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Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

GERARDO SANCHEZ, as an individual
and on behalf of all others similarly
situated,

Plaintiff,

vs.

DUTTON HOME SERVICES, LLC, a
California corporation; and DOES 1
through 100,

Defendants.

CASE NO. 22STCV01834

*[Case assigned for all purposes to the Hon.
Maren E. Nelson, Dept. 17]*

**DECLARATION OF FLETCHER W.
SCHMIDT IN SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: May 22, 2023
Time: 9:00 a.m.
Dept.: 17

Action Filed: January 14, 2022
Trial Date: None Set

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I, Fletcher W. Schmidt, declare as follows:

1. I am a Partner at the Haines Law Group, APC, and counsel for the named Plaintiff
 to Sanchez (“Plaintiff”) in the above-captioned matter. I am a member in good standing of
 of the State of California and am admitted to practice in this Court. I have personal
 dge of the facts stated in this declaration and could testify competently to them if called
 do so.

2. I am a 2012 graduate of Loyola Law School, Los Angeles, where I graduated *cum* and was awarded membership in the Order of the Coif. From August 2013 to March 2016, ed as an associate attorney at Boren, Osher & Luftman LLP. Since March 2016 I have at my current firm, Haines Law Group, APC, where, in 2018, I became a Partner.

3. During my time with Boren, Osher & Luftman LLP and Haines Law Group, APC, practice has been solely devoted to litigating plaintiff-side wage and hour class actions in Virginia state and federal court. I am currently responsible for managing a caseload of over twenty-five (25) active wage and hour class actions in which I am integrally involved in all aspects of the litigation.

4. The following is a non-exhaustive list of class action and PAGA settlements in which Plaintiff has been named as Class Counsel, and which have been granted final approval: *Julio v. [REDACTED], Inc.*, Case No. CV14-03172 AB (SHx), United States District Court, Central District of California, Honorable Judge Andre Birotte, Jr. presiding (approving an hourly rate of \$350 for work performed in 2014 and 2015); *Litt v. Western Stone & Metal Corp.*, Case No. 3:14-cv-00000-PJH, United States District Court, Northern District of California, Honorable Judge Phyllis K. Hamilton presiding (approving an hourly rate of \$350 for work performed in 2014 and 2015); *Avila v. United Towing and Transport Burbank, et al.*, Case No. BC518468, California Superior Court, County of Los Angeles, Honorable Judge Kenneth Freeman presiding (approving an hourly rate of \$350 for work performed in 2013, 2014 and 2015); *Rivera Regalado v. Jaguar Labor Contracting*, Case No. CV 130569, California Superior Court, County of San Luis Obispo, Honorable Martin J. Tangeman presiding (approving an hourly rate of \$350 for work performed in 2013, 2014 and 2015).

performed in 2014 and 2015); *Sanchez v. Res-Care, Inc.*, Case No. BC526175, California Superior Court, County of Los Angeles, Honorable John S. Wiley presiding (approving an hourly rate of \$350 for work performed in 2013, 2014 and 2015); *Rodas v. Gateways Hospital and Mental Health Center*, Case No. BC503179, California Superior Court, County of Los Angeles, Honorable Judge Amy D. Hogue presiding (approving an hourly rate of \$350 for work performed in 2014 and 2015); *Prado v. Warehouse Demo Services, Inc.*, Case No. CV14-3170 JFW (Ex), United States District Court, Central District of California, Honorable Judge John F. Walter presiding (approving an hourly rate of \$350 for work performed in 2014 and 2015); *Shaw v. Conant Auto Retail, San Diego*, Case No. 37-2014-00044052-CU-OE-CTL, California Superior Court, County of San Diego, Honorable Judge Joan M. Lewis presiding (approving an hourly rate of \$375 for work performed in 2014, 2015, and 2016); *Tirado v. Ricon Corp.*, Case No BC537042, California Superior Court, County of Los Angeles, Honorable Judge John Shepard Wiley, Jr. presiding (approving an hourly rate of \$375 for work performed in 2014, 2015, and 2016); *Tesla Motors Wage and Hour Litigation*, JCCP 4792, California Superior Court, County of Santa Clara, Honorable Peter H. Kirwan presiding (approving an hourly rate of \$375 for work performed in 2013, 2014, 2015, and 2016); *Lopez v. RM HQ LLC, et al.*, Case No. BC525592, California Superior Court, County of Los Angeles, Honorable Elihu M. Berle presiding (approving an hourly rate of \$375 for work performed in 2013, 2014, 2015, and 2016); *Horta v. Searles Valley Minerals, Inc.*, Case No. CIVDS 1507615, California Superior Court, County of San Bernardino, Honorable Donald Alvarez presiding (approving an hourly rate of \$375 for work performed in 2015 and 2016); *Mansilla v. Haeco Americas Line Services, LLC, et al*, Case No. BC615310, Superior Court of California, County of Los Angeles, Honorable Judge Elihu M. Berle presiding (approved at an hourly rate of \$425 for work performed in 2016 and 2017); *Khosravi v. Enterprise Rent-A-Car Company of Los Angeles, LLC, et al.*, Case No. 30-2016-00829923-CU-OE-CXC, Superior Court of California, County of Orange, Honorable Judge Thierry Patrick Colaw presiding (approved at an hourly rate of \$425 for work performed in 2016 and 2017); *Nieves v. Ta Chen International, Inc.*, Case No. BC609005, Superior Court of California, County of Los Angeles, Honorable Judge Kenneth R. Freeman presiding (approved at an hourly rate of \$425 for

work performed in 2016 and 2017); *Berkel v. Pride Bakeries, LLC*, Case No. 30-2017-00923148-CU-OE-CXC, Superior Court of California, County of Orange, Honorable Judge William Claster presiding (approved at an hourly rate of \$425 for work performed in 2017 and 2018); *Ruvalcaba Quiroz v. Circle M Contractors, Inc.*, Case No. 30-2016-00885065-CU-OE-CXC, Superior Court of California, County of Orange, Honorable William D. Claster presiding (approving an hourly rate of \$425 for work performed in 2016, 2017 and 2018); *Armenta, et al., v. California Friends Homes d/b/a Quaker Gardens*, Case No. 30-2016-00883282-CU-OE-CXC, Superior Court of California, County of Orange, Honorable Randall J. Sherman presiding (approving an hourly rate of \$425 for work performed in 2016, 2017 and 2018); *Sandra Zinnerman v. Tumbleweed Educational Enterprises, Inc.*, Case No. BC673708, Superior Court of California, County of Los Angeles, Honorable Maren E. Nelson presiding (approving an hourly rate of \$425 for work performed in 2016, 2017, and 2018); *Tina Arellano v. Williams Sonoma Stores, Inc.*, Case No. BC693760, Los Angeles County Superior Court, Honorable Daniel J. Buckley, presiding; *William Cuellar v. UMA Enterprises, Inc.*, Case No. BC657146, Los Angeles County Superior Court, Honorable Maren E. Nelson, presiding (approving an hourly rate of \$475 for work performed in 2017, 2018 and 2019); *Maria C. Garcia, et al. v. Simplified Labor Staffing Solutions, Inc.*, Case No. BC696898, Los Angeles County Superior Court, Honorable Elihu M. Berle, presiding (approving an hourly rate of \$475 for work performed in 2018 and 2019); *Arturo Delgado v. Spears Manufacturing Co.*, Case No. BC709665, Los Angeles County Superior Court, Honorable Maren E. Nelson, presiding (approving an hourly rate of \$595 for work performed in 2018, 2019 and 2020); *Soto v. L I Metal Systems*, Case No. 37-2017-00009607-CU-OE-CTL, San Diego County Superior Court, Honorable Timothy Taylor, presiding (approving an hourly rate of \$595 for work performed in 2017-2020); *Michael Fishback v. Paragon Framing, Inc.*, Case No. CIVDS1906610, San Bernardino County Superior Court, Honorable David Cohn, presiding (approving an hourly rate of \$595 for work performed in 2019 and 2020); *Francisco Garcia v. Searing Industries, Inc.*, Case No. CIVDS1932477, San Bernardino County Superior Court, Honorable David Cohn, presiding (approving an hourly rate of \$595 for work performed in 2019 and 2020); *Ahmad Teeba v. Brill, Inc.*, Case No. CIVDS1923242, San Bernardino County

