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on behalf of herself and all others similarly situated
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And SHIRLEY A. KLUVER

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF TULARE

TRACY HERNANDEZ, an individual and on
behalf of all others similarly situated,

Plaintiff,

v.

CENTRAL VALLEY RECOVERY
SERVICES INC., a Delaware corporation;
SHIRLEY A. KLUVER, an individual; and
DOES 1 through 100, inclusive,

Defendants.

CASE NO.: VCU290220

[Assigned for all purposes to the Hon. Brett
Hillman, Dept. 7]

**JOINT STIPULATION RE: CLASS
ACTION AND REPRESENTATIVE
ACTION SETTLEMENT**

ACTION FILED: January 26, 2022

TRIAL DATE: None set

1
2 This Joint Stipulation re: Class Action and Representative Action Settlement
3 (“Settlement,” “Agreement” or “Settlement Agreement”) is made by and between plaintiff
4 TRACY HERNANDEZ (“Plaintiff”), on behalf of herself and all others similarly situated and
5 aggrieved, on one hand; and defendants CENTRAL VALLEY RECOVERY SERVICES INC.
6 and SHIRLEY A. KLUVER (collectively “Defendants”), on the other hand, in the lawsuit
7 entitled *Tracey Hernandez v. Central Valley Services, Inc. et al.*, filed in Tulare County Superior
8 Court, Case Nos. VCU290220 (the “Class Action”) and VCU291151 (the “PAGA Action”, and
9 with the Class Action, the “Action”). Plaintiff and Defendants shall be, at times, collectively
10 referred to as the “Parties”. This Agreement is intended by the Parties to fully, finally and forever
11 resolve the claims as set forth herein, based upon and subject to the terms and conditions of this
12 Agreement.

13 **1. DEFINITIONS**

14 **A. “Action”** means the actions entitled *Tracey Hernandez v. Central Valley Services,*
15 *Inc., et al.*, filed in Tulare County Superior Court, Case No. VCU290220.

16 **B. “Aggrieved Employees”** means Class Members working for Defendant during
17 the PAGA Period in the State of California.

18 **C. “Class Counsel”** means David D. Bibiyan, Jeffrey D. Klein, and Vedang J. Patel
19 of Bibiyan Law Group, P.C. The term “Class Counsel” shall be used synonymously with the term
20 “Plaintiff’s Counsel.”

21 **D. “Class Period”** means the period from January 26, 2018 through August 15, 2023.

22 **E. “Class Notice”** means and refers to the notice sent to Class Members after
23 preliminary approval of the Settlement in the manner described in Paragraph 9(A) of this
24 Agreement.

25 **F. “Court”** means the Superior Court of the State of California for the County of
26 Tulare.

27 **G. “Final Approval Date”** means the later of: (1) the date the Court signs an Order
28 granting final approval of this Settlement (“Final Approval”) and Judgment; (2) if there is an

1 objector, 60 days from the date of the Final Approval and Judgment; or (3) to the extent any
2 appeals have been filed, the date on which they have been resolved or exhausted.

3 **H. “Defendants”** means Central Valley Recovery Services Inc. and Shirley A.
4 Kluver. **“Defendant”** means Central Valley Recovery Services Inc.

5 **I. “Employer Taxes”** means employer-funded taxes and contributions imposed on
6 the wage portions of the Individual Settlement Payments under the Federal Insurance
7 Contributions Act, the Federal Unemployment Tax Act, and any similar state and federal taxes
8 and contributions required of employers, such as for unemployment insurance.

9 **J. “General Release”** means the broader release of claims by Plaintiff, which is in
10 addition to Plaintiff’s limited release of claims as a Participating Class Member.

11 **K. “Gross Settlement Amount”** means a non-reversionary fund in the sum of One
12 Hundred Fifty Thousand Dollars and Zero Cents (\$150,000.00),¹ which shall be paid by
13 Defendant, from which all payments for the Individual Settlement Payments to Participating
14 Class Members, the Court-approved amounts for attorneys’ fees and reimbursement of litigation
15 costs and expenses to Class Counsel, Settlement Administration Costs, the Service Award, the
16 PAGA Payment and the LWDA Payment shall be paid. It expressly excludes Employer Taxes,
17 which shall be paid by Defendant separate, apart and in addition to the Gross Settlement Amount.

18 **L. “Individual PAGA Payment”** means a payment made to an Aggrieved Employee
19 for his or her share of the PAGA Payment, which may be in addition to his or her Individual
20 Settlement Share if he or she is also a Participating Class Member.

21 **M. “Individual Settlement Payment”** means a payment to a Participating Class
22 Member of his or her net share of the Net Settlement Amount.

23 **N. “Individual Settlement Share”** means the gross amount of the Net Settlement
24 Amount that a Participating Class Member is projected to receive based on the number of
25 Workweeks that he or she worked as a Settlement Class Member during the Class Period, which
26 shall be reflected in his or her Class Notice.

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28 ¹ As the same may be increased in accordance with Paragraph 17 below.

1 **O. “LWDA Payment”** means the payment to the State of California Labor and
2 Workforce Development Agency (“LWDA”) for its seventy-five percent (75%) share of the total
3 amount allocated toward penalties under the PAGA, all of which is to be paid from the Gross
4 Settlement Amount. The Parties have agreed that Ten Thousand Dollars and Zero Cents
5 (\$10,000.00) shall be allocated toward PAGA penalties, of which Seven Thousand Five Hundred
6 Dollars and Zero Cents (\$7,500.00) will be paid to the LWDA (*i.e.*, the LWDA Payment) and
7 Two Thousand Five Hundred Dollars and Zero Cents (\$2,500.00) will be paid to Aggrieved
8 Employees on a *pro rata* basis based on the Pay Periods worked for Defendant as a non-exempt,
9 hourly-paid employee in California in the PAGA Period (*i.e.* the PAGA Payment).

