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Attorneys for Plaintiff Randall Kunsman, on behalf of himself and all “aggrieved employees” pursuant to Labor Code § 2698 *et seq.*

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

RANDALL KUNSMAN, on behalf of himself
and all “aggrieved employees” pursuant to
Labor Code § 2698 *et seq.*,

Plaintiff,

v.

PATRIOT ENVIRONMENTAL SERVICES,
INC., a California corporation, and DOES 1
through 10, inclusive,

Defendants.

Case No: 34-2021-00310042-CU-OE-GDS

Assigned to the Hon. Thadd A. Blizzard, Dept. 43

**DECLARATION OF EVAN S. GAINES IN
SUPPORT OF STIPULATION TO (1) LIFT
ARBITRATION STAY; AND (2) REQUEST
FOR DISMISSAL OF REPRESENTATIVE
ACTION**

[Filed Concurrently: Stipulation To (1) Lift
Arbitration Stay; And (2) Request For Dismissal O
Representative Action]

Complaint Filed: October 22, 2021

1 I, Evan S. Gaines, declare as follows:

2 1. I am an attorney duly admitted to practice law in the State of California and the owner
3 of Gaines Law Corporation, counsel of record for Plaintiff Randall Kunsman (“Plaintiff”) in this
4 matter. The matters set forth herein are of my own personal knowledge, and if sworn as a witness, I
5 could and would testify competently thereto.

6 2. On October 22, 2021, Plaintiff filed the instant Action seeking damages on a
7 representative basis on behalf of himself and similarly situated individuals for Defendant PATRIOT
8 ENVIRONMENTAL SERVICES, INC.’s (“Defendant”) alleged violations of California Labor Code
9 and the Private Attorneys General Act of 2004 (“PAGA”), codified as § 2698, et seq., by allegedly
10 failing to provide meal and rest periods, or compensation in lieu thereof, issue complete and accurate
11 wage statements, and pay all wages due at separation of employment.

12 3. Thereafter, on October 25, 2022, pursuant to Defendant’s motion, this Court ordered
13 that the representative PAGA claims stayed pending (1) the completion of arbitration of Plaintiff’s
14 individual PAGA claim or (2) a ruling in Adolph, whichever occurs first. The stay will not be lifted
15 automatically. Any party seeking to lift the stay must file a motion (if opposed) or a stipulation and
16 proposed order. Attached as **Exhibit A** is a true and correct copy of the Order granting Defendant’s
17 Motion.

18 4. The Parties participated in a global mediation (together with the case *Robert Bennett*
19 *v. Patriot Environmental Services, Inc.*, San Diego County Superior Court, Case No. 37-2022-
20 00044044-CU-OE-CTL [the “*Bennett* Action”]), with experienced wage and hour mediator Hunter R.
21 Hughes III, Esq., wherein a settlement was achieved.

22 5. The Parties negotiated a global settlement of the Class and PAGA claims that resolved
23 the claims alleged in the instant Action and the *Bennett* Action. A true and correct copy of the Class
24 Action And PAGA Settlement Agreement (the “Settlement”) is attached hereto as **Exhibit B**.

25 6. The *Bennett* Action received final approval of the Settlement on September 13, 2024.
26 A true and correct copy of the Order Granting Final Approval of Class Action and Attorneys' Fees and
27 Costs and Entering Judgment is attached hereto as **Exhibit C**.

7. The Parties request that the Court (1) lift the arbitration stay and (2) enter a dismissal of this action with prejudice.

8. Concurrent with the filing of this declaration and the request for dismissal, my office has submitted the Settlement to the LWDA in compliance with Labor Code section 2699(1)(2). A true and correct copy of the submission confirmation email is attached hereto as **Exhibit D**.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and was executed on February 12, 2025 at Westlake Village, California.

EVAN S. GAINES

EXHIBIT A

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO
GORDON D SCHABER COURTHOUSE

MINUTE ORDER

DATE: 10/25/2022

TIME: 09:00:00 AM

DEPT: 54

JUDICIAL OFFICER PRESIDING: Christopher Krueger

CLERK: J. Servantez

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT: N. Alvi, J. Reilly

CASE NO: **34-2021-00310042-CU-OE-GDS** CASE INIT.DATE: 10/22/2021

CASE TITLE: **Kunsman vs. Patriot Environmental Services**

CASE CATEGORY: Civil - Unlimited

EVENT TYPE: Motion to Compel - Other - Civil Law and Motion

APPEARANCES

Miranda M Rowley, counsel, present for Defendant(s) remotely via video.

Evan Gaines, counsel, present for Plaintiff(s) remotely via video.

Nature of Proceeding: Motion to Compel Arbitration

TENTATIVE RULING

Defendant Patriot Environmental Services, Inc.'s motion to compel arbitration is ruled upon as follows.

Background

This is a PAGA case. Plaintiff Randall Kunsman began working for Defendant in November of 2020 and executed the subject Arbitration Agreement at that time. Gordon Decl., Exh. B.) The Agreement states that "if any dispute arises from or relates to Employee's application or candidacy for employment, employment and/or cessation of employment with Company, it will be submitted to final and binding arbitration before a neutral arbitrator." (Gordon Decl., Exh. A ("Agreement"), p. 1.) The Agreement covers "any claim, dispute, and/or controversy that either the employee or the company may have against each other arising from, related to, or having any relationship or connection whatsoever with Employee's seeking employment with, employment by, terms and conditions of employment, cessation of employment with, or other association with the Company" (*Ibid.*)

The Agreement also contains the following terms:

"To the extent permitted by law, the Company and Employee intend and agree that no claims covered under this Agreement may be initiated or maintained on a class, collective, or representative action basis either in court or under this Agreement, including in arbitration. Any claim covered under this Agreement purporting to be brought as a class, collective, or representative action will be decided under this Agreement as an individual claim. The exclusive procedure for the resolution of all claims that may otherwise be brought on a class, collective, or representative action basis, whether participation is an opt-in or opt-out basis, is through this Agreement on an individual basis. The Company and Employee expressly waive any right with respect to any claim covered under this Agreement to submit, initiate, or participate in a representative capacity or as a plaintiff, claimant, or member in a class, collective, or

representative action, regardless of whether the action is filed in arbitration or court. ...

[¶]

Employee and the Company understand and agree that any dispute as to the arbitrability of a particular issue or claim pursuant to this Agreement is to be resolved in arbitration. If for any reason the class, collective, and representative action waiver is found to be unenforceable, the class, collective, or representative action may only be heard in court and may not be arbitrated under this Agreement. ...

[¶]

If any term of provision, or portion of this Agreement is declared void or unenforceable or to be contrary to public policy or any law, it shall be severed and the remainder of this Agreement shall be enforceable and remain in full force and effect as if the void or unenforceable term or portion had not existed within this Agreement."

(Agreement, pp. 1-2, 3, emphasis in original.)

Plaintiff initiated this action on October 21, 2021 asserting various PAGA claims. Defendant now moves to compel arbitration in the wake of the United States Supreme Court's June 15, 2022 decision in *Viking River Cruises, Inc. v. Moriana* (2022) 142 S.Ct. 1906.

Discussion

In *Viking River Cruises*, the Supreme Court held that "the FAA preempts the rule of *Iskanian* insofar as it precludes division of PAGA actions into individual and non-individual claims through an agreement to arbitrate." (*Viking River Cruises*, at p. 1924.) In discussing *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, the Supreme Court stated the following: "*Iskanian*'s principal rule prohibits waivers of 'representative' PAGA claims in the first sense. That is, it prevents parties from waiving *representative standing* to bring PAGA claims in a judicial or arbitral forum. But *Iskanian* also adopted a secondary rule that invalidates agreements to separately arbitrate or litigate 'individual PAGA claims for Labor Code violations that an employee suffered,' on the theory that resolving victim-specific claims in separate arbitrations does not serve the deterrent purpose of PAGA. [Citations.]" (*Viking River Cruises*, at pp. 1916-1917.) The Supreme Court left this "principal rule" undisturbed, but overruled the "secondary rule" that barred splitting PAGA individual and representative actions. (*Id.* at 1924-1925.)

