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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO – GORDON D. SHABER COURTHOUSE**

KHAMTANH PHAKHAILATHVONE,
individually, and on behalf of all others similarly
situated,

Plaintiff,

v.

ORANGE CRUSH ATHLETICS
CORPORATION, a California corporation;
WESTERN STATES WASTE, LLC, a limited
liability company; NORTECH WASTE, LLC, a
limited liability company; and DOES 1 through 10,
inclusive,

Defendants.

Case No. 34-2021-00308178-CU-OE-GDS
*Assigned for all purposes to the Honorable Jill H.
Talley, Department 27*

COMPLEX ACTION

**CLASS AND PAGA REPRESENTATIVE
ACTION SETTLEMENT AGREEMENT AND
CLASS NOTICE**

PAGA Case No.	
LWDA-CM-844259-21:	09/11/2021
Action Filed:	09/17/2021
FAC Filed:	11/23/2021
Trial Date:	None Set

**CLASS ACTION AND PAGA SETTLEMENT AGREEMENT
(SACRAMENTO SUPERIOR COURT, CASE No. 34-2021-00308178-CU-OE-GDS)**

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CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff KHAMTANH PHAKHAILATHVONE (“Plaintiff”), on the one hand, and Defendant ORANGE CRUSH ATHLETICS CORPORATION d/b/a WESTERN STATES WASTE, LLC, a California corporation; and Defendant NORTECH WASTE, LLC, a limited liability company (collectively, “Defendants”), on the other hand. The Agreement refers to Plaintiff and Defendants collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

1.1. Action. “Action” means Plaintiff’s lawsuit alleging wage and hour violations against Defendants captioned *Phakhailathvone v. Orange Crush Athletics Corporation, et al.* Case No. 34-2021-00308178-CU-OE-GDS, initiated on September 17, 2021, and pending in the Superior Court of the State of California, County of Sacramento.

1.2. Administrator. “Administrator” means Simpluris, Inc., or another the neutral entity the Parties have agreed to appoint to administer the Settlement.

1.3. Administration Expenses Payment. “Administration Expenses Payment” means the amount not to exceed twenty thousand dollars and zero cents (\$20,000.00) the Administrator shall be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.

1.4. Aggrieved Employee. “Aggrieved Employee” or “PAGA Member” means all individuals: (1) who worked for ORANGE CRUSH ATHLETICS CORPORATION, doing business as WESTERN STATES WASTE, LLC; and (2) who worked for any other entity operated by Johnny Ray as an hourly, non-exempt employee and was staffed to perform work for NORTECH WASTE, LLC during the PAGA Period.

1.5. Class. “Class” means all individuals: (1) who worked for ORANGE CRUSH ATHLETICS CORPORATION, doing business as WESTERN STATES WASTE, LLC; and (2) who worked for any other entity operated by Johnny Ray as an hourly, non-exempt employee and was staffed to perform work for NORTECH WASTE, LLC during the Class Period.

1.6. Class Counsel. “Class Counsel” means Moon Law Group, PC including Kane Moon, Allen Feghali, and Michael M. Citrin.

1.7. Class Counsel Fees Payment. “Class Counsel Fees Payment” and/or “Class Counsel Attorneys’ Fee Award” mean an amount of no less than to one-third (1/3) of the Gross Settlement Amount payable to Class Counsel for reimbursement of reasonable attorneys’ fees incurred to prosecute the Action.

1.8. Class Counsel Litigation Expenses Payment. “Class Counsel Litigation Expenses Payment” and/or “Class Counsel Costs Award” mean an amount up to twenty-five thousand dollars and zero cents (\$25,000.00) allocated to Class Counsel for reimbursement of expenses incurred to prosecute the Action.

1.9. Class Data. “Class Data” and/or “Class List” means Class Member identifying information in Defendants’ possession including the Class Member’s name, last-known mailing address, Social Security number, and dates of employment with ORANGE CRUSH ATHLETICS CORPORATION, doing business as WESTERN STATES WASTE, LLC or with any related entity operated by Johnny Ray as non-exempt employees, and number of Workweeks and PAGA Pay Periods Class Members worked respectively.

1.10. Class Member or Settlement Class Member. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member; or a Non-Participating Class Member who qualifies as an Aggrieved Employee.

1.11. Class Member Address Search. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

1.12. Class Notice. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English with a Spanish translation, in the form, without material variation, attached as **Exhibit A** and incorporated by reference into this Agreement.

1.13. Class Period. “Class Period” means the time period beginning on September 17, 2017 and ending on August 26, 2023, or ending on another date Defendant ORANGE CRUSH ATHLETICS

CORPORATION d/b/a WESTERN STATES WASTE, LLC selects pursuant to the Gross Settlement Amount 15% Escalation Option, whichever date occurs first.

1.14. Class Representative. “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.

1.15. Class Representative Service Payment. “Class Representative Service Payment” means the payment not to exceed seven thousand, five hundred dollars, and zero cents (\$7,500.00) to the Class Representative for initiating the Action and providing services in support of the Action.

1.16. Court. “Court” means the Superior Court of the State of California, County of Sacramento, and the Judicial Officer presiding over this matter.

1.17. Covered PAGA Pay Period. “Covered PAGA Pay Period” or “PAGA Pay Period” means any seven (7) day pay period in which a PAGA Member worked for ORANGE CRUSH ATHLETICS CORPORATION, doing business as WESTERN STATES WASTE, LLC or who worked for any other entity operated by Johnny Ray as a non-exempt employee staffed to perform work for NORTECH WASTE, LLC during the PAGA Period.

1.18. Covered Class Workweek. “Covered Class Workweek” and/or “Workweek” means any week during which a Class Member worked for ORANGE CRUSH ATHLETICS CORPORATION, doing business as WESTERN STATES WASTE, LLC or with any related entity operated by Johnny Ray as a non-exempt employee staffed to perform work for NORTECH WASTE, LLC, during the Class Period.

1.19. Defendants. “Defendants” means named Defendant ORANGE CRUSH ATHLETICS CORPORATION, a California corporation d/b/a WESTERN STATES WASTE, LLC; and Defendant NORTECH WASTE, LLC, a limited liability company.

1.20. Defense Counsel. “Defense Counsel” means Jackson Lewis, P.C., including Yvonne A. Fossati, Hazel U. Poei, and Isabella L. Shin; and Hanson Bridgett LLP, including Paul Mello and Josue Aparicio.

1.21. Effective Date. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no

1 Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or
2 more Participating Class Members objects to the Settlement, then the day after the deadline for filing a
3 notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, then the day after
4 the appellate court affirms the Judgment and issues a remittitur.

5 1.22. Employer's Payroll Taxes. "Employer's Payroll Taxes" means Defendant ORANGE
6 CRUSH ATHLETICS CORPORATION d/b/a WESTERN STATES WASTE, LLC's share of any
7 applicable employer payroll taxes on the wage-portion of the Individual Class Payments to be paid in
8 connection with the Settlement, which it shall pay in addition to, and separate from, the Gross Settlement
9 Amount.

10 1.23. Exhibits. "Exhibits" mean the two (2) exhibits attached to this Settlement Agreement
11 including **Exhibit A** (proposed Class Notice) and **Exhibit B** (Plaintiff's PAGA Notice)

12 1.24. Final Approval. "Final Approval" means the Court's order granting final approval of the
13 Settlement.

14 1.25. Final Approval Order. "Final Approval Order" means the Court's order, which shall,
15 among other things, finally approve the fairness, reasonableness, and adequacy of this Settlement
16 Agreement.

17 1.26. Final Approval Hearing. "Final Approval Hearing" means the Court's hearing on the
18 Motion for Final Approval of the Settlement.

19 1.27. Final Judgment. "Final Judgment" means the Judgment entered by the Court upon granting
20 Final Approval of the Settlement.