10 **P. “Net Settlement Amount”** means the portion of the Gross Settlement Amount
11 that is available for distribution to the Participating Class Members after deductions for the Court-
12 approved allocations for Settlement Administration Costs, a Service Award to Plaintiff, an award
13 of attorneys’ fees, reimbursement of litigation costs and expenses to Class Counsel, the LWDA
14 Payment and the PAGA Payment.

15 **Q. “PAGA Payment”** is the 25% portion of the Ten Thousand Dollars and Zero
16 Cents (\$10,000.00) that is allocated toward PAGA penalties (Two Thousand Five Hundred
17 Dollars and Zero Cents (\$2,500.00) that will be paid to Aggrieved Employees on a *pro rata* basis
18 based on the Workweek worked as non-exempt, hourly-paid employees in California in the
19 PAGA Period, which would be in addition to their Individual Settlement Payment if they are
20 Participating Class Members, as well.

21 **S. “PAGA Period”** means the period from January 26, 2021 through the end of the
22 Class Period.

23 **T. “Pay Period”** means the number of pay periods that a Settlement Class Member
24 was employed by the Defendant in a non-exempt, hourly position during the Class Period in
25 California, based on hire dates, re-hire dates (as applicable), and termination dates (as
26 applicable).

27 **U. “Participating Class Members”** means all Settlement Class Members who do
28 not submit a timely and valid Request for Exclusion.

1 **V. “Participating Individual Settlement Share”** means the gross amount of the Net
2 Settlement Amount that a Participating Class Member is eligible to receive based on the number
3 of Workweeks that he or she worked as a Settlement Class Member during the Class Period once
4 all opt-outs have been factored in, excluding any Individual PAGA Payment to which he or she
5 may be entitled if he or she is also an Aggrieved Employee.

6 **V. “Plaintiff,” “Named Plaintiff” or “Class Representative”** shall refer to Plaintiff
7 Tracy Hernandez.

8 **W. “Preliminary Approval Date”** means the date on which the Court enters an Order
9 granting preliminary approval of the Settlement.

10 **X. “Released Parties”** shall mean Defendants and each of its past, present and future
11 respective subsidiaries, dba’s, affiliates, parents, insurers and reinsurers, and company-sponsored
12 employee benefit plans of any nature, and their successors and predecessors in interest, including
13 all of their officers, directors, shareholders, exempt employees, agents, principals, heirs,
14 representatives, accountants, auditors, consultants, attorneys, administrators, fiduciaries, trustees
15 and agents.

16 **Y. “Response Deadline”** means the deadline for Settlement Class Members to mail
17 any Requests for Exclusion, Objections or Workweek Disputes to the Settlement Administrator,
18 which is forty-five (45) calendar days from the date that the Class Notice is first mailed in English
19 and Spanish by the Settlement Administrator, unless a Class Member’s notice is re-mailed. In
20 such an instance, the Response Deadline shall be fifteen (15) calendar days from the re-mailing
21 or forty-five (45) calendar days from the date of the initial mailing, whichever is later, in which
22 to postmark a Request for Exclusion, Workweek Dispute or Objection. The date of the postmark
23 shall be the exclusive means for determining whether a Request for Exclusion, Objection or
24 Workweek Dispute was submitted by the Response Deadline.

25 **Z. “Request for Exclusion”** means a written request to be excluded from the
26 Settlement Class pursuant to Paragraph 9(C) below.

27 **AA. “Service Award”** means monetary amounts to be paid to Plaintiff of up to Seven
28 Thousand Five Hundred Dollars and Zero Cents (\$7,500.00), which, subject to Court approval,

1 will be paid out of the Gross Settlement Amount.

2 **BB. “Settlement Administration Costs”** means all costs incurred by the Settlement
3 Administrator in administration of the Settlement, including, but not limited to, translating the
4 Class Notice to Spanish, distribution of the Class Notice to the Settlement Class in English and
5 Spanish, calculating Individual Settlement Shares, Individual Settlement Payments, Individual
6 PAGA Payments and Participating Individual Settlement Shares, as well as associated taxes and
7 withholdings, providing declarations, generating Individual Settlement Payment checks and
8 related tax reporting forms, doing administrative work related to unclaimed checks, transmitting
9 payment to Class Counsel for the Court-approved amounts for attorneys’ fees and reimbursement
10 of litigation costs and expenses, to Plaintiff for her Service Award and to the LWDA for the
11 LWDA Payment, providing weekly reports of opt-outs, objections and related information, and
12 any other actions of the Settlement Administrator as set forth in this Agreement, all pursuant to
13 the terms of this Agreement. The Settlement Administration Costs are estimated not to exceed
14 \$7,950.00. If the actual amount of the Settlement Administration Costs is less than \$7,950.00,
15 the difference between \$7,950.00 and the actual Settlement Administration Costs shall be a part
16 of the Net Settlement Amount. If the Settlement Administration Costs exceed \$7,950.00, then
17 such excess will be paid solely from the Gross Settlement Amount and Defendant will not be
18 responsible for paying any additional funds in order to pay these additional costs.

19 **CC. “Settlement Administrator”** means the Third-Party Administrator mutually
20 agreed upon by the Parties that will be responsible for the administration of the Settlement
21 including, without limitation, translating the Class Notice in Spanish, distribution of the
22 Individual Settlement Payments to be made by Defendant from the Gross Settlement Amount
23 and related matters under this Agreement.

24 **DD. “Settlement Class,” “Settlement Class Members” or “Class Members”** means
25 all current and former non-exempt, hourly-paid employees who worked in California for
26 Defendant at any time during the Class Period.

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1 **EE. “Workweeks”** means the number of weeks that a Settlement Class Member was
2 employed by the Defendant in a non-exempt, hourly position during the Class Period in
3 California, based on hire dates, re-hire dates (as applicable), and termination dates (as
4 applicable).

