

CASE NO. 22STCV09767 PAGA SETTLEMENT AGREEMENT AND PAGA RELEASE

This PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiff Jennifer Linares (“Plaintiff”) and defendant Toluca Lake Collective, Inc. (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means the Plaintiff’s representative Labor Code Private Attorneys General (“PAGA”) cause of action alleging wage and hour violations against Defendant captioned *Jennifer Linares v. Toluca Lake Collective, Inc.* in the lawsuit initiated on March 21, 2022, and pending in Superior Court of the State of California, County of Los Angeles.
- 1.2. “Administrator” means Phoenix Settlement Administrators, 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 approval of this Settlement.
- 1.4. “Aggrieved Employee” means a person employed by Defendant in California and classified as non-exempt who worked for Defendant during the PAGA Period.
- 1.5. “Aggrieved Employee Data” means Aggrieved Employee identifying information in Defendant’s possession including the Aggrieved Employee’s name, last-known mailing address, Social Security number, and number of PAGA Pay Periods.
- 1.6. “Aggrieved Employee Address Search” means the Administrator’s investigation and search for current Aggrieved Employee mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Aggrieved Employees.
- 1.7. “Court” means the Superior Court of California, County of Los Angeles.
- 1.8. “Defense Counsel” means Arthur D. Hodge, A Professional Law Corporation.
- 1.9. “Gross Settlement Amount” means \$100,000.00 which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administrator’s Expenses

Payment.

- 1.10. "Individual PAGA Payment" means the Aggrieved Employee's *pro rata* share of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.
- 1.11. "Judgment" means the judgment entered by the Court based upon the Final Approval.
- 1.12. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699(i).
- 1.13. "LWDA PAGA Payment" means the 75% of the Net PAGA Settlement Amount paid to the LWDA under Labor Code section 2699(i).
- 1.14. "Net PAGA Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remaining Net PAGA Settlement Amount is to be paid to the LWDA as the LWDA PAGA Payment and to the Aggrieved Employees as Individual PAGA Payments.
- 1.15. "PAGA Counsel" means Matthew Gutierrez of Gutierrez Derham Law Firm LLP, the attorneys representing the Plaintiff in the Action.
- 1.16. "PAGA Counsel Fees Payment" and "PAGA Counsel Litigation Expenses Payment" mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys' fees and expenses, respectively, incurred to prosecute the Action.
- 1.17. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.
- 1.18. "PAGA Period" means the period from December 30, 2020, to the date the Court approves the PAGA Settlement.
- 1.19. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698 *et seq.*).
- 1.20. "PAGA Notice" means Plaintiff's December 30, 2021, letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3(a).
- 1.21. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Net PAGA Settlement Amount, allocated 25% to the Aggrieved Employees and the 75% to LWDA in settlement of PAGA claims.

- 1.22. "Plaintiff" means Jennifer Linares, the named plaintiff in the Action.
- 1.23. "Approval Order" means the proposed Court Order Granting Approval of PAGA Settlement.
- 1.24. "Released PAGA Claims" means the claims being released by the Plaintiff as described in Paragraph 6 below.
- 1.25. "Released Parties" means: Defendant and each of its former and present directors, officers, shareholders, owners, attorneys, insurers, predecessors, successors, assigns.
- 1.26. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.
- 1.27. "Defendant" means named Defendant(s) Toluca Lake Collective, Inc.

2. RECITALS.

- 2.1. On March 21, 2022, Plaintiff filed the action entitled, *Jennifer Linares v. Toluca Lake Collective, Inc.* which is currently pending in the Superior Court of California for the County of Los Angeles (Case No. 22STCV09767), based on certain alleged wage and hour violations. On November 3, 2022, Plaintiff filed a First Amended Complaint ("Operative Complaint"). Plaintiff asserts four individual non-representative claims for monetary damages and equitable relief on her own behalf, which are: (1) Failure To Pay Overtime in Violation of Labor Code § 510; (2) Labor Code § 203 Waiting Time Penalty; (3) Unfair Competition Law; (4) Failure to Provide Meal and Rest Periods or Compensation in Lieu Thereof in Violation of Labor Code § 226.7 ("Individual Claims"). Plaintiff also asserts a representative Labor Code Private Attorneys General Act claim ("PAGA Claim"). The Individual Claims are not released by this Agreement. Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint and denies any and all liability for the causes of action alleged. Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in 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, Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice. The LWDA Case No. is LWDA-CM- 860720-22.
- 2.3. On October 6, 2023, the Parties participated in an half-day mediation presided over by well-respected mediators Tagore Subramaniam and Lindsey Bayman which led to an agreement in principle to settle the Action. In the next two months, Defendants provided additional sampling of documents. Defendant also provided a true and correct copy of its Profit and Loss Statement for period January 1, 2023, to October 26, 2023. Defendant also provided its CPA for an interview with Plaintiff's counsel regarding Defendant's finances, which then