21 1.28. Gross Settlement Amount. "Gross Settlement Amount" means four hundred thousand
22 dollars and zero cents (\$400,000.00), which, subject to the Gross Settlement Amount 15% Escalation
23 Clause and the amount payable separately by ORANGE CRUSH ATHLETICS CORPORATION d/b/a
24 WESTERN STATES WASTE, LLC as the Employer's Payroll Taxes, shall be the total amount
25 Defendants agree to pay under the Settlement, which shall be paid by Defendant ORANGE CRUSH
26 ATHLETICS CORPORATION d/b/a WESTERN STATES WASTE, LLC in the amount of two hundred
27 fifty thousand dollars and zero cents (\$250,000.00) and by Defendant NORTECH WASTE, LLC in the
28 amount of one hundred fifty thousand dollars and zero cents (\$150,000.00) which shall be used as a

common settlement fund to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the Class Representative Service Payment, and the Administrator's Expenses Payment.

1.29. Gross Settlement Amount 15% Escalation Option. "Gross Settlement Amount 15% Escalation Option" means the contingent provision that provides: if the total number of Covered Class Workweeks in the Class Period exceeds 22,000 by fifteen percent (15%) (i.e., if the Covered Class Workweeks within the Class Period includes more than 3,300 additional Covered Class Workweeks), then Defendant ORANGE CRUSH ATHLETICS CORPORATION d/b/a WESTERN STATES WASTE, LLC shall have the option to: (a) increase the gross settlement proportionally by \$18.18 for each additional workweek exceeding 25,300 Covered Class Workweeks; or (b) as long as the Class Period includes the time period beginning on September 17, 2017 and ending no sooner than June 30, 2022, select the end date of the Class Period and PAGA Period so that there is no increase in the Gross Settlement Amount.

1.30. Individual Class Payment. "Individual Class Payment" means the Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of each Participating Class Member's Covered Class Workweeks in relation to the total Covered Class Workweeks during the Class Period.

1.31. Individual PAGA Payment. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of each Aggrieved Employee's Covered PAGA Periods in relation to the total Covered PAGA Periods during the PAGA Period.

1.32. LWDA. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).

1.33. LWDA PAGA Payment. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).

1.34. Net Settlement Amount. "Net Settlement Amount" means the Gross Settlement Amount, less the following amounts: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses

1 Payment, and the Administration Expenses Payment. The remainder shall be paid to Participating Class
2 Members as Individual Class Payments. Any amounts the Court finally approves for such deductions,
3 which are less than the amounts proposed, shall remain a part of the Net Settlement Amount.

4 1.35. Non-Participating Class Member. “Non-Participating Class Member” means any Class
5 Member who opts out of the non-PAGA portion of the Settlement by sending the Administrator a valid
6 and timely Request for Exclusion.

7 1.36. PAGA. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698, *et seq.*).

8 1.37. PAGA Notice. “PAGA Notice” means Plaintiff’s October 8, 2021 letter to Defendants and
9 the LWDA providing notice pursuant to Labor Code section 2699.3, subd. (a), which is attached as
10 **Exhibit B**.

11 1.38. PAGA Penalties. “PAGA Penalties” means forty thousand dollars and zero cents
12 (\$40,000.00), the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount. The
13 PAGA Penalties shall be allocated as: ten thousand dollars and zero cents (\$10,000.00) for the twenty-
14 five percent (25%) due to the Aggrieved Employees and thirty thousand dollars and zero cents
15 (\$30,000.00) for the seventy-five percent (75%) to the LWDA in settlement of PAGA claims.

16 1.39. PAGA Period. “PAGA Period” means the time period beginning on September 11, 2020
17 and ending on August 26, 2023, or on another date Defendant ORANGE CRUSH ATHLETICS
18 CORPORATION d/b/a WESTERN STATES WASTE, LLC selects pursuant to the Gross Settlement
19 Amount 15% Escalation Option, whichever date occurs first.

20 1.40. Participating Class Member. “Participating Class Member” means a Class Member who
21 does not submit a valid and timely Request for Exclusion from the Settlement.

22 1.41. Plaintiff. “Plaintiff” means plaintiff Khamtanh Phakhailathvone, the named plaintiff in the
23 Action.

24 1.42. Plaintiff’s Further Released Claims. “Plaintiff’s Further Released Claims” means the
25 claims and causes of action, except for any claims or causes of action arising out of the obligations created
26 in this Agreement, Plaintiff, individually, and in addition to Plaintiff’s release of the Released Class
27 Claims and Released PAGA Claims, expressly and further releases against the Released Parties including
28 by waiver of all rights, protections and benefits under California Civil Code section 1542, which includes

claims known and unknown related to Plaintiff's employment with Defendant ORANGE CRUSH ATHLETICS CORPORATION, doing business as WESTERN STATES WASTE, LLC, claims alleged in the Action, any additional claims Plaintiff may have against Defendant NORTECH WASTE, LLC, except as may be prohibited by law, which may have existed at the time Plaintiff signs this Agreement. Plaintiff's Further Released Claims excludes claims for unemployment insurance, disability, social security, workers' compensation (except for claims pursuant to Labor Code sections 132a and 4553), and any claims or causes of action arising out of any event or controversy occurring after the time Plaintiff signs this Agreement including for any obligation arising out of this MOU.

1.43. Preliminary Approval. "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement.

1.44. Preliminary Approval Order. "Preliminary Approval Order" means the order granting preliminary approval of stipulation of the class and PAGA representative action settlement, which shall, among other things, preliminarily approve the fairness, reasonableness, and adequacy of this Settlement Agreement.

1.45. Released Class Claims. "Released Class Claims" means the claims being released as described in Paragraph 5.3 (Release of Released Class Claims by Participating Class Members) below.

1.46. Released PAGA Claims. "Released PAGA Claims" means the claims being released as described in Paragraph 5.4 (Release of Released PAGA Claims by Participating Class Members; and Non-Participating Class Members Who Are Aggrieved Employees) below.

1.47. Released Parties. "Released Parties" means Defendants together with their present and former parents, subsidiaries, affiliated and related entities, present and former owners, boards, officers, directors, trustees, shareholders, members, partners, managing employees, agents, insurers, attorneys, representatives, heirs, executors, administrators, successors, and assigns who may be held liable for any of the Released Class Claims and the Released PAGA Claims.

1.48. Request for Exclusion. "Request for Exclusion" and/or "Opt-Out Request" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member.

1.49. Response Deadline. "Response Deadline" means 45 days after the Administrator mails

1 Notice to Class Members and Aggrieved Employees, which shall be the last date on which Class Members
2 may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or
3 her Objection to the Settlement. Class Members to whom Class Notices are resent after having been
4 returned undeliverable to the Administrator shall have an additional 15 days beyond the Response
5 Deadline has expired.

6 1.50. Settlement. “Settlement” means the disposition of the Action effected by this Agreement
7 and the Judgment.

8 1.51. Unclaimed Property Fund. “Unclaimed Property Fund” means the California Controller’s
9 Unclaimed Property Fund (Cal. Code Civ. Proc. § 1314).

10 **2. RECITALS.**

11 2.1. 09/11/21 Plaintiff’s PAGA Notice to the LWDA and Defendants in LWDA Case No.
12 LWDA-CM-844259-21. On September 11, 2021, pursuant to Labor Code section 2699.3, subd. (a),
13 Plaintiff gave timely written notice to Defendants and the LWDA by sending the PAGA Notice, in LWDA
14 Case No. LWDA-CM-844259-21, a copy of which is attached hereto as Exhibit B.

15 2.2. 09/17/21 Commencement of Action and Complaint. On September 17, 2021, Plaintiff
16 commenced this Action by filing a Complaint alleging causes of action against Defendants alleging (1)
17 failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide required meal
18 periods; (4) failure to provide required rest periods; (5) failure to indemnify employees for necessary
19 expenditures incurred in discharge of duties; (6) failure to furnish accurate itemized wage statements; (7)
20 failure to pay timely and all wages due to discharged and quitting employees; and (8) unfair and unlawful
21 business practices.

22 2.3. 11/23/21 First Amended Complaint and Operative Complaint. On November 23, 2021,
23 Plaintiff filed a First Amended Complaint alleging a Ninth Cause of Action against Defendants for PAGA
24 claims based on Plaintiff’s PAGA Notice. The First Amended Complaint is the operative complaint in the
25 Action (the “Operative Complaint”). Defendants deny the allegations in the Operative Complaint, deny
26 any failure to comply with the laws identified in the Operative Complaint, and deny any and all liability
27 for the causes of action alleged.