5 **2. BACKGROUND**

6 **A.** On January 26, 2022, Plaintiff filed with the LWDA and served on Defendants a
7 notice under Labor Code section 2699.3 stating Plaintiff intended to serve as a proxy of the
8 LWDA to recover civil penalties on behalf of Aggrieved Employees for alleged Labor Code
9 violations (“PAGA Notice”).

10 **B.** On January 26, 2022, Plaintiff filed a putative wage-and-hour class action in the
11 Tulare County Superior Court, Case No. VCU290220, alleging: (1) failure to pay overtime
12 wages; (2) failure to pay minimum wages; (3) failure to provide meal breaks or compensation in
13 lieu thereof; (4) failure to provide rest breaks or compensation in lieu thereof; (5) waiting time
14 penalties; (6) wage statement violations; (7) failure to timely pay wages; (8) failure to indemnify
15 and; (9) unfair competition (the “Class Action”).

16 **C.** On April 1, 2022, after sixty-five (65) days had passed since Plaintiff filed and
17 served the PAGA Notice, without any action by the LWDA with respect to the alleged Labor
18 Code violations, Plaintiff filed a representative action seeking PAGA civil penalties against
19 Defendants for Labor Code violations alleged in the PAGA Notice in the Tulare County Superior
20 Court of California, Case No. VCU291151 (the “PAGA Action”)

21 **D.** Thereafter, the Parties agreed to exchange informal discovery and attend an early
22 mediation. Prior to mediation, Defendants agreed to informally produce the following: (1) time
23 and payroll records for 20% of the 110 Class Members, (*i.e.*, non-exempt employees working for
24 Defendant in California); (b) class data points, including average rates of pay, total hours worked
25 during the Class Period, the number of shifts worked during the Class Period, the number of
26 terminated/separated Class Members eligible for waiting time penalties, the number of
27 Aggrieved Employees (current and former), the number of hours worked, and number of pay
28

1 periods in the wage statement period and PAGA Period; (3) all of Defendants' policy documents;
2 and (4) Defendants' employee handbooks.

3 **E.** On May 23, 2023, the Parties participated in a full-day mediation before Paul
4 Grossman, Esquire, a well-regarded mediator experienced in mediating complex labor and
5 employment matters. With the aid of the mediator's evaluation, the Parties reached the Settlement
6 to resolve the Action.

7 **F.** On or around August 29, 2022, the Class Action and PAGA Action were
8 consolidated, with the Class Action as lead. The Class Action shall hereinafter be referred to as
9 the "Action."

10 **G.** Class Counsel has conducted significant investigation of the law and facts relating
11 to the claims asserted in the Action and in the PAGA Notice, and have concluded that the
12 Settlement set forth herein is fair, reasonable, adequate and in the best interests of the Settlement
13 Class, taking into account the sharply contested issues involved, the expense and time necessary
14 to litigate the Action through trial and any appeals, the risks and costs of further litigation of the
15 Action, the risk of an adverse outcome, the uncertainties of complex litigation, the information
16 learned through informal discovery regarding Plaintiff's allegations, and the substantial benefits
17 to be received by Settlement Class Members.

18 **H.** Defendants have concluded that, because of the substantial expense of defending
19 against the Action, the length of time necessary to resolve the issues presented herein, the
20 inconvenience involved and the concomitant disruption to its business operations, it is in its best
21 interest to accept the terms of this Agreement. Defendants deny each of the allegations and claims
22 asserted against them in the Action and in the PAGA Notice. However, Defendants nevertheless
23 desire to settle the Action for the purpose of avoiding the burden, expense and uncertainty of
24 continuing litigation, and for the purpose of putting to rest the controversies engendered by the
25 Action.

26 **I.** This Agreement is intended to and does effectuate the full, final and complete
27 resolution of all Class Released Claims of Plaintiff and Participating Class Members, and all
28 PAGA Released Claims of Plaintiffs and, to the extent permitted by law, of the State of California

1 and Aggrieved Employees.

2 **3. JURISDICTION**

3 The Court has jurisdiction over the Parties and the subject matter of the Action. The
4 Action includes claims that, if proven, would authorize the Court to grant relief pursuant to the
5 applicable statutes. After the Court has granted Final Approval of the Settlement and entered
6 judgment, the Court shall retain jurisdiction over the Parties to enforce the terms of the judgment
7 pursuant to California Rules of Court, rule 3.769, subdivision (h).

8 **4. STIPULATION OF CLASS CERTIFICATION**

9 The Parties stipulate to the certification of the Settlement Class under this Agreement for
10 purposes of settlement only.

11 **5. MOTIONS FOR APPROVAL OF SETTLEMENT**

12 After full execution of this Agreement, Plaintiff will move for an order granting
13 preliminary approval of the Settlement, approving and directing the mailing of the proposed
14 Notice of Class Action Settlement (“Class Notice”) attached hereto as **Exhibit “A,”** conditionally
15 certifying the Settlement Class for settlement purposes only, and approving the deadlines
16 proposed by the Parties for the submission of Requests for Exclusion, Workweek Disputes and
17 Objections. If and when the Court preliminarily approves the Settlement, and after administration
18 of the Class Notice in a manner consistent with the Court’s Preliminary Approval Order,
19 Plaintiffs will move for an order finally approving the Settlement and seek entry of a Judgment
20 in line with this Settlement. The Parties may both respond to any Objections lodged to final
21 approval of the Settlement up to five (5) court days before the Final Approval Hearing.