1 Superior Court, Honorable David Cohn, presiding (approving an hourly rate of \$595 for work
2 performed in 2019-2021); *David Hasler, et al. v. Anheuser-Busch, LLC*, Case No. 19STCV00802,
3 Los Angeles County Superior Court, Honorable Daniel J. Buckley, presiding; and *Angel Ochoa*
4 *v. Fonseca Construction, Inc.*, Case No. CIVDS1928625, San Bernardino County Superior Court,
5 Honorable David Cohn, presiding (approving an hourly rate of \$595 for work performed in 2019
6 to 2021); *William Chang v. Avcorp Composite Fabrication, Inc.*, Case No. BC715159, Los
7 Angeles County Superior Court, Honorable Amy D. Hogue, presiding (approving an hourly rate
8 of \$595 for work performed in 2018 to 2021); *David Alvarado, et al. v. J.G. Boswell Company*,
9 Case No. 19STCV19033, Los Angeles County Superior Court, Honorable Daniel J. Buckley,
10 presiding (approving an hourly rate of \$595 for work performed in 2019 to 2021); *Gaudencio*
11 *Arroyo Reynoso, et al. v. Cream of the Crop Ag Service, Inc.*, Case No. VCU278847, Tulare
12 County Superior Court, Honorable Bret D. Hillman, presiding (approving an hourly rate of \$595
13 for work performed in 2019 to 2022); *Alejandra Parra v. Sixty Collective, LLC*, Case No.
14 19STCV01016, Los Angeles County Superior Court, Honorable Carolyn B. Kuhl, presiding
15 (approving an hourly rate of \$625 for work performed in 2019-2022); *Veronica Gonzalez v.*
16 *Precision Hospitality & Development, LLC*, Case No. 30-2020-01127597-CU-OE-CXC, Orange
17 County Superior Court, Honorable Randall J. Sherman, presiding (approving an hourly rate of
18 \$625 for work performed in 2020-2021); *David Montalvo v. Warehouse Services No. 4 LLC*, Case
19 No. CIVDS1931568, San Bernardino County Superior Court, Honorable David Cohn, presiding
20 (approving an hourly rate of \$625 for work performed in 2019-2022); *Steve Qawas v. Socal*
21 *Framing, Inc.*, Case No. RIC1902588, Riverside County Superior Court, Honorable Sunshin S.
22 Sykes, presiding (approving an hourly rate of \$650 for work performed in 2019-2022); *Jessica*
23 *Burrola v. Trademark Cosmetics, Inc.*, Case No. RIC2002311, Riverside County Superior Court,
24 Honorable Sunshine S. Sykes, presiding (approving an hourly rate of \$650 for work performed in
25 2020-2022); *Elmy Calderon v. Personnel Staffing Group, LLC*, Case No. VCU278910, Tulare
26 County Superior Court, Honorable David C. Mathias, presiding (approving an hourly rate of \$650
27 for work performed in 2019-2022); and *Santos Orellana v. Smarte Carte, Inc.*, Case No.

20STCV08890, Los Angeles County Superior Court, Honorable Yvette M. Palazuelos, presiding (approving an hourly rate of \$650 for work performed in 2020-2022).

5. I have also moved to certify and have received an order certifying a class action and/or conditionally certifying a collective action as Class Counsel in the following cases: *Medeiros v. Vortex Financial Management Inc.*, Case No. 30-2013-00644741-CU-OE-CXC, California Superior Court, County of Orange, Honorable Judge Gail A. Andler presiding (certifying a class of employees who were misclassified as independent contractors); *Javine v. San Luis Ambulance Service, Inc.*, Case No. CV13-07480 BRO (SSx), United States District Court, Central District of California, Honorable Judge Beverly Reid O'Connell presiding (conditionally certifying an unpaid FLSA overtime wage class); *Prado v. Warehouse Demo Services, Inc.*, Case No. CV14-3170 JFW (Ex), United States District Court, Central District of California, Honorable Judge John F. Walter presiding (certifying a rest period violation class and conditionally certifying a FLSA unpaid overtime wage class); *Bower v. Cycle Gear, Inc.*, Case No. CV14-2712 HSG, United States District Court, Northern District of California, Honorable Judge Haywood S. Gilliam, Jr. presiding (conditionally certifying an unpaid FLSA overtime wage class); *Vega v. Weatherford U.S., Limited Partnership*, Case No. CV14-1790-JLT, United States District Court, Eastern District of California, Honorable Judge Jennifer L. Thurston presiding (conditionally certifying an unpaid FLSA overtime wage class); *Galvan v. AMVAC Chemical Corporation*, Case No. 30-2014-00716103-CU-OE-CXC, California Superior Court, County of Orange, Honorable Judge William Claster presiding (certifying unpaid overtime wage class and waiting time penalty class); *Camacho v. Residential Fire Systems, Inc.*, Case No. 30-2015-00775372-CU-OE-CXC, California Superior Court, County of Orange, Honorable Judge Glenda Sanders presiding (certifying five separate classes for claims for unpaid wages, unreimbursed expenses, failure to authorize and permit rest periods, and derivative claims); *Ontiveros v. Safelite Fulfillment, Inc., et al*, Case No. CV 15-7118-DMG (RAOx), United States District Court, Central District of California, Honorable Dolly M. Gee presiding (certifying six classes of employees for rest period violations, wage statement violations, meal period violations, and overtime and double-time violations); *Staublein v. Wells Fargo Bank, National Association*, Case No.

1 CIVDS1712267, San Bernardino Superior Court, Honorable David Cohn presiding (certifying a
2 wage statement class); and *Danica N. Keich, et al. v. U.S. Healthworks, Inc., et al.*, Case No. 37-
3 2017-00015343-CU-OE-CTL, San Diego County Superior Court, Honorable Eddie C. Sturgeon,
4 presiding (certifying classes for rest period violations, meal period violations, on-call pay
5 violations, wage statement violations, and waiting time violations).

6 6. In each year from 2018 through 2022, Thomson Reuters and Los Angeles
7 Magazine recognized me as a Top Young Attorney in Southern California in the annual Rising
8 Star Edition of Super Lawyers. This is an honor awarded to no more than two-and-a-half percent
9 (2.5%) of attorneys under the age of forty in Southern California each year.

10 7. As counsel for Plaintiff, I have been intimately involved in all aspects of this
11 litigation from its inception and believe that the proposed Settlement is a fair and reasonable result
12 for the Class Members.

