or agent thereof, including, but not limited to, any and all allegedly aggrieved employees, from pursuing any action against Defendant under PAGA based on or arising out of violations of Labor Code sections alleged in the Lawsuit, and claims that could have been asserted in the Lawsuit based upon the facts alleged in the operative complaint and PAGA Notice through the end of the Settlement Period ("Released Claims"). The Released Claims include, but are not limited to, claims under the PAGA for civil penalties for alleged violations of Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802; and claims for attorneys' fees, costs, or interest resulting therefrom.

10. **Dismissal With Prejudice.** Within ten (10) calendar days from the full funding of the entire Gross Settlement Amount and payments of all sums required by this Agreement (or sooner), Plaintiff agrees to file a request for dismissal with prejudice of all claims and causes of action asserted in the Lawsuit, including the PAGA causes of action on behalf of Plaintiff and all Settlement Group Members. If the Court does not agree to dismiss in this Lawsuit, the Agreement shall remain in full effect, and the Parties agree to cooperate for submittal of a stipulated request for dismissal filed by Plaintiff's Counsel, supported by any necessary declarations, or otherwise

effectuate dismissal of the Lawsuit in whatever manner directed or required by the Court. Pursuant to Code of Civil Procedure section 664.6, the Court shall retain jurisdiction to enforce the terms of this Agreement.

11. **Acknowledgement of Fair and Reasonable Settlement.** The Parties have arrived at this Agreement after arm's-length negotiations between experienced counsel. Each of the Parties acknowledges, agrees, and believes this Agreement is a fair, adequate, and reasonable settlement of the Lawsuit. The Parties further acknowledge they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Agreement. Each Party to this Agreement agrees and represents it has investigated the facts relevant to this Agreement, and all matters pertaining thereto, to the full extent that each Party deems necessary. The Parties agree this Agreement reflects their good faith compromise of the claims raised in the Lawsuit based on their assessment of the mutual risks and costs of further litigation and the assessments of their counsel.

12. **Authority to Enter the Agreement.** Each Party represents and warrants it has the right and authority to execute this Agreement.

13. **Ownership of Claims.** The Parties represent they have not transferred or assigned, or purported to transfer or assign, to any person or entity any portion of any liability, claim, demand, action, cause of action or right herein released and discharged.

14. **Authorization of Counsel.** Counsel for all Parties warrant and represent they are authorized by the Parties whom they represent to negotiate this Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms and to execute any other documents required to effectuate its terms.

15. **Attorneys' Fees.** Except as set forth in this Agreement, each side shall bear its own costs and attorneys' fees.

16. **Confidentiality.** Except as provided below to the extent necessary to effectuate the settlement or as required by court or legal process, the Parties and their counsel will keep confidential the facts relating to the existence of this Agreement, negotiations leading to the execution of this Agreement, terms of this Agreement, and alleged factual basis for Plaintiff's claims, if any. Neither the Parties nor their counsel shall issue a press release, hold a press conference, publish information about the settlement on any website or through any social media, or otherwise publicize the settlement or communicate its terms in public or in private, unless ordered by the Court. However, for the limited purpose of establishing adequacy of counsel in future actions, Plaintiff's Counsel may reference the Action only by name and case number in a declaration establishing adequacy as class or representative counsel.

17. **Duty to Cooperate.** Each Party agrees it will abide by this Agreement and that the Parties and their counsel will cooperate with each other to affect the implementation of this Agreement. The Parties pledge their good faith and fair dealing in supporting the approval of this Agreement by the Court, including, but not limited to, fully documenting the settlement, completing, or filing any other documents or pleadings, arguing that the terms and conditions

agreed upon should be enforced fully, commencing any required action (either in court or in arbitration), jointly appealing and/or otherwise exhausting judicial review of any adverse ruling, etc. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties may seek the assistance of the mediator who facilitated the negotiation of this Agreement. If the Parties cannot resolve their dispute with the assistance of the mediator, the Parties may seek the assistance of the Court.

18. **Nullification of Agreement.** Defendant's payment of the Gross Settlement Amount shall be subject to the Court granting approval. If the Court fails to grant approval, the Parties shall be returned to their original respective positions as though this Agreement had never been entered into at all, with the exception that if any settlement administration costs are due and payable, the Parties agree to split those costs.

19. **Defendant's Option to Revoke.** Should the settlement, or any terms therein, be modified, vacated, altered, or become otherwise subject to challenge by law, including, but not limited to, any law that became effective after the execution of this Agreement, so that this Agreement is not approved by the Court in its entirety and therefore the intent of the Parties cannot be accomplished after jointly taken efforts to enforce it have been exhausted, Defendant shall have the option to revoke this Agreement at its sole discretion.