22 **6. STATEMENT OF NO ADMISSION**

23 Defendants deny any wrongdoing of any sort and further deny any liability to Plaintiff
24 and the Settlement Class with respect to any claims or allegations asserted in the Action and the
25 PAGA Notice. This Agreement shall not be deemed an admission by Defendants of any claims
26 or allegations asserted in the Action or in the PAGA Notice. Except as set forth elsewhere herein,
27 in the event that this Agreement is not approved by the Court or any appellate court, is terminated,
28 or otherwise fails to be enforceable, Plaintiff will not be deemed to have waived, limited or

1 affected in any way any claims, rights or remedies, or defenses in the Action or in the PAGA
2 Notice, and Defendants will not be deemed to have waived, limited or affected in any way any
3 of their objections or defenses in the Action and in the PAGA Notice. The Parties shall be restored
4 to their respective positions in the Action prior to the entry of this Settlement.

5 **7. RELEASE OF CLAIMS**

6 **A. Release by All Participating Class Members.**

7 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
8 of Judgment and payment by Defendant to the Settlement Administrator of the full Gross
9 Settlement Amount and Employers Taxes necessary to effectuate the Settlement, Plaintiff and all
10 Participating Class Members release all claims against the Released Parties asserted in the
11 complaint filed in the Class Action, or any and all claims that could have been asserted based on
12 the factual allegations in the complaint filed in the Class Action, including: (1) all claims for
13 failure to pay overtime wages; (2) all claims for failure to pay minimum wages; (3) all claims for
14 failure to provide meal periods or compensation in lieu thereof; (4) all claims for failure to
15 provide rest periods or compensation in lieu thereof; (5) all claims for failure to pay all wages
16 due upon termination; (6) all claims for failure to provide accurate wage statements; (7) all claims
17 for failure to timely pay wages during employment; (8) all claims for failure to indemnify for
18 business expenses; and (9) all claims asserted through California Business & Professions Code
19 section 17200, *et seq.* arising out of the Labor Code violations referenced in the Operative
20 Complaint (the “Class Released Claims”).

21 **B. Release by All Aggrieved Employees**

22 For Aggrieved Employees and, to the extent permitted by law, the State of California, the
23 release includes for the duration of the PAGA Period, all claims asserted in the PAGA Notice
24 and in the complaint filed in the PAGA Action, or that could have been based on the factual
25 allegations asserted in the PAGA Notice and the complaint filed in the PAGA Action for PAGA
26 civil penalties, including pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1 and
27 2699, violations of Labor Code sections 200, 201, 202, 203, 204, 226, 226.7, 510, 512, 558.1,
28 1194, 1194.2, 1197, 2802, et al., and California Code of Regulations, Title 8, section 11040 (the

1 “PAGA Released Claims”). The Class Released Claims and PAGA Released Claims shall be
2 referred to herein as the “Released Claims”.

3 **C. Claims Not Released**

4 The releases above expressly exclude all other claims, including claims for vested
5 benefits, wrongful termination, unemployment insurance, disability, social security, workers’
6 compensation, and any other claims outside of the Class Released Claims of Participating Class
7 Members arising during the Class Period and the PAGA Released Claims of Aggrieved
8 Employees (and, to the extent permitted by law, the State of California) arising outside of the
9 PAGA Period.

10 **D. General Release**

11 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
12 of Judgment and payment by Defendant to the Settlement Administrator selected of the full Gross
13 Settlement Amount and Employers’ Taxes necessary to effectuate the Settlement, in addition to
14 the Released Claims, Plaintiff makes the additional following General Release: Plaintiff releases
15 the Released Parties from all claims, demands, rights, liabilities and causes of action of every
16 nature and description whatsoever, known or unknown, asserted or that might have been asserted,
17 whether in tort, contract, or for violation of any state or federal statute, rule, law or regulation
18 arising out of, relating to, or in connection with any act or omission of the Released Parties
19 through the date of full execution of this Agreement in connection with Plaintiff’s employment
20 with Defendant or termination thereof, except for any and all other claims that may not be
21 released as a matter of law through this Agreement. To the extent of the General Release provided
22 herein, Plaintiff stipulates and agrees that, upon entry of an Order granting Final Approval of the
23 Settlement, entry of Judgment and payment by Defendant to the Settlement Administrator
24 selected of the full Gross Settlement Amount and Employers’ Taxes necessary to effectuate the
25 Settlement, they shall have expressly waived and relinquished, to the fullest extent permitted by
26 law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other
27 similar provision under federal or state law, which provides:
28

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

6 **8. SETTLEMENT ADMINISTRATOR**

7 **A.** Plaintiff and Defendants, through their respective counsel, have selected Phoenix
8 Class Action Administration Solutions (“Phoenix”) to administer the Settlement, which includes,
9 but is not limited to, translating the Class Notice to Spanish, distributing and responding to
10 inquiries about the Class Notice, and calculating all amounts to be paid from the Gross Settlement
11 Amount. Charges and expenses of the Settlement Administrator, currently estimated to be
12 \$7,950.00, will be paid from the Gross Settlement Amount. If the actual amount of the Settlement
13 Administration Costs is less than \$7,950.00, the difference between \$7,950.00 and the actual
14 Settlement Administration Costs shall be a part of the Net Settlement Amount. If the Settlement
15 Administration Costs exceed \$7,950.00, then such excess will be paid solely from the Gross
16 Settlement Amount and Defendant will not be responsible for paying any additional funds in
17 order to pay these additional costs.