13 8. Defendant Dutton Home Services, LLC (“Defendant”) operates a plumbing repair
14 service in Los Angeles, California. Plaintiff was employed by Defendant as a non-exempt
15 “Plumber” from approximately February 18, 2019, to approximately March 12, 2021. Plaintiff’s
16 primary job duties consisted of traveling to client homes to conduct repairs, installations, and
17 maintenance on residential plumbing. Like all Settlement Class members, Plaintiff was subject to
18 Defendant’s wage and hour policies and practices.

19 9. On January 14, 2022, Plaintiff filed the initial Complaint in this action, alleging
20 Defendant failed to: (i) pay all overtime wages; (ii) pay all minimum wages; (iii) provide all meal
21 periods; (iv) authorize and permit all rest periods; (v) reimburse all necessary business expenses;
22 (vi) provide accurate, itemized wage statements; (vii) timely pay all final wages upon separation
23 of employment; and (viii) comply with California’s Unfair Competition law. On March 21, 2022,
24 Plaintiff filed the operative First Amended Complaint (“FAC”), adding a cause of action for civil
25 penalties under PAGA.

26 10. Plaintiff’s complaint includes claims for underpaid overtime wages due to a
27 miscalculation of the regular rate of pay and a failure to reimburse necessary cell phone expenses.
28 Through Plaintiff’s pre-mediation investigation and with additional documents and information

provided by Defendant's counsel, Plaintiff has determined that these claims add only nominal settlement value to the case. Specifically, Defendant produced evidence showing that, throughout the Class Period, Defendant's payroll system automatically adjusted employees' overtime rate to include a bonus that was earned in the pay period that overtime was worked. Defendant also made true up payments for overtime worked in prior pay periods that the bonus was earned. Additionally, Defendant confirmed that employees are provided an iPad and company cell phone for use on the job.

11. Plaintiff alleges that Defendant's timekeeping policies and/or practices resulted in an underpayment of wages, in that Class Members were required to perform work off-the-clock work. Specifically, Plaintiff alleges that Defendant encouraged Plaintiff and other employees to delay, shorten, or forego their meal periods in order to maintain a busy schedule of client appointments. Because Defendant did not account for meal periods on the schedule, Plaintiff and other employees were expected to clock out for a meal period prior to the end of the fifth hour of work but continue working. Employees were instructed to either eat their lunch in their vehicle on the way to appointments or delay the meal period until later in the day. Defendant's practice of requiring employees to clock out for meal periods but continue working led to Plaintiff and other employees not being paid for all hours actually worked. Plaintiff estimates that employees were not paid for at least two, 30-minute meal periods each workweek (resulting in 1 hour of unpaid work per week). Using the data provided by Defendant, Plaintiff's expert determined that employees earned an average hourly rate of \$20.48 during the Class Period. Assuming each of these unpaid hours are overtime hours, Plaintiff determined Defendant's potential exposure for unpaid wages as \$467,098 (15,205 workweeks x 1 unpaid hour per week x \$30.72 avg overtime rate). Plaintiff discounted Defendant's maximum exposure by 75% for the risk of non-certification and 50% for the risk of being unsuccessful on the merits or obtaining reduced damages, to arrive at an estimated exposure of \$58,387.

12. Defendant contends that it expressly prohibited off-the-clock work and always compensated employees for all hours worked. To the extent that employees clocked out for a meal period and did not actually use the time as provided, Defendant contends that it did not have actual

1 knowledge of such work and could not reasonably be expected to have known of such activity.
2 Defendant also asserts that this claim is not amenable to class certification as individualized
3 inquiries would be required to determine whether each employee performed off-the-clock work
4 on a particular shift, and whether Defendant was aware that such work was being performed.

5 13. In addition to the time spent working through meal periods, Plaintiff contends that
6 Defendant is also liable for meal period premium wages due to its failure to provide uninterrupted,
7 30-minute meal periods commencing before the end of the fifth hour of work. Plaintiff also alleges
8 Defendant failed to provide second meal periods on shifts over 10.0 hours. As discussed above,
9 Plaintiff and other employees were not provided meal periods throughout their shift due to the
10 busy schedule driving to customer homes. Instead, Plaintiff and other employees were expected
11 to eat lunch while driving to the next location or delay their meal period until later in the shift (if
12 they were able). Based on Plaintiff's expert's analysis of Defendant's records, and giving credit
13 for meal period premiums already paid, Plaintiff calculated Defendant's potential exposure for
14 meal periods at \$691,255 (27,287 first meal violations + 7,899 second meal violations (without a
15 first violation) x \$20.48 average meal premium – \$29,354 meal premiums already paid). Plaintiff
16 discounted Defendant's maximum exposure by 50% for the risk of non-certification and 50% for
17 the risk of being unsuccessful on the merits or obtaining reduced damages, to arrive at an
18 estimated exposure of \$172,814.

19 14. Defendant argues it maintains a legally-compliant meal period policy, that it has
20 always provided meal periods consistent with that policy, and that it is only required to "provide"
21 the opportunity to take meal periods, not "ensure" meal periods are taken. Defendant further
22 maintains that any meal period violations reflected in timekeeping records were the result of
23 employee choice, not Defendant's policies, thereby precluding liability. Defendant further
24 contends that employees validly waived second meal periods on shifts over 10 hours. Defendant
25 also argues individualized inquiries will be required to determine why meal periods are late, short,
26 or missed, whether there was a valid waiver, and whether a premium was paid on each such shift,
27 thereby precluding class certification of this claim.

1 15. Plaintiff alleges Defendant failed to authorize and permit rest periods throughout
2 the workday due to the busy schedule of client appointments that did not include time for 10-
3 minute rest periods. Plaintiff contends that Defendant encouraged employees to finish each job
4 as quickly as possible and immediately begin traveling to the next location. Plaintiff maintains
5 that Defendant's practice violates California law, which requires employers to authorize and
6 permit rest periods for every four hours worked, or major fraction thereof. Plaintiff's expert's
7 review of the payroll data reveals that there were 66,646 shifts worked in excess of 3.5 hours,
8 63,812 shifts worked in excess of 6.0 hours, and 18,886 shifts worked in excess of 10.0 hours.
9 Given the second meal period compliance rate (approximately 6%), Plaintiff determined he will
10 be able to prove that employees were not authorized to take at least three, uninterrupted 10-minute
11 rest periods when working shifts in excess of 10.0 hours at the same violation rate of second
12 meals. Plaintiff therefore calculated Defendant's potential exposure for rest periods at \$363,578
13 (18,886 shifts x 94% violation rate x \$20.48 average premium). Plaintiff discounted Defendant's
14 maximum exposure by 75% for risk of non-certification and 25% for risk of being unsuccessful
15 on the merits, to arrive at an estimated exposure of \$68,171.

16 16. Defendant argues it maintains a facially compliant written rest period policy, and
17 that it has always authorized and permitted rest periods in compliance with that policy. Defendant
18 also argues this claim is not amenable to class treatment, as individual inquiries would be required
19 to determine whether the employee was authorized to take rest periods on each particular shift
20 based on their schedule, resulting in an unmanageable series of mini-trials. This manageability
21 concern is especially present for the rest period claim as rest periods are not recorded.