The subject agreement in *Viking River Cruises* contained a wholesale PAGA waiver unenforceable under *Iskanian*, but also a severability clause that left the remainder of the arbitration agreement, including the agreement to arbitrate the individual PAGA claim, enforceable. (*Viking River Cruises*, *supra*, at pp. 1924-1925.) In explaining the application of its holding, the Supreme Court stated:

"The agreement between Viking and Moriana purported to waive 'representative' PAGA claims. Under *Iskanian*, this provision was invalid if construed as a wholesale waiver of PAGA claims. And under our holding, that aspect of *Iskanian* is not preempted by the FAA, so the agreement remains invalid insofar as it is interpreted in that manner. But the severability clause in the agreement provides that if the waiver provision is invalid in some respect, and 'portion' of the waiver that remains valid must still be 'enforced in arbitration.' Based on this clause, Viking was entitled to enforce the agreement insofar as it mandated arbitration of Moriana's individual PAGA claim."

(*Ibid.*)

Here, the Agreement contains a wholesale PAGA waiver, in that it requires and class or representative claim to be brought as an individual claim. (Agreement, pp. 1-2.) This remains invalid under *Iskanian* and *Viking River Cruises*. The Agreement also contains two conflicting severability clauses. First, the Agreement states, **"If for any reason the class, collective, and representative action waiver is found to be unenforceable, the class, collective, or representative action may only be heard in court and may not be arbitrated under this Agreement."** (Agreement, p. 3, emphasis in original.) The following paragraph contains a general severability clause, which states, "If any term of provision, or portion of this Agreement is declared void or unenforceable or to be contrary to public policy or any law, it shall be severed and the remainder of this Agreement shall be enforceable and remain in full force and effect as if the void or unenforceable term or portion had not existed within this Agreement." (*Ibid.*)

Defendant contends that this case must be arbitrated under *Viking River Cruises* because Plaintiff has agreed to arbitrate all claims, including his individual PAGA claim, now separable under *Viking River Cruises*. Defendant further contends that the wholesale PAGA waiver contained in the agreement is severable pursuant to the general severability clause. Plaintiff opposes, and argues that the more specific provision requiring a representative action to be heard in court if the representative waiver is found unenforceable controls. Plaintiff also argues that this more specific provision differs completely from the severability clause in *Viking River Cruises*, which expressly required any portion of the PAGA waiver that remained valid, i.e., the individual PAGA claim, must still be "enforced in arbitration."

The problem for Plaintiff is that the specific provision on which he relies states that if the waiver is unenforceable, "the class, collective, or representative action may only be heard in court and may not be arbitrated under this Agreement." (Agreement, p. 3.) It does not state that the individual PAGA claim may only be heard in court, and under *Viking River Cruises*, the individual and representative PAGA claims are now separable. Further, the Agreement's use of the word "representative" within the context of the words "class" and "collective" indicates that the term "representative" means claims brought by Plaintiff on behalf of other aggrieved employees, not on behalf of the State of California. Thus, this provision does not apply to Plaintiff's individual PAGA claim, which is covered under the general arbitration agreement.

Given the clear language that the Agreement requires arbitration of all claims related to Plaintiff's employment with Defendant, Defendant has met its burden to show the existence of an agreement to arbitrate Plaintiff's individual PAGA claim. Further, the wholesale PAGA waiver does not invalidate the rest of the Agreement. Therefore, Defendant's motion to compel arbitration is GRANTED.

Defendant also contends that Plaintiff's representative PAGA claim must be dismissed for lack of standing. However, this remains an open question based on Justice Sotomayor's concurrence in *Viking River Cruises* as well as the pending California Supreme Court case of *Adolph v. Uber Technologies, Inc.* (2022 LEXIS 5021 (S274671)). Further, the Agreement itself may contradict Defendant's argument.

After considering the parties' arguments, the Court concludes a stay of Plaintiff's representative PAGA claims is the prudent approach. Defendant's arguments in favor of dismissal are unpersuasive under the circumstances. Defendant cites no authority to support their position that the Court must rule on this question of standing before the California Supreme Court issues its decision in *Adolph*. The Court has inherent authority to control its docket and courts routinely stay matters where circumstances or the interests of justice warrant. (*Avant! Corp. v. Superior Court* (2000) 79 Cal.App.4th 876, 885 (*Avant! Corp.*); see *Friberg v. City of Mission Viejo* (1995) 33 Cal.App.4th 1481, 1489 ["Trial courts generally have the inherent power to stay proceedings in the interests of justice and to promote judicial efficiency."].) The decision to grant a stay is based on the following factors: "(1) the interest of the plaintiffs in proceeding expeditiously with this litigation or any particular aspect of it, and the potential prejudice to plaintiffs of a delay; (2) the burden which any particular aspect of the proceedings may impose on defendants; (3) the convenience of the court in the management of its cases, and the efficient

use of judicial resources; (4) the interests of persons not parties to the civil litigation; and (5) the interest of the public in the pending civil and criminal litigation." (*Avant! Corp.*, *supra*, at 885.)

Rather than definitively rule on these issues and allow the representative PAGA claims to remain in this litigation, the Court maintains that the more prudent approach for *both* parties is to stay Plaintiff's representative claims pending the California Supreme Court decision in *Adolph* or the parties' arbitration of the individual claims.

Disposition

Defendant's motion to compel arbitration of Plaintiff's individual PAGA claim is GRANTED. Defendant's motion to dismiss Plaintiff's representative PAGA claims is DENIED without prejudice. The representative PAGA claims are STAYED pending (1) the completion of arbitration of Plaintiff's individual PAGA claim or (2) a ruling in *Adolph*, whichever occurs first. The stay will not be lifted automatically. Any party seeking to lift the stay must file a motion (if opposed) or a stipulation and proposed order.

The minute order is effective immediately. No formal order pursuant to CRC Rule 3.1312 or further notice is required.

COURT RULING

The matter was argued and submitted. The Court affirmed the tentative ruling.

EXHIBIT B

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

Subject to court approval, this Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between Robert Bennett and Randall Kunsman, individually and on behalf of others similarly situated (collectively, “Plaintiffs”), and Defendant Patriot Environmental Services, Inc. (hereinafter, “Defendant”). The Agreement refers to Plaintiffs and Defendant collectively as “Parties” or as a “Party.”

1. DEFINITIONS.

1.1. “Action” means Plaintiffs’ lawsuit alleging wage and hour violations against Defendant captioned *Robert Bennett et al. v. Patriot Environmental Services, Inc. et al.*; Case No. 37-2022-0004404-CU-OE-CTL, pending in San Diego County Superior Court. The Action shall also be defined to include Randall Kunsman’s case pending in Sacramento County Superior Court, Case No. 34-2021-00310042 (including the individual claim pending in arbitration).

1.2. “Address Search” means the Administrator’s search for Covered Employees’ mailing addresses using all reasonably available sources, including but not limited to the National Change of Address database, skip traces, and direct contact by the Administrator.

1.3. “Administrator” means CPT Group.

1.4. “Administration Expenses” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its costs in accordance with the Administrator’s bid to be submitted to the Court. The Administration Expenses shall not exceed \$15,000, except for a showing of good cause and as approved by the Court.

1.5. “Attorneys’ Fees” mean the amounts allocated to Plaintiffs’ Counsel for reimbursement of reasonable attorneys’ fees in connection with this Settlement in an amount not to exceed 33.33% of the Gross Settlement Amount.

1.6. “Class” or “Class Member(s)” means as all current and former non-exempt employees who worked for Defendant in California at any time from November 1, 2018 through April 30, 2024. =.

1.7. “Class Counsel” or “Plaintiffs’ Counsel” means Ferraro Vega Employment Lawyers, Inc. and Gaines & Gaines.

1.8. “Class Period” means the period from November 1, 2018 to April 30, 2024.

1.9. “Class Notice” means the Notice of Class Action and PAGA Settlement, attached as **Attachment A** and including the Request for Exclusion, attached as **Attachment B**, to be mailed to Class Members and incorporated by reference into this Agreement.

1.10. “Class Response Deadline” means 45 days after the Administrator mails Notice to Class Members and shall be the last date on which Class Members may: (a) email or mail Requests for Exclusion from the Settlement, or (b) email or mail their Objection to the

Settlement. Class Members to whom the Class Notice is resent after being returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline expiry.

1.11. “Class Representatives” or “Named Plaintiffs” refers to Robert Bennett and Randall Kunsman.

1.12. “Class Workweek” means any verified, regular workweek during the Class Period during which a Class Member worked for Defendant for at least one or more calendar days.

1.13. “Class Workweek Estimate” means, based on a review of Defendant’s records to date, a total of 27,431 Class Workweeks.

1.14. “Court” means the San Diego County Superior Court.

1.15. “Covered Employees” means all PAGA Members and all Class Members.

1.16. “Defense Counsel” means captioned counsel of record from the law firm of Morgan, Lewis & Bockius LLP.

1.17. “Effective Date” means the date on which the Court enters Judgment on its order granting Final Approval of the Settlement and the Judgment is final. The Judgment is final as of the latest of the following occurrences: (i) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (ii) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or (iii) if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

1.18. “Employee Data” means all Covered Employees’ identifying information in Defendant’s possession including their names, last-known mailing addresses, Social Security numbers, and number of Class Workweeks and PAGA Pay Periods.

1.19. “Final Approval” means the Court’s order granting final approval of the Settlement.

1.20. “Final Approval Hearing” means the Court’s hearing on the final motion for approval of the Settlement.

1.21. “Gross Settlement Amount” means \$950,000, which is the total amount Defendant(s) agree(s) to pay under the Settlement, subject to the terms and conditions of this Settlement.

1.22. “Individual Class Payments” means the Participating Class Member’s pro rata share of the Net Settlement Amount, calculated according to the number of Class Workweeks.

1.23. “Individual PAGA Payments” means the PAGA Members’ pro rata share of the Net PAGA Payment, calculated according to the number of PAGA Pay Periods.

1.24. “Individual Settlement Payments” means the Individual Class Payment and the Individual PAGA Payments.

1.25. “Judgment” means the judgment entered by the Court based upon the Final Approval of the Settlement.

1.26. “Litigation Costs” means the amount incurred by Plaintiffs’ Counsel to prosecute the Action and which are reimbursable in an amount up to \$50,000.

1.27. “LWDA” means the California Labor Workforce and Development Agency.

1.28. “LWDA Payment” means the 75% share of the PAGA Payment allocated to be paid to the LWDA under Labor Code section 2699, subd. (i).

1.29. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Service Payment, Attorneys’ Fees, Litigation Costs, the PAGA Payment (including the LWDA Payment), and the Administration Expenses.

1.30. “Net PAGA Payment” means the 25% share of the PAGA Payment allocated to be paid to the PAGA Employees under Labor Code section 2699, subd. (i).

1.31. “Non-Participating Class Member” means any Class Member who submits a valid and timely Request for Exclusion from the Settlement.

1.32. “Operative Complaint” means the most recently filed complaint, including amended complaints, filed by Plaintiffs Robert Bennett and Randall Kunsman. In connection with this Settlement, and as a prerequisite to this Settlement, Plaintiff shall request the Court approve (in the Preliminary Approval Order) the Third Amended Class and Representative Action Complaint (attached hereto as **Attachment C**), which is the same as the Second Amended Class and Representative Action Complaint filed on March 18, 2024, but which adds Plaintiff Randall Kunsman as a class representative. Plaintiff Kunsman’s pending arbitrations and complaints shall be dismissed upon the Effective Date as a material condition of this agreement. Defendant’s current Answer on file shall be deemed to be the responsive pleading to the Third Amended Class and Representative Action Complaint

1.33. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.

1.34. “PAGA” means California’s Private Attorneys General Act of 2004.

1.35. “PAGA Period” means October 23, 2020 through April 30, 2024.

1.36. “PAGA Payment” means 50,000, which is the amount provided in exchange for the release of the PAGA claims addressed in this Settlement, and which shall be paid from the Gross Settlement Amount, with 75% of the PAGA Payment constituting the LWDA Payment,

with the remaining 25% constituting the Net PAGA Payment to be allocated and paid to PAGA Members.

1.37. “PAGA Counsel” or “Plaintiffs’ Counsel” means Ferraro Vega Employment Lawyers, Inc.

1.38. “PAGA Members” means all current and former non-exempt employees who worked for Defendant in California during the PAGA Period.

1.39. “PAGA Notice” means Named Plaintiffs’ letter to Defendants and the LWDA, including any amendments thereto, pursuant to Labor Code § 2699.3(a).

1.40. “PAGA Pay Period” means any pay period during which a PAGA Member worked for Defendant for at least one calendar day during the PAGA Period.

1.41. “PAGA Representatives” refers to Robert Bennett and Randall Kunsman.

1.42. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.

1.43. “PAGA Released Claims” means the claims being released by PAGA Members in connection with the PAGA portion of this settlement, as set forth in full below.

1.44. “Released Claims” means the claims being released in connection with this Settlement, as set forth in full below.

1.45. “Released Parties” means: Defendants and each former and present directors, officers, shareholders, owners, agents, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates.

1.46. “Request for Exclusion” means a Class Member’s submission of a signed written request to be excluded from the Class Settlement, including on the form provided with the Class Notice.

1.47. “Service Payment(s)” means the payment to each of the Named Plaintiffs (Bennett and Kunsman) for initiating and providing services in support of the Action in an amount up to \$10,000 each, subject to Court approval, which also constitutes consideration for Plaintiffs’ individual settlement and general release of all claims, as set forth in this Agreement.

1.48. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

2. MONETARY TERMS.

2.1. Gross Settlement Amount. Subject to all terms of this Agreement, Defendant shall pay the Gross Settlement Amount in connection with this Settlement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring

Covered Employees do not need to submit any claim as a condition of payment. The Gross Settlement Amount is non-reversionary.

2.1.1. Employer Payroll Taxes: The Gross Settlement Amount does not include any employer payroll taxes owed on the Wage Portion of the Individual Class Payments, which shall be paid separately.

2.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts approved by the Court:

2.2.1. To Named Plaintiffs: The Service Payment, in addition to any Individual Settlement Payment he may be entitled to receive as a Covered Employee. If the Court approves a Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. If the Court approves a Service Payment greater than the amount requested, the Administrator will take the excess from the Net Settlement Amount. The Administrator will pay the Service Payment using IRS Form 1099. An award of less than the requested amount for the Service Payment will not give rise to a basis to abrogate the Settlement Agreement, and the Court has authority under this Agreement to reduce (or increase) the Service Payment, at its discretion at the final approval stage.

2.2.2. To Plaintiffs' Counsel: Attorneys' Fees and Litigation Costs to Plaintiffs' Counsel. Defendant will not oppose requests for these payments, provided the requests do not exceed the amounts set forth in this Agreement. If the Court approves Attorneys' Fees and/or Litigation Costs in an amount less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will pay the Attorneys' Fees and Litigation Costs using one or more IRS 1099 Forms. If the Court approves Attorneys' Fees or Litigation Costs greater than the amount requested, the Administrator will take the excess from the Net Settlement Amount.

2.2.3. To the Administrator: Administration Expenses to the Administrator. To the extent the Administration Expenses are less than projected in this Agreement, or the Court approves payment less than the Administration Expenses set forth in this Agreement, the Administrator will retain the remainder in the Net Settlement Amount. If the Court approves Administrator Expenses greater than the amount requested, the Administrator will take the excess from the Net Settlement Amount.

2.2.4. To the LWDA: Subject to Court approval, the Net PAGA Payment will be allocated to cover any and all claims for civil penalties associated with the Released Claims that were, or could have been, brought in the Actions under PAGA based on the factual allegations in the Operative Complaint and PAGA Notice ("PAGA Released Claims"); 75% of the Net PAGA Payment will be paid to the LWDA (i.e., the LWDA Payment) and the remaining 25% shall constitute the Net PAGA Payment for distribution to PAGA Members as penalties in exchange for a full and final release of the PAGA claims. The Court has authority under this Agreement to increase (or reduce) the PAGA Payment up to and including at the final approval hearing, and the Parties respectfully reserve the right to increase (or reduce) the PAGA Payment up to and including at the final approval stage, subject to the Court's final approval. If the Court approves a PAGA

Payment of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. If the Court approves a PAGA Payment greater than the amount requested, the Administrator will take the excess from the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms. Plaintiffs will give any required LWDA notice within the time frame required by law.

2.2.5. To Each Participating Class Member/Tax Allocation: An Individual Class Payment calculated by: (a) dividing the Net Settlement Amount by the total number of Class Workweeks worked by all Participating Class Members during the Class Period; and (b) multiplying the result by each Participating Class Member's Class Workweeks. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis. 33.33% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The remaining 66.67% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

2.2.6. To Each PAGA Member/Tax Allocation: An Individual PAGA Payment calculated by: (a) dividing the Net Settlement Amount by the total number of PAGA Pay Periods worked by all PAGA Members during the PAGA Period; and (b) multiplying the result by each PAGA Members' PAGA Pay Periods. The Individual PAGA Payments are not subject to wage withholdings and will be reported on IRS 1099 Forms. Covered Employees assume full responsibility and liability for any individual taxes owed on their Individual PAGA Payment.

3. SETTLEMENT FUNDING AND PAYMENTS.

3.1. Delivery of Employee Data to Administrator. Not later than 15 business days after the Court grants Preliminary Approval, Defendant will simultaneously deliver the Employee Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Covered Employees' privacy, the Administrator must maintain the Employee Data in confidence, use the Employee Data only for purposes of this Settlement, and restrict access to the Employee Data to Administrator employees who need access to the Employee Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Plaintiffs' Counsel if it discovers that the Employee Data omitted Covered Employees' identifying information and to provide corrected or updated Employee Data as soon as reasonably feasible. The Parties and their counsel must expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Employee Data.

3.2. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount and fund the amounts necessary to fully pay its share of payroll taxes by transmitting the funds to the Administrator no later than 15 business days after the later of the (i) Effective Date and (ii) the date on which the Administrator provides Defendant with both (a) the total amount of employer-side payroll taxes to remit and (b) wiring instructions for funding.

3.3. Payments from the Gross Settlement Amount. Within 10 calendar days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Settlement Payments, the Administration Expenses, the LWDA Payment, Attorneys' Fees, Litigation Costs, and Service Payment(s).

3.3.1. The Administrator will issue checks for the Individual Settlement Payments and send them to Covered Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 calendar days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

3.3.2. The Administrator must conduct an Address Search for all other Covered Employees whose checks are returned undelivered without USPS forwarding addresses. Within 7 calendar days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Address Search. The Administrator need not take further steps to deliver checks to Covered Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

3.3.3. For any Covered Employee whose Individual Settlement Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds, in the name of the Covered Employee, to the State of California's Unclaimed Property Division.

3.3.4. The payment of Individual Settlement Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Covered Employee beyond those specified in this Agreement.

3.3.5. The Administrator will send checks for Individual PAGA Payments to all PAGA Members, who have no right to opt-out or otherwise exclude themselves from the settlement and release of PAGA claims set forth in this Settlement.

3.4. Payments to the Responsible Tax Authorities. The Administrator will pay the Participating Class Members' portion of normal payroll withholding taxes out of each person's Individual Class Payment. The Administrator shall also pay Defendant's portion of payroll taxes as the current or former employer (including the employer's payment of applicable FICA, FUTA, and SUI contributions, etc.) to the appropriate local, state, and federal taxing authorities. The Administrator will calculate the amount of the Participating Class Members' and Defendant's portion of payroll withholding taxes and forward those amounts to the appropriate taxing authorities. The Administrator will also inform Defendant of the amount of Defendant's portion of the payroll withholding taxes no later than 3 calendar days following the Effective Date.

4. RELEASES OF CLAIMS.

Effective on the date when Defendant fully funds the Gross Settlement Amount and all associated employer payroll taxes owed on the Wage Portion of the Individual Class Payments, the following releases will take effect:

4.1. Named Plaintiffs' General Release. Each of the Named Plaintiffs' respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint or ascertained during the Action; and (b) any other claims, debts, liabilities, demands, damages, obligations, actions and causes of actions, of any nature whatsoever, whether known or unknown, or suspected or unsuspected, arising out of or in connection with their employment with Defendant, the separation of such employment, or any other act, omission or event occurring between the Parties at any time prior to the date the respective Named Plaintiffs execute this Agreement. This General Release includes, without limitation: (1) all claims for violation of any federal, state or local statute, ordinance or regulation relating to employment benefits, leaves of absence, or discrimination, harassment, retaliation, or whistleblowing in employment, specifically including, without limitation, the California Fair Employment and Housing Act, the California Family Rights Act, Title VII of the Civil Rights Act of 1964, the Family and Medical Leave Act, the Age Discrimination in Employment Act, the Older Workers Benefit Protection Act, the Genetic Information Nondiscrimination Act, the Americans with Disabilities Act, and the Employee Retirement Income Security Act, the Consolidated Omnibus Budget Reconciliation Act, the Securities Act, the Immigration Reform and Control Act the Worker Adjustment and Retraining Notification Act of 1988, the California Worker Adjustment and Retraining Notification Act, the Uniformed Service Employment and Reemployment Rights Act, and any regulation of any administrative agency or governmental authority relating to employment benefits or discrimination or harassment or retaliation in employment; (2) all claims for failure to pay minimum or overtime wages, failure to timely pay wages, failure to provide accurate itemized wage statements, failure to maintain accurate records, failure to reimburse business expenses, failure to provide meal periods or rest breaks, failure to provide paid sick leave, failure to post notice of paydays and time and place of payment, and any claim for violations of the California Labor Code, California's Business and Professions Code § 17200 et seq., and the applicable California Industrial Welfare Commission Wage Order; (3) any non-statutory tort or contractual claim, including all claims for breach of oral, implied or written contract, breach of implied covenant of good faith and fair dealing, negligent or intentional infliction of emotional distress, and conversion; (4) all claims for wrongful termination of employment; (5) all claims for wages, penalties and/or benefits; and (6) all claims for attorneys' fees and costs. Named Plaintiffs' General Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time. Named Plaintiffs acknowledge that they may discover facts or law different from, or in addition to, the facts or law that Plaintiffs now know or believe to be true but agree, nonetheless, that Named Plaintiffs' General Release shall be and remain effective in all respects, notwithstanding such different or additional facts or their discovery of them.

4.1.1. Named Plaintiffs' Section 1542 Waiver. For purposes of Named Plaintiffs' General Release, Named Plaintiffs expressly waive and relinquish the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her, would have materially affected his or her settlement with the debtor or released party.

4.2. Release by Participating Class Members: All Participating Class Members release Released Parties from any and all claims, damages, and penalties alleged in the Operative Complaint and arising out of the facts in the Operative Complaint during the Class Period, including, without limitation, claims for: (1) meal period violations, (2) rest period violations, (3) untimely payment of wages, (4) wage statement violations, (5) waiting time penalties, (6) minimum wage violations, (7) failure to pay for all hours worked, including unpaid overtime wages, (8) failure to reimburse expenses, (9) unfair competition, and (10) civil penalties under the Private Attorneys General Act. Participating Class Members **do not** release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts outside of the Operative Complaint or outside the Class Period.

4.3. Release by PAGA Members: All PAGA Members and the LWDA release Released Parties from, and are forever barred from pursuing such against Released Parties for, the PAGA claims alleged in and/or arising out of the facts alleged in the Operative Complaint during the PAGA Period, including, without limitation penalties predicated on the underlying alleged violations for: (1) meal period violations, (2) rest period violations, (3) untimely payment of wages, (4) wage statement violations, (5) waiting time penalties, (6) minimum wage violations, (7) failure to pay for all hours worked, including unpaid overtime wages, (8) failure to reimburse expenses, (9) unfair competition, and (10) civil penalties under the Private Attorneys General Act.

5. MOTION FOR SETTLEMENT APPROVAL.

5.1. Preliminary Approval. Not later than 16 court days before the Preliminary Approval Hearing, Named Plaintiffs shall move (subject to Defense Counsels' review and revision) for an order conditionally certifying the Class for settlement purposes only, granting Preliminary Approval of the Settlement, setting a date for the Final Approval Hearing, and approving the Class Notice. Defendant shall accept service of the Motion for Preliminary Approval (or any other motions, stipulations, declarations, proposed orders, exhibits, or other documents filed in connection with this Settlement) via electronic service at the email addresses set forth in this Agreement or, if an electronic service agreement is already in place, at the email addresses in the Parties' electronic service agreement.

5.2. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Settlement or forthcoming motions or joint stipulations for approval, Plaintiffs' Counsel and Defense Counsel will expeditiously work together in good faith on behalf of the Parties to resolve the disagreement. If the Court does not grant settlement approval or conditions any approval or review on any material change to this Agreement, Plaintiffs' Counsel and Defense Counsel will

expeditiously work together in good faith on behalf of the Parties to modify the Agreement and satisfy the Court's concerns. Should the Court decline to approve all material aspects of the Settlement, the Settlement will be null and void, and the Parties will have no further obligations under it.

6. SETTLEMENT ADMINISTRATION.

6.1. Selection of Administrator. The Parties have jointly selected the Administrator to administer this Settlement. The Administrator agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

6.2. Employer Identification Number. The Administrator shall have and use its own Employer Identification Number to calculate payroll tax withholdings and report to state and federal tax authorities.

6.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund under U.S. Treasury Regulation section 468B-1.

6.4. Notice to Class Members.

6.4.1. No later than 3 business days after receipt of the Employee Data, the Administrator shall notify Plaintiffs' Counsel that the list has been received and state the number of Covered Employees and Class Workweeks and PAGA Pay Periods in the Employee Data.

6.4.2. Using best efforts to perform as soon as possible, and no later than 14 calendar days after receiving the Employee Data, the Administrator will send to all Class Members identified in the Employee Data, via first-class United States Postal Service ("USPS") mail, the Class Notice substantially in the form attached to this Agreement as Attachment A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment payable to the Class Member, and the number of Class Workweeks used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Covered Employees' addresses using the National Change of Address database.

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

6.4.4. The deadlines for Class Members' written objections, challenges to Class Workweeks and/or PAGA Pay Periods, and Requests for Exclusion will be extended an additional 14 calendar days beyond the time otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

6.4.5. If the Administrator, Defendant or Plaintiffs' Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Employee Data and should have received Class Notice, the Parties will expeditiously meet and confer in a good-faith effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 calendar days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

6.5. Requests for Exclusion (Opt-Outs).

6.5.1. Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 45 calendar days after the Administrator mails the Class Notice (plus an additional 14 calendar days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

6.5.2. The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity.

6.5.3. Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases paragraph of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

6.5.4. Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment, nor shall they have the right to object to the class action components of the Settlement.

6.6. Challenges to Calculation of Class Workweeks. Each Class Member shall have until the Response Deadline (plus an additional 14 calendar days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating

with the Administrator via fax, email, or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Class Workweeks contained in the Class Notice are correct so long as they are consistent with the Employee Data. The Administrator shall promptly provide copies of all challenges to calculation of Class Workweeks to Defense Counsel and Plaintiffs' Counsel and the Administrator's determination of the challenges.

6.7. Objections to Settlement.

6.7.1. Only Participating Class Members may object to the Settlement, including contesting the fairness of the Settlement.

6.7.2. Participating Class Members may send written objections to the Administrator, by email or mail. Alternatively, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than the Response Deadline (plus an additional 14 calendar days for Class Members whose Class Notice was re-mailed).

6.7.3. Non-Participating Class Members have no right to object to any of the class action portion of the Settlement.

6.8. Administrator Duties. The Administrator has a duty and is authorized to perform and observe all tasks necessary to effectuate and administer the Settlement in a manner consistent with the terms of this Agreement.

6.8.1. Email Address and Toll-Free Number. The Administrator will establish, maintain, and use its own company website with their contact information included so that Covered Employees may find the Administrator on the World Wide Web. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member telephone calls and emails.

6.8.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 5 calendar days after the Response Deadline, the Administrator shall email a list to Plaintiffs' Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion ("Exclusion List"); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).

6.8.3. Weekly Reports. The Administrator must, on a weekly or biweekly basis, provide written reports to Plaintiffs' Counsel and Defense Counsel that tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Class Workweeks received and/or resolved, and checks mailed for Individual Class Payments. The Weekly Reports must provide the Administrator's assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

6.8.4. Class Workweek Challenges. The Parties and counsel have the authority to address and make final decisions, consistent with the terms of this Agreement, on all Class Member challenges over the calculation of Class Workweeks. The Parties' and counsel's decision shall be final and not appealable or otherwise susceptible to challenge.

6.8.5. Administrator's Declaration. Not later than 14 calendar days before the date by which Plaintiffs are required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Plaintiffs' Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Covered Employees, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Plaintiffs' Counsel is responsible for filing the Administrator's declaration(s) in Court.

6.8.6. Final Report by Settlement Administrator. Within 10 calendar days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Plaintiffs' Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 calendar days before any deadline set by the Court, if applicable and if requested by either Party, the Administrator will prepare, and submit to Plaintiffs' Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement.

6.8.7. Dismissal of Kunsman Action. Within 10 calendar days after the Administrator disburses all funds in the Gross Settlement Amount, Plaintiff Kunsman shall file a request for dismissal in his pending individual arbitration and in Sacramento County Superior Court, Case No. 34-2021-00310042.

7. ESCALATION CLAUSE. Based on its records, Defendant has provided a Class Workweek Estimate. In the event the total Class Workweeks set forth in the Class Workweek Estimate is incorrect by more than 10%, the Parties agree that the Gross Settlement Amount shall be increased proportionately by the same percentage above 10%. For example, if the total Class Workweeks is in fact 11% higher than the Class Workweek Estimate, the Gross Settlement Amount will be increased by 1%.

8. EMPLOYEE ESTIMATE. Based on the records evaluated, there are an estimated 550 Class Members and 380 PAGA Members covered by this Agreement.

9. DEFENDANT'S RIGHT TO WITHDRAW. If (a) the number of valid Requests for Exclusion identified in the Exclusion List exceeds 15% of the total of all Class Members, (b) the Court does not approve the Settlement, (c) the Court does not order the release of claims as agreed to by the Parties as set forth in this Agreement, or (d) the Court makes an order inconsistent with any of the material terms of this Agreement, Defendant may, but is not obligated to, elect to withdraw from the Settlement. If Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and neither Party shall have any further obligation to perform

under this Agreement; provided, however, Defendant will remain responsible for paying all Settlement Administration Expenses incurred to that point. To elect to withdraw, Defendant must notify Plaintiffs' Counsel and the Court of its election to withdraw not later than 10 business days after the Response Deadline.

10. MOTION FOR FINAL APPROVAL. Not later than 16 court days before the Final Approval Hearing, Named Plaintiffs will file in Court and serve on Defendants a motion for approval of the Settlement that includes a Proposed Final Approval Order and a proposed Judgment, which shall specifically state and include a request for approval of the PAGA settlement under Labor Code § 2699, subd. (l). Plaintiffs' Counsel will provide drafts of these documents to Defense Counsel in advance of filing for Defense Counsel's review and revision. Defendant shall accept service of the Motion for Final Approval (or any other motions, stipulations, declarations, proposed orders, exhibits, or other documents filed in connection with this Settlement) via electronic service at the email addresses set forth in this Agreement or, if an electronic service agreement is already in place, at the email addresses in the Parties' electronic service agreement.

10.1. Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court prior to the Final Approval Hearing, or as otherwise by the Court.

10.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement, the Parties will expeditiously work together through counsel in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval.

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

10.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Attorneys' Fees and Litigation Costs set forth in this Settlement, the Parties, their respective counsel, and all Covered Employees, excluding opt outs in a class action, as applicable and provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals.

10.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Covered Employees), this Agreement shall be null and void. The Parties shall agree to expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur.

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

12. ADDITIONAL PROVISIONS.

12.1. No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by the Parties that any of the allegations or the defenses in the Operative Complaint have merit or that there is any liability for any claims asserted or that any claims may proceed on a class, collective, or representative basis. The Settlement, this Agreement, and the Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

12.2. Confidentiality. Other than filing a Motion for Preliminary Approval, the Parties and their counsel will keep the Settlement, the Settlement-related documents and any memorandum of understanding, and their Settlement negotiations confidential, and neither Party will disclose that information or related documents to any third party (other than the Administrator) until after the Motion for Preliminary Approval is filed. No comments of any kind regarding the Settlement, the Settlement-related documents or memorandum of understanding, or the Settlement negotiations (including without limitation, the negotiations in the course of mediation), may be made at any time to the press or media, unless the Parties agree otherwise in writing. Notwithstanding the foregoing, Defendant and Plaintiff shall have the right to disclose the Settlement and its terms for accounting or public filing purposes, or to otherwise comply with any public reporting duties. Plaintiffs' counsel may post Court documents only on Plaintiffs' counsel's website [after the Effective Date]. The Parties' counsel shall also retain the right to discuss the Settlement with the Parties.

12.3. No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Covered Employee to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Plaintiffs' Counsel's ability to communicate with Covered Employees in accordance with Plaintiffs' Counsel's ethical obligations owed to Covered Employees.

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

12.5. Attorney Authorization. Plaintiffs' Counsel and Defense Counsel separately warrant and represent that they are authorized by the Parties, respectively, 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 reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

12.6. Cooperation. The Parties and their counsel will cooperate and use their best efforts, in good faith, to implement the Settlement by modifying the Settlement Agreement, submitting supplemental evidence, and supplementing points and authorities as requested by the Court, among other things. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

12.7. No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

12.8. No Tax Advice. Neither the Parties, Plaintiffs' Counsel, nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

12.9. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or Plaintiffs' Counsel and Defense Counsel, as their legal representatives.

12.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

12.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the state of California, without regard to conflict of law principles.

12.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

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

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

12.15. Notice. All notices or other communications between the Parties required in connection with this Agreement shall be in writing and shall be deemed to have been duly given as of the 3rd business day after mailing by U.S. Mail or the same day if sent by email, addressed as follows:

To Plaintiffs:

Ferraro Vega Employment Lawyers, Inc.

Attn: Nicholas J. Ferraro

3333 Camino del Rio South, Suite 300

San Diego, CA 92108 USA

nick@ferrarovega.com / classactions@ferrarovega.com

www.ferrarovega.com

To Defendants:

Morgan, Lewis & Bockius LLP

Attn: Kathryn T. McGuigan

300 South Grand Avenue, Twenty-Second Floor,

Los Angeles, CA 90071-3132

kathryn.mcguigan@morganlewis.com

12.16. Execution in Counterparts. This Agreement may be executed using physical and/or electronic signatures (i.e. DocuSign, SignRequest, Adobe Sign, etc.), which shall be accepted as originals for purposes of this Agreement. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

SIGNATURES

I have read this Agreement and agree to its terms.

Plaintiff Robert Bennett



Date: Apr 15, 2024

Robert Bennett

Plaintiff Randall Kunsman



Date: 04 / 18 / 2024

Randall Kunsman

Defendant Patriot Environmental Services, Inc.

Date: _____

Name: _____

Title: _____

SIGNATURES

I have read this Agreement and agree to its terms.

Plaintiff Robert Bennett



Date: Apr 15, 2024

Robert Bennett

Plaintiff Randall Kunsman

Date: _____

Randall Kunsman

Defendant Patriot Environmental Services, Inc.

Date: 4/18/2024 | 11:54 AM CDT

DocuSigned by:

FBEC5A393AF746E...

Name: Mark DeVita

Title: Treasurer

Attachment A

Notice of Class Action Settlement

NOTICE OF CLASS ACTION SETTLEMENT

Robert Bennett et al. v. Patriot Environmental Services, Inc. et al.
Superior Court of the State of California for the County of San Diego
Case No. 37-2022-0004404-CU-OE-CTL

This notice is to the following individuals in connection with a pending class action settlement:

All current and former non-exempt employees who worked for Defendant in California at any time from November 1, 2018 through April 30, 2024.

Read this notice carefully. Your legal rights could be affected whether you act or not.

The Superior Court of the State of California for the County of San Diego (the “Court”) has preliminarily approved this class and representative action lawsuit filed by Robert Bennett (“Class Representative”) against Patriot Environmental Services, Inc. (“Defendant”) for alleged wage and hour violations (the “Lawsuit”).

The Lawsuit is based on the following legal causes of action: (1) meal period violations, (2) rest period violations, (3) untimely payment of wages, (4) wage statement violations, (5) waiting time penalties, (6) minimum wage violations, (7) failure to pay for all hours worked, including unpaid overtime wages, (8) failure to reimburse expenses, (9) unfair competition, and (10) civil penalties under the Private Attorneys General Act. Defendant denies all claims and maintains it has fully complied with the law.

Defendant’s records reflect you worked **[[Individual Workweeks]]** workweeks during the Class Period of November 1, 2018 to April 30, 2024. Based on this information, your Individual Class Payment is estimated to be **\$[[Individual Class Payment]]** (less any applicable state and federal withholdings). The actual amount you may receive will likely be different and will depend on multiple factors, such as how many other individuals decide to opt out.

<u>YOUR OPTIONS</u>	
DO NOTHING	You do not have to do anything in response to this notice. If you do nothing, you will remain eligible to automatically receive an Individual Class Payment if the Court grants final approval of the settlement. In such case, you will be bound by the release provisions in the settlement and release your claims in exchange for compensation.
OPT OUT	You may opt out of the Settlement by submitting a Request for Exclusion form. If you opt out, you may not object to the Settlement, you will not receive an Individual Class Payment, and you shall not be bound by the release provisions in the settlement. However, you will be bound to the PAGA settlement and release regardless of whether you opt out of the Settlement.

OBJECT	You may object to the Settlement by submitting a written objection. If the Court grants final approval of the settlement despite your objection, you will remain eligible to automatically receive an Individual Class Payment if the Court grants final approval of the settlement. In such case, you will be bound by the release provisions in the settlement.
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The Court’s final approval hearing is scheduled to take place on **[[Final Approval Hearing Date]]** at **[[Final Approval Hearing Time]]** in Dept. 60 of the San Diego Superior Court, located at 330 W Broadway, San Diego, CA 92101. You do not have to attend but you do have the right to appear. ***For more information, please carefully read this notice.***

1. WHAT IS THE ACTION ABOUT?

The Class Representatives are former employees of Defendant. The Class Representatives alleged Defendant violated California labor and employment laws as follows: (1) meal period violations, (2) rest period violations, (3) untimely payment of wages, (4) wage statement violations, (5) waiting time penalties, (6) minimum wage violations, (7) failure to pay for all hours worked, including unpaid overtime wages, (8) failure to reimburse expenses, (9) unfair competition, and (10) civil penalties under the Private Attorneys General Act (“PAGA”). Plaintiffs are represented by Ferraro Vega Employment Lawyers (“Class Counsel.”)

Defendant denies violating any laws or failing to pay any wages and contends it complied with all applicable laws.

2. WHAT ARE PROPOSED SETTLEMENT TERMS?

At the Final Approval Hearing, the Class Representative, through Class Counsel, will ask the Court to approve a Gross Settlement Amount of \$950,000 and authorize the following deductions: Service Payments (\$20,000), Attorneys’ Fees in the amount of 33.33% of the Gross Settlement, Litigation Costs (not to exceed \$50,000), the LWDA’s 75% portion of the PAGA Payment, and the Administration Expenses to be paid to the third-party settlement administrator. The PAGA aspect of the Settlement applies to you if you worked at any time during the period October 23, 2020 through April 30, 2024. For this aspect of the claim, you may not opt out and will be bound by the terms of the settlement, of which \$50,000 has been allocated to PAGA claims. 75% of the PAGA Payment shall be paid to the California Labor and Workforce Development Agency, with the remaining 25% constituting the Net PAGA Payment to be allocated and paid to individuals within this period of October 23, 2020 through April 30, 2024

After making the above deductions in amounts approved by the Court from the total \$950,000 amount, the Administrator will calculate and distribute making Individual Class Payments to Participating Class Members based on their Class Workweeks. 33.33% of each Individual Class Payment shall constitute taxable wages (“Wage Portion”) and 66.67% shall constitute interest and penalties (“Non-Wage Portion”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendant will separately pay employer payroll taxes it owes on the Wage Portion. The Administrator will report the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

You will be treated as a Participating Class Member, participating fully in the settlement, unless you submit a signed Request for Exclusion by the **[[Response Deadline]]** “Response Deadline”.

After the Judgment is final and Defendant has fully funded the settlement and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the settlement, as follows:

Release by Participating Class Members: All Participating Class Members release Released Parties from any and all claims, damages, and penalties alleged in the Operative Complaint and arising out of the facts in the Operative Complaint during the Class Period, including, without limitation, claims for: (1) meal period violations, (2) rest period violations, (3) untimely payment of wages, (4) wage statement violations, (5) waiting time penalties, (6) minimum wage violations, (7) failure to pay for all hours worked, including unpaid overtime wages, (8) failure to reimburse expenses, (9) unfair competition, and (10) civil penalties under the Private Attorneys General Act. Participating Class Members **do not** release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts outside of the Operative Complaint or outside the Class Period.

Release by PAGA Members: All PAGA Members and the LWDA release Released Parties from, and are forever barred from pursuing such against Released Parties for, the PAGA claims alleged in and/or arising out of the facts alleged in the Operative Complaint during the PAGA Period, including, without limitation penalties predicated on the underlying alleged violations for: (1) meal period violations, (2) rest period violations, (3) untimely payment of wages, (4) wage statement violations, (5) waiting time penalties, (6) minimum wage violations, (7) failure to pay for all hours worked, including unpaid overtime wages, (8) failure to reimburse expenses, (9) unfair competition, and (10) civil penalties under the Private Attorneys General Act.

3. HOW IS MY INDIVIDUAL CLASS SETTLEMENT CALCULATED?

The number of Class Workweeks you worked during the Class Period are stated on the first page of this Class Notice. The Administrator will calculate your Individual Class Payments by (1) dividing the Net Settlement Amount by the total number of Class Workweeks worked by all Participating Class Members, and then (2) multiplying the result by the number of Class Workweeks worked by each respective Participating Class Member. In other words, you will receive a proportional recovery based on your length of employment in relation to other Class Members.

4. HOW CAN I CORRECT THE NUMBER OF CLASS WORKWEEKS?

You have until the Response Deadline to correct or challenge the number of Class Workweeks. You can submit your challenge by signing and sending a letter to the Administrator via mail or email to the Administrator at the following address:

Administrator:

CPT Group, Inc.

50 Corporate Park

Irvine, CA 92606

Fax: (949) 419-3446

(833) 816-0845

<https://www.cptgroup.com/case-inquiry>

The Administrator will accept Defendant's calculation of Class Workweeks as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you.

5. HOW WILL I GET PAID?

The Administrator will send, by U.S. mail, a single check to every Participating Class Member following the Effective Date of this Settlement. Your check will be sent to the same address as this notice. If you change your address, notify the Administrator as soon as possible.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Complete the attached Request for Exclusion form and mail or email it to the Administrator before the Response Deadline.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement by submitting a written objection to the Administrator before the Response Deadline. To object, please provide a written statement to the Administrator advising what you object to, why you object, and any facts that support your objection. Please sign the objection and identify the Action and include your name, current address, telephone number, and your approximate dates of employment.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You may, but are not required to, attend the Final Approval Hearing on **[[Final Approval Hearing Date]]** at **[[Final Approval Hearing Time]]** in Dept. 60 of the San Diego County Superior Court, located at 330 W Broadway, San Diego, CA 92101. At the hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to

the LWDA, Class Counsel, the Class Representative(s), and the Administrator. The Court will invite comment from objectors, Class Counsel, and Defense Counsel before making a decision.

It is possible the Court will reschedule the Final Approval Hearing. Please review the Court's online docket or contact the Administrator or Class Counsel to verify the date and time of the Final Approval Hearing if you believe it may have been continued or otherwise changed.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendant and Plaintiffs have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment, or any other Settlement documents is to go to the Court's website, access the Register of Actions, and search for the case using the case number at the top of this notice. You can also telephone or send an email to Class Counsel at the address below:

Class Counsel

Nicholas J. Ferraro (State Bar No. 306528)

Lauren N. Vega (State Bar No. 306525)

Ferraro Vega Employment Lawyers, Inc.

3333 Camino del Rio South, Suite 300

San Diego, California 92108

(619) 693-7727 telephone

classactions@ferrarovega.com

ferrarovega.com

10. WHAT IF I LOSE MY SETTLEMENT CHECK OR FAIL TO CASH IT?

If you lose or misplace your settlement check, the Administrator will replace it if you request a replacement before the void date on the face of the original check. If your check is already void or you have otherwise failed to cash it, it will be provided to the State of California's Unclaimed Property Division in your name. For more information, please review how to process a claim for your funds with the State of California, https://www.sco.ca.gov/upd_form_claim.html.

Attachment B

Request for Exclusion Form

Request for Exclusion Form

Robert Bennett et al. v. Patriot Environmental Services, Inc. et al.
Superior Court of the State of California for the County of San Diego
Case No. 37-2022-0004404-CU-OE-CTL

By signing and returning this form, I confirm that I do not want to be included in the Settlement or receive a settlement check in the class action lawsuit referenced above.

I understand that by opting out, I am giving up my right to receive any payments in this Settlement. To “opt out,” this form must be postmarked no later than **[[Response Deadline]]** and mailed via U.S. Mail to the following address:

CPT Group, Inc.
50 Corporate Park
Irvine, CA 92606
Fax: (949) 419-3446
(833) 816-0845

<https://www.cptgroup.com/case-inquiry>

I confirm I have reviewed the Notice of Class Action Settlement. I have decided to be excluded from the class and **not** participate in the proposed settlement or receive an individual settlement check I am otherwise entitled to receive.

Dated: _____

(Signature)

(Last Four Digits of SSN)

(Type or print name and former name(s))

(Telephone Number)

(Address)

EXHIBIT C

FILED
Clerk of the Superior Court

SEP 13 2024

By: B. Delgado, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

ROBERT BENNETT, *et al.*

Plaintiff,

vs.

PATRIOT ENVIRONMENTAL SERVICES,
INC., *et al.*

Defendants.

Case No. 37-2022-00044044-CU-OE-CTL

Hon. Matthew C. Braner
Dept. 60

CLASS ACTION

**Amended [~~Proposed~~] Order Granting Final
Approval of Class Action Settlement and
Attorneys' Fees and Costs and Entering
Judgment**

Motion for Final Approval/Attorneys' Fees:

Date: September 13, 2024

Time: 9:00 a.m.

Action Filed: November 1, 2022

1 This matter came on for hearing on September 13, 2024 at 9:00 a.m. in Department 60 of the
2 above-captioned Court, the Honorable Matthew C. Braner presiding, on (1) Plaintiffs' Motion for Final
3 Approval of Class Action Settlement and (2) Plaintiffs' Motion for Attorneys' Fees and Costs.

4 Having received and considered the motions and supporting papers, including the Class Action
5 and PAGA Settlement Agreement ("Settlement"), the evidence and documents received by the Court
6 in connection with the Motions for Final Approval and Attorneys' Fees and Costs, and the previously
7 decided Motion for Preliminary Approval, the Court GRANTS FINAL APPROVAL of the Settlement
8 and ORDERS AND MAKES THE FOLLOWING DETERMINATIONS:

9 1. Pursuant to the terms of the Settlement and the Order Granting Preliminary Approval,
10 and the Settlement, a notice was sent to each class member by first-class U.S. mail. The notice
11 informed the class of the terms of the Settlement, their right to receive a settlement payment without
12 any required action, their right to comment upon or object to the Settlement, and their right to appear
13 in person or by counsel at the Final Approval Hearing and to be heard regarding approval of the
14 Settlement. Adequate periods of time were provided for each of these procedures.

15 2. Zero class members returned a written objection to the proposed Settlement as part of
16 the notice process or stated an intention to appear at the Final Approval Hearing and there were no
17 dissenting appearances from class members at the hearing. One class member requested exclusion
18 from the Settlement: Ashkan A. Moghaddam. This "opt out" is affirmatively excluded from the class
19 settlement.

20 3. The Court finds and determines the notice procedure afforded adequate protections to
21 the class and provides the basis for the Court's informed decision regarding approval of the Settlement
22 based the response. The Court finds and determines the notice provided was the best notice
23 practicable, satisfying the requirements of law and due process.

24 4. For purposes of approving this Settlement only, this Court finds and concludes: (a) the
25 proposed class is ascertainable and so numerous that joinder of all members of the class is
26 impracticable; (b) there are questions of law or fact common to the proposed class, and there is a well-
27 defined community of interest among members of the class with respect to the subject matter of the
28 claims; (c) the claims of the representative are typical of the claims of the class; (d) the class

representatives have and will fairly and adequately protect the interests of the class; (e) a class action is superior to other available methods for an efficient adjudication of this controversy in the context of settlement; and (f) the law firms of Ferraro Vega Employment Lawyers, Inc., and Gaines Law Corporation are qualified and adequate to serve as Class Counsels in this action.

5. The Court confirms certification, for settlement purposes only, of the class as defined in the Settlement and approved at the preliminary approval stage.

6. The Court finds and determines the terms set forth in the Settlement are fair, reasonable, and adequate and, having found the Settlement was reached as a result of informed and non-collusive arms'-length negotiations facilitated by a neutral and experienced mediator, directs the Parties to effectuate the Settlement according to its terms. The Court further finds the Parties conducted extensive investigation, research, and informal discovery, and that their attorneys were able to reasonably evaluate their respective positions. The Court also finds that Settlement will enable the Parties to avoid additional and potentially substantial litigation costs, as well as delay and risks if the Parties were to continue to litigate the case. The Court has reviewed the monetary recovery and recognizes the significant value provided to the Class. Therefore, the Court approves the Settlement and incorporates the terms of the Settlement in full into this Final Approval Order as though fully set forth herein.

7. The Court finds and determines the fees and expenses in administering the Settlement incurred by the Settlement Administrator of \$10,500 are fair and reasonable. The Court orders these administration costs be paid in accordance with the terms of the Settlement.

8. The Court finds and determines the Service Awards of \$10,000 to each named Plaintiff as fair and reasonable. The Court orders the service awards be paid in accordance with the terms of the Settlement.

9. The Court finds and determines payment to the California Labor and Workforce Development Agency of \$37,500, as its 75% share of the civil penalties under the Private Attorneys General Act is fair, reasonable, and appropriate. The Court orders that amount be paid in accordance with the terms of the Settlement and approves the settlement of claims under the Private Attorneys General Act pursuant to Labor Code § 2699(1)(2).

1 10. Pursuant to the terms of the Settlement and the statutory provisions authorizing
2 attorneys' fees under the California Labor Code and Code of Civil Procedure, as set forth in the Motion
3 for Attorneys' Fees, the Court awards Class Counsels attorneys' fees of \$342,097.62 and litigation
4 costs of \$16,226.66. Class Counsels have sufficiently explained the basis for the fee award based on
5 a percentage of the fund. The Court finds such amounts to be fair and reasonable. The Court orders
6 the Settlement Administrator to make these payments in accordance with the Settlement. Moreover,
7 because the escalator clause has triggered as set forth in supplemental declaration of the Administrator,
8 on file with the Court, pursuant to the terms of the Settlement, the Gross Settlement Amount shall be
9 \$1,026,395.50.

10 11. Without affecting the finality of this Order or the entry of judgment in any way, the
11 Court retains jurisdiction of all matters relating to the interpretation, administration, implementation,
12 and enforcement of this Order and the Settlement.

13 12. Nothing in this Order shall preclude any action to enforce the Parties' obligations under
14 the Settlement or under this Order, including the requirement that Defendant make payments to Class
15 Members in accordance with the Settlement.

16 13. The Court hereby ENTERS FINAL JUDGMENT in accordance with the terms of the
17 Settlement, in accordance with this Final Approval Order and Judgment.

18 14. The Parties shall comply with Cal. Rules of Court Rule 3.771(b), by filing a Notice of
19 Entry of Judgment with the Court.

20
21 **IT IS SO ORDERED.**

22
23 Date: 9/13/24



The Honorable Matthew C. Braner
Judge of the Superior Court

EXHIBIT D

1 **PROOF OF SERVICE AND CERTIFICATION**

2 I am employed in the County of Ventura, State of California. I am over the age of 18 and not a party to the
3 within action; my business address is 4550 East Thousand Oaks Boulevard, Suite 100, Westlake Village, CA 91362.

4 _____ (For messenger) my business address is:

5 On February 12, 2025, I served the foregoing document described as **DECLARATION OF EVAN S. GAINES**
6 **IN SUPPORT OF REQUEST FOR DISMISSAL OF REPRESENTATIVE ACTION** on the interested parties in this
7 action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

8 **MORGAN, LEWIS & BOCKIUS LLP**
9 **Kathryn T. McGuigan, Esq.**
10 **300 South Grand Avenue, 22nd Floor**
11 **Los Angeles, California 90071-3132**
12 kathryn.mcguigan@morganlewis.com

13 **MORGAN, LEWIS & BOCKIUS LLP**
14 **Regina Agopian, Esq.**
15 **1400 Page Mill Road**
16 **Palo Alto, CA 94304-1124**
17 regina.agopian@morganlewis.com

18 _____ (BY ☐ U.S. MAIL/ BY ☐ CERTIFIED MAIL, RETURN RECEIPT REQUESTED) The sealed envelope was
19 mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection
20 and processing correspondence for mailing. It is deposited with United States postal service on that same
21 day in the ordinary course of business. I am aware that on motion of party served, service is presumed
22 invalid if postal cancellation date or postage meter date is more than one day after date of deposit for
23 mailing in affidavit.

24 _____ (BY FEDERAL EXPRESS OR OTHER OVERNIGHT SERVICE) I deposited the sealed envelope in a box or
25 other facility regularly maintained by the express service carrier or delivered the sealed envelope to an
26 authorized carrier or driver authorized by the express carrier to receive documents.

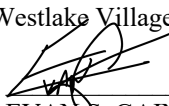
27 X (BY ELECTRONIC SERVICE) The above-stated document was submitted for service by electronic
28 transmission of CASEANYWHERE on the counsel of record listed above..

29 X (UPLOADED TO LWDA WEB PORTAL) I caused the above-described documents to be delivered to the Labor
30 & Workforce Development Agency via online process at the PAGA Filing website (www.dir.ca.gov)
31 in accordance with the procedure imposed by the LWDA.

32 I certify that the above document was printed on recycled paper.

33 I declare under penalty of perjury that the foregoing is true and correct.

34 Executed on February 12, 2025, at Westlake Village, California.

35 
36 EVAN S. GAINES
37
38