18 **9. NOTICE, WORKWEEK DISPUTE, OBJECTION AND EXCLUSION**
19 **PROCESS**

20 **A. Notice to the Settlement Class Members**

21 (1) Within seven (7) calendar days after the Preliminary Approval Date, Defendants’
22 Counsel shall provide the Settlement Administrator with information with respect to each
23 Settlement Class Member, including his or her: (1) name; (2) last known address(es) currently in
24 Defendants’ possession, custody or control; (3) last known telephone number(s) currently in
25 Defendants’ possession, custody or control; (4) last known Social Security Number(s) in
26 Defendants’ possession, custody or control; and (5) the dates of employment (*i.e.*, hire dates and,
27 if applicable, re-hire date(s) and/or separation date(s)) for each Settlement Class Member (“Class
28 List”). The Settlement Administrator shall perform an address search using the United States
Postal Service National Change of Address (“NCOA”) database and update the addresses
contained on the Class List with the newly-found addresses, if any. Within seven (7) calendar

1 days or soon thereafter of receiving the Class List from Defendants, the Settlement Administrator
2 shall mail the Class Notice in English and Spanish to the Settlement Class Members via first-
3 class regular U.S. Mail using the most current mailing address information available. The
4 Settlement Administrator shall maintain the Class List and digital copies of all the Settlement
5 Administrator's records evidencing the giving of notice to any Settlement Class Member for at
6 least four (4) years from the Final Approval Date.

7 (2) The Class Notice will set forth:

- 8 (a) the Settlement Class Member's estimated Individual
9 Settlement Payment and Individual PAGA Payment,
10 and the basis for each;
- 11 (b) the information required by California Rule of Court,
12 rule 3.766, subdivision (d);
- 13 (c) the material terms of the Settlement;
- 14 (d) the proposed Settlement Administration Costs;
- 15 (e) the definition of the Settlement Class;
- 16 (f) a statement that the Court has preliminarily approved
17 the Settlement;
- 18 (g) how the Settlement Class Member can obtain
19 additional information, including contact information
20 for Class Counsel;
- 21 (h) information regarding opt-out and objection
22 procedures;
- 23 (i) the date and location of the Final Approval Hearing;
24 and
- 25 (j) that the Settlement Class Member must notify the
26 Settlement Administrator no later than the Response
27 Deadline if the Settlement Class Member disputes the
28 accuracy of the number of Workweeks worked as set

forth on his or her Class Notice (“Workweek Dispute”).

If a Settlement Class Member fails to timely dispute the number of Workweeks attributed to him or her in conformity with the instructions in the Class Notice, then he or she shall be deemed to have waived any objection to its accuracy and any claim to any additional settlement payment based on different data.

(3) If a Class Notice from the initial notice mailing is returned as undeliverable, the Settlement Administrator will attempt to obtain a current address for the Settlement Class Member to whom the returned Class Notice had been mailed, within five (5) calendar days of receipt of the returned Class Notice, by: (1) contacting the Settlement Class Member by phone, if possible, and (2) undertaking skip tracing. If the Settlement Administrator is successful in obtaining a new address, it will re-mail the Class Notice to the Settlement Class Member within three (3) calendar days. Further, any Class Notices that are returned to the Settlement Administrator with a forwarding address before the Response Deadline shall be promptly re-mailed to the forwarding address affixed thereto.

(4) No later than seven (7) calendar days from the Response Deadline, the Settlement Administrator shall provide counsel for the Parties with a declaration attesting to the completion of the notice process, including the number of attempts to obtain valid mailing addresses for and re-sending of any returned Class Notices, as well as the identities, number of, and copies of all Requests for Exclusion and Objections received by the Settlement Administrator.

B. Objections

Only Participating Class Members may object to the Settlement. In order for any Settlement Class Member to object to this Settlement in writing, or any term of it, he or she must do so by mailing a written objection to the Settlement Administrator at the address or phone number provided on the Class Notice no later than the Response Deadline. The Settlement Administrator shall email a copy of the Objection forthwith to Class Counsel and Defendants’

1 counsel and attach copies of all Objections to the Declaration it provides Class Counsel, which
2 Class Counsel shall file in support of Plaintiff's Motion for Final Approval. The Objection
3 should set forth in writing: (1) the Objector's name; (2) the Objector's address; (3) the last four
4 digits of the Objector's Social Security Number; (4) the Objector's signature; (5) a statement of
5 whether the Objector plans to appear at the Final Approval Hearing; and (6) the reason(s) for the
6 Objection, along with whatever legal authority, if any, the Objector asserts in support of the
7 Objection. If a Settlement Class Member objects to the Settlement, the Settlement Class Member
8 will remain a member of the Settlement Class and if the Court approves this Agreement, the
9 Settlement Class Member will be bound by the terms of the Settlement in the same way and to
10 the same extent as a Settlement Class Member who does not object. The date of mailing of the
11 Class Notice to the objecting Settlement Class Member shall be conclusively determined
12 according to the records of the Settlement Administrator. Settlement Class Members need not
13 object in writing to be heard at the Final Approval Hearing; they may object or comment in
14 person at the hearing at their own expense. Class Counsel and Defendants' Counsel may respond
15 to any objection lodged with the Court up to five (5) court days before the Final Approval
16 Hearing.

17 **C. Requesting Exclusion**

18 Any Settlement Class Member may request exclusion from (*i.e.*, "opt out" of) the
19 Settlement by mailing a written request to be excluded from the Settlement ("Request for
20 Exclusion") to the Settlement Administrator, postmarked on or before the Response Deadline.
21 To be valid, a Request for Exclusion must include: (1) the Class Member's name; (2) the last
22 four (4) digits of the Class Member's Social Security Number; (3) the Class Member's signature;
23 and (4) the following statement: "Please exclude me from the Settlement Class in the *Tracey*
24 *Hernandez v. Central Valley Services, Inc. et al.* matter" or any statement of similar meaning
25 standing for the proposition that the Class Member does not wish to participate in the Settlement.
26 The Settlement Administrator shall immediately provide copies of all Requests for Exclusion to
27 Class Counsel and Defendants' Counsel and shall report the Requests for Exclusions that it
28 receives, to the Court, in its declaration to be provided in advance of the Final Approval Hearing.