28 2.4. 05/16/23 Private Mediation and Negotiations Leading to this Agreement. On May 16,

2023, the Parties participated in an all-day mediation presided over by a professional with an experienced wage and hour class action mediator, the Honorable Carl West (Retired), which led to the Parties' June 27, 2023 execution of memorandum of understanding that included the material terms of a class and representative action ("MOU") which formed the basis of this Agreement to settle the Action.

2.5. This Court has Not Certified a Class in this Action. Prior to mediation, Plaintiff and Class Counsel engaged in substantial investigation about the Defendants' business practices in California. Plaintiff obtained documents, data, and information from Defendants and other sources. As a condition of mediation, the Parties engaged in extensive informal exchange of information. Plaintiff obtained Defendants' wage and hour business policies in effect during the Class Period as well as a sampling of Class Member time and pay records consisting of a large volume of data and consisting of several hundred thousand data points. Accordingly, Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

2.6. This Court has Not Certified a Class in this Action. The Court has not granted class certification, nor has Plaintiff moved for class certification.

2.7. The Parties are Unaware of Other Pending Matters that Will be Extinguished or Affected by the Settlement. The Parties, Class Counsel, and Defense Counsel represent they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9.1 (Defendants' Option to Withdraw if Requests for Exclusion Exceed Ten Percent (10%)) below, Defendants promise to pay no less than four hundred thousand dollars and zero cents (\$400,000.00), subject to the Gross Settlement Amount 15% Escalation Option, , as the Gross Settlement Amount and Defendant ORANGE CRUSH ATHLETICS CORPORATION d/b/a WESTERN STATES WASTE, LLC agrees to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments as Employer's Payroll Taxes. Defendants have no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 (Defendants' Funding of Gross Settlement Amount Within 21 Days of the Effective Date) of this Agreement. The Administrator will disburse the

entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants.

3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

3.2.1. Class Service Payment to Plaintiff. A Class Representative Service Payment to the Class Representative of not more than seven thousand, five hundred dollars, and zero cents (\$7,500.00) (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defendants will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, then the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

3.2.2. Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment to Class Counsel. A Class Counsel Fees Payment of not more than one-third (1/3) of the Gross Settlement Amount, which is currently estimated to be one hundred thirty-three thousand, three hundred thirty-three dollars, and thirty-three cents (\$133,333.33) and a Class Counsel Litigation Expenses Payment of not more than twenty-five thousand dollars and zero cents (\$25,000.00). Defendants will not oppose requests for these payments provided that do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, then the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion of the Class Counsel Fee

1 Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class
2 Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class
3 Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and
4 the Class Counsel Litigation Expenses Payment and holds Defendants harmless, and indemnifies
5 Defendants, from any dispute or controversy regarding any division or sharing of any of these payments.

6 3.2.3. Administrator Expenses to the Administrator. An Administrator Expenses
7 Payment not to exceed twenty thousand dollars and zero cents (\$20,000.00) except for a showing of good
8 cause and as approved by the Court. To the extent the Administration Expenses are less or the Court
9 approves payment less than \$20,000.00, the Administrator will retain the remainder in the Net Settlement
10 Amount.

11 3.2.4. Individual Class Payments to Each Participating Class Member and Calculation
12 Individual Class Payments. An Individual Class Payment calculated by (a) dividing the Net Settlement
13 Amount by the total number of Workweeks worked by all Participating Class Members during the Class
14 Period and (b) multiplying the result by each Participating Class Member's Workweeks.

15 3.2.4.1. Tax Allocation of Individual Class Payments as Ten-Percent (10%) Wage Portion
16 and as Ninety-Percent (90%) Non-Wage Portion. Ten-percent (10%) of each Participating Class
17 Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion").
18 The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. Ninety-
19 percent (90%) of each Participating Class Member's Individual Class Payment will be allocated to
20 settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not
21 subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members
22 assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

23 3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual Class
24 Payments. Non-Participating Class Members will not receive any Individual Class Payments. The
25 Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount
26 for distribution to Participating Class Members on a pro rata basis.

27 3.2.5. PAGA Penalties to the LWDA and Aggrieved Employees. PAGA Penalties in the
28 amount of forty thousand dollars and zero cents (\$40,000.00) to be paid from the Gross Settlement

Amount, with 75%, i.e., thirty thousand dollars and zero cents (\$30,000.00) allocated to the LWDA PAGA Payment and 25% i.e., ten thousand dollars and zero cents (\$10,000.00) allocated to the Individual PAGA Payments.

3.2.5.1.Calculation of Individual PAGA Payments to Aggrieved Employees and Calculation of Individual PAGA Payments. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of the forty thousand dollars and zero cents (\$40,000.00) amount in PAGA Penalties by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.2.Tax Allocation of Individual PAGA Payments as Non-Wages. If the Court approves PAGA Penalties of less than the amount requested, then the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Class Workweeks and Aggrieved Employee Pay Periods Estimate. Based on a review of its records during the Class Period, Defendant ORANGE CRUSH ATHLETICS CORPORATION d/b/a WESTERN STATES WASTE, LLC represents the Class consists of approximately 1,333 persons as of May 17, 2023, who worked approximately 22,180 Covered Class Workweeks around the time of the Parties' mediation.

4.2. Defendants' Transfer of Class Data to the Administrator Within 14 Days of Preliminary Approval. Not later than 14 days after the Court grants Preliminary Approval of the Settlement, Defendants will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendants have a continuing duty to immediately notify Class Counsel if they discover that the Class Data omitted class member identifying information and to provide

corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendants must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.3. Defendants' Funding of Gross Settlement Amount Within 21 Days of the Effective Date.

Defendants shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant ORANGE CRUSH ATHLETICS CORPORATION d/b/a WESTERN STATES WASTE, LLC share of payroll taxes by transmitting the funds to the Administrator no later than 21 days after the Effective Date. If Defendants fail to remit their respective share of the Gross Settlement Amount to the Administrator in full on the date it is due, then that Defendant shall be obligated to pay the legal rate of interest for all amounts due and owing until that Defendant remits their share of the Gross Settlement Amount to the Administrator in full and such interest shall become part of the Net Settlement Amount and distributed to Participating Class Members.

4.4. Administrator's Payments from the Gross Settlement Amount Within 14 Days of Receiving the Gross Settlement Amount. Within 14 days after Defendants fund the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.

4.4.1. Administrator's National Change of Address Search Individual Class Payment and/or Individual PAGA Payment Mailings by First Class U.S. Mail with 180 Day Void Date. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class

1 Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to
2 all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved
3 Employees (including those for whom Class Notice was returned undelivered). The Administrator may
4 send Participating Class Members a single check combining the Individual Class Payment and the
5 Individual PAGA Payment. Before mailing any checks, the Administrator must update the recipients'
6 mailing addresses using the National Change of Address Database.

7 4.4.2. Administrator's Re-Mailing of Undelivered and Returned Individual Class
8 Payment and/or Individual PAGA Payment Checks Within Seven (7) Days of Receipt. The Administrator
9 must conduct a Class Member Address Search for all other Class Members whose checks are returned
10 undelivered without a USPS forwarding address. Within seven (7) days of receiving a returned check the
11 Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained
12 through the Class Member Address Search. The Administrator need not take further steps to deliver checks
13 to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly
14 send a replacement check to any Class Member whose original check was lost or misplaced, requested by
15 the Class Member prior to the void date.

16 4.4.3. Administrator's Transfer of Void Individual Class Payment and Individual PAGA
17 Payment Amounts to the State Unclaimed Property Division. For any Class Member whose Individual
18 Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date,
19 the Administrator shall transmit the amount of the Individual Class Payment and Individual PAGA
20 Payment to the California State Controller's Office in accordance with California Unclaimed Property
21 Law so that the Class Member will have his or her Individual Class Payment available to him or her per
22 the applicable claim procedure to request that money from the State of California. Therefore, there will
23 be no unpaid residue or unclaimed or abandoned class member funds and the California Code of Civil
24 Procedure section 384 shall not apply.