22 17. As a result of these alleged substantive violations, Plaintiff contends that
23 Defendant is liable for derivate wage statement violations, waiting time penalties and civil
24 penalties under the PAGA. Defendant argues that the alleged wage statement violations were not
25 "knowing and intentional," and that Plaintiff could not show he "suffer[ed] injury," as required
26 by Labor Code § 226(e) for imposition of penalties. Defendant further contends that it possesses
27 strong, good faith defense to Plaintiff's underlying claims, thus precluding recovery of waiting
28 time penalties (which are only available for the "willful" failure to pay wages). Defendant also

maintains that, given its good-faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find Defendant liable for any of Plaintiff's underlying claims.

18. Based on the data provided by Defendant for mediation, 148 employees received 4,718 wage statements during the 1-year time period associated with wage statement penalties. Plaintiff therefore calculated Defendant's maximum wage statement exposure at \$464,400 (148 "initial" violations x \$50 + 4,570 "subsequent" violations x \$100). Plaintiff discounted the value of this claim by 50% for the risk of non-certification of the underlying claims and discounted 50% for a risk of being unsuccessful on the merits, for an estimated exposure of \$116,100.

19. Based on the data provided by Defendant for mediation, 155 employees separated their employment with Defendant during the 3-year time period associated with waiting time penalties. Plaintiff therefore calculated Defendant's maximum waiting time penalty exposure at \$761,825 (155 former employees x \$20.48 average hourly rate x 8 hours per day x 30 days). Plaintiff discounted the value of this claim by 50% for the risk of non-certification of the underlying claims, and 75% for a risk of being unsuccessful on the merits (including a failure to establish wilfulness), for an estimated recovery on this claim of \$95,228.

20. Assuming that Plaintiff could prove at least one underlying Labor Code violation in each pay period within the PAGA Period, Plaintiff calculates Defendant's maximum PAGA exposure at \$471,800 (4,718 pay periods at \$100 per violation). However, these penalties derived from the underlying wage and hour violations discussed above, which Defendant disputes. Plaintiff discounted the maximum figure by 75% for the risk of being unable to proceed on a representative basis due to manageability concerns and an additional 75% to account for the likelihood of this Court reducing penalties, to arrive at an estimated exposure of \$29,488.

21. Using these estimated figures for each of the claims described above, Plaintiff predicts that a projected potential recovery for the Settlement Class would be approximately \$540,188.00. The Gross Settlement Amount of \$450,000.00 represents approximately 83.3% of Plaintiff's projected potential recovery, while avoiding the further expense and risk of proceeding towards class certification and trial.

1 22. In connection with mediation, but prior to responding to formal written discovery,
2 Defendant provided Plaintiff with timekeeping and payroll data for 1/3 of the putative class who
3 worked during the Class Period. Defendant also provided the employee handbook and other
4 relevant policies in effect during the Class Period. Plaintiff, with the help of his expert who holds
5 a Ph.D. in economics, conducted an analysis of this data and created a comprehensive damages
6 model to calculate the likely exposure that Defendant faced on each claim.

7 23. On August 24, 2022, the Parties participated in a mediation with Louis Marlin,
8 Esq., a highly respected wage and hour class action mediator. During mediation, the Parties
9 exchanged divergent views on Defendant's liability and exposure valuations, their legal positions,
10 and the likelihood of certification of Plaintiff's claims. With the help of Mr. Marlin, the Parties
11 ultimately reached a class-wide settlement at the conclusion of mediation. Over the following
12 months, the Parties negotiated and executed the Settlement now before the Court for preliminary
13 approval. A true and correct copy of the Class Action and PAGA Settlement Agreement
14 ("Settlement Agreement") (based off of this Court's model agreement of the same name) is
15 attached hereto as **Exhibit 1**. A true and correct copy of the proposed Notice of Proposed Class
16 Action Settlement ("Class Notice") is attached as Exhibit A to the Settlement Agreement.

17 24. If the Court preliminarily approves this settlement, Defendant will pay a Gross
18 Settlement Amount of \$450,000.00. This Settlement is non-reversionary and Settlement Class
19 members will automatically receive their Individual Settlement Payment unless they affirmatively
20 opt-out of the Settlement. Defendant's records indicate that there are approximately 275
21 Settlement Class members who worked during the Class Period. Based on the allocations of the
22 Net Settlement Amount, participating employees will receive, on average, a payment of
23 approximately \$795.45.

24 25. As part of the Settlement, Plaintiff will apply for a service payment at the time of
25 seeking final approval of the Settlement in the total amount of \$5,000.00 for his service to the
26 Settlement Class and his general release of all claims (known or unknown) against Defendant.
27 Some of the activities Plaintiff completed in order to help procedure the Settlement include:
28 providing factual information and documents to his attorneys, identifying potential witnesses, and

1 participating in multiple meetings with his attorneys to discuss the claims and theories at issue in
2 the litigation. Additionally, Plaintiff undertook significant risks by agreeing to serve as the named
3 plaintiff in this case (as potential employers can now search his name and determine he has
4 previously sued an employer), as well as the fact that Plaintiff agreed to a general release of all
5 claims subject to a waiver of California Civil Code § 1542.

6 26. My firm will also apply for an attorneys' fee award of \$150,000.00 (one-third of
7 the GSA), and up to \$30,000.00 in verified costs. My firm incurred substantial attorneys' fees
8 conducting pre-filing investigation, retaining an expert and analyzing Plaintiff's claims,
9 conducting legal research and analysis, reviewing documents and data produced by Defendant,
10 propounding written discovery, building a comprehensive damages model, preparing for and
11 attending mediation, negotiating and preparing the long-form Settlement Agreement, preparing
12 this motion for preliminary approval, and otherwise litigating the case. My firm will also expend
13 future attorney time in attending the hearing on this Motion, overseeing the Notice process,
14 drafting the final approval motion and supporting documents, and attending the final approval
15 hearing, among other tasks.

16 27. I confirm that neither my firm nor I have any relationship, financial or otherwise,
17 with the proposed settlement administrator, CPT Group, Inc.

18 28. A true and correct copy of Plaintiff's letter to the LWDA, dated January 14, 2022,
19 which details the PAGA allegations at issue in this lawsuit is attached hereto as **Exhibit 2**.

20 29. In connection with the filing of Plaintiff's motion for preliminary approval, my
21 office provided the LWDA with the Settlement Agreement along with all moving papers. A true
22 and correct copy of the LWDA's submission confirmation is attached hereto as **Exhibit 3**.

23 I declare under penalty of perjury under the laws of California and the United States that
24 the foregoing is true and correct. Executed on January 25, 2023, at El Segundo, California.

25
26 
27 Fletcher W. Schmidt
28

EXHIBIT 1

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiff Gerardo Sanchez (“Plaintiff”) and Defendant Dutton Home Services, LLC (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1 “Action” means the Plaintiff’s lawsuit alleging wage-and-hour violations against Defendant captioned *Gerardo Sanchez vs. Dutton Home Services, LLC*, Case No. 22STCV01834 initiated on January 14, 2022, and pending in the Superior Court of the State of California, County of Los Angeles.
- 1.2 “Settlement Administrator” means CPT Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3 “Administration Expenses Payment” means the amount the Administrator will 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 “PAGA Group Members” means “all current and former non-exempt employees of Defendant in California who worked at any time between January 14, 2021, and the date of preliminary approval or November 22, 2022, whichever is sooner.”
- 1.5 “Class” means “all current and former non-exempt employees of Defendant and/or its predecessor, Dutton Plumbing, Inc., in California who worked at any time between January 14, 2018, and the date of preliminary approval or November 22, 2022, whichever is sooner.”
- 1.6 “Class Counsel” means Paul K. Haines, Fletcher W. Schmidt, Andrew J. Rowbotham, and Susan J. Perez of Haines Law Group, APC.
- 1.7 “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8 “Class Data” means Class Member identifying information in Defendant’s possession including the Class Member’s name, last-known mailing address, phone number, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods.
- 1.9 “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non- Participating Class Member who qualifies as a PAGA Group Member).