Any Settlement Class Member who requests exclusion using this procedure will not be entitled to receive any payment from the Settlement and will not be bound by the Settlement Agreement or have any right to object to, appeal, or comment on the Settlement. Any Settlement Class Member who does not opt out of the Settlement by submitting a timely and valid Request for Exclusion will be bound by all terms of the Settlement, including those pertaining to the Released Claims, as well as any Judgment that may be entered by the Court if Final Approval of the Settlement is granted. A Settlement Class Member cannot submit both a Request for Exclusion and an objection. If a Settlement Class Member submits an Objection and a Request for Exclusion, the Request for Exclusion will control and the Objection will be overruled. Settlement Class Members who worked during the PAGA Period as Aggrieved Employees that submit a valid Request for Exclusion will still be deemed Aggrieved Employees, will still receive their Individual PAGA Payments, and will be bound by the release of the PAGA Released Claims.

D. Disputes Regarding Settlement Class Members' Workweek Data.

Each Settlement Class Member may dispute the number of Workweeks attributed to him or her on his or her Class Notice ("Workweek Dispute"). Any such disputes must be mailed to the Settlement Administrator by the Settlement Class Member, postmarked on or before the Response Deadline. The Settlement Administrator shall immediately provide copies of all disputes to Class Counsel and counsel for Defendants and shall immediately attempt to resolve all such disputes directly with relevant Settlement Class Member(s) with the assistance of Defendants and Class Counsel. If the dispute cannot be resolved in this manner, the Court shall adjudicate the dispute.

10. INDIVIDUAL SETTLEMENT PAYMENTS AND INDIVIDUAL PAGA PAYMENTS

Individual Settlement Payments will be calculated and distributed to Participating Class Members from the Net Settlement Amount on a *pro rata* basis, based on the Participating Class Members' respective number of Workweeks worked during the Class Period. Individual PAGA Payments to Aggrieved Employees will be calculated and distributed to Aggrieved Employees from the PAGA Payment on a *pro rata* basis based on Aggrieved Employees' respective

1 number of Pay Periods worked during the PAGA Period. Specific calculations of the Individual
2 Settlement Shares and Individual PAGA Payments to Aggrieved Employees will be made as
3 follows:

4 **A.** The Settlement Administrator will determine the total number of Workweeks
5 worked by each Settlement Class Member during the Class Period (“Class Member’s
6 Workweeks”), as well as the aggregate number of Workweeks worked by all Settlement Class
7 Members during the Class Period (“Class Workweeks”). Additionally, the Settlement
8 Administrator will determine the total number of Pay Periods worked by each Aggrieved
9 Employee during the PAGA Period (“Aggrieved Employee’s Pay Periods”), as well as the
10 aggregate number of Pay Periods worked by all Aggrieved Employees during the PAGA Period
11 (“PAGA Pay Periods”).

12 **B.** To determine each Settlement Class Member’s Individual Settlement Share, the
13 Settlement Administrator will use the following formula: Individual Settlement Share =
14 (Settlement Class Member’s Workweeks worked ÷ Class Workweeks) × Net Settlement
15 Amount.

16 **C.** To determine each Participating Class Member’s Participating Individual
17 Settlement Share, the Settlement Administrator will determine the aggregate number of
18 Workweeks worked by all Participating Class Members during the Class Period (“Participating
19 Class Workweeks”) and use the following formula: Individual Settlement Share =
20 (Participating Class Member’s Workweeks worked ÷ Participating Class Workweeks) × Net
21 Settlement Amount.

22 **D.** The net amount of the Participating Individual Settlement Share is to be paid out
23 to Participating Class Members by way of check and is referred to as “Individual Settlement
24 Payment(s)”.

25 **E.** To determine each Aggrieved Employee’s Individual PAGA Payment, the
26 Settlement Administrator will use the following formula: Aggrieved Employee’s Individual
27 PAGA Payment = (Aggrieved Employee’s Pay Periods worked ÷ PAGA Pay Periods) x
28 \$2,500.00 (the PAGA Payment).

1 F. Individual Settlement Payments and Individual PAGA Payments shall be paid
2 to Participating Class Members and/or Aggrieved Employees by way of check. When a
3 Participating Class Member is also an Aggrieved Employee, one check may be issued that
4 aggregates both the Individual Settlement Payment and the Individual PAGA Payment.

5 **11. DISTRIBUTION OF PAYMENTS**

6 **A. Distribution of Individual Settlement Payments**

7 Participating Class Members will receive an Individual Settlement Payment and
8 Aggrieved Employees will receive an Individual PAGA Payment. Individual Settlement
9 Payment and Individual PAGA Payment checks shall remain valid and negotiable for one
10 hundred and eighty (180) calendar days after the date of their issuance. For any Class Members
11 whose Individual Class Payment check or Individual PAGA Payment check is uncashed and
12 cancelled after the void date, the Administrator shall transmit the funds represented by such
13 checks to the *cy pres* recipient, Legal Aid at Work, for use in Tulare County.

14 **B. Funding of Settlement**

15 Defendant shall pay the Gross Settlement Amount in two separate payments, as follows:
16 (1) Defendant shall make a payment of one-half (1/2) the Gross Settlement Amount (as the same
17 may be escalated pursuant to Paragraph 17 of this Agreement) no later than thirty (30) days of
18 the Final Approval Date; and (2) make a final payment of the second half (1/2) of the Gross
19 Settlement Amount no later than twelve (12) months after the first payment, , including Employer
20 Taxes to the Settlement Administrator pursuant to Internal Revenue Code section 1.468B-1 for
21 deposit in an interest-bearing qualified settlement account (“QSA”) with an FDIC insured
22 banking institution, for distribution in accordance with this Agreement and the Court’s Orders
23 and subject to the conditions described herein.