25 4.4.4. No Employee Benefits Conferred as a Result of Individual Class Payments and/or
26 Individual PAGA Payments. The payment of Individual Class Payments and Individual PAGA Payments
27 shall not obligate Defendants to confer any additional compensation or benefits under any company bonus,
28 contest or other compensation or benefit plan or agreement in place during the period covered by the

1 Agreement, nor shall Individual Class Payments and Individual PAGA Payments entitle any Class
2 Member or PAGA Member to any increased retirement, 401K benefits or matching benefits, or deferred
3 compensation benefits. It is the intent of this Settlement that the individual settlement awards provided for
4 in this Settlement are the sole payments to be made by Defendants to the Class Members and PAGA
5 Members, and that the Class Members and PAGA Members shall not be entitled to any new or additional
6 compensation or benefits as a result of having received the individual settlement awards (notwithstanding
7 any contrary language or agreement in any benefit or compensation plan document that might have been
8 in effect during the period covered by this Settlement).

9 **5. RELEASES OF CLAIMS.**

10 5.1. Releases of Claims Against Released Parties When Gross Settlement Amount Paid in Full.
11 Effective on the date when Defendants fully fund the entire Gross Settlement Amount and funds all
12 employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class
13 Members, and Class Counsel will release claims against all Released Parties as follows:

14 5.2. Plaintiff's Release of Plaintiff's Further Released Claims Against Defendants. Plaintiff and
15 Plaintiff's former and present spouses, representatives, agents, attorneys, heirs, administrators, successors,
16 and assigns generally, release and discharge Released Parties including by waiver of all rights, protections
17 and benefits under California Civil Code section 1542, which includes all claims known and unknown
18 related to Plaintiff's employment with Defendant ORANGE CRUSH ATHLETICS CORPORATION,
19 doing business as WESTERN STATES WASTE, LLC, including claims alleged in the Action, any claims
20 Plaintiff may have against Defendant NORTECH WASTE, LLC, except as may be prohibited by law,
21 which may have existed at the time Plaintiff signs this Agreement. Plaintiff's Further Released Claims
22 excludes claims for unemployment insurance, disability, social security, workers' compensation (except
23 for claims pursuant to Labor Code sections 132a and 4553), and any claims or causes of action arising out
24 of any event or controversy occurring after the time Plaintiff signs this Agreement including for any
25 obligation arising out of this Agreement.

26 5.2.1. Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For
27 purposes of Plaintiff's release of Plaintiff's Further Released Claims, Plaintiff expressly waives and
28 relinquishes 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.

5.3. Release of Released Class Claims by Participating Class Members Who Are Not Aggrieved Employees. All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, are deemed to release Released Parties from any and all claims, rights, demands, liabilities and causes of action alleged in the Action, including: (1) Failure to Pay Minimum and Regular Rate Wages (Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197); (2) Failure to Pay Overtime Compensation (Cal. Lab. Code §§ 1194 and 1198); (3) Failure to Provide Meal Periods (Cal. Lab. Code §§ 226.7, 512); (4) Failure to Authorize and Permit Rest Breaks (Cal. Lab. Code §§ 226.7); (5) Failure to Indemnify Necessary Business Expenses (Cal. Lab. Code § 2802); (6) Failure to Timely Pay Final Wages at Termination (Cal. Lab. Code §§ 201-203); (7) Failure to Provide Accurate Itemized Wage Statements (Cal. Lab. Code § 226); and (8) Unfair Business Practices (Cal. Bus. & Prof. Code §§ 17200, *et seq.*) and all other claims, rights, demands, liabilities and causes of action that were asserted or that could have reasonably been asserted based on the facts and claims alleged in the Operative Complaint in the Action, and any amendments thereto. Except as set forth in Paragraph 5.4 (Release of Released PAGA Claims by Participating Class Members; and Non-Participating Class Members Who Are Aggrieved Employees) of this Agreement, 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 occurring outside the Class Period.

5.4. Release of Released PAGA Claims by Participating Class Members and Non-Participating Class Members Who Are Aggrieved Employees. All Participating Class Members; and Non-Participating Class Members who are Aggrieved Employees, on behalf of themselves, the state of California, and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, are deemed to release the Released Parties from all claims, rights, demands, liabilities and causes

1 of action arising from PAGA (Labor Code §§ 2689, *et seq.*) that were asserted or that could have
2 reasonably been asserted based on the facts and claims alleged in the Operative Complaint in the Action,
3 and any amendments thereto and Plaintiff's PAGA Notice, and any amendments thereto, arising during
4 the PAGA Period.

5 **6. MOTION FOR PRELIMINARY APPROVAL.**

6 6.1. Motion for Preliminary Approval of Settlement Filing. The Parties agree to jointly prepare
7 and file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with the
8 Court's current rules or guidance for motions seeking preliminary approval of settlements.

9 6.2. Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all
10 documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and
11 memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the
12 Settlement under *Dunk/Kullar* and a request for approval of the Settlement under Labor Code section
13 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of
14 Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching
15 its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve;
16 competency; operative procedures for protecting the security of Class Data; amounts of insurance
17 coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or
18 potential conflicts of interest with Class Members; and the nature and extent of any financial relationship
19 with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming
20 willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts
21 of interest with Class Members and the Administrator; (v) a signed declaration from each Class Counsel
22 firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of
23 all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)),
24 Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699,
25 subd. (l)(2)); (vi) a redlined version of the Parties' Agreement showing all modifications made to the
26 [Model] Class Action and PAGA Settlement Agreement and Class Notice (LASC CIV 296 NEW 06/22
27 For Optional Use) ready for filing with the Court; and (vii) all facts relevant to any actual or potential
28 conflict of interest with Class Members and/or the Administrator. In their Declarations, Plaintiff and Class

Counsel shall aver that they are not aware of any other pending actions that assert claims that will be extinguished or adversely affected by the Settlement.

6.3. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator, and for submitting a copy of this Agreement to the LWDA at the same time it is submitted to the Court in accordance with the requirements set forth in Section 2699(1)(2). Class Counsel shall also be responsible for submitting to the LWDA a copy of the Court's judgment and any other orders that award or deny civil penalties to the LWDA.

6.4. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, then Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

7.1. Selection of Administrator. The Parties have jointly selected Simpluris, Inc. to serve as the Administrator and verified that, as a condition of appointment, Simpluris, Inc. 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.

7.2. Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.

1 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets
2 the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.

3 7.4. Notice to Class Members.

4 7.4.1. Administrator’s Report of Class Data Receipt. No later than three (3) business days
5 after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received
6 and state the number of Class Members, Aggrieved Employees, Workweeks, and PAGA Pay Periods in
7 the Class Data.

8 7.4.2. Administrator’s National Change of Address Search and Prompt Mailing of Class
9 Notices by First Class U.S. Mail Within 14 Days of Receipt of Class Data. Using best efforts to perform
10 as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator
11 will send to all Class Members identified in the Class Data, via first-class United States Postal Service
12 (“USPS”) mail, the Class Notice with a Spanish translation, substantially in the form attached to this
13 Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts
14 of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the
15 number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before
16 mailing Class Notices, the Administrator shall update Class Member addresses using the National Change
17 of Address database.

18 7.4.3. Administrator’s Re-Mailing of Undelivered and Returned Class Notices. Not later
19 than three (3) business days after the Administrator’s receipt of any Class Notice returned by the USPS as
20 undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by
21 the USPS. If the USPS does not provide a forwarding address, then the Administrator shall conduct a
22 Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The
23 Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members
24 whose Class Notice is returned by the USPS a second time.

25 7.4.4. Class Member Response Deadline 15-Day Extension for Re-Mailed Class Notices.
26 The deadlines for Class Members’ written objections, challenges to Workweeks and/or Pay Periods, and
27 Requests for Exclusion will be extended an additional 15 days beyond the 45 days otherwise provided in
28 the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class

1 Member of the extended deadline with the re-mailed Class Notice.

2 7.4.5. The Parties' Identification of Potential Class Members Not Included in the Class
3 Data. If the Administrator, Defendants or Class Counsel is contacted by or otherwise discovers any
4 persons who believe they should have been included in the Class Data and should have received Class
5 Notice, then the Parties will expeditiously meet and confer in person or by telephone, in good faith, in an
6 effort to agree on whether to include them as Class Members. If the Parties agree, then such persons will
7 be Class Members entitled to the same rights as other Class Members, and the Administrator will send,
8 via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement
9 not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever
10 are later.