20. **Severability.** Should any clause or provision of this Agreement be declared illegal or unenforceable, it shall be modified as minimally as necessary to be enforceable. If the provision cannot be modified to be enforceable, such provision shall immediately become null and void, leaving the remainder of this Agreement in full force and effect.

21. **Governing Law and Interpretation.** This Agreement shall be governed in accordance with the laws of the State of California. The Agreement shall be interpreted in accordance with the plain meaning of its terms and shall not be strictly interpreted for or against any of the Parties to this Agreement. Given that all Parties hereto had the opportunity to draft, review, and edit the language of this Agreement, the Parties expressly waive the benefit of any legal principle or rule providing that in cases of uncertainty the language of a contract should be interpreted against the Party who caused the uncertainty to exist.

22. **Continuing Jurisdiction of the Court.** Pursuant to Code of Civil Procedure section 664.6, the Court shall retain continuing jurisdiction over the Lawsuit and the Parties to the fullest extent necessary to enforce and effectuate the terms and intent of this Agreement.

23. **Admissibility of Agreement.** The Parties agree this Agreement is admissible for the purposes of proving and or enforcing the terms of the Agreement, as set forth herein, pursuant to Evidence Code section 1123.

24. **Amendment and Modification.** This Agreement may not be modified, altered, or changed, except by a written instrument signed by either the Parties or their successors-in-interest or counsel for all Parties.

25. **Binding on Successors and Assigns.** This Agreement will be binding upon, and inure to the benefit of, the Parties hereto and their respective agents, employees, representatives, officers, directors, parents, subsidiaries, assigns, heirs, executors, administrators, insurers, and successors in interest.

26. **No Representations.** The Parties acknowledge, except as expressly set forth herein, no representation of any kind or character has been made to induce the execution of this Agreement.

27. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures sent by facsimile transmission or scanned e-mail transmission have the same force, validity, and effect as original signatures.

* * *

IN WITNESS WHEREOF, the Parties knowingly and voluntarily accept the terms of this Settlement Agreement and Release by affixing their signatures below.

Dated: 03/15/2024

Tony Banks

By: 

Dated: 3/18/24

Justice Law Corporation [Approving as to Form Only]

By: 
Douglas Han, Esq.
Shunt Tatavos-Gharajeh, Esq.
Attorneys for Plaintiff

Dated: _____

Sublime Machining Inc. d/b/a Sublime Canna

By: _____
On behalf of Sublime Machining Inc. d/b/a Sublime Canna

Dated: _____

AD Astra Law Group, LLP [Approving as to Form Only]

By: _____
Sean B. Gentry, Esq.
Zoey Campbell, Esq.
Attorneys for Defendant

IN WITNESS WHEREOF, the Parties knowingly and voluntarily accept the terms of this Settlement Agreement and Release by affixing their signatures below.

Dated: _____

Tony Banks

By: _____

Dated: _____

Justice Law Corporation [Approving as to Form Only]

By: _____

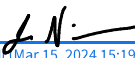
Douglas Han, Esq.

Shunt Tatavos-Gharajeh, Esq.

Attorneys for Plaintiff

Dated: Mar 15, 2024

Sublime Machining Inc. d/b/a Sublime Canna

By: 
By: [Jack N. \(Mar 15, 2024 15:19 EDT\)](#)
On behalf of Sublime Machining Inc. d/b/a Sublime Canna

Dated: Mar 15, 2024

AD Astra Law Group, LLP [Approving as to Form Only]

By: 
By: [Sean Gentry \(Mar 15, 2024 15:06 PDT\)](#)
Sean B. Gentry, Esq.
Zoey Campbell, Esq.
Attorneys for Defendant

EXHIBIT A

NOTICE OF PAGA SETTLEMENT

Banks v. Sublime Machining Inc. d/b/a Sublime Canna
Superior Court of California, County of Alameda
Case No. 21CV000754

Dear [Settlement Group Member's Name]:

Enclosed with this letter is a settlement check being paid to you pursuant to the settlement of the lawsuit filed in the Superior Court of California, County of Alameda, entitled *Banks v. Sublime Machining Inc. d/b/a Sublime Canna*, Case Number 21CV000754 (“Action”). The purpose of this letter is to provide you with basic information about the Action, the reasons why you are receiving the enclosed settlement check, and the effect of the settlement on your legal rights.

I. The Action

On October 22, 2021, Plaintiff Tony Banks (“Plaintiff”), a former employee of Defendant Sublime Machining Inc. d/b/a Sublime Canna (“Defendant”), commenced this Action by filing a complaint pursuant to Labor Code section 2698 (Private Attorneys General Act of 2004 (“PAGA”)) in the Superior Court of California, County of Alameda (“Operative Complaint”) on behalf of the State of California and all current or former hourly-paid or non-exempt employees of Defendant who worked for Defendant within the State of California at any time during the period from July 30, 2020, through June 30, 2022, referred to as “Settlement Group Members.”