24 **C. Time for Distribution**

25 Within seven (7) calendar days after payment of the full Gross Settlement Amount and
26 Employer Taxes by Defendant, or as soon thereafter as practicable, the Settlement Administrator
27 shall distribute all payments due from the QSA for: (1) the Service Award to Plaintiff, as
28 specified in this Agreement and approved by the Court; (2) the Attorneys’ Fees and Cost Award

1 to be paid to Class Counsel, as specified in this Agreement and approved by the Court; (3) the
2 Settlement Administrator Costs, as specified in this Agreement and approved the Court; (4) the
3 LWDA Payment, as specified in this Agreement and approved by the Court; (5) Individual
4 PAGA Payments to Aggrieved Employees, as specified in this Agreement and approved by the
5 Court; and (6) Individual Settlement Payments to Participating Class Members, less applicable
6 taxes and withholdings, as specified in this Agreement and approved by the Court. All interest
7 accrued shall be for the benefit of the Class Members and distributed on a *pro rata* basis to
8 Participating Class Members based on the number of Workweeks worked by them in the Class
9 Period.

10 **12. ATTORNEYS' FEES AND LITIGATION COSTS**

11 Class Counsel shall apply for, and Defendants shall not oppose, an award of attorneys'
12 fees of up to thirty five percent (35%) of the Gross Settlement Amount, which, unless escalated
13 pursuant to Paragraph 17 of this Agreement, amounts to Fifty-Two Thousand and Five Hundred
14 Dollars and Zero Cents (\$52,500.00). Class Counsel shall further apply for, and Defendants shall
15 not oppose, an application or motion by Class Counsel for reimbursement of actual costs
16 associated with Class Counsel's prosecution of this matter as set forth by declaration testimony
17 in an amount up to Thirty-Five Thousand Dollars and Zero Cents (\$35,000.00). Awards of
18 attorneys' fees and costs shall be paid out of the Gross Settlement Amount, for all past and future
19 attorneys' fees and costs necessary to prosecute, settle and obtain Final Approval of the
20 settlement in Action. The "future" aspect of the amounts stated herein includes, without
21 limitation, all time and expenses expended by Class Counsel (including any appeals therein).
22 There will be no additional charge of any kind to either the Settlement Class Members or request
23 for additional consideration from Defendant for such work, unless, Defendants materially breach
24 this Agreement, including any term regarding funding, and further efforts are necessary from
25 Class Counsel to remedy said breach, including, without limitation, moving the Court to enforce
26 the Agreement. Should the Court approve attorneys' fees and/or litigation costs and expenses in
27 amounts that are less than the amounts provided for herein, then the unapproved portion(s) shall
28 be a part of the Net Settlement Amount.

1 **13. SERVICE AWARD TO PLAINTIFF**

2 Named Plaintiff shall seek, and Defendants shall not oppose, a Service Award in an
3 amount not to exceed Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to
4 Plaintiff, for participation in and assistance with the Action. Any Service Award and additional
5 consideration awarded and/or paid to Plaintiff shall be paid from the Gross Settlement Amount
6 and shall be reported on an IRS Form 1099. If the Court approves the Service Award in less than
7 the amounts sought herein, then the unapproved portion(s) shall be a part of the Net Settlement
8 Amount.

9 **14. TAXATION AND ALLOCATION**

10 a. Each Individual Settlement Share shall be allocated as follows: 20% as wages (to
11 be reported on an IRS Form W2); and 80% as interest and penalties (to be reported on an IRS
12 Form 1099). Each Individual PAGA Payment shall be allocated entirely as penalties. The Parties
13 agree that the employees' share of taxes and withholdings with respect to the wage portion of the
14 Individual Settlement Share will be withheld from the Individual Settlement Share in order to
15 yield the Individual Settlement Payment. The amount of federal income tax withholding will be
16 based upon a flat withholding rate for supplemental wage payments in accordance with Treasury
17 Regulation § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also
18 be made pursuant to applicable state and/or local withholding codes or regulations.

19 b. Forms W-2 and/or Forms 1099 will be distributed by the Settlement
20 Administrator at times and in the manner required by the Internal Revenue Code of 1986 (the
21 "Code") and consistent with this Agreement. If the Code, the regulations promulgated
22 thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes
23 set forth in this Section may be modified in a manner to bring Defendants into compliance with
24 any such changes.

25 c. All Employer Taxes shall be paid by Defendant separate, apart, and in addition to
26 the Gross Settlement Amount. Defendant shall remain liable to pay the employer's share of
27 payroll taxes as described above.
28

d. Neither Counsel for Plaintiff nor Defendants intend anything contained in this Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Agreement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended) or otherwise.

15. PRIVATE ATTORNEYS' GENERAL ACT ALLOCATION

The Parties agree to allocate Ten Thousand Dollars and Zero Cents (\$10,000.00) of the Gross Settlement Amount toward PAGA penalties. Pursuant to the PAGA, seventy-five percent (75%) of the amount allocated toward PAGA (\$7,500.00) will be paid to the LWDA and twenty-five percent (25%) (\$2,500.00) will be distributed to Aggrieved Employees on a *pro rata* basis based upon their respective Pay Periods worked as Aggrieved Employees during the PAGA Period.

16. COURT APPROVAL

This Agreement is contingent upon an order by the Court granting Final Approval of the Settlement, and that the LWDA does not intervene and object to the Settlement. In the event it becomes impossible to secure approval of the Settlement by the Court and the LWDA, the Parties shall be restored to their respective positions in the Action prior to entry of this Settlement. If this Settlement Agreement is voided, not approved by the Court or approval is reversed on appeal, it shall have no force or effect and no Party shall be bound by its terms except to the extent: (a) the Court reserves any authority to issue any appropriate orders when denying approval; and/or (b) there are any terms and conditions in this Settlement Agreement specifically stated to survive the Settlement Agreement being voided or not approved, and which control in such an event.