11 7.5. Requests for Exclusion (Opt-Outs).

12 7.5.1. Class Member Opt-Out Request Requirements. Class Members who wish to
13 exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail,
14 a signed written Request for Exclusion not later than 45 days after the Administrator mails the Class
15 Notice (plus an additional 15 days for Class Members whose Class Notice is re-mailed). A Request for
16 Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the
17 Class Member's election to be excluded from the Settlement and includes the Class Member's name,
18 address and email address or telephone number. To be valid, a Request for Exclusion must be timely
19 faxed, emailed, or postmarked by the Response Deadline.

20
21 7.5.2. Binding Nature of Released Class Claims on Class Members who do Not Timely
22 Request Exclusion. Every Class Member who does not submit a timely and valid Request for Exclusion
23 is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by
24 all terms and conditions of the Settlement, including the Participating Class Members' Releases under
25 Paragraph 5.3 (Release of Released Class Claims by Participating Class Members Who Are Not
26 Aggrieved Employees) of this Agreement, regardless whether the Participating Class Member actually
27 receives the Class Notice or objects to the Settlement.

28 7.5.3. No Release of Released Class Claims by Class Members who Timely Request

1 Exclusion. Every Class Member who submits a valid and timely Request for Exclusion is a Non-
2 Participating Class Member and shall not receive an Individual Class Payment or have the right to object
3 to the class action components of the Settlement. Because future PAGA claims are subject to claim
4 preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees
5 are deemed to release the claims identified in Paragraph 5.4 (Release of Released PAGA Claims by Non-
6 Participating Class Members Who Are Aggrieved Employees) of this Agreement and are eligible for an
7 Individual PAGA Payment.

8 7.6. Challenges to Calculation of Workweeks. Each Class Member shall have 45 days after the
9 Administrator mails the Class Notice (plus an additional 15 days for Class Members whose Class Notice
10 is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to
11 the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating
12 with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class
13 Member to submit supporting documentation. In the absence of any contrary documentation, the
14 Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long
15 as they are consistent with the Class Data. The Administrator's determination of each Class Member's
16 allocation of Workweeks and/or PAGA Pay Periods shall be final and not appealable or otherwise
17 susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation
18 of Workweeks and/or PAGA Pay Periods to Defense Counsel and Class Counsel and the Administrator's
19 determination the challenges.

20 7.7. Objections to Settlement.

21 7.7.1. Participating Class Member Objections. Only Participating Class Members may
22 object to the class action components of the Settlement and/or this Agreement, including contesting the
23 fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel
24 Litigation Expenses Payment and/or Class Representative Service Payment.

25 7.7.2. Participating Class Member Objections Requirements. Participating Class
26 Members may send written objections to the Administrator, by fax, email, or mail. In the alternative,
27 Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal
28 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 45 days after the Administrator's mailing of the Class Notice (plus an additional 15 days for Class Members whose Class Notice was re-mailed).

7.7.3. Non-Participating Class Members' Lack of Rights to Object to the Settlement. Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

7.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

7.8.1. Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

7.8.2. 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 five (5) days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing the names of Class Members who have timely submitted valid Requests for Exclusion. .

7.8.3. Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, 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 Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments ("Weekly Report").

7.8.4. Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator's decision shall be

1 final and not appealable or otherwise susceptible to challenge.

2 7.8.5. Administrator's Declaration. Not later than 14 days before the date by which
3 Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide
4 to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due
5 diligence and compliance with all of its obligations under this Agreement, including, but not limited to,
6 its mailing of the Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices,
7 attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received
8 (both valid or invalid), the number of Requests for Exclusion, the names of those who submitted valid
9 Requests for Exclusion, and the number of written objections. The Administrator will supplement its
10 declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing
11 the Administrator's declaration(s) in Court.

12 7.8.6. Final Report by Administrator. Within 10 days after the Administrator disburses all
13 funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel
14 with a final report detailing its disbursements by employee identification number only of all payments
15 made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will
16 prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court
17 attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible
18 for filing the Administrator's declaration in Court.

19 **8. CLASS SIZE ESTIMATE AND ESCALATOR CLAUSE.**

20 8.1. Class Size Estimate. Based on a review of its records during the Class Period, Defendant
21 ORANGE CRUSH ATHLETICS CORPORATION d/b/a WESTERN STATES WASTE, LLC represents
22 the Class consists of approximately 1,333 persons as of May 17, 2023, who worked approximately 22,180
23 Covered Class Workweeks around the time of the Parties' mediation.

24 8.2. Defendants' Election Under the Gross Settlement Amount 15% Escalation Option. If the
25 actual number of Covered Class Workweeks in the Class Period exceeds 22,000 by fifteen percent (15%)
26 (i.e., if the Covered Class Workweeks within Class Period includes more than 3,300 additional Covered
27 Class Workweeks), then Defendant ORANGE CRUSH ATHLETICS CORPORATION d/b/a WESTERN
28 STATES WASTE, LLC shall have the option to: (a) increase the gross settlement proportionally by \$18.18

1 for each additional workweek exceeding 25,300 Covered Class Workweeks; or (b) as long as the Class
2 Period includes the time period beginning on September 17, 2017 and ending no sooner than June 30,
3 2022, select the end date of the Class Period and PAGA Period so that there is no increase in the Gross
4 Settlement Amount.

5 **9. DEFENDANTS' RIGHT TO WITHDRAW.**

6 9.1. Defendants' Option to Withdraw if Requests for Exclusion Exceed Ten Percent (10%). If
7 the number of valid Requests for Exclusion identified in the Exclusion List exceeds ten percent (10%) of
8 the total of all Class Members, Defendants ORANGE CRUSH ATHLETICS CORPORATION d/b/a
9 WESTERN STATES WASTE, LLC and NORTECH WASTE, LLC shall retain the right, and in the
10 exercise of their sole discretion may, but are not obligated, elect to withdraw from and nullify the
11 Settlement. The Parties agree that, if Defendants withdraw, then the Settlement shall be void ab initio,
12 have no force or effect whatsoever, and that none of the Parties will have any further obligation to perform
13 under this Agreement; provided, however, Defendants will remain responsible for paying all Settlement
14 Administration Expenses incurred to that point. Defendants must notify Class Counsel in writing of their
15 election or intent to withdraw at least 14 days prior to exercising this option in order to give the Parties an
16 opportunity to meet and confer..

17 **10. MOTION FOR FINAL APPROVAL.**

18 10.1. Motion for Final Approval of Settlement Filing. No later than 16 court days before the
19 calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the
20 Settlement that includes a request for approval of the PAGA settlement under Labor Code Section 2699,
21 subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final
22 Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel not later than seven (7)
23 days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously
24 meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the
25 Motion for Final Approval.

26 10.2. Response to Objections. Each Party retains the right to respond to any objection raised by
27 a Participating Class Member, including the right to file responsive documents in Court no later than five
28 (5) court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

1 10.3. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval
2 on any material change to the Settlement (including, but not limited to, the scope of release to be granted
3 by Class Members), the Parties will expeditiously work together in good faith to address the Court's
4 concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award
5 less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees
6 Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not
7 constitute a material modification to the Agreement within the meaning of this paragraph.

8 10.4. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the
9 Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i)
10 enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii)
11 addressing such post-Judgment matters as are permitted by law.

12 10.5. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
13 conditions of this Agreement, specifically including Section 5 of this Settlement Agreement as well as the
14 Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment set forth in this Settlement,
15 the Parties, their respective counsel, and all Participating Class Members who did not object to the
16 Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all
17 rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions
18 for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the
19 right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations
20 to perform under this Agreement will be suspended until such time as the appeal is finally resolved and
21 the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement
22 Amount.