- 1.10 “Class Member Address Search” means the Settlement 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 (“NCOA”), skip traces, and direct contact by the Administrator with Class Members.
- 1.11 “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.
- 1.12 “Class Period” means the period from January 14, 2018, and the date of preliminary approval or November 22, 2022, whichever is sooner.
- 1.13 “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.14 “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.15 “Court” means the Superior Court of California, County of Los Angeles.
- 1.16 “Defendant” means named Defendant Dutton Home Services, LLC.
- 1.17 “Defense Counsel” means George W. Abele and Chris A. Jalian of Paul Hastings, LLP.
- 1.18 “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. “Final” shall mean the latest of the following dates, as applicable: (i) in the event that any party or Class Member has filed an appeal regarding the trial court’s final approval of the settlement, the date the Court of Appeal or the California Supreme Court has rendered a final ruling affirming the trial court’s final approval of the settlement without material modification, or (ii) the date that the deadline for seeking appellate review of the trial court’s final approval of the settlement has passed without the filing of a timely appeal or timely request for review.
- 1.19 “Final Approval” means the Court’s order granting final approval of the Settlement.
- 1.20 “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.21 “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.

- 1.22 “Gross Settlement Amount” means \$450,000.00 which is the total amount Defendant agrees to pay under the Settlement except as provided in Section 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment, and the Administrator’s Expenses.
- 1.23 “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.
- 1.24 “Individual PAGA Payment” means the PAGA Group Member’s pro rata share of 25% of the Gross PAGA Payment calculated according to the number of Workweeks worked during the PAGA Period.
- 1.25 “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.26 “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.27 “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.28 “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.29 “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.30 “PAGA Pay Period” means any Pay Period during which a PAGA Group Member worked for Defendant for at least one day during the PAGA Period.
- 1.31 “PAGA Period” means the period from January 14, 2021, and the date of preliminary approval, or November 22, 2022, whichever is sooner.
- 1.32 “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).
- 1.33 “PAGA Notice” means Plaintiff’s January 14, 2022, letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd. (a).
- 1.34 “Gross PAGA Payment” means the total amount of money to be paid from the Gross Settlement Amount, allocated 25% to the PAGA Group Members

(\$12,500.00) and the 75% to the LWDA (\$37,500.00), in settlement of Plaintiff's PAGA claims.

- 1.35 "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.36 "Plaintiff" means Gerardo Sanchez, the named plaintiff in the Action.
- 1.37 "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement.
- 1.38 "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.39 "Released Class Claims" means the claims being released as described in Section 6.2 below.
- 1.40 "Released PAGA Claims" means the claims being released as described in Section 6.2 below.
- 1.41 "Released Parties" means: Defendant, its past and present officers, directors, shareholders, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and its respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys, including, without limitation Dutton Plumbing, Inc.
- 1.42 "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.43 "Response Deadline" means sixty (60) calendar days after the Settlement Administrator mails the Notice to the Class Members and the PAGA Group Members, and shall be the last date on which the Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional fourteen (14) calendar days beyond the Response Deadline has expired.
- 1.44 "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.
- 1.45 "Workweek" means any week during which a Class Member worked for Defendant for at least one day during the Class Period.

2. RECITALS.

- 2.1 On January 14, 2022, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for: (1) failure to pay all overtime wages (Labor Code §§ 204, 510, 558, 1194, 1198); (2) failure to pay all minimum

wages (Labor Code §§ 1182.12, 1194, 1194.2, 1197); (3) meal period violations (Labor Code §§ 226.7, 512, 558); (4) rest period violations (Labor Code §§ 226.7, 516, 558); (5) failure to reimburse necessary business expenses (Labor Code §§ 2802, 2804); (6) wage statement violations (Labor Code § 226 *et seq.*); (7) waiting time penalties (Labor Code §§ 201-203); and (8) unfair competition (Bus. & Prof. Code § 17200 *et seq.*). On March 21, 2022, Plaintiff filed the operative First Amended Complaint (“Operative Complaint”) to add a cause of action for civil penalties under PAGA. Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint, and denies any and all liability for the causes of action alleged.

- 2.2 Pursuant to Labor Code section 2699.3, subd. (a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice.
- 2.3 On August 24, 2022, the Parties participated in an all-day mediation presided over by Louis Marlin, Esq., which led to this Agreement to settle the Action.
- 2.4 Prior to mediation, Plaintiff obtained, through informal discovery a representative sampling of timekeeping and payroll records for approximately 33% of Class Members who worked during the Class Period. Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.*, 48 Cal. App. 4th 1794, 1801 (1996) and *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 129-30 (2008) (“*Dunk/Kullar*”).
- 2.5 The Court has not granted class certification.
- 2.6 The Parties, Class Counsel and Defense Counsel represent that 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 Section 9 below, Defendant promises to pay \$450,000.00 and no more as the Gross Settlement Amount, and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Section 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or PAGA Group Members to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.
- 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 To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$5,000.00 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defendant 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 sixteen (16) court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, 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 To Class Counsel: A Class Counsel Fees Payment of not more than 1/3 of the Gross Settlement Amount, which is currently estimated to be \$150,000.00 and a Class Counsel Litigation Expenses Payment of not more than \$30,000.00. Defendant will not oppose requests for these payments provided that they 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 sixteen (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, 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 any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.
- 3.2.3 To the Administrator: An Administrator Expenses Payment not to exceed \$8,750.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than the above stated amount, the Administrator will retain the remainder in the Net Settlement Amount.
- 3.2.4 To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class

Period and (b) multiplying the result by each Participating Class Member's Workweeks.

3.2.4.1 Tax Allocation of Individual Class Payments. 1/3 of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. 2/3 of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

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

3.2.5 To the LWDA and PAGA Group Members: Gross PAGA Payment in the amount of \$50,000.00 to be paid from the Gross Settlement Amount, with 75% (\$37,500.00) allocated to the LWDA PAGA Payment and 25% (\$12,500.00) allocated to the Individual PAGA Payments.

3.2.5.1 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the PAGA Group Members' 25% share of Gross PAGA Payment (\$12,500.00) by the total number of PAGA Period Pay Periods worked by all PAGA Group Members during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. PAGA Group Members assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.2 If the Court approves Gross PAGA Payment of less than the amount requested, 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. Based on a review of its records, Defendant estimates Class Members collectively worked a total of 15,205 Workweeks as of August 24, 2022.

4.2 Class Data. Not later than ten (10) business days after the Court grants Preliminary Approval of the Settlement, Defendant 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. Defendant has a continuing duty to immediately notify Class Counsel if it discovers 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 Defendant 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 Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than thirty (30) days after the Effective Date.