17. INCREASE IN WORKWEEKS

The settlement was negotiated based on an understanding that there are no more than 12,000 Workweeks during the Class Period. If the number of Workweeks during the Class Period increases by more than 10% or 1,200 Workweeks, then the Gross Settlement Amount shall be increased proportionally by the Workweeks in excess of 12,000 Workweeks multiplied by the Workweek Value. The Workweek Value shall be calculated by dividing the originally agreed-upon Gross Settlement Amount (\$150,000.00) by 12,000 Workweeks. The Parties agree that the

1 Workweek Value amounts to and the settlement amounts to \$12.50 per Workweek (\$150,000.00
2 / 12,000 Workweeks). Thus, for example, should there be 14,000 Workweeks in the Class Period,
3 then the Gross Settlement Amount shall be increased by \$25,000.00 ((14,000 Workweeks –
4 12,000 Workweeks) x \$12.50 per Workweek).

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

6 If the number of valid Requests for Exclusion identified by the Settlement
7 Administrator exceeds 5% of the total Class Members, Defendants may, but is not obligated,
8 elect to withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the
9 Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party
10 will have any further obligation to perform under this Agreement; provided, however,
11 Defendant will remain responsible for paying all Settlement Administration Expenses incurred
12 through withdrawal. Defendant must notify Class Counsel and the Court of its election to
13 withdraw not later 14 days after expiration of the Response Deadline. Late elections will have
14 no effect.

15 **19. NOTICE OF JUDGMENT**

16 In addition to any duties set out herein, the Settlement Administrator shall provide
17 notice of the Final Judgment entered in the Action by posting the same on its website for a
18 period of no less than four (4) years.

19 **20. MISCELLANEOUS PROVISIONS**

20 **A. Interpretation of the Agreement**

21 This Agreement constitutes the entire agreement between the Parties with respect to its
22 subject matter. Except as expressly provided herein, this Agreement has not been executed in
23 reliance upon any other written or oral representations or terms, and no such extrinsic oral or
24 written representations or terms shall modify, vary or contradict its terms. In entering into this
25 Agreement, the Parties agree that this Agreement is to be construed according to its terms and
26 may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and
27 enforced under the laws of the State of California, both in its procedural and substantive aspects,
28 without regard to its conflict of law provisions. Any claim arising out of or relating to the

1 Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior
2 Court of the State of California for the County of Kern, and Plaintiff and Defendants hereby
3 consent to the personal jurisdiction of the Court in the Action over it solely in connection
4 therewith. The foregoing is only limited to disputes concerning this Agreement. The Parties,
5 and each of them, participated in the negotiation and drafting of this Agreement and had available
6 to them the advice and assistance of independent counsel. As such, neither Plaintiff nor
7 Defendants may claim that any ambiguity in this Agreement should be construed against the
8 other. The Agreement may be modified only by a writing signed by counsel for the Parties and
9 approved by the Court.

10 **B. Further Cooperation**

11 The Parties and their respective attorneys shall proceed diligently to prepare and execute
12 all documents, to seek the necessary approvals from the Court, and to do all things reasonably
13 necessary to consummate the Settlement as expeditiously as possible. The Parties agree that they
14 will not take any action inconsistent with this Agreement, including, without limitation,
15 encouraging Class Members to opt out of the Settlement. In the event the Court finds that any
16 Party has taken actions inconsistent with the Settlement, including, without limitation,
17 encouraging Class Members to opt out of the Settlement, the Court may take any corrective
18 actions, including enjoining any Party from communicating regarding the Settlement on an *ex*
19 *parte* basis, issuing (a) corrective notice(s), awarding monetary, issue, evidentiary and/or
20 terminating sanctions against that Party, and/or enforcing this Agreement despite the presence of
21 opt-outs and/or objections.

22 ///

23 **C. Counterparts**

24 The Agreement may be executed in one or more actual or non-original counterparts, all
25 of which will be considered one and the same instrument and all of which will be considered
26 duplicate originals.

27 **D. Authority**

Each individual signing below warrants that he or she has the authority to execute this Agreement on behalf of the Party for whom or which that individual signs.

E. No Third-Party Beneficiaries

Plaintiffs, Participating Class Members, Aggrieved Employees, the State of California, Class Counsel, and Defendants are direct beneficiaries of this Agreement, but there are no third-party beneficiaries.

F. Deadlines Falling on Weekends or Holidays

To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday, or legal holiday, that deadline shall be continued until the following business day.

G. Jurisdiction of the Court

Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Settlement Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the settlement embodied in this Settlement Agreement and all orders and judgments entered in connection therewith.

H. Severability

In the event that one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall in no way effect any other provision if Defendants' Counsel and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

IT IS SO AGREED:

Dated: _____, 2023

TRACY HERNANDEZ
Plaintiff and Class Representative

Each individual signing below warrants that he or she has the authority to execute this Agreement on behalf of the Party for whom or which that individual signs.

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IT IS SO AGREED:

Dated: 9/14/2023, 2023


Tracy K. Hernandez-Estrada (Sep 14, 2023 05:38 PDT)
TRACY HERNANDEZ
Plaintiff and Class Representative

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Dated: 9-14-23, 2023

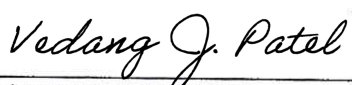

CENTRAL VALLEY RECOVERY
SERVICES INC.
Defendant
By: _____
Its: _____

Dated: 9-13-23, 2023


SHIRLEY A. KLUVER
Defendant
By: _____
Its: _____

AGREED AS TO FORM:

Dated: September 14, 2023


DAVID D. BIBIYAN
VEDANG J. PATEL
Counsel for Plaintiff TRACY HERNANDEZ,
and all others similarly situated and aggrieved

Dated: Sept 14, 2023


PAUL J. BAUER
Counsel for Defendants