23 10.6. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the
24 reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material
25 modification of this Agreement (including, but not limited to, the scope of release to be granted by Class
26 Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work
27 together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of
28 Judgment, sharing, on an equal basis, any additional Administration Expenses reasonably incurred after

1 remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class
2 Representative Service Payment or any payments to Class Counsel shall not constitute a material
3 modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement
4 Amount remains unchanged.

5 **11. AMENDED JUDGMENT.**

6 11.1. Agreement to Submit Proposed Amended Judgment as Necessary. If any amended
7 judgment is required under Code of Civil Procedure Section 384, then the Parties will work together in
8 good faith to jointly submit and a proposed amended judgment.

9 **12. ADDITIONAL PROVISIONS.**

10 12.1. No Admission of Liability, Class Certification or Representative Manageability for Other
11 Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in
12 this Agreement is intended or should be construed as an admission by Defendants that any of the
13 allegations in the Operative Complaint have merit or that Defendants have any liability for any claims
14 asserted; nor should it be intended or construed as an admission by Plaintiff that Defendants' defenses in
15 the Action have merit. The Parties agree that class certification and representative treatment is for purposes
16 of this Settlement only. If, for any reason the Court does not grant Preliminary Approval, Final Approval
17 or enter Judgment, then Defendants reserve the right to contest certification of any class for any reasons,
18 and Defendants reserve all available defenses to the claims in the Action, and Plaintiff reserves the right
19 to move for class certification on any grounds available and to contest Defendants' defenses. The
20 Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will
21 not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the
22 Settlement and this Agreement).

23 12.2. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendants and
24 Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed,
25 they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person
26 to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically
27 or generally, to any person, corporation, association, government agency, or other entity except: (1) to the
28 Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement

1 confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate
2 taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena
3 issued by a state or federal government agency. Each Party agrees to immediately notify each other Party
4 of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel,
5 Defendants and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation
6 or other communication, before the filing of the Motion for Preliminary Approval, with any third party
7 regarding this Agreement or the matters giving rise to this Agreement except to respond only that “the
8 matter was resolved,” or words to that effect. This paragraph does not restrict Class Counsel’s
9 communications with Class Members in accordance with Class Counsel’s ethical obligations owed to
10 Class Members.

11 12.3. No Solicitation. The Parties separately agree that they and their respective counsel and
12 employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the
13 Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel’s ability to communicate
14 with Class Members in accordance with Class Counsel’s ethical obligations owed to Class Members.

15 12.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement
16 together with its attached exhibits shall constitute the entire agreement between the Parties relating to the
17 Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to
18 or by any Party.

19 12.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and
20 represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate action
21 required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and
22 to execute any other documents reasonably required to effectuate the terms of this Agreement including
23 any amendments to this Agreement.

24 12.6. Cooperation. The Parties and their counsel will cooperate with each other and use their best
25 efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement
26 Agreement, submitting supplemental evidence and supplementing points and authorities as requested by
27 the Court. In the event the Parties are unable to agree upon the form or content of any document necessary
28 to implement the Settlement, or on any modification of the Agreement that may become necessary to

1 implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

2 12.7. No Prior Assignments. The Parties separately represent and warrant that they have not
3 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
4 any person or entity and portion of any liability, claim, demand, action, cause of action, or right released
5 and discharged by the Party in this Settlement.

6 12.8. No Tax Advice. Neither Plaintiff, Class Counsel, Defendants nor Defense Counsel are
7 providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as
8 such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended)
9 or otherwise. It is understood and agreed that neither the Parties nor their respective counsel are making
10 representations regarding tax obligations or consequences, if any, related to this Agreement, and that
11 Participating Class Members will assume any such tax obligations or consequences that may arise from
12 this Agreement, and that Settlement Class Members shall not seek any indemnification from the Parties
13 or their counsel or any of the Released Parties in this regard. The Parties agree that, in the event that any
14 taxing body determines that additional taxes are due from any Settlement Class Members, such Settlement
15 Class Members assume all responsibility for the payment of such taxes. Plaintiff and the Settlement Class
16 Members should consult with their tax advisors concerning the tax consequences of their Individual Class
17 Payment, Individual PAGA Payment and/or Class Representative Payment they receive pursuant to this
18 Agreement.

19 12.9. Modification of Agreement. This Agreement, and all parts of it, may be amended,
20 modified, changed, or waived only by an express written instrument signed by all Parties or their
21 representatives, and approved by the Court.

22 12.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the
23 benefit of, the successors of each of the Parties.

24 12.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be
25 governed by and interpreted according to the internal laws of the state of California, without regard to
26 conflict of law principles.

27 12.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of
28 this Agreement. This Agreement will not be construed against any Party on the basis that the Party was

1 the drafter or participated in the drafting.

2 12.13. Confidentiality. To the extent permitted by law, all agreements made, and orders entered
3 during the Action and in this Agreement relating to the confidentiality of information shall survive the
4 execution of this Agreement.

5 12.14. Use and Return of Class Data. Information provided to Class Counsel pursuant to Evidence
6 Code Section 1152, and all copies and summaries of the Class Data provided to Class Counsel by
7 Defendants in connection with the mediation, other settlement negotiations, or in connection with the
8 Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used
9 in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days
10 after the date when the Court discharges the Administrator's obligation to provide a Declaration
11 confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic
12 versions of Class Data received from Defendants, unless, prior to the Court's discharge of the
13 Administrator's obligation, Defendants makes a written request to Class Counsel for the return, rather
14 than the destructions, of Class Data.

15 12.15. Headings. The descriptive heading of any section or paragraph of this Agreement is
16 inserted for convenience of reference only and does not constitute a part of this Agreement.

17 12.16. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be
18 to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal
19 legal holiday, such date or deadline shall be on the first business day thereafter.

20 12.17. Notice. All notices, demands or other communications between the Parties in connection
21 with this Agreement will be in writing and deemed to have been duly given as of the third business day
22 after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

23 To Plaintiff:

24 Kane Moon (SBN 249834)
25 *kmoon@moonlawgroup.com*
26 Allen Feghali (SBN 301080)
27 *afeghali@moonlawgroup.com*
28 Michael M. Citrin (SBN 335033)
mcitrin@moonlawgroup.com
MOON LAW GROUP, PC
1055 West Seventh Street, Suite 1880
Los Angeles, California 90017

Telephone: (213) 232-3128
Facsimile: (213) 232-3125

To Defendant ORANGE CRUSH ATHLETICS CORPORATION d/b/a WESTERN STATES
WASTE, LLC:

Yvonne Arvanitis Fossati (Cal. SBN 161764)

JACKSON LEWIS P.C.

725 South Figueroa Street, Suite 2500
Los Angeles, California 90017

Telephone: (213) 689-0404
Facsimile: (213) 689-0430

Hazel U. Poci (Cal. SBN 214928)
Isabella L. Shin (Cal. SBN 294937)

JACKSON LEWIS P.C.

200 Spectrum Center Drive, Suite 500
Irvine, California 92618

Telephone: (949) 885-1360
Facsimile: (949) 885-1380

To Defendant NORTECH WASTE, LLC:

Paul Mello (Cal. SBN 179755)

Josue R. Aparicio (Cal. SBN 322750)

HANSON BRIDGETT LLP

425 Market Street, 26th Floor
San Francisco, California 94105

Telephone: (925) 746-8480
Facsimile: (925) 746-8492

12.18. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

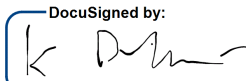
12.19. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to Code of Civil Procedure section 583.330 to extend the date to bring a case to trial under Code of Civil Procedure section 583.310 for the entire period of this settlement process.

** * * Remainder of Page Intentionally Blank – Signature Page Follows * * **

AGREED:

DATED: 9/19/2023

Plaintiff KHAMTANH PHAKHAILATHVONE

By: 
KHAMTANH PHAKHAILATHVONE

Plaintiff KHAMTANH PHAKHAILATHVONE,
individually, and on behalf of all others similarly
situated

DATED: _____

**Defendant ORANGE CRUSH ATHLETICS
CORPORATION**

By: _____
JOHNNY RAY

President, ORANGE CRUSH ATHLETICS
CORPORATION d/b/a WESTERN STATES
WASTE, LLC

DATED: _____

Defendant NORTECH WASTE, LLC

By: _____
STEPHANIE TREWHITT

President, NORTECH WASTE, LLC

APPROVED AS TO FORM:

DATED: 9/19/2023

MOON LAW GROUP, PC

By: 
KANE MOON
ALLEN FEGHALI

Attorneys for Plaintiff KHAMTANH
PHAKHAILATHVONE

DATED: _____

JACKSON LEWIS P.C.

