

PRIVATE ATTORNEY GENERAL ACT (LABOR CODE SECTION 2698 *ET SEQ.*)
SETTLEMENT AGREEMENT AND LIMITED RELEASE

IT IS HEREBY STIPULATED AND AGREED by and among the undersigned Parties, subject to the approval of the Court, that the settlement of this action shall be effectuated upon and subject to the following terms and conditions. Capitalized terms used herein shall have the meanings set forth in Article I or elsewhere in this Private Attorney General Act (Labor Code section 2698 *et seq.*) (“PAGA”) Settlement Agreement and Limited Release (“Agreement”).

This Agreement is made by and between MOISES AUGUSTO GIRON (“GIRON”), for himself and on behalf of the State of California and alleged aggrieved employees, and FIOR DI SOLE, LLC (“FIOR DI SOLE”). This Agreement shall be effective upon the last date upon which it is signed by the Parties.

The Parties agree that the Action shall be, and hereby is, ended, settled, resolved, and concluded by this Agreement, which is intended to effect and complete settlement of this matter.

Article I.

Definitions.

Section 1.01 Definitions.

Unless otherwise defined herein, the following terms used in this Agreement shall have the meanings ascribed to them as set forth below:

- i. “Action” means the August 13, 2021, written notice to the Labor and Workforce Development Agency (“LWDA”) indicating his intent to assert a claim against FIOR DI SOLE under the Private Attorneys General Act of 2005 (“PAGA”) (the “PAGA Letter”), and the subsequent lawsuit to be filed in Superior Court, County of Solano in order to effectuate this Agreement.
- ii. “Agreement,” or “Settlement Agreement,” means this Private Attorney General Act (Labor Code section 2698 *et seq.*) Settlement Agreement and Limited Release.
- iii. “Aggrieved Employees” means any and all non-exempt employees who worked for FIOR DI SOLE on-site in the production, facilities or maintenance departments from August 13, 2020 to June 22, 2021.
- iv. “Complaint” means the operative Complaint to be filed by GIRON in Solano County to effectuate this Agreement, containing all allegations and claims pursuant to the PAGA Letter, and as agreed upon by the Parties to effectuate the terms of this Agreement.
- v. “Court” means the Superior Court for the State of California, County of Solano.
- vi. “Defense Counsel” or “Counsel for Defendant” is:

Sarah Hamilton,

Constangy, Brooks, Smith & Prophete
601 Montgomery Street
Suite 350
San Francisco, CA 94111

- vii. “Effective Date” means the date this Agreement is approved as provided herein and the Court’s order granting Settlement Approval and entry of Final Judgment becomes final and is no longer appealable. For purposes of this Agreement, “becomes final and is no longer appealable” shall mean the later of: (a) the day after the last date by which a notice of appeal to the applicable Court of Appeal of the order and judgment approving this Agreement may be timely filed and none is filed (*i.e.*, 61 days from notice of entry of judgment); (b) if an appeal is filed, and the appeal is finally disposed of by ruling, dismissal, denial, or in a any other manner that confirms the validity of the order and judgment, the day after the last date for filing a request for further review of the order and judgment approving this Agreement passes, and no further review is requested; or (c) if an appeal is filed and the order approving this Agreement is affirmed and further review of the order is requested, the day after the review is finally resolved and the order and judgment approving this Agreement is affirmed.
- viii. “Fee Amount” is the amount in fees GIRON’s Counsel is free to request that the Court award them up to one-third (1/3) of the PAGA Settlement Amount, per Section 3.01 as compensation for their attorneys’ fees.
- ix. “Cost Amount” is the total amount of litigation costs incurred by GIRON’s counsel in connection with the Action including filing fees, etc., up to a maximum of \$2,500, which shall be paid from the PAGA settlement amount as reimbursement of litigation costs.
- x. “Individual PAGA Payment” is the amount in Labor Code Section 2699 penalties to be paid to Aggrieved Employees, which will be 25% of the Net PAGA Payment, unless the Court determines otherwise.
- xi. “LWDA Payment” is the amount in Labor Code Section 2699 penalties to be paid to the LWDA, which will be 75% of the Net PAGA Payment, unless the Court determines otherwise.
- xii. “Net PAGA Payment” means the amount remaining from the Settlement Sum after the deduction of the Settlement Administration Fee, GIRON’s Counsel’s Fee Amount and GIRON’ Counsels’ Cost Amount.
- xiii. “Notice of PAGA Settlement” means the Notice of PAGA Settlement (attached hereto as Exhibit A) the Settlement Administrator shall mail, along with each Individual PAGA Payment, to all Aggrieved Employees by first-class United States mail, postage prepaid, to the last known address of each Aggrieved Employee with directions to the Postmaster to forward the Notice and return all undeliverable Notices to the Settlement Administrator.

- xiv. "PAGA Period" means the time period from August 13, 2020 through approval of this Agreement.
- xv. "Parties" refers to GIRON, Aggrieved Employees, and Defendant FIOR DI SOLE .
- xvi. "Pay Period" means each biweekly period in which Aggrieved Employees received wages during their employment at FIOR DI SOLE , during the PAGA Period.
- xvii. "GIRON' Counsel" are as follows:

Craig J. Ackermann
ACKERMANN & TILAJEF, P.C.
1180 South Beverly Drive
Suite 610
Los Angeles, CA 90035

and

Hengameh S. Safaei
Rana Nader
PROXY LAW FIRM LLP
10880 Wilshire Boulevard, Suite 1101
Los Angeles, CA 90024

- xviii. "Released Claims" means any and all claims, rights, demands, liabilities, including without limitation statutory, constitutional, contractual or common law claims for actual damages, penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, equitable relief for all PAGA claims alleged in the PAGA Letter and operative Complaint in the Action which occurred during the PAGA Period, based on all of the underlying Labor Code Sections 201, 202, 203, 204, 210, 212, 225.2, 226, 226.3, 226.7, 450, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 1198 and 2802, and the applicable Industrial Welfare Commission Wage Order(s) (including but not limited to IWC Wage Order 8 and Section 11, 12), including the primary rights of each provision of the State of California under PAGA, and including the PAGA penalty claims described in the PAGA letter of GIRON, dated August 13, 2021.
- xix. "Released Parties" means FIOR DI SOLE and its former and present parents, subsidiaries and affiliated corporations and its officers, directors, employees, managers, partners, shareholders, agents, insurers, and any other successors, assigns, or legal representatives. joint ventures, and any joint employers.
- xx. "Settlement Administrator" means a third-party administrator the Parties will jointly select to administer the notice and payments called for in this Agreement. The Settlement Administrator shall be selected by the parties based on the bid most agreeable to all parties.

xxi. "Settlement Administration Fee" means costs incurred by the Settlement Administrator in connection with the current Agreement, whether foreseen or not, which are anticipated not to exceed \$3,500.

xxii. "Settlement Sum" means the maximum amount FIOR DI SOLE has agreed to pay pursuant to Section 1.02, below.

Terms of Agreement.

Section 1.02 Settlement Sum.

FIOR DI SOLE agrees to pay **Sixty Five Thousand Dollars and Zero Cents (\$65,000.00)** as a full, complete and final settlement of the Action. This sum includes the following: (i) any payment to the LWDA; (ii) any payment to Aggrieved Employees; (iii) the payment of fees and costs to GIRON's counsel, as approved by the Court; and (v) all fees, costs, and expenses of administration of this Agreement. The settlement is non-reversionary, however, under no circumstances shall the Settlement Sum exceed \$65,000. The Settlement Sum shall be used to satisfy all of the alleged PAGA claims alleged against FIOR DI SOLE in the Action, including those in the Demand Letter, any operative complaint pursuant to PAGA brought to effectuate this Agreement, and as released through the Release, as well administration fees, PAGA/LWDA payment, interest, GIRON's attorneys' fees and costs, and payments to all Aggrieved Employees.

Section 1.03 Fee Amount.

GIRON' Counsel is free to request the Fee Amount as compensation for their attorneys' fees and the Cost Amount in addition as reimbursement for their litigation costs incurred. FIOR DI SOLE will not oppose any such request up to 1/3 of the Settlement Sum for fees and an additional \$2,500 for the Cost Amount. Any reduction in this payment by the Court is not grounds to void this Agreement and any funds requested but not awarded as attorneys' fees or trust will be distributed to the State and eligible employees pursuant to the distribution terms of the Agreement or any terms imposed by the Court.

Section 1.04 PAGA Payment - Allocation.

The Net PAGA Payment shall represent Labor Code Section 2699 penalties, of which 75% of the payment will be paid to the LWDA as the LWDA Payment and 25% will be paid to Aggrieved Employees as Individual PAGA Payments, unless the Court determines otherwise. A reallocation of the settlement funds amongst PAGA claims directed by the Court shall not be a basis for either side to void the agreement. Aggrieved Employees will be issued Form 1099 for their share of the PAGA payments. The Individual PAGA Payment for each Aggrieved Employee shall be based on the number of biweekly payroll periods each Aggrieved Employees worked during the PAGA Period as a percentage of the total pay periods worked by all Aggrieved Employees during the PAGA Period.

Article II.

Approval and Implementation of Agreement.

Section 2.01 Cooperation.

The Parties will cooperate in obtaining through an unopposed motion, an Order from the Court approving the terms of this Agreement at the earliest possible date. The Parties agree to use their best efforts to expedite the preparation and submission of the Agreement documents. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents reasonably necessary to be prepared or filed in order to obtain approval of this Agreement.

Section 2.02 Court Approval.

The Parties will seek to obtain the Court's approval of this Agreement by way of a motion to be filed by GIRON's counsel. The Court's approval of this Agreement shall be embodied in a written Order. Should the Court not grant approval of terms set forth in Sections 3.02 of this Agreement, then the entirety of this Agreement shall be null and void.

Section 2.03 Notice to Aggrieved Employees.

(a) Notice.

Notice shall be provided to the Aggrieved Employees in the following manner:

- (1) No later than fourteen (14) days after Effective Date, FIOR DI SOLE shall provide the Settlement Administrator with a list of all Aggrieved Employees ("Aggrieved Employees List"). The Aggrieved Employees List shall state the first name and last name in separate columns for each Aggrieved Employee, the last known home address for each such Aggrieved Employee, each Aggrieved Employee's social security number, and each Aggrieved Employee's respective number of Pay Periods employed by FIOR DI SOLE between August 13, 2020 through approval of this Agreement.
- (2) The Settlement Administrator shall conduct one National Change of Address ("NCOA") search for all Aggrieved Employees identified on the Aggrieved Employees List. No later than ten (10) business days after its receipt of the information described in Section 4.03(a)(1), above, the Settlement Administrator shall mail the Notice of PAGA Settlement (attached hereto as Exhibit A) and each Individual PAGA Payment to all Aggrieved Employees by first-class United States mail, postage prepaid, to the last known address of each Aggrieved Employee with directions to the Postmaster to forward the Notice and Individual PAGA Payment and return all undeliverable Notices and Individual PAGA Payments to the Settlement Administrator. For each Notice and Individual PAGA Payment that is returned as undeliverable, the Settlement Administrator shall promptly attempt to locate the Aggrieved Employee by using an address refresher database.

- (3) All costs incurred by the Settlement Administrator in connection with the current settlement, whether foreseen or not, shall be paid out of the Settlement Sum.

Section 2.04 Settlement Payment And Administration Procedures.

(a) Payment of Aggrieved Employee Payment.

For purposes of distributing each Individual PAGA Payment, all distribution payments will be made according to the number of Pay Periods each Aggrieved Employee was employed by FIOR DI SOLE August 13, 2020 through approval of this Agreement, with each Aggrieved Employee being entitled to a share of the Net PAGA Payment allocated to the Aggrieved Employees based upon the Aggrieved Employee's number of Pay Periods employed with FIOR DI SOLE during the specified period as a numerator and the total number of Pay Periods all Aggrieved Employees were employed with FIOR DI SOLE between August 13, 2020 through approval of this Agreement as the denominator.

The Individual PAGA Payments are considered penalties and will not be subject to local, state or federal tax withholdings. All Aggrieved Employees who cash their settlement check may receive a IRS Form 1099 reflecting this portion of the settlement.

The settlement checks issued to Aggrieved Employees shall remain valid for one hundred twenty (120) days. Thereafter, all uncashed checks shall be voided and the funds represented thereby shall be paid to the LWDA by the Settlement Administrator.

In no event will any funds or payment be due by FIOR DI SOLE prior to the Effective Date of this Agreement.

Section 2.05 LWDA Notice.

Pursuant to California Labor Code section 2699(l), GIRON will provide a copy of this Agreement to the LWDA concurrently with the filing of the motion for settlement approval. GIRON will also file a declaration in support of their Motion for Settlement Approval confirming that they have submitted the Agreement to the LWDA in compliance with Labor Code section 2699(l). In addition, GIRON shall submit to the LWDA a copy of the Court's judgment and order approving the Agreement within ten (10) days after entry of the judgment or order.

Section 2.06 Filing of Complaint

GIRON shall file a Complaint in the County of Solano to effectuate the terms of this Agreement. The Complaint shall contain all PAGA claims and theories asserted in the PAGA Letter and shall be reviewed and approved for filing by FIOR DI SOLE's counsel prior to filing. GIRON agrees such Complaint shall be resolved in its entirety through this settlement and agrees to take all steps to seek final judgment and dismissal of the claims as contemplated by this Agreement.

Section 2.07 Submission of Judgment.

Upon payment of the entire Settlement Sum by FIOR DI SOLE and distribution of the Settlement Sum by the Settlement Administrator in accordance with this Agreement, GIRON and FIOR DI SOLE will jointly submit a Notice of Satisfaction of Judgment.

Article III.

Limitations On Use Of This Agreement.

Section 3.01 No Admission.

This Agreement and compliance with this Agreement shall not be construed as an admission by FIOR DI SOLE of any liability whatsoever, or as admission by FIOR DI SOLE of any violations of GIRON' rights, violation of any order, law, statute, duty or contract whatsoever. FIOR DI SOLE specifically disclaims any liability to GIRON or any other allegedly Aggrieved Employee for any alleged violation of his/her rights, or for any alleged violation of any order, law, statute, duty or contract.

Section 3.02 Nullification.

- (a) If the Court should for any reason fail to approve this Agreement, then (a) this Agreement shall be considered null and void, (b) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect, and (c) all Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had been neither entered into nor filed with the Court.
- (b) Invalidation of any material portion of this Agreement shall invalidate this Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect. Material terms of this Agreement include: the definition of Aggrieved Employees (Section 1.01(iii)); the definition of Effective Date (Section 1.01(vii)); the definition of PAGA Period (Section 1.01(xiv); the definition of Released Claims (Section 1.01(xviii); the definition of Released Parties (Section 1.01(xix); the definition of Settlement Sum (Section 1.01(xxii)); the requirement for entry of an order by the Court approving this Agreement and entering PAGA Judgment as contemplated in Article II. The following terms are not material to this Agreement: the allocation of Fee Amount (Sections 1.01(xiii)); the amount of the Settlement Administration Fee (Section 1.01(xxi); the allocation within the Net PAGA payment (Section 2.04).

Article IV.

Limited Release and Waiver of Claims.

It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge disputes and claims arising from or related to the PAGA Letter and/or the Action. Upon entry of the Order and Final Judgment approving payment of the payment of PAGA penalties as described in this Agreement, GIRON, the Aggrieved Employees and the State of California shall be bound

by this Agreement and shall have recourse exclusively to the benefits, rights, and remedies provided hereunder. GIRON, the Aggrieved Employees and the State of California shall be deemed to have, and by operation of the Order and Final Judgment granting approval of this Agreement, shall have fully, finally, and forever released, relinquished, and discharged each and all of the Released Parties from the Released Claims.

Article V.

Miscellaneous Provisions.

Section 5.01 Voluntariness.

This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any of the Parties, or of any other person, firm or other entity.

Section 5.02 Amendments.

The terms and provisions of this Agreement may be amended only by a written agreement that is both (a) signed by GIRON, GIRON's Counsel, FIOR DI SOLE and Defense Counsel who executed this Agreement and (b) approved by the Court. Any waiver of any provision of this Agreement shall not constitute a waiver of any other provision of this Agreement unless expressly so indicated otherwise.

Section 5.03 Assignment.

None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party, Aggrieved Employee, GIRON's Counsel, or Defense Counsel without the express written consent of each other Party and their respective counsel hereto. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under this Agreement, and shall not be construed to confer any right or to avail any remedy to any other person. GIRON expressly warrants that they have not transferred to any person or entity any right or cause of action, or claim released by this Agreement.

Section 5.04 Governing Law.

This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California, and shall in all cases be shall be interpreted in accordance with the plain meaning of its terms and not strictly for or against any of the Parties hereto.

Section 5.05 Entire Agreement.

This Agreement, including the Exhibits referred to herein, which form an integral part hereof, contains the entire understanding of the Parties hereto in respect of the subject matter contained herein. This Agreement supersedes all prior agreements and understandings among the Parties hereto with respect to the settlement of the Action.

Section 5.06 Counterparts.

This Agreement, and any amendments hereto, may be executed in any number of counterparts and any Party and/or their respective counsel hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for any of the other counterparts.

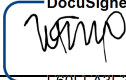
Section 5.07 Dispute(s).

Should any dispute(s) arise among the Parties or their respective counsel regarding the implementation or interpretation of this Agreement, the Parties agree to submit any such dispute(s) to the Court and/or to a mediator.

IN WITNESS WHEREOF, the Parties have executed this Private Attorney General Act Settlement Agreement and Limited Release on the date set forth.

APPROVED AND ACCEPTED.

Dated: 11/18/2021, 2021

By  DocuSigned by:
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MOISES AUGUSTO GIRON

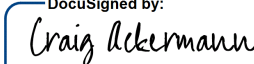
Dated: _____, 2021

By _____
Its: _____
FOR FIOR DI SOLE, LLC

APPROVED AS TO FORM AND ATTORNEY OBLIGATIONS ONLY

Dated: 11/17/2021, 2021

ACKERMANN & TILAJEF, P.C.

By  DocuSigned by:
6F3C75CDED5444B...
Craig J. Ackermann
Attorneys for GIRON and the Aggrieved
Employees, and on behalf of the State of
California

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Section 5.07 Dispute(s).

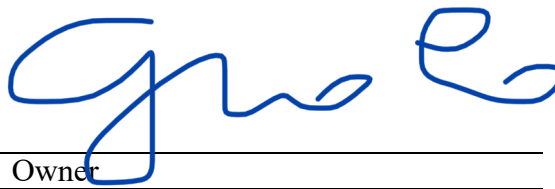
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IN WITNESS WHEREOF, the Parties have executed this Private Attorney General Act Settlement Agreement and Limited Release on the date set forth.

APPROVED AND ACCEPTED.

Dated: _____, 2021

By _____
MOISES AUGUSTO GIRON



Dated: November 15, 2021

By _____
Its: Owner
FOR FIOR DI SOLE, LLC

**APPROVED AS TO FORM AND
ATTORNEY OBLIGATIONS ONLY**

Dated: _____, 2021

ACKERMANN & TILAJEF, P.C.

By _____
Craig J. Ackermann
Attorneys for GIRON and the Aggrieved
Employees, and on behalf of the State of
California

Dated: November 22, 2021

CONSTANGY, BROOKS, SMITH &
PROPHETE

By _____

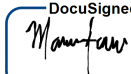
Sarah K. Hamilton

Attorneys FIOR DI SOLE, LLC

ACKNOWLEDGMENT OF INTERPRETER

The undersigned hereby states that I interpreted the entirety of the above Settlement Agreement in Spanish for MOISES AUGUSTO GIRON, and with the assistance of his attorneys, have explained the content and legal effect of the Agreement in Spanish to MOISES AUGUSTO GIRON, and MOISES AUGUSTO GIRON has informed me before signing the Agreement that he understood the terms of the Agreement and agreed to be bound by all of its terms and conditions.

Date: 11/18/2021

DocuSigned by:

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Interpreter

NOTICE TO PLAINTIFF

Upon signing this document, you understand that this legal document is important and affects your rights in this case. You declare that this document was translated into the Spanish version attached hereto and your attorney has explained its significance. You declare that you understand and voluntarily accept the terms of this settlement whether written in English or Spanish.

Al firmar este documento Usted entiende que este documento legal es importante y afecta sus derechos en este proceso legal. Usted declara que este documento fue traducido al español (cual versión adjunta este documento) y su abogado le ha explicado su significado. Usted declara que entiende y voluntariamente acepta los términos del Acuerdo, independientemente si está escrito en inglés o en español.

DocuSigned by:

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MOISES AUGUSTO GIRON