led to this Agreement.

- 2.4. Prior to mediation or negotiating the Settlement, Plaintiff obtained, through formal discovery the contact information of Defendant's employees and conducted several witness interviews.
- 2.5. Defendant is aware of the following: (1) pre-lawsuit PAGA Notice submitted by third-party Williema Mamsaang to the LWDA on October 30, 2023, but Ms. Mamsaang has not yet filed a PAGA lawsuit and therefore this Settlement has no impact on that pre-lawsuit letter; and (2) Defendant Toluca Lake Collective, Inc was one of several parties (including Hezekiah Incorporated dba Hezekiah, Inc.; Los Angeles Farmers, Inc.; Jungle Boys L.A. Farmers, and Elise Management) who was named in claims pursuant to Labor Code section 2698 arising from an alleged unhealthy place of employment without adequate safety devices and safeguards, and for various alleged wage and hour violations in Case No. 22STCV14074, styled as *Rivadeneyra et al. v. Toluca Lake Collective, Inc. et al.*, which was filed after the instant case. Toluca Lake Collective, Inc. understands that the proposed settlement in this instant matter will not extinguish PAGA rights against Toluca Lake Collective, Inc. in Case No. 22STCV14074 and may not affect PAGA rights whatsoever as the settling/adjudicated defendant in the aforementioned actions may not be Toluca Lake Collective, Inc.

3. MONETARY TERMS.

- 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendant promises to pay One-Hundred Thousand Dollars (\$100,000.00) and no more as the Gross Settlement Amount. Defendant has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees 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 PAGA Counsel: A PAGA Counsel Fees Payment of not more than 33.33% of the Gross Settlement Amount and PAGA Counsel Litigation Expenses Payment of not more than \$1,000.00. Defendant will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. Plaintiff and/or PAGA Counsel will file an application or motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms.
- 3.2.2. To the Administrator: An Administrator Expenses Payment not to exceed

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\$3,500.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less than \$3,500.00, the Administrator will retain the remainder in the Net PAGA Settlement Amount.

- 3.2.3. To the LWDA and Aggrieved Employees: PAGA Penalties to be paid from the Gross Settlement Amount, with 75% allocated to the LWDA PAGA Payment and 25% allocated to the Individual PAGA Payments.

3.2.3.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.3.2. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. **NON-MONETARY TERMS.** In consideration for the settlement of the PAGA Claims, Defendant has reviewed its wage and hour policies and procedures, and tip-pooling policies for ensured compliance. Defendant shall re-issue policies to their current workforce as needed to remain compliant with current state, local, and federal laws. Notwithstanding these commitments, Defendant denies any wrongdoing, liability, or obligation related to the claims asserted and agrees to these additional measures as a prophylactic measure.

5. SETTLEMENT FUNDING AND PAYMENTS.

5.1. Aggrieved Employee Pay Periods. Based on its records, Defendant estimates that, as of the date of this Settlement Agreement, (1) there are 237 Aggrieved Employees ("Number of Aggrieved Employees") who worked an estimated 15,190 pay periods ("Number of Pay Periods") during the PAGA Period to December 15, 2023.

5.2. Aggrieved Employee Data. Within 15 days of the court approving the settlement, Defendant will simultaneously deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Aggrieved Employee 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 Aggrieved Employee Data.

5.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than 30 days after the court approves the settlement.

5.4. Payments from the Gross Settlement Amount. Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Fees Payment, and the PAGA Counsel Litigation Expenses Payment.