By: _____
YVONNE ARVANITIS FOSSATI
HAZEL U. POEI
ISABELLA L. SHIN

Attorneys for Defendant ORANGE CRUSH
ATHLETICS CORPORATION

1 **AGREED:**

2 DATED: _____

Plaintiff KHAMTANH PHAKHAILATHVONE

3
4 By: _____
KHAMTANH PHAKHAILATHVONE

5 Plaintiff KHAMTANH PHAKHAILATHVONE,
6 individually, and on behalf of all others similarly
situated

7 DATED: _____

**Defendant ORANGE CRUSH ATHLETICS
CORPORATION**

8
9 By: _____
JOHNNY RAY

10 President, ORANGE CRUSH ATHLETICS
11 CORPORATION d/b/a WESTERN STATES
12 WASTE, LLC

13 DATED: 9/8/2023 _____

Defendant NORTECH WASTE, LLC

14
15 By: Stephanie Trewhitt _____
STEPHANIE TREWHITT

16 President, NORTECH WASTE, LLC

17 **APPROVED AS TO FORM:**

18 DATED: _____

MOON LAW GROUP, PC

19
20 By: _____
KANE MOON
ALLEN FEGHALI

21 Attorneys for Plaintiff KHAMTANH
22 PHAKHAILATHVONE

23 DATED: _____

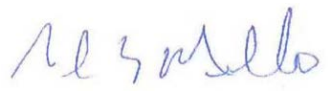
JACKSON LEWIS P.C.

24
25 By: _____
YVONNE ARVANITIS FOSSATI
26 HAZEL U. POEI
ISABELLA L. SHIN

27 Attorneys for Defendant ORANGE CRUSH
28 ATHLETICS CORPORATION

1 DATED: September 11, 2023

HANSON BRIDGETT LLP

2
3 By: 
4 PAUL MELLO

JOSUE R. APARICIO

5 Attorneys for Defendant NORTECH WASTE, LLC

1 **AGREED:**

2 DATED: _____

Plaintiff KHAMTANH PHAKHAILATHVONE

3
4 By: _____
KHAMTANH PHAKHAILATHVONE

5 Plaintiff KHAMTANH PHAKHAILATHVONE,
6 individually, and on behalf of all others similarly
situated

7 DATED: _____

**Defendant ORANGE CRUSH ATHLETICS
CORPORATION**

8
9 By: _____
JOHNNY RAY

10 President, ORANGE CRUSH ATHLETICS
11 CORPORATION d/b/a WESTERN STATES
12 WASTE, LLC

13 DATED: _____

Defendant NORTECH WASTE, LLC

14
15 By: _____
STEPHANIE TREWHITT

16 President, NORTECH WASTE, LLC

17 **APPROVED AS TO FORM:**

18 DATED: _____

MOON LAW GROUP, PC

19
20 By: _____
KANE MOON
ALLEN FEGHALI

21 Attorneys for Plaintiff KHAMTANH
22 PHAKHAILATHVONE

23 DATED: September 11, 2023

JACKSON LEWIS P.C.

24
25 By: _____
YVONNE ARVANITIS FOSSATI
HAZEL U. POEI
ISABELLA L. SHIN

26 Attorneys for Defendant ORANGE CRUSH
27 ATHLETICS CORPORATION
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18 **EXHIBIT A**
19

20
21
22 **([PROPOSED] COURT APPROVED NOTICE**
23 **OF CLASS ACTION SETTLEMENT AND**
24 **HEARING DATE FOR FINAL COURT**
25 **APPROVAL)**
26
27
28

**COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE
FOR FINAL COURT APPROVAL**

Phakhailathvone v. Orange Crush Athletics Corporation, et al, Sacramento Superior Court,
Case No. 34-2021-00308178-CU-OE-GDS

The Superior Court for the State of California authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.

You may be eligible to receive money from an employee class action lawsuit ("Action") against Defendant Orange Crush Athletics Corporation d/b/a Western States Waste, LLC; and Defendant Nortech Waste, LLC ("Defendants") (collectively "Defendants") for alleged wage and hour violations. The Action was filed by Defendants' former employee Khamtanh Phakhailathvone ("Plaintiff") and seeks payment of (1) back wages for a class of hourly, non-exempt employees ("Class Members") who worked for Defendants during the Class Period September 17, 2017 through [Date]; and (2) penalties under the California Private Attorney General Act ("PAGA") for all hourly, non-exempt employees who worked for Defendants during the PAGA Period September 11, 2020 through [Date] ("Aggrieved Employees").

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendants to fund Individual Class Payments, and (2) a PAGA Settlement requiring Defendants to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency ("LWDA").

Based on Defendants' records, and the Parties' current assumptions, **your Individual Class Payment is estimated to be \$[Pro-rata Individual Class Payment] (less withholding) and your Individual PAGA Payment is estimated to be \$[Pro-rata Individual PAGA Payment]**. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendants' records you are not eligible for an Individual PAGA Payment under the Settlement because you didn't work during the PAGA Period.)

The above estimates are based on Defendants' records showing that **you worked [Workweeks in Class Data] workweeks during the Class Period and you worked [Pay Periods in Class Data] pay periods during the PAGA Period**. If you believe that you worked more workweeks during either period, you can submit a challenge by the deadline date. See **Section 4** of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff's attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires Defendants to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendants.

If you worked for Defendants during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

- (1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against Defendants.
- (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against Defendants, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

Defendants will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement

If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Defendants and Released Parties (defined below) that are covered by this Settlement (Released Class Claims).

You Can Opt-out of the Class Settlement but not the PAGA Settlement

The Opt-out Deadline is [45 Days after Class Notice Mailing]

If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See **Section 6** of this Notice.

You cannot opt-out of the PAGA portion of the proposed Settlement. Defendants must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released PAGA Claims (defined below).

Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement

Written Objections Must be Submitted by [45 Days after Class Notice Mailing]

All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See **Section 7** of this Notice.

You Can Participate in the [Date - TBD] Final Approval Hearing

The Court's Final Approval Hearing is scheduled to take place on [Date - TBD]. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See **Section 8** of this Notice.

You Can Challenge the Calculation of Your Workweeks/Pay Periods

Written Challenges Must be Submitted by [45 Days after Class Notice Mailing]

The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Period Workweeks and number of PAGA Period Pay Periods you worked according to Defendants' records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by [45 Days after Class Notice Mailing]. See **Section 4** of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is Defendants' former employee. The Action alleges Defendants violated California labor laws by (1) failing to pay minimum wages; (2) failing to pay overtime wages; (3) failing to provide required meal periods; (4) failing to provide required rest periods; (5) failing to indemnify employees for necessary expenditures incurred in discharge of duties; (6) failing to furnish accurate itemized wage statements; (7) failing to pay timely and all wages due to discharged and quitting employees; and (8) for unfair and unlawful business practices. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General

Act (Labor Code §§ 2698, *et seq.*) (“PAGA”). Plaintiff is represented by attorneys in the Action: Moon Law Group, PC (“Class Counsel”).

Defendants strongly deny violating any laws or failing to pay any wages and contend they complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Defendants or Plaintiff is correct on the merits.

In the meantime, Plaintiff and Defendants hired an experienced, neutral mediator and participated in an all-day mediation that involved the extensive informal exchange of information including Defendants’ written wage and hour policies and a sampling of Class Member time and pay records in an effort to resolve the Action by negotiating an end to the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Defendants have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendants do not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendants have agreed to pay a fair, reasonable, and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable, and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Defendants Will Pay No Less Than \$400,000.00 as the Gross Settlement Amount (Gross Settlement). Defendants have agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorney’s fees and expenses, the Administrator’s expenses, and penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, Defendants will fund the Gross Settlement not more than 21 days after the Judgment entered by the Court becomes final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.

2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:

- A. Up to \$133,333.33 or one-third (1/3) of the Gross Settlement Amount to Class Counsel for attorneys’ fees and up to \$25,000.00 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
- B. Up to \$7,500.00 as a Class Representative Award for filing the Action, working with Class Counsel, and representing the Class. A Class Representative Award will be the only monies Plaintiff will receive other than Plaintiff’s Individual Class Payment and any Individual PAGA Payment.
- C. Up to \$20,000.00 to the Administrator for services administering the Settlement.
- D. Up to \$40,000.00 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Pay Periods.

Participating Class Members have the right to object to any of these deductions. The Court will

consider all objections.

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the “Net Settlement”) by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.
4. Taxes Owed on Payments to Class Members. Plaintiff and Defendants are asking the Court to approve an allocation of ten-percent (10%) of each Individual Class Payment to taxable wages (“Wage Portion”) and ninety-percent (90%) to non-wage penalties and interest (“Non-Wage Portion”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendants will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and Defendants have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don’t cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller’s Unclaimed Property Fund in your name.

If the monies represented by your check is sent to the Controller’s Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than [45 Days after Class Notice Mailing], that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the [45 Days after Class Notice Mailing] Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member’s name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Defendants.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against Defendants based on the PAGA Period facts alleged in the Action.

7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and Defendants have agreed that, in either case, the Settlement will be void: Defendants will not pay any money and Class Members will not release any claims against Defendants.
8. Administrator. The Court has appointed a neutral company, Simpluris (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.

- 1 9. Participating Class Members' Release. After the Judgment is final and Defendants have fully
2 funded the Gross Settlement and separately paid all employer payroll taxes, Participating Class
3 Members will be legally barred from asserting any of the claims released under the Settlement.
4 This means that unless you opted out by validly excluding yourself from the Class Settlement,
5 you cannot sue, continue to sue, or be part of any other lawsuit against Defendants or any
6 "Released Parties" for wages based on the Class Period facts and PAGA penalties based on
7 PAGA Period facts, as alleged in the Action and resolved by this Settlement.

8 The Participating Class Members will be bound by the following release of Released Class
9 Claims:

10 All Participating Class Members, on behalf of themselves and their respective
11 former and present representatives, agents, attorneys, heirs, administrators,
12 successors, and assigns, are deemed to release Released Parties from any and all
13 claims, rights, demands, liabilities and causes of action arising from the alleged (1)
14 Failure to Pay Minimum and Regular Rate Wages (Cal. Lab. Code §§ 204, 1194,
15 1194.2, and 1197); (2) Failure to Pay Overtime Compensation (Cal. Lab. Code §§
16 1194 and 1198); (3) Failure to Provide Meal Periods (Cal. Lab. Code §§ 226.7,
17 512); (4) Failure to Authorize and Permit Rest Breaks (Cal. Lab. Code §§ 226.7);
18 (5) Failure to Indemnify Necessary Business Expenses (Cal. Lab. Code § 2802);
19 (6) Failure to Timely Pay Final Wages at Termination (Cal. Lab. Code §§ 201-203);
20 (7) Failure to Provide Accurate Itemized Wage Statements (Cal. Lab. Code § 226);
21 and (8) Unfair Business Practices (Cal. Bus. & Prof. Code §§ 17200, *et seq.*) and
22 all other claims, rights, demands, liabilities and causes of action that were asserted
23 or that could have reasonably been asserted based on the facts and claims alleged
24 in the Operative Complaint in the Action, and any amendments thereto. Except as
25 set forth in Paragraph 5.4 (Release of Released PAGA Claims by Non-Participating
26 Class Members Who Are Aggrieved Employees) of this Agreement, Participating
27 Class Members do not release any other claims, or claims based on facts occurring
28 outside the Class Period. Except may be released as part of the Release of Released
PAGA Claims by Participating Class Members and Non-Participating Class
Members Who Are Aggrieved Employees (below), Participating Class Members
do not release any other claims or claims based on facts occurring outside the Class
Period.

18 "Released Parties" means:

19 Defendants and any past, present or future parent, subsidiary, affiliate, predecessor
20 or successor, and all agents, managing employees, owners, shareholders, insurers,
21 reinsurers, assigns, officers, directors and attorneys thereof, who may be held liable
22 for any of the Released Class Claims and Released PAGA Claims.

- 21 10. Aggrieved Employees' PAGA Release. After the Court's judgment is final, and Defendants
22 have paid the Gross Settlement (and separately paid the employer-side payroll taxes), all
23 Aggrieved Employees will be barred from asserting PAGA claims against Defendants, whether
24 or not they exclude themselves from the Settlement. This means that all Aggrieved Employees,
25 including those who are Participating Class Members and those who opt-out of the Class
26 Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against
27 Defendants or their related entities based on the PAGA Period or facts alleged in the Action
28 and resolved by this Settlement relating to the PAGA claim.

25 The Participating Class Members and all Non-Participating Class Members who are Aggrieved
26 Employees will be bound by the following release of Released PAGA Claims:

27 All Participating Class Members and Non-Participating Class Members who are
28 Aggrieved Employees, on behalf of themselves and their respective former and
present representatives, agents, attorneys, heirs, administrators, successors, and
assigns, are deemed to release the Released Parties from all claims, rights, demands,
liabilities and causes of action arising from PAGA (Labor Code §§ 2689, *et seq.*)

that were asserted or that could have reasonably been asserted based on the facts and claims alleged in the Operative Complaint in the Action, and any amendments thereto and Plaintiff's PAGA Notice, and any amendments thereto, arising during the PAGA Period.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$10,000.00 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Pay Periods worked by each individual Aggrieved Employee.
3. Workweek/Pay Period Challenges. The number of Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in Defendants' records, are stated in the first page of this Notice. You have until [45 Days after Class Notice Mailing] to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Defendants' calculation of Workweeks and/or Pay Periods based on Defendants' records 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. The Administrator will resolve Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Defendants' Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who does not opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.
2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

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

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as "*Phakhailathvone v. Orange Crush Athletics Corporation, et al*" and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by [45 Days after Class Notice Mailing], or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Defendants are asking the Court to approve. At least 16 court days before the Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website [Proposed Administrator – TBD website address] or the Superior Court's website (<https://prod-portal-sacramento-ca.journaltech.com/public-portal/?q=Home>).

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is [45 Days after Class Notice Mailing]**. Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action "*Phakhailathvone v. Orange Crush Athletics Corporation, et al*" and include your name, current address, telephone number, and approximate dates of employment for Defendants and sign the objection. Section 9 of this Notice has the Administrator's contact information.

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. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on [Date - TBD] at [Time - TBD] in Department 27 of the Sacramento Superior Court, located at 720 Ninth Street, Sacramento, California 95814. 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 Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via the Court's Civil Court Zoom Link (<https://saccourt-cagov.zoomgov.com/my/sscdept27>) Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Superior Court's website by going to (<https://prod-portal-sacramento-ca.journaltech.com/public-portal/?q=Home><https://prod-portal-sacramento-ca.journaltech.com/public-portal/?q=node/408a>) and entering the Case Number for the Action, Case No. 34-2021-00308178-CU-OE-GDS beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendants and Plaintiff 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 [Proposed Administrator – TBD]'s website at [Proposed Administrator – TBD - website address]. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to: <https://prod-portal-sacramento-ca.journaltech.com/public-portal/?q=node/408> and entering the Case Number for the Action, Case No. 34-2021-00308178-CU-OE-GDS. You can also make an appointment to personally review court documents at the Civil Records Unit in the Gordon D. Schaber Sacramento County Courthouse Room 102 (Window 16).

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

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Administrator:

[Proposed Administrator – TBD]
[Proposed Administrator – TBD] Email Address]
[Proposed Administrator – TBD] Mailing Address]
[Proposed Administrator – TBD] Telephone]
[Proposed Administrator – TBD] Fax Number]

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the Unclaimed Property Fund's website (https://www.sco.ca.gov/upd_msg.html) for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

EXHIBIT B

(PAGA NOTICE)

4861-6441-5100, v. 2

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