In the Action, Plaintiff claimed Defendant owed civil penalties under PAGA to Plaintiff and the Settlement Group Members for alleged violations of the Labor Code. Defendant denies it violated the Labor Code, denies the allegations in the Operative Complaint, and denies all liability under PAGA to Plaintiff, Settlement Group Members, and State of California.

The merits of the Action have not been determined. However, on [Approval Date], the Superior Court of California, County of Alameda, approved a settlement of the Action that Defendant entered to avoid the costs and disruption of litigation.

II. Why This Settlement Check Is Being Sent to You

The settlement approved by the Superior Court of California, County of Alameda, on [Approval Date] involves a payment of civil penalties. In accordance with PAGA, seventy-five percent (75%) of the civil penalties paid under the settlement goes to the California Labor Workforce Development Agency. The remaining twenty-five percent (25%) of the civil penalties paid under the settlement will be distributed to all Settlement Group Members. The enclosed settlement check is being sent to you because you have been identified as a Settlement Group Member.

III. How the Amount of Your Settlement Check Was Determined

The enclosed settlement check was calculated based on the total number of pay periods you worked for Defendant from July 30, 2020, through June 30, 2022 relative to all other Settlement Group Members.

Your settlement check will remain negotiable for one hundred twenty (120) calendar days after its mailing. If your settlement check is not cashed, deposited, or negotiated within this timeframe, it will be voided and paid to the California State Controller's Unclaimed Property Fund in your name.

IV. Consequences of the Settlement

The Action was filed exclusively as a representative action under PAGA, which functions as a substitute for an enforcement action by the State of California.

The Court's order and judgment approving the settlement of the Action binds all persons, including nonparty employees, who would be bound by a judgment in an action brought by California itself. As a result, although you are not a "party" to the Action, the judgment entered upon settlement of the Action is binding on you with respect to any claims for civil penalties under PAGA encompassed by the settlement. That is true regardless of whether you choose to cash, deposit, or negotiate the enclosed settlement check.

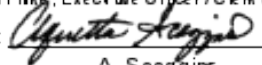
V. Taxation of Your Individual Settlement Award

You will be issued an IRS Form 1099 in connection with the funds paid to you via the enclosed check if your Individual Settlement Award is \$600 or more. However, you are solely responsible for all tax obligations attributable to you that may arise as a result of receiving the settlement check. If you have any tax-related questions regarding your receipt of the enclosed check, you should direct them your own tax advisor.

VI. Where to Get More Information

Do not call or contact the Superior Court of California, County of Alameda, about this letter, settlement, settlement check sent to you, or Action in general. If you have questions about this letter, settlement, settlement check sent to you, or Action in general, you may contact the Settlement Administrator Phoenix Class Action Administration Solutions at [REDACTED].

Dated: [REDACTED]

SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612	FILED Superior Court of California County of Alameda 11/13/2024
PLAINTIFF/PETITIONER: Tony Banks	Chad Finke, Executive Officer / Clerk of the Court By:  Deputy A. Scoggins
DEFENDANT/RESPONDENT: Sublime Machining Inc. d/b/a Sublime Canna	
CERTIFICATE OF ELECTRONIC SERVICE CODE OF CIVIL PROCEDURE 1010.6	CASE NUMBER: 21CV000754

I, the below named Executive Officer/Clerk of Court of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the Order [Proposed] Order And Judgment Granting Approval Of Private Attorneys General Act (Labor Code 2698, Et Seq.) Settlement Agreement entered herein upon each party or counsel of record in the above entitled action, by electronically serving the document(s) from my place of business, in accordance with standard court practices.

Douglas Han
Justice Law Corporation
dhan@justicelawcorp.com

Sean Gentry
AD ASTRA LAW GROUP, LLP
sgentry@astralegal.com

Dated: 11/13/2024

Chad Finke, Executive Officer / Clerk of the Court

By:



A. Scoggins, Deputy Clerk

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On November 15, 2024, I served the foregoing document described as

**ORDER AND JUDGMENT GRANTING APPROVAL OF PRIVATE ATTORNEYS
GENERAL ACT (LABOR CODE § 2698, ET SEQ.) SETTLEMENT AGREEMENT**

for the following case:
LWDA/Court Case No.:

Banks v. Sublime Machining, Inc. DBA Sublime Canna
LWDA Case No.: CM-839859-21
Court Case No.: 21CV000754
Alameda County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on November 15, 2024, at Pasadena, California.

Betty Marie Loub

Bitty Minnis-Lemley