

Kane Moon (SBN 249834)
Allen Feghali (SBN 301080)
Charlotte Mikat-Stevens (SBN 327047)
MOON & YANG, APC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125
kane.moon@moonyanglaw.com
allen.feghali@moonyanglaw.com
charlotte.mikat-stevens@moonyanglaw.com

Attorneys for Plaintiff
CESAR GARCIA

MORGAN, LEWIS & BOCKIUS LLP
Sarah Zenewicz, Bar No. 258068
One Market, Spear Street Tower
San Francisco, California 94105-1596
Telephone: +1.415.442.1000
Facsimile: +1.415.442.1001
sarah.zenewicz@morganlewis.com

Attorneys for Defendant
SAN JOSE WATER COMPANY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

CESAR GARCIA, individually, and on behalf
of all others similarly situated,

Plaintiff,

vs.

SAN JOSE WATER COMPANY, a California
corporation and DOES 1 through 10, inclusive,

Defendants.

Case Nos. 22CV396328

**STIPULATION OF CLASS AND PAGA
REPRESENTATIVE ACTION
SETTLEMENT**

Trial Date: Not Set
Date Action Filed: March 22, 2022

1 This Stipulation of Settlement (“Stipulation” or “Settlement”) is made and entered into, as
2 of the date set forth below, between Plaintiff Cesar Garcia, as an individual and as a
3 representative of the proposed Class described herein and as a representative of the State of
4 California (“Plaintiff”), and Defendant San Jose Water Company (“Defendant”), who are parties
5 to the above-captioned litigation (together, the “Parties”).

6 **1. DEFINITIONS**

7 1.1 “Action” means the above-captioned action, *Garcia v. San Jose Water Company*,
8 Santa Clara Superior Court Case No. 22CV396328.

9 1.2 “Class Counsel” means Kane Moon, Allen Feghali and Charlotte Mikat-Stevens of
10 Moon & Yang, APC.

11 1.3 “Class Data” means a confidential spreadsheet that includes, for each Settlement
12 Class Member, their name, last known address, social security number, and number of Eligible
13 Workweeks and Eligible Pay Periods or data sufficient for the Settlement Administrator to
14 determine Eligible Workweeks and Eligible Pay Periods. The Class Data shall be based on
15 Defendant’s personnel and payroll records and provided in a format acceptable to the Settlement
16 Administrator.

17 1.4 “Class Settlement Period” means the time period from March 22, 2018, through
18 the Preliminary Approval Date, subject to section 3.2.2.

19 1.5 “Class Representative” or “Plaintiff” means Plaintiff Cesar Garcia.

20 1.6 “Class Representative’s Released Claims” means any and all claims, obligations,
21 demands, actions, rights, causes of action, and liabilities against the Released Parties, of whatever
22 kind and nature, character, and description, whether in law or equity, whether sounding in tort,
23 contract, federal, state and/or local law, statute, ordinance, regulation, common law, or other
24 source of law or contract, whether known or unknown, and whether anticipated or unanticipated,
25 including all unknown claims covered by California Civil Code Section 1542, by the Class
26 Representative, arising at any time up to and including the date on which the Court enters the
27 Order of Final Approval, for any type of relief, including without limitation claims for wages,
28 premium and other forms of pay, unpaid/unreimbursed costs, penalties (including waiting time

1 penalties), general damages, compensatory damages, liquidated damages, punitive damages,
2 interest, attorneys' fees, litigation and other costs, expenses, restitution, and equitable and
3 declaratory relief. The Class Representative's Released Claims also include, but are not limited
4 to, the Released Claims as well as any other claims under any provision of the Fair Labor
5 Standards Act ("FLSA"), the California Labor Code, any applicable California Industrial Welfare
6 Commission Wage Orders, any city or county Living Wage Ordinances, and claims under state or
7 federal discrimination statutes, including, without limitation, the California Government Code;
8 the Unruh Civil Rights Act, California Civil Code; the California Constitution; the California
9 Business and Professions Code, including but not limited to Sections 17200 *et seq.*; the United
10 States Constitution; the Age Discrimination in Employment Act ("ADEA") and the Older
11 Workers Benefit Protection Act; the Uniformed Services Employment and Reemployment Rights
12 Act, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000 *et seq.*; the Civil Rights Act of
13 1991; the Family and Medical Leave Act, to the extent not prohibited by law; the Americans with
14 Disabilities Act, 42 U.S.C. § 12101 *et seq.*; the Employee Retirement Income Security Act of
15 1974, 29 U.S.C. § 1001 *et seq.*; the Equal Pay Act; the Fair Credit Reporting Act; the Employee
16 Retirement Income Security Act of 1974; the Worker Adjustment and Retraining Notification
17 Act; the Sarbanes-Oxley Act of 2002; the California Family Rights Act; and all of their
18 implementing regulations and interpretive guidelines; any and all claims for monetary recovery
19 and personal or individual relief, except as prohibited by law; and any premiums, penalties,
20 interest, punitive damages, costs, attorneys' fees, injunctive relief, declaratory relief, or
21 accounting based on any of the foregoing claims. For the avoidance of doubt, this is a complete
22 and general release to the maximum extent by law. Notwithstanding the foregoing, the release of
23 the Class Representative's Released Claims do not include any claim or right that is not waivable
24 as a matter of law.

25 1.7 "Court" means Santa Clara County Superior Court.

26 1.8 "Defendant's Counsel" means Sarah Zenewicz of Morgan, Lewis & Bockius LLP.

27 1.9 "Effective Date" means the date on which the Judgment becomes a Final
28 Judgment. For purposes of this Settlement Agreement, the final judgment "becomes final" only

1 after the Court grants the motion for final approval of the settlement and upon the latter of (i) the
2 period for filing any appeal, writ, or other appellate proceeding challenging or opposing the
3 Settlement (i.e., 60 days following entry of judgment) has elapsed without any appeal, writ, or
4 other appellate proceeding having been filed; (iii) if a timely appeal from the Judgment is filed,
5 the day after any appeal, writ or other appellate proceeding challenging or opposing the
6 Settlement has been dismissed finally and conclusively with no right to pursue further remedies
7 or relief; or (iv) if a timely appeal from the Judgment is filed, the date after any appeal, writ or
8 other appellate proceeding has upheld the Court's final order with no right to pursue further
9 remedies or relief. In this regard, it is the intention of the Parties that the Settlement shall not
10 become effective, and Defendant will not be obligated to fund this Settlement, until the Court's
11 order approving the Settlement is completely final, and there is no further recourse by an
12 appellant, objector, or intervenor who seeks to contest the Settlement.

13 1.10 "Eligible Workweeks" shall mean the workweeks that each Settlement Class
14 Member worked for Defendant in California during the Class Settlement Period.

15 1.11 "Eligible Pay Periods" shall mean the pay periods that each PAGA Member
16 worked for Defendant in California during the PAGA Settlement Period.

17 1.12 "Enhancement Award" means the amount approved by the Court to be paid to the
18 Class Representative, in recognition of his efforts in coming forward as Class Representative and
19 as consideration for a full, general, and comprehensive release of the Class Representative's
20 Released Claims, which shall be in addition to his portion of the Net Settlement Amount.

21 1.13 "Final Approval Date" means the date on which the Court enters the Order of
22 Final Approval.

23 1.14 "Final Approval Hearing" means a hearing set by the Court, to take place on a date
24 established by the Court, for the purpose of (i) determining the fairness, adequacy, and
25 reasonableness of the Stipulation terms and associated Settlement pursuant to class action
26 procedures and requirements; (ii) determining the amount of the award of attorneys' fees and
27 costs to Class Counsel; (iii) determining the amounts of the Enhancement Award to the Class
28 Representative; and (iv) entering the Judgment.

1 1.15 “Gross Settlement Amount” shall mean the amount that Defendant will pay in
2 settlement of this matter, subject to section 3.2.2 below. The Gross Settlement Amount includes
3 all awards of attorneys’ fees and costs to Class Counsel, Settlement Administration Costs,
4 Enhancement Award, the PAGA Settlement Payment (paid to the PAGA Members and the
5 LWDA), and payments to the Participating Class Members.

6 1.16 “Individual PAGA Payment” means the individual amounts paid from the PAGA
7 Payment to the individual PAGA Members for settlement of claims for civil penalties under
8 PAGA.

9 1.17 “Individual Settlement Payment” means the settlement amount due each
10 Participating Class Member from the Net Settlement Amount.

11 1.18 “LWDA” means the California Labor and Workforce Development Agency.

12 1.19 “LWDA PAGA Payment” means the payment to the LWDA from the PAGA
13 Payment for settlement of claims for civil penalties under PAGA.

14 1.20 “Net Settlement Amount” is the portion of the Gross Settlement Amount available
15 for distribution to the Participating Class Members, which shall equal the Gross Settlement
16 Amount less PAGA Payment, Court-approved attorneys’ fees and costs award to Class Counsel,
17 Settlement Administration Costs, and the Enhancement Award.

18 1.21 “Notice of Settlement” means the document provided to Settlement Class
19 Members to notify them of the settlement, a copy of which is attached hereto as **Exhibit 1**.

20 1.22 “PAGA Members” means all current and former California non-exempt employees
21 of Defendant during the PAGA Settlement Period.

22 1.23 “PAGA Payment” means the payment in settlement of all claims for PAGA
23 penalties, 75% of which will be distributed as the LWDA PAGA Payment and 25% of which will
24 be distributed as Individual PAGA Payments to the PAGA Members.

25 1.24 “PAGA Settlement Period” means all means the period from March 12, 2021,
26 through the Preliminary Approval Date.

1 1.25 “Participating Class Members” means the Settlement Class Members who do not
2 timely request to be excluded from the class portion of the settlement. No claim form is required
3 for a Settlement Class Member to become a Participating Class Member.

4 1.26 “Preliminary Approval Date” means the date the Court enters the Order
5 preliminary approving the Stipulation of Settlement and setting the Final Approval Hearing.

6 1.27 “Qualified Settlement Fund” means the Qualified Settlement Fund (“QSF”)
7 created under Internal Revenue Code Section 468B, to be overseen by the Settlement
8 Administrator.

9 1.28 “Released Class Claims” means all federal, state and local law claims, rights,
10 demands, liabilities, and causes of action, asserted in any of the complaints filed in the Action,
11 and all claims that could have been asserted in the Action arising from the same alleged facts or
12 in any PAGA letter sent by Plaintiff to the LWDA, including causes of action for (1) failure to
13 pay minimum wages for all hours worked; (2) failure to pay overtime compensation; (3) failure to
14 provide meal periods; (4) failure to authorize and permit rest breaks; (5) failure to indemnify
15 necessary business expenses; (6) failure to timely pay all final wages; (7) failure to provide
16 accurate itemized wage statements; (8) unfair and unlawful competition based on the Labor Code
17 violations alleged in (1)-(7); and (9) all claims for interest, penalties, attorneys’ fees, costs and
18 any other monetary relief based upon the claims described above and including, but not limited
19 to, pursuant to Labor Code §§ 210, 218.5, 218.6, Code of Civil Procedure §1021.5, and/or Civil
20 Code §§ 3287(b) and 3289, costs, attorneys' fees, injunctive relief, declaratory relief, or
21 accounting that are based on or related to the alleged Labor Code, Wage Order, and Business &
22 Professions Code violations, that accrue during the Class Settlement Period.

23 1.29 “Released PAGA Claims” means all claims for civil penalties under PAGA
24 asserted in any of the complaints filed in the Action, and all claims that could have been asserted
25 in the Action based on the same alleged facts in the complaints or in any PAGA letter sent by
26 Plaintiff to the LWDA, including but not limited to claims for violations of the California Labor
27 Code for unpaid minimum wages, unpaid overtime wages, unpaid meal period premiums, unpaid
28 rest period premiums, inaccurate wage statements, failure to keep accurate records, failure to

1 indemnify for all necessary business expenses, failure to timely pay wages during employment or
2 at termination and violations of Labor Code sections 201-204, 210, 226, 226.3, 227.3, 510, 512,
3 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, and 2802.

4 1.30 “Released Parties” means Defendant and any parent, subsidiary, affiliated or
5 related entities (including any companies, corporations, partnerships, alter egos, joint venturers,
6 and actual or alleged joint employers), and each of their respective past, present and future agents,
7 employees, servants, officers, directors, partners, members, trustees, fiduciaries, representatives,
8 shareholders, stockholders, attorneys, equity sponsors, (defined as a company/corporation and/or
9 partnership that is, directly or indirectly, under common control with that Defendant or any of its
10 parents and/or affiliates), divisions, assigns, predecessors, successors, insurers, and consultants.

11 1.31 “Response Deadline” means sixty (60) days after the Settlement Administrator
12 mails the Notice of Settlement to Settlement Class Members. It shall be the last date on which
13 Settlement Class Members may: (a) postmark any Opt-Out Request from the class portion of the
14 Settlement, (b) postmark any written objection to the Settlement, and (c) postmark any Eligible
15 Workweek or Eligible Pay Period Dispute. The Response Deadline for Settlement Class
16 Members to whom the Notice of Settlement is remailed after having been returned as
17 undeliverable to the Settlement Administrator shall be seventy (70) calendar days after the
18 Settlement Administrator’s initial mailing of the Notice of Settlement to Settlement Class
19 Members, or fourteen (14) days after the re-mailing, whichever is later.

20 1.32 “Settlement Administration Costs” means the costs payable from the Gross
21 Settlement Amount to the Settlement Administrator for administering this Settlement in
22 accordance with the Settlement Administrator’s responsibilities outlined in this Settlement
23 Agreement.

24 1.33 “Settlement Administrator” means Phoenix Settlement Administrators, who shall
25 be responsible for the administration of the Settlement, distribution of any amounts owed under
26 this Settlement, and matters necessarily related thereto, pursuant to the terms of this Settlement,
27 and subject to appointment by the Court.
28

1.34 “Settlement Class” or “Settlement Class Members” means all current and former California non-exempt employees of Defendant during the Class Settlement Period.

2. **RECITALS**

2.1 **Background and Procedural History**

2.1.1 On March 12, 2022, Plaintiff sent a PAGA notice to the LWDA and Defendant regarding alleged California Labor Code violations. On March 22, 2022, Plaintiff filed his Class Action Complaint in Santa Clara Superior Court alleging causes of action on behalf of himself and a putative class of Defendant’s current and former California non-exempt employees for (1) failure to pay minimum wage; (2) failure to pay overtime compensation; (3) failure to provide meal periods; (4) failure to authorize and permit rest breaks; (5) failure to indemnify necessary business expenses; (6) failure to timely pay wages at termination; (7) failure to provide accurate itemized wage statements; and (8) unfair business practices. On May 18, 2022, Plaintiff filed his First Amended Complaint adding a cause of action for civil penalties under PAGA.

2.1.2 Through substantial and extensive informal discovery, Defendant provided Class Counsel with written policies and data reflecting the Settlement Class Members’ time worked, pay, workweeks, meal premiums paid, and employment status during the Class Settlement Period.

2.1.3 The Parties participated in a private mediation with experienced wage and hour mediator Tripper Ortman on December 7, 2022, and reached an agreement on a settlement. All of the terms of the settlement are contained within this Stipulation of Settlement. At all times, the Parties’ settlement negotiations have been non-collusive, adversarial, and at arm’s length.

2.2 **Benefits of Settlement**

2.2.1 Based on their own independent investigations and evaluations, Class Counsel is of the opinion that the Settlement with Defendant for the consideration and terms set forth herein, considering the representative and class claims, and the risk of loss, is fair, reasonable, and adequate in light of all known facts and circumstances, and is in the best interests of the Settlement Class. Class Counsel is also of the opinion that the total consideration and

1 payment set forth in this Stipulation of Settlement is adequate in light of the uncertainties
2 surrounding the risk of further litigation, the possibility of losing class certification, that the
3 PAGA claim could be deemed unmanageable, and the defenses that Defendant has asserted
4 and/or could assert as to the substantive merit of the claims.

5 2.2.2 Class Counsel has weighed the monetary benefit under the Settlement to
6 the Settlement Class against the expenses and length of continued proceedings that would be
7 necessary to prosecute the Action against Defendant through class certification, through
8 manageability motions, summary judgment, trial and possible appeals. Class Counsel has also
9 taken into account the uncertain outcome and risk of any litigation, especially in complex actions
10 such as class and representative actions, as well as the difficulties and delay inherent in such
11 litigation. As a result, Class Counsel has determined that the settlement set forth in this
12 Stipulation of Settlement is in the best interests of the Settlement Class.

13 2.2.3 Defendant and the Released Parties specifically and generally deny any and
14 all liability or wrongdoing of any sort with regard to the claims alleged, make no concessions or
15 admissions of liability of any sort, and contend that for any purpose other than Settlement, the
16 Action is not appropriate for class or representative action treatment. Nonetheless, Defendant has
17 concluded that further conduct of the Action would be protracted, distracting, and expensive, and
18 that it is desirable that the Action be fully and finally settled in the manner and upon the terms
19 and conditions set forth in this Stipulation. Defendant has also taken into account the uncertainty
20 and risks inherent in any litigation. Defendant has therefore determined that it is desirable and
21 beneficial to it to settle the Action in the manner and upon the terms and conditions set forth in
22 this Stipulation.

23 2.2.4 Neither this Stipulation of Settlement, nor any document referred to in it,
24 nor any actions taken pursuant to this Stipulation of Settlement, is or should be construed as an
25 admission by Defendant of any fault, wrongdoing, or liability whatsoever. Nor should the
26 Stipulation of Settlement be construed as an admission that Plaintiff could meet any of the class
27 action requirements or that any PAGA claim would be manageable. There has been no final
28

determination by any court as to the merits of the claims asserted by Plaintiff against Defendant, as to whether a class action should be certified, or that any PAGA claim is manageable.

3. SETTLEMENT TERMS

3.1 **Conditional Class Certification.** The Parties stipulate, for settlement purposes only, to the certification by the Court of the Settlement Class. If, for any reason, the Court does not approve this Stipulation, fails to enter the Judgment, or if this Stipulation is terminated for any other reason, the Settlement Class will be decertified and Defendant shall, and hereby does, retain the right to dispute the appropriateness of class certification.

3.2 **Gross Settlement Amount**

3.2.1 Gross Settlement Amount: Defendant shall pay a non-reversionary amount not to exceed One Million, Two Hundred Thousand Dollars and Zero Cents (\$1,200,000) as the Gross Settlement Amount to resolve the Action on a class and representative basis, subject to section 3.2.2. The Gross Settlement Amount shall be used to pay, as approved by the Court, Class Counsel's attorneys' fees and costs, an Enhancement Award, Settlement Administration Costs; the PAGA Payment to the LWDA and the PAGA Members, and the Individual Settlement Payments to the Participating Class Members. Notwithstanding the foregoing, in addition to the Gross Settlement Amount, Defendant will pay the employer's portion of payroll taxes, including FICA and FUTA, on the portion of each Individual Settlement Payment allocated as unpaid wages.

3.2.2 Escalation of Gross Settlement Amount or Truncation of Class Settlement Period: The number of workweeks during the Class Settlement Period is estimated to be 89,000 as of the December 7, 2022 mediation. If the number of actual workweeks during the Class Settlement Period exceeds 10% of the estimated workweeks (i.e., exceeds 97,900 workweeks), then at Defendant's option, either (a) Class Settlement Period shall end as of the date the workweeks during the Class Settlement Period reach 97,900 workweeks; or (b) increase the Gross Settlement Amount by a pro-rata dollar value equal to the number of workweeks in excess of 97,900 workweeks (i.e., if the workweeks during the Class Settlement Period are 98,790, which is

1 11% greater than the estimate at mediation, then the Gross Settlement Amount increases by 1% to
2 \$1,212,000).

3 3.3 Allocation of Gross Settlement Amount

4 3.3.1 Class Representative Enhancement Award: The Class Representative's
5 Enhancement Award, which is in addition to the Class Representative's Individual Settlement
6 Payment from the Net Settlement Amount and Individual PAGA Payment as PAGA Members,
7 will, subject to Court approval, be paid out of the Gross Settlement Amount and will not exceed
8 \$10,000, less taxes and withholdings, for the Class Representative's services and assistance to the
9 Class. Any amount of the Class Representative Enhancement Award that is not awarded by the
10 Court shall be added to the Net Settlement Amount.

11 3.3.2 Attorneys' Fees and Costs: Class Counsel may apply to the Court for an
12 award of reasonable attorneys' fees not to exceed 33.3% of the Gross Settlement Amount,
13 \$400,000, and will seek an award of costs for reimbursement of Class Counsel's out-of-pocket
14 costs incurred up to an additional \$20,000, to be paid out of the Gross Settlement Amount.
15 Defendant reserves the right to challenge Class Counsel's requests for fees and costs in excess of
16 these amounts. The Settlement Administrator shall issue IRS Forms 1099 to Class Counsel for
17 the payments made pursuant to this section. Class Counsel shall be solely and legally responsible
18 for paying any and all applicable taxes on their fees and costs award and shall indemnify, defend,
19 and hold the Released Parties harmless from any claim or liability for taxes, penalties or interest
20 arising as a result of any payments received by Class Counsel pursuant to this Agreement. Any
21 amount of Class Counsel's requested fees and costs that is not awarded by the Court shall be
22 added to the Net Settlement Amount. Neither Class Counsel nor any other attorneys acting for, or
23 purporting to act for, the Settlement Class, Settlement Class Members, or Plaintiff, may recover
24 or seek to recover any amounts for fees, costs, or disbursements from the Defendant or the
25 Released Parties except as expressly provided herein.

26 3.3.3 Settlement Administrator Costs: The Settlement Administration Costs
27 incurred by the Settlement Administrator as a result of the procedures and processes expressly
28 required by this Stipulation shall be paid out of the Gross Settlement Amount and are estimated

1 not to exceed \$10,000. Under no circumstances will Defendant be required to contribute
2 additional funds, above and in addition to the Gross Settlement Amount, to cover any unexpected
3 Settlement Administration Costs. The Settlement Administration Costs shall include: all costs of
4 administering the Settlement, including all tax document preparation, custodial fees, and
5 accounting fees incurred by the Settlement Administrator; all costs and fees associated with
6 establishing and maintaining a Qualified Settlement Fund; all costs and fees associated with
7 preparing, issuing and mailing the Notice of Settlement and other correspondence to Settlement
8 Class Members; all costs and fees associated with communicating with Settlement Class
9 Members, Class Counsel, and Defendant's Counsel; all costs and fees associated with computing,
10 processing, reviewing, and paying the payments due under this Stipulation, and resolving
11 disputed claims; all costs and fees associated with calculating tax withholdings and payroll taxes,
12 making related payment to federal and state tax authorities, and issuing tax forms relating to
13 payments made under the Settlement; all costs and fees associated with preparing any tax returns
14 and any other filings required by any governmental taxing authority or agency; all costs and fees
15 associated with preparing any other notices, reports, or filings to be prepared in the course of
16 administering payments due under this Stipulation; and any other costs and fees incurred and/or
17 charged by the Settlement Administrator in connection with the execution of its duties under this
18 Stipulation.

19 3.3.4 Individual Settlement Payments to Participating Class Members: Each
20 Participating Class Member will be entitled to receive an Individual Settlement Payment, which
21 will be paid out of the Net Settlement Amount. The amount of each Individual Settlement
22 Payment will be calculated on a pro rata basis, based on the Eligible Workweeks each
23 Participating Class Member worked during the Class Settlement Period. There is no need for a
24 Participating Settlement Class Member to submit a claim form in order to be eligible for and to
25 receive an Individual Settlement Payment. To determine each Settlement Class Member's
26 estimated "Individual Settlement Payment," the Settlement Administrator will use the following
27 formula: estimated Individual Settlement Payment = individual Eligible Workweeks ÷ all
28 Settlement Class Member Eligible Workweeks × Net Settlement Amount. The Parties recognize

1 that the Individual Settlement Payments to be paid to Participating Class Members reflect
2 settlement of a dispute over claimed wages, interest, penalties, and other alleged damages.

3 3.3.5 PAGA Payment: A total amount of \$100,000 from the Gross Settlement
4 Amount will be allocated as the PAGA Payment to be paid as penalties under PAGA, seventy-
5 five percent (75%) of this amount (\$75,000) will be the LWDA PAGA Payment to paid to the
6 LWDA and the remaining twenty-five (25%) of this amount (\$25,000) shall be distributed to the
7 PAGA Members as Individual PAGA Payments. Any portion of the PAGA Payment not
8 approved by the Court shall be added to the Net Settlement Amount and any additional amount
9 ordered by the Court shall be paid from the Gross Settlement Amount. The 25% of the PAGA
10 Payment to be distributed to the PAGA Members as Individual PAGA Payments and shall be
11 distributed based on a pro rata share based on the number of Eligible Pay Periods each PAGA
12 Member worked during the PAGA Settlement Period.

13 3.4 **Taxation**

14 3.4.1 Tax Treatment of Individual Settlement Payments. All Individual
15 Settlement Payments to Participating Class Members shall be allocated as follows for tax
16 purposes: 20% of each Individual Settlement Payment reflects compromise of a claim for alleged
17 unpaid wages; 80% of each Individual Settlement Payment reflects compromise of a claim for
18 alleged interest and penalties. The portion of the Individual Settlement Payment attributable to
19 unpaid wages will be subject to regular and/or applicable payroll and income tax withholdings
20 (for the employee portion only), and will be reported on an IRS Form W-2. Participating Class
21 Members will each indemnify and hold harmless the Released Parties for any taxes due or owing
22 by them with respect such payments and/or any penalties and interest owed by the Released
23 Parties for the failure to withhold with respect to such payments. The Settlement Administrator
24 shall make appropriate tax withholdings from the portion of each Individual Settlement Payment
25 designated as unpaid wages, and shall pay the employer portion of payroll taxes with funds
26 separate from the Gross Settlement Amount to be furnished by Defendant. Participating Class
27 Members will be responsible for paying all other taxes due on their Individual Settlement
28 Payments. Other than as set forth above, the Settlement Administrator will not make any

1 deductions, withholdings, or additional payments, including without limitation, medical or other
2 insurance payments or premiums, employee 401(k) contributions or matching employer
3 contributions, wage garnishments to the extent permitted by law, or charity withholdings, from or
4 with respect to the Individual Settlement Payments, and entry of the Order of Final Approval by
5 the Court shall be deemed authority not to make any such deductions, withholdings, or additional
6 payments.

7 3.4.2 Tax Treatment of Individual PAGA Payments: All Individual PAGA
8 Payments shall be allocated as 100% penalties, for which a 1099 will be issued if required.
9 PAGA Members will be responsible for paying all other taxes due on their Individual PAGA
10 Payments. PAGA Members will be responsible for paying all taxes due on their Individual
11 PAGA Payments. The Settlement Administrator will not make any deductions, withholdings, or
12 additional payments, including without limitation, medical or other insurance payments or
13 premiums, employee 401(k) contributions or matching employer contributions, wage
14 garnishments to the extent permitted by law, or charity withholdings, from or with respect to the
15 Individual PAGA Payments.

16 3.4.3 Circular 230 Disclaimer: Each Party to this Stipulation (for purposes of
17 this section, the “acknowledging party” and each Party to this Stipulation other than the
18 acknowledging party, an “other party”) acknowledges and agrees that (1) no provision of this
19 Stipulation, and no written communication or disclosure between or among the Parties or their
20 attorneys and other advisers, is or was intended to be, nor shall any such communication or
21 disclosure constitute or be construed or be relied upon as, tax advice within the meaning of
22 United States Treasury Department Circular 230 (31 CFR Part 10, as amended); (2) the
23 acknowledging party (a) has relied exclusively upon his, her, or its own, independent legal and
24 tax counsel for advice (including tax advice) in connection with this Agreement, (b) has not
25 entered into this Stipulation based upon the recommendation of any other party or any attorney or
26 advisor to any other party, and (c) is not entitled to rely upon any communication or disclosure by
27 any attorney or adviser to any other party to avoid any tax penalty that may be imposed on the
28 acknowledging party; and (3) no attorney or adviser to any other party has imposed any limitation

1 that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of
2 whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax
3 treatment or tax structure of any transaction, including any transaction contemplated by this
4 Stipulation.

5 **3.5 No Effect on Employee Benefits.** Neither the Settlement nor any amounts paid
6 under the Settlement will modify any previously credited hours or service under any employee
7 benefit plan, policy, or bonus program sponsored by the Released Parties. Such amounts will not
8 form the basis for additional contributions to, benefits under, or any other monetary entitlement
9 under the Released Parties' sponsored benefit plans, policies, or bonus programs. The payments
10 made under the terms of this Stipulation shall not be applied retroactively, currently, or on a
11 going forward basis, as salary, earnings, wages, or any other form of compensation for the
12 purposes of the Released Parties' benefit plans, policies, or bonus programs. The Released
13 Parties retain the right to modify the language of their benefit plans, policies and bonus programs
14 to effectuate this intent, and to make clear that any amounts paid pursuant to this Settlement are
15 not for "hours worked," "hours paid," "hours of service," or any similar measuring term as
16 defined by applicable plans, policies and bonus programs for purposes of eligibility, vesting,
17 benefit accrual, or any other purpose, and that additional contributions or benefits are not required
18 by this Stipulation of Settlement.

19 **3.6 Releases**

20 **3.6.1 Class Representative's Release.** Effective on the date when Defendant
21 fully funds the Settlement, the Class Representative shall be deemed to have fully, finally, and
22 forever released the Released Parties from all Class Representative's Released Claims through the
23 Final Approval Date. The Class Representatives may hereafter discover claims or facts in
24 addition to, or different from, those which he now knows or believes to exist, but Class
25 Representative expressly agrees to fully, finally and forever settle and release any and all claims
26 against the Released Parties, known or unknown, suspected or unsuspected, which exist or may
27 exist on behalf of or against the other at the time of execution of this Agreement. The Class
28 Representative shall be deemed to have expressly waived and relinquished, to the fullest extent

1 permitted by law, the provisions, rights, and benefits he may otherwise have had relating to the
2 Class Representative's Released Claims pursuant to Section 1542 of the California Civil Code,
3 which provides as follows:

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

9 Notwithstanding the foregoing, Class Representative does not waive or release any claim which
10 cannot be waived or released by private agreement or law. Class Representative does not waive
11 or release his worker's compensation claims. Further, nothing in this Agreement shall prevent
12 Class Representative from filing a charge or complaint with, or from participating in, an
13 investigation or proceeding conducted by the SEC, OSHA, EEOC, DFEH, NLRB or any other
14 federal, state or local agency charged with the enforcement of any employment or other
15 applicable laws. Class Representative, however, understands that by signing this Agreement, he
16 waives the right to recover any damages or to receive other relief in any claim or suit brought by
17 or through the EEOC, the DFEH or any other state or local deferral agency on his behalf to the
18 fullest extent permitted by law, but expressly excluding any monetary award or other relief
19 available from the SEC/OSHA, including an SEC/OSHA whistleblower award, or other awards
20 or relief that may not lawfully be waived.

21 3.6.2 Participating Class Member Release. Effective on the date when
22 Defendant fully funds the Settlement, all Participating Class Members fully and finally release the
23 Released Parties from the Released Claims that arose during the Class Settlement Period.

24 3.6.3 PAGA Member Release. Effective on the date when Defendant fully funds
25 the Settlement, Plaintiff, as representative of the State of California and on behalf of the LWDA
26 and as representatives of the PAGA Members, fully and finally releases the Released Parties from
27 the PAGA Released Claims for the PAGA Settlement Period.

28 **4. APPROVAL OF SETTLEMENT, NOTICE TO CLASS AND ADMINISTRATION**

1 **4.1 Preliminary Approval**

2 4.1.1 Class Counsel shall submit to the Court this Stipulation of Settlement and
3 exhibits thereto for preliminary approval by the Court. Class Counsel will prepare and file the
4 motion for preliminary approval and supporting papers for the Court, subject to Defendant's prior
5 review and approval. Plaintiff will provide the motion for preliminary approval to Defendant for
6 its review and approval at least seven days before filing.

7 4.1.2 Pursuant to California Labor Code § 2699(I), concurrently with the filing
8 of the motion for preliminary approval, Plaintiff will provide notice of the proposed Settlement to
9 the LWDA.

10 4.1.3 The Court's preliminary approval of this Settlement shall be embodied in
11 an order certifying the Class for settlement purposes only, preliminarily approving the Settlement
12 and providing for Notice of Settlement to be mailed to the Class in materially the same format
13 attached hereto as **Exhibit 1**, and which will also set the date for the Final Approval Hearing.
14 The Notice of Settlement shall advise Settlement Class Members of their options, which include
15 filing an Opt-Out Request to the class settlement; filing an objection to the Settlement and
16 receiving an Individual Settlement Payment and an Individual PAGA Payment (if applicable); or
17 taking no action and receiving an Individual Settlement Payment and an Individual PAGA
18 Payment (if applicable).

19 **4.2 Notice**

20 4.2.1 Delivery of Class Data: No later than thirty (30) calendar days after the
21 Preliminary Approval Date, Defendant shall provide the Class Data to the Settlement
22 Administrator. The Settlement Administrator shall maintain the Class Data, and all data
23 contained within the Class Data, as private and confidential and shall not disclose such data to
24 any persons or entities, unless otherwise required by law. The information in the Class Data is
25 being supplied solely for purposes of the administration of the settlement and cannot be used by
26 the Settlement Administrator or any agent or representative of the Settlement Administrator for
27 any other purpose. Upon receipt of the Class Data, the Settlement Administrator shall check with
28

1 the U.S. Postal Service National Change of Address Database and update any addresses for the
2 Settlement Class Members.

3 4.2.2 Notice By First-Class Mail. Within fourteen (14) calendar days of the
4 receipt of the Class Data, the Settlement Administrator will send via United States first class mail
5 the Notice of Settlement to the Settlement Class Members. If any Notice of Settlement is
6 returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall run
7 a skip-trace using that Settlement Class Member's social security number in an effort to attempt
8 to ascertain the current address of the Settlement Class Member. If such an address(es) is
9 ascertained, the Settlement Administrator shall re-mail the Notice of Settlement within ten (10)
10 calendar days. If alternative addresses are obtained for a Settlement Class Member, the
11 Settlement Administrator shall send the Notice of Settlement to up to two (2) alternative
12 addresses.

13 4.3 **Opt-Out Requests**

14 4.3.1 Settlement Class Members, except for the Class Representative, will have
15 until the Response Deadline within which to opt out of the class portion of this Settlement;
16 however, exercising this option has no effect on the PAGA portion of this settlement, PAGA
17 Members will be mailed an Individual PAGA Payment and be bound by the release of the
18 Released PAGA Claims regardless of whether they opt out of the class settlement. Settlement
19 Class Members who want to opt out must timely submit a signed and dated written request to be
20 excluded from the class portion of the Settlement to the Settlement Administrator ("Opt-Out
21 Request"). The Opt-Out Request must be postmarked on or before the Response Deadline,
22 include the case name and number, the Settlement Class Member's name, address, and last four
23 of their social security number, must be signed by the Settlement Class Member, and must
24 reasonably communicate the Settlement Class Member's election to be excluded from the class
25 Settlement.

26 4.3.2 Settlement Class Members who do not timely submit an executed Opt-Out
27 Request shall be deemed a Participating Class Member and bound by this Settlement including
28 the Participating Class Member Release. Settlement Class Members who timely submit an

1 executed Opt-Out Request will not be bound by the Participating Class Member Release and will
2 not receive an Individual Settlement Payment. The Notice of Settlement shall advise Settlement
3 Class Members of their ability to opt-out of the class portion of the Settlement and of the
4 consequences thereof, and further inform them that they cannot opt out of the PAGA settlement.
5 Neither the Parties nor any of their counsel will solicit any Settlement Class Member to submit an
6 Opt-Out Request.

7 4.3.3 If a Settlement Class Member submits both an Opt-Out Request and an
8 Objection within the Response Deadline, then the Opt-Out Request will be deemed valid and the
9 Objection invalid and the individual will not be deemed a Participating Class Member.

10 4.4 **Objections.** Participating Class Members, except for the Class Representative,
11 may object to the Settlement in person at the Final Approval Hearing and/or in writing.
12 Participating Class Members, except for the Class Representative, will have until the Response
13 Deadline to mail a written objection to the Settlement and a notice of intent to appear at the Final
14 Approval Hearing. All written objections, supporting papers and/or notices of intent to appear at
15 the Final Approval Hearing must (a) clearly identify the case name and number, (b) be submitted
16 to the Court either by mailing the objection to: Clerk of the Court, Superior Court of California,
17 County of Santa Clara, 191 N. 1st Street, San Jose, California 95113, or by filing in person at the
18 same location; (c) also be mailed to Class and Defendants' Counsel and (d) be filed or
19 postmarked on or before the Response Deadline. The Parties and their counsel agree that they
20 will not solicit, encourage, counsel or advise any individual to object to the Settlement.

21 4.5 **Eligible Workweek and Eligible Pay Period Disputes.** Participating Class
22 Members and PAGA Members may dispute their Eligible Workweeks and Eligible Pay Periods if
23 they believe they were employed for more Eligible Workweeks or Eligible Pay Periods in the
24 Class Settlement Period or PAGA Settlement Period than stated on their Notice of Settlement.
25 Participating Class Members and PAGA Members may do this by submitting information to the
26 Settlement Administrator in writing no later than the Response Deadline. The Settlement
27 Administrator will jointly work with Class Counsel and Defendant's Counsel to resolve the
28 dispute in good faith. If the Parties cannot agree on the Eligible Workweeks or Eligible Pay

1 Periods to be credited to that Participating Class Member or PAGA Member, the Court shall
2 make the final decision based on the information presented by the individual and the Parties.

3 **4.6 Certification Reports by the Settlement Administrator.** The Settlement
4 Administrator will, on a weekly basis during and for a reasonable period following distribution of
5 the Notice of Settlement, provide updates to Class Counsel and Defendant's Counsel as to the
6 number of persons in the Settlement Class who submitted (i) valid Opt-Out Requests; (ii) written
7 Objections, and (iii) Eligible Workweeks or Eligible Pay Period disputes. All written objections
8 shall be provided to the Parties' counsel within 2 days of receipt by the Settlement Administrator.
9 To the extent practicable, the weekly updates shall also provide updated data on the extent of
10 Notices of Settlement that are returned undeliverable and any re-mailing efforts.

11 **4.7 Nullification of Settlement.** Defendant shall have the sole right to void and
12 withdraw from this Agreement if at any time prior to the Final Approval Date: (a) five percent
13 (5%) or more of all Settlement Class Members submit timely and valid Opt-Out Requests; or (b)
14 the Settlement is construed in such a fashion that Defendant would be required to pay more than
15 the Gross Settlement Amount, exclusive of Defendant's share of the employer payroll taxes; or
16 (c) the Court does not certify the Settlement Class, or does not certify a class releasing all of the
17 Released Class Claims defined in this Agreement, or does not approve the PAGA settlement
18 including the release of the Released PAGA Claims, or otherwise makes an order inconsistent
19 with any of the material terms (as determined by Defendant) of this Agreement; (d) any pending
20 litigation or litigation filed prior to the Final Approval Date in any way prevents this Agreement
21 from resolving all claims identified in the Class Representative's Released Claims, Released
22 Class Claims and Released PAGA Claims, as described here; or (e) Plaintiff or Class Counsel
23 materially breach this Agreement.

24 **4.8 Final Approval and Entry of Final Judgment**

25 **4.8.1** Prior to the Final Approval Hearing, Plaintiff will move the Court for entry
26 of an "Order of Final Approval" and associated entry of Judgment: (a) certifying the Settlement
27 Class for Settlement purposes only, (b) finding the Settlement fair, reasonable, adequate, and in
28 the best interests of the Participating Class Members, (c) approving the PAGA Payment to the

1 LWDA and the PAGA Members; (d) approving Class Counsel's application for an award of
2 attorneys' fees and costs, (e) approving the Class Representative's application for an
3 Enhancement Award, (f) approving the payment of reasonable Settlement Administration Costs,
4 and (g) releasing and barring any further Released Class Claims by Participating Class Members
5 and Released PAGA Claims by or on behalf of the PAGA Members. Plaintiff will provide the
6 motion for final approval to Defendant for its review and approval at least seven days before
7 filing. The Parties and their respective counsel shall make all reasonable efforts to secure entry of
8 the Order of Final Approval. The proposed Order of Final Approval and the associated proposed
9 Judgment shall be filed with the Court with the motion for final approval, or as otherwise directed
10 by the Court.

11 4.8.2 Class Representative and Class Counsel shall be responsible for justifying
12 the amount of the Enhancement Award and attorneys' fees and costs to the Court, and they agree
13 to submit, as appropriate, the necessary materials to justify these payments. If the Court (or any
14 appellate court) awards less than the amount requested for attorneys' fees and/or costs, or less
15 than the amount requested for the Enhancement Award for the Class Representative, only the
16 awarded amounts shall be paid and shall constitute satisfaction of the obligations of Defendant
17 under this Stipulation.

18 4.8.3 If an appeal results in an order materially modifying, setting aside, or
19 vacating any portion of the Stipulation, with the exception of any modification of the amount of
20 attorneys' fees or costs to be paid to Class Counsel, or the amount of the Enhancement Award
21 paid to the Class Representative, each party adversely impacted by the order shall have the right
22 to treat such order as an event preventing Final Approval. To exercise this right, the party must
23 inform the other party and the Settlement Administrator, in writing, of the exercise of this right,
24 within ten (10) calendar days of receiving notice of any order modifying, setting aside, or
25 vacating any portion of the Stipulation. Before any Party elects to exercise its right to treat such
26 order as an event permanently preventing Final Approval, that Party must meet and confer in
27 good faith with the other Party to determine if an agreement can be reached modifying this
28 Settlement to the mutual satisfaction of the Parties.

1 4.8.4 If the Final Approval does not occur, or if this Stipulation is terminated or
2 canceled pursuant to its terms, the Parties to this Stipulation shall be deemed to have reverted to
3 their respective status as of the date and time immediately prior to the execution of this
4 Stipulation. In such an event, if the Stipulation is not approved by the Court substantially in the
5 form agreed to by the Parties, or if the Settlement set forth in the Stipulation is terminated,
6 cancelled, declared void, or fails to become effective in accordance with its terms, or if the
7 Judgment does not become a Final Judgment, or if the Final Approval Date does not occur, this
8 Stipulation (except for those provisions relating to non-admission, denial of liability set forth
9 herein, and the confidentiality agreements entered into by the Parties) shall be deemed null and
10 void, its terms and provisions shall have no further force and effect and shall not be used in this
11 Action or in any other proceeding for any purpose, and any Judgment or order entered by the
12 Court in accordance with the terms of the Stipulation shall be treated as vacated, *nunc pro tunc*.
13 Notwithstanding any other provision of this Stipulation, no order of the Court, or modification or
14 reversal on appeal of any order of the Court, reducing the amount of any attorneys' fees or costs
15 to be paid by Defendant to Class Counsel, or reducing the amount of the Enhancement Award
16 paid to the Class Representative, shall constitute grounds for cancellation or termination of the
17 Stipulation, or grounds for limiting any other provision of the Judgment.

18 **4.9 Funding and Distribution of the Settlement Proceeds**

19 4.9.1 Within fifteen (15) calendar days after the Effective Date, Defendant shall
20 pay the Gross Settlement Amount into the Qualified Settlement Fund set up, held, and controlled
21 by the Settlement Administrator.

22 4.9.2 Within fifteen (15) calendar days after Defendant funds the Qualified
23 Settlement Fund, the Settlement Administrator shall issue Individual Settlement Payments to
24 Participating Class Members, Individual PAGA Payments to the PAGA Members, the LWDA
25 PAGA Payment to the LWDA, the Court-approved attorneys' fees and costs to Class Counsel,
26 and the court-approved Enhancement Award to the Class Representative.

27 4.9.3 The Settlement Administrator shall keep counsel for the Parties apprised of
28 all distributions from the Qualified Settlement Account and upon completion of administration of

1 that portion of the Settlement, the Settlement Administrator shall provide