4.4 Payments from the Gross Settlement Amount. Within ten (10) business days after Defendant funds 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 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 (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 Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all PAGA Group Members including Non-Participating Class Members who qualify as PAGA Group Members (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2 The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without a USPS forwarding address. Within seven (7) days of receiving a returned check

the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

4.4.3 For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

4.4.4 **The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.**

5. **[SECTION 5 MISSING IN MODEL]**

6. **RELEASES OF CLAIMS.** Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows:

6.1 **Plaintiff's Release.** Plaintiff and his or her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiff's PAGA Notice, or ascertained during the Action and released under Paragraph 6.2, below. ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, Social Security benefits, Workers' Compensation entitlement and/or benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

6.1.1 **Plaintiff's Waiver of Rights Under California Civil Code Section 1542.** For purposes of Plaintiff's Release, Plaintiff expressly waives and 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.

6.2 Release by Participating Class Members : All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from any and all federal and California state law wage-and-hour claims, rights, demands, liabilities, and/or causes of action, whether known or unknown, arising from or related to any and all claims that were asserted or could have been asserted based on the facts alleged in the Action or Plaintiff's letter to the LWDA dated January 14, 2022, including, without limitation, statutory, constitutional, contractual, and/or common law claims for unpaid wages, reimbursements, damages, unpaid costs, penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief that arose during the Class Period. Except as set forth in Section 6.3 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. The time period covered by this release will mirror the Class Period.

6.3 Release by PAGA Group Members: All PAGA Group Members are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims, demands, rights, liabilities and causes of action under the PAGA, premised on the facts, claims, causes of action or legal theories pled in the Operative Complaint in the Action (or Plaintiff's letter to the LWDA dated January 14, 2022), or which could have been alleged based on the factual allegations therein, that arose during the PAGA Period. The time period covered by this release will mirror the PAGA Period.

7. **MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with the Court's current checklist for Preliminary Approvals.

7.1 Defendant's Declaration in Support of Preliminary Approval. Sufficiently in advance of the deadline to file the Motion for Preliminary Approval, Defendant will prepare and deliver to Class Counsel a signed Declaration from Defendant and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator and Cy Pres Recipient (if applicable). In their Declarations, Defense Counsel and Defendant shall aver that they are not aware of

any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

- 7.2 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members and/or the proposed Cy Pres (if applicable); and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, the Administrator, and/or the proposed Cy Pres (if applicable); (vi) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (vii) a redlined version of the parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (viii) all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator and/or the Cy Pres Recipient. In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.
- 7.3 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval as soon as practicable 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.
- 7.4 Duty to Cooperate. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, 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.

8. SETTLEMENT ADMINISTRATION.

- 8.1 Selection of Administrator. The Parties have jointly selected CPT Group, Inc. to serve as the Administrator and verified that, as a condition of appointment, CPT Group, 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.
- 8.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports to state and federal tax authorities.
- 8.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under U.S. Treasury Regulation section 468B-1.
- 8.4 Notice to Class Members.
- 8.4.1 As expeditiously as possible after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Group Members, Workweeks, and Pay Periods in the Class Data. The Class Data shall not be provided to Class Counsel without the express written permission of Defense Counsel. However, the Administrator may provide to Class Counsel preliminary and final calculation spreadsheets so long as they do not include contact information or other identifying information for the Class Members and PAGA Members.
- 8.4.2 Using best efforts to perform as soon as possible, and in no event later than ten (10) business days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice with Spanish translation, (if applicable) substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address Database.
- 8.4.3 Not later than seven (7) days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall

conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

- 8.4.4 The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional fourteen (14) days beyond the sixty (60) days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.
- 8.4.5 If the Administrator, Defendant or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received the Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than fourteen (14) days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

8.5 Requests for Exclusion (Opt-Outs).

- 8.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than sixty (60) days after the Administrator mails the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address, and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline. Plaintiff agrees to not request exclusion from the Class Settlement.
- 8.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's

determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

8.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Sections 6.2 and 6.3 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

8.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are PAGA Group Members are deemed to release the claims identified in Section 6.3 of this Agreement and are eligible for an Individual PAGA Payment.

8.6 Challenges to Calculation of Workweeks. Each Class Member shall have sixty (60) days after the Administrator mails the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email, or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination regarding the challenges.

8.7 Objections to Settlement.

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

8.7.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to

present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than sixty (60) days after the Administrator's mailing of the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice was re-mailed).

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

8.8 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.

8.8.1 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.

8.8.2 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 seven (7) 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 (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion ("Exclusion List"); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; and (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).

8.8.3 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"). The Weekly Reports must include the Administrator's assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

8.8.4 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 final and not appealable or otherwise susceptible to challenge.

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

8.8.6 Final Report by Settlement Administrator. Within ten (10) days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements to Class Members by employee identification number only of all payments made under this Agreement. At least seven (7) days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

9. **CLASS SIZE ESTIMATES AND ESCALATOR CLAUSE.** Based on its records, Defendant estimates Class Members collectively worked a total of 15,205 Workweeks as of August 24, 2022. If the actual number of Workweeks worked as of August 24, 2022, is greater than 10% of this figure (*i.e.*, if there are 16,726 or more Workweeks worked as of August 24, 2022), Defendant agrees to increase the Gross Settlement Amount on a proportional basis over the 10% threshold (*i.e.*, if there was 15% increase in the number Workweeks worked, Defendant would increase the Gross Settlement Amount by 5%).

10. **MOTION FOR FINAL APPROVAL.** Not later than sixteen (16) court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (1), a Proposed Final Approval Order, and a proposed Judgment (collectively "Motion for Final Approval").

10.1 Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive

documents in Court no later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

- 10.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.
- 10.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.
- 10.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected as set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs, or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.
- 10.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

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

12. **ADDITIONAL PROVISIONS.**

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

12.2 **Confidentiality Prior to Preliminary Approval.** Plaintiff, Class Counsel, Defendant, and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate, and/or publicize, or cause or permit another person to disclose, disseminate, or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant, and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, with any third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

12.3 **No Solicitation.** The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be

construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

- 12.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 12.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 12.6 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 12.7 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 12.8 No Tax Advice. Neither Plaintiff, Class Counsel, Defendant, nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 12.9 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 12.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 12.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.

- 12.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 12.13 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during the Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 12.14 Use and Return of Class Data. The Class Data shall not be provided to Class Counsel. In the event the Class Data is inadvertently produced to Class Counsel, Class Counsel shall immediately destroy all paper and electronic versions of the Class Data. Class Counsel shall confirm in writing to Defense Counsel that all copies of Class Data were destroyed. Information provided to Class Counsel pursuant to Cal. Evid. Code § 1152, and all summaries and/or samples of Class Members' timekeeping and payroll records provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. '''
- 12.15 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 12.16 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 12.17 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff: Fletcher W. Schmidt of Haines Law Group, APC
2155 Campus Drive, Suite 180
El Segundo, CA 90265
fschmidt@haineslawgroup.com

To Defendant: Chris A. Jalian of Paul Hastings, LLP
515 South Flower Street, 25th Floor
Los Angeles, CA 90071
chrisjalian@paulhastings.com

- 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 California Civil Procedure Code section 583.330 to extend the date to bring a case to trial under California Civil Procedure Code section 583.310 for the entire period of this settlement process.
- 12.20 Enforcement Action. In the event that one more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Agreement or to declare rights and/or obligations under this Agreement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

[SIGNATURES BEGIN ON FOLLOWING PAGE]

DATED:

DUTTON HOME SERVICES, LLC

By: 
Name: CHRISTOPHER BARTON

Title: CHIEF FINANCIAL OFFICER, TREASURER AND SECRETARY

DATED:

PLAINTIFF GERARDO SANCHEZ

By: _____
Plaintiff and Settlement Class Representative

DATED:

PAUL HASTINGS, LLP

By: _____
George W. Abele
Chris A. Jalian
Attorneys for Defendants

DATED:

HAINES LAW GROUP, APC

By: _____
Fletcher W. Schmidt
Attorneys for Plaintiff

DATED:

DUTTON HOME SERVICES, LLC

By: _____
Name: _____
Title: _____

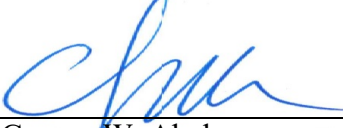
DATED: Jan 12, 2023

PLAINTIFF GERARDO SANCHEZ

By:  _____
Gerardo Sanchez (Jan 12, 2023 20:14 PST)
Plaintiff and Settlement Class Representative

DATED:

PAUL HASTINGS, LLP

By:  _____
George W. Abele
Chris A. Jalian
Attorneys for Defendants

DATED: Jan 12, 2023

HAINES LAW GROUP, APC

By:  _____
Fletcher W. Schmidt
Attorneys for Plaintiff

EXHIBIT 2

HAINES LAW GROUP
EMPLOYMENT ATTORNEYS

January 14, 2022

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Gerardo Sanchez v. Dutton Home Services, LLC, et al.*

To Whom It May Concern:

Please be advised that this law firm represents Gerardo Sanchez in claims arising from his employment with Dutton Home Services, LLC and Does 1 through 100 (collectively, “Defendants”). Mr. Sanchez is an “aggrieved employee” within the meaning of Labor Code section 2699.3 as to all of the violations alleged herein. The purpose of this letter is to comply with Labor Code § 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, “aggrieved employees” includes all of Defendants’ current and former non-exempt employees who worked for Defendants in California during the one year immediately preceding the date of this letter through the present.

Defendants operate a plumbing repair service in Los Angeles, California. Mr. Sanchez was employed by Defendants as a non-exempt employee from approximately February 2019 to approximately March 2021. Mr. Sanchez’s primary job duties consisted of traveling to client homes to conduct repairs, installations, and maintenance on residential plumbing.

During Mr. Sanchez’s employment with Defendants, Mr. Sanchez routinely worked in excess of 8 hours per workday and/or more than 40 hours per workweek but did not receive overtime compensation equal to one and one-half times his regular rate of pay for working overtime hours. Specifically, Mr. Sanchez and other aggrieved employees earned commissions (denoted on paystubs as “Performanc”), non-discretionary bonuses (denoted on paystubs as “BONUS” and “CASH BO”), and other forms of pay that cannot be excluded from the regular rate of pay as a matter of law (hereinafter “Incentive Pay”). As a result of paying Mr. Sanchez and other aggrieved employees Incentive Pay, Defendants failed to properly calculate the regular rate of pay, resulting in unpaid overtime wages.

Defendants also failed to compensate Mr. Sanchez and other aggrieved employees for all hours actually worked, resulting in unpaid minimum wages and additional unpaid

overtime wages. Specifically, Defendants mandated that non-exempt employees, including Mr. Sanchez, clock out for a meal period prior to the end of the fifth hour of work, regardless of whether they were actually provided with a meal period. As a result, employees were forced to clock out but continue working, and eat their lunch later while driving or forego lunch altogether. As a result, Mr. Sanchez and other aggrieved employees were not credited with all hours actually worked and were not paid all minimum and overtime wages earned.

Defendants also failed to provide Mr. Sanchez and other aggrieved employees with all legally-compliant meal periods due to Defendants' unlawful meal period policies/practices that failed to provide timely, duty-free 30-minute first meal periods commencing before the end of the fifth hour of work and a second duty-free, 30-minute meal period when they worked shifts in excess of 10.0 hours. As discussed above, Defendants explicitly instructed Mr. Sanchez to clock in and out for his meal periods on their timekeeping system, a cellular phone application named "Paylocity." Defendants required Mr. Sanchez to mark a meal period on the "Paylocity" application even when Defendants did not provide Mr. Sanchez with a lawful meal period. For example, Mr. Sanchez was required to report to work at 7:30am three days a week and 7:15am twice a week, and routinely worked 10-to-12-hour days, but would typically be forced to eat his lunch in 10 to 20 minutes where he could find it in his schedule, often while driving between assignments. Defendants did not permit Mr. Sanchez to take a meal period when he was in a client's home and routinely dispatched Mr. Sanchez to client homes at any time, including during Mr. Sanchez's meal periods. Defendant also instructed Mr. Sanchez that his time spent traveling to, from, and between clients counted as his meal period. Defendants' policy/practice often resulted in Mr. Sanchez and other aggrieved employees unable to take their meal periods before the commencement of the fifth hour of work, often missing their meal period altogether, and failed to provide Mr. Sanchez and other non-exempt employees with a second duty-free, 30-minute meal period when they worked shifts in excess of 10.0 hours. On occasions when Mr. Sanchez and other aggrieved employees were not provided with all lawful meal periods to which they were entitled, Defendants failed to pay Mr. Sanchez and other aggrieved employees an additional hour of premium pay at their respective regular rates of pay for each workday in which a meal period violation occurred, as required by Labor Code § 226.7.

Defendants failed to authorize and permit Mr. Sanchez and other aggrieved employees to take any duty-free 10-minute rest periods for every four hours worked, or major fraction thereof, due to Defendants' unlawful rest period policies/practices. Defendant failed to authorize and permit Mr. Sanchez and other aggrieved employees to take any rest periods whatsoever. Furthermore, Defendants failed to compensate Mr. Sanchez and other aggrieved employees with an additional hour of premium pay at their respective regular rates of pay for each workday in which a rest period violation occurred, as required by Labor Code § 226.7.

Defendants failed to maintain pay codes for the payment of meal and rest period premium payments as required by Labor Code § 226.7.

During their respective employments with Defendants, Mr. Sanchez and other aggrieved employees were required to use their personal cell phones for work, as supervisors would frequently call them on their personal cell phones for work-related communications, employees needed the navigation functions to navigate to various assignment locations, and employees were required to use personal cell phones for daily timekeeping. Despite this, Defendants failed to reimburse Mr. Sanchez and other aggrieved employees for all necessary business expenses associated with using their personal cell phones in violation of Labor Code § 2802.

As a result of Defendants' failure to pay all overtime wages, minimum wages, and meal and rest period premium wages owed, Defendants also maintained inaccurate payroll records, issued inaccurate wage statements to Mr. Sanchez and other aggrieved employees, and failed to pay all final wages owed to Mr. Sanchez and other aggrieved employees upon their respective separations from employment.

As described above, Defendants committed the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 16-2001 ("Wage Order 16"):

Overtime Violations

Defendants were required to properly pay Mr. Sanchez and other aggrieved employees for all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order 16. Wage Order 16, § 3 requires an employer to pay an employee "one and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours" per workday and/or in excess of 40 hours of work in the workweek. Wage Order 16, § 3 also requires an employer to pay an employee double the employee's regular rate of pay for work in excess of twelve hours each work day and/or for work in excess of 8 hours on the seventh consecutive day of work in the workweek. Defendants caused Mr. Sanchez and other aggrieved employees to work overtime hours but did not compensate Mr. Sanchez and other aggrieved employees at one and one-half times their regular rate of pay for such hours. Defendants also caused Mr. Sanchez and other aggrieved employees to work in excess of twelve hours in a workday but did not properly compensate Mr. Sanchez and other aggrieved employees at double their regular rate of pay for all such hours.

Minimum Wage Violations

Wage Order 16, § 4 and California Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued thereon.

Defendants failed to conform their pay practices to the requirements of the law.

This unlawful conduct includes but is not limited to all hours they were subject to Defendants' control. Accordingly, Mr. Sanchez and other aggrieved employees were not compensated for all hours actually worked as required by the California Labor Code and Wage Order 16.

Meal Period Violations

Defendants failed in their affirmative obligation to provide Mr. Sanchez and other aggrieved employees with all legally-compliant meal periods, due to Defendants' unlawful meal period policies and/or practices. As a result of the meal period violations discussed herein, Mr. Sanchez and other aggrieved are owed an additional hour of wages for each meal period violation at the employee's regular rate of compensation. *See* Labor Code section 226.7 ("If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided."); *see also id.*, sections 204, 210, 512; Wage Order 16, § 10.

Rest Period Violations

Wage Order 16, § 11 and Labor Code §§ 226.7 and 516 establish the right of employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour period worked, or major fraction thereof.

Due to Defendants' unlawful rest period policies and/or practices, Defendants failed to authorize and permit Mr. Sanchez and other aggrieved employees to take all lawful rest periods to which they were legally entitled. Despite Defendants' violations, Defendants failed to pay an additional hour of premium pay to Mr. Sanchez and other aggrieved employees at their respective regular rates of pay for each violation, as required by California Labor Code § 226.7.

Failure to Reimburse Necessary Business Expenses

Defendants required Mr. Sanchez and other aggrieved employees to incur necessary work expenses without reimbursing these employees for such necessary work expenditures, during the four years preceding the filing of this action. Defendants were subject to Labor Code § 2802, which states that "an employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or obedience to the directions of the employer." Defendants were subject to Labor Code § 2804, which states that "any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State."

Wage Statement Violations

Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Mr. Sanchez and other aggrieved employees with complete and accurate itemized wage statements that included, among other requirements, all overtime and minimum wages earned, and all meal and rest period premium wages owed, in violation of Labor Code § 226 *et seq.* Defendants' failure to furnish Mr. Sanchez and other aggrieved employees with complete and accurate, itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all overtime and minimum wages owed and all meal and rest period premium wages owed, and deprived them of the information necessary to identify the discrepancies in Defendants' reported data.

Waiting Time Penalties

Labor Code §§ 201-203 require an employer to pay all wages earned immediately at the time of separation of employment in the event the employer discharges the employee, or if the employee provides at least 72 hours of notice of his/her intent to quit. In the event the employee provides less than 72 hours of his/her intent to quit, said employee's wages become due and payable no later than 72 hours upon said employee's last date of employment. Defendants failed to timely pay Mr. Sanchez and other aggrieved employees all final wages due to them at the time of their separation, which includes, among other things, underpaid owed overtime wages and minimum wages, and meal and rest period premium wages. Further, as a matter of uniform policy and practice, Defendants continue to fail to pay aggrieved employees all earned wages at the end of employment in a timely manner pursuant to Labor Code §§ 201-203. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203. Defendants' willful failure to timely pay Mr. Sanchez and other aggrieved employees their earned wages upon separation from employment, results in a continued payment of wages up to thirty (30) days from the time the wages were due.

As an "aggrieved employee," Mr. Sanchez will initiate a civil action on behalf of himself and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Sanchez's own investigation, and on information and belief, Defendants committed and continue to commit the following Labor Code violations:

- a. Defendants violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Sanchez and other aggrieved employees all overtime compensation earned;
- b. Defendants violated Labor Code §§ 558, 1182.12, 1194, 1194.2, 1197, and 1198 by failing to pay Mr. Sanchez and aggrieved employees the statutory minimum wage for all hours worked;

- c. Defendants violated Labor Code §§ 226.7, 512, 558, and 1198 by failing to provide meal periods as required by law and failing to pay meal period premiums to Mr. Sanchez and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations;
- d. Defendants violated Labor Code §§ 226.7, 512, 558, and 1198 by failing to authorize and permit Mr. Sanchez and other aggrieved employees to take all lawful rest periods to which they are entitled, and failing to pay rest period premiums to Mr. Sanchez and other aggrieved employees at these employees' respective regular rates of compensation for rest period violations;
- e. Defendants violated Labor Code §§ 2802 and 2804 by failing to reimburse Mr. Sanchez and other aggrieved employees for all work-related expenses they incurred;
- f. Defendants violated Labor Code § 226 by failing to furnish Mr. Sanchez and other aggrieved employees with accurate and compliant itemized wage statements;
- g. Defendants violated Labor Code §§ 201-203 by failing to timely pay all final wages due to Mr. Sanchez and other aggrieved employees;
- h. Defendants violated Labor Code § 204 by failing to pay Mr. Sanchez and aggrieved employees all wages earned at least twice during each calendar month; and
- i. Defendants violated Labor Code §§ 558 and 1174 by failing to maintain accurate records on behalf of Mr. Sanchez and aggrieved employees.

Pursuant to Labor Code § 2699.3, please notify us and Defendants if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
HAINES LAW GROUP, APC



Fletcher W. Schmidt

cc: Dutton Home Services, LLC (via certified mail)

PROOF OF ACCEPTANCE (ELECTRONIC)

PRODUCED DATE: 01/15/2022

HAINES LAW GROUP:

The following is information for Certified Mail™/RRE item number:

9214 8901 9403 8363 7919 68

Our records indicate that this item was accepted by the USPS at:

SHIPMENT RECEIVED ACCEPTANCE PENDING EL SEGUNDO,CA 90245 01/14/2022

ORIGINAL INTENDED RECIPIENT:

DUTTON HOME SERVICES LLC

C/O: C T CORPORATION SYSTEM

STE 700

330 N BRAND BLVD

GLENDALE CA 91203-2336

JR



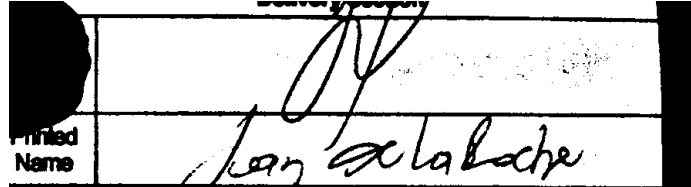
Mailer: Haines Law Group

Date Produced: 01/24/2022

ConnectSuite Inc.:

The following is the delivery information for Certified Mail™/RRE item number 9214 8901 9403 8363 7919 68. Our records indicate that this item was delivered on 01/19/2022 at 07:14 a.m. in GLENDALE, CA 91209. The scanned image of the recipient information is provided below.

Signature of Recipient :



Address of Recipient :



Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,
United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

This USPS proof of delivery is linked to the customers mail piece information on file as shown below:

DUTTON HOME SERVICES LLC
C/O: C T CORPORATION SYSTEM
STE 700
330 N BRAND BLVD
GLENDALE CA 91203-2336

Customer Reference Number: C3169844.18426116

Return Reference Number JR

EXHIBIT 3