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

5.4.2. The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within 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 Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.

5.4.3. For any Aggrieved Employee whose 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 Aggrieved Employee.

5.4.4. The payment of Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

6. **RELEASES OF PAGA CLAIMS.** Effective on the date when Defendant fully funds the entire Gross Settlement Amount, Plaintiff agrees that on behalf of the LWDA and the group of aggrieved employees herein defined as PAGA Member(s) for the facts and theories set forth in the Plaintiff's Complaint, First Amended Complaint, or letter(s) to the LWDA, that all Aggrieved Employees are deemed to release, on behalf of themselves

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and their respective former and present representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that occurred during the PAGA Period, that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint, including but not limited to inaccurate wage statements and failure to keep accurate records, claims for tip pooling violations, failure to pay final wages, meal and rest break violations, and overtime violations.

PAGA Counsel release on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for PAGA Fees incurred in connection with the Operative Complaint and the PAGA Period facts stated in the Operative Complaint and the PAGA Notice.

- 7. MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT.** Any of the Parties may prepare and file an application or motion for approval of this Settlement. Plaintiff, however, agrees to prepare and file the motion for approval. Regardless of which party files the motion, Defendant shall file a declaration in support of the motion explaining the reasons why its financial status supports approval of settlement.

7.1 Duty to Cooperate. If the Parties disagree on any aspect of the proposed application or motion for approval of this Settlement and/or the supporting declarations and documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting via Zoom or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant the motion for approval of this Settlement or conditions its approval on any material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting via Zoom 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 Phoenix Settlement Administrators to serve as the Administrator. The Parties 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 providing 1099 forms.

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

8.4 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.

9. AGGRIEVED EMPLOYEE SIZE ESTIMATES AND ESCALATOR CLAUSE

Escalator Clause. If the Number of Aggrieved Employees or Number of Pay Periods is exceeded by more than 10% during the PAGA Period by the time of the court's order of approval of the settlement, then the Gross Settlement Amount will increase *pro rata* per additional employee or additional pay period, whichever is greater, as follows: \$250.00 per employee or \$10.00 per additional pay period, and any additional amount of settlement administration costs caused by the increased number of Aggrieved Employees.

10. CONTINUING JURISDICTION OF THE COURT.

- 10.1 Pursuant to Code of Civil Procedure § 664.6, the Parties agree that the Court may retain jurisdiction for the purpose of enforcing full performance of the terms of this PAGA Agreement. In the event that one or more of the Parties institutes any motion, legal action, or other proceeding against any other Party or Parties to enforce the provisions of this PAGA Agreement or to declare rights and/or obligations under this PAGA Agreement, the successful Party or Parties shall be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs incurred in connection with any enforcement actions.
- 10.2 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.
- 10.3 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment, the Parties 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 another party 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 PAGA Settlement Amount**.

11. ADDITIONAL PROVISIONS.

- 11.1 No Admission of Liability 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 representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement,

Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right 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).

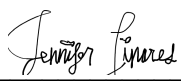
- 11.2 Integrated Agreement. Upon execution by all Parties, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 11.3 Cooperation. The Parties 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.
- 11.4 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.
- 11.5 No Tax Advice. Neither Plaintiff, PAGA 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.
- 11.6 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.
- 11.7 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 11.8 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.
- 11.9 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.

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- 11.10 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 11.11 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.
- 11.12 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.
- 11.13 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (e.g. 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.
- 11.14 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 CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.
- 11.15 Invalidity of Any Provision/Severability. Before declaring any provision of this Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. If any term or provision of this Agreement is held to be invalid or unenforceable, the remaining portions of this Agreement will continue to be valid and will be performed, construed and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the Parties, as determined from the face of the Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.
- 11.16 Parties’ Authority: The Parties as signatories hereto hereby represent that they are fully authorized to enter into this PAGA Agreement and bind the Parties to the terms and conditions hereof.

Dated: 01 / 19 / 2024



 JENNIFER LINARES



Dated: 1/18/2024

DocuSigned by:

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TOLUCA LAKE COLLECTIVE, INC.
BY: MARTIN VIVERO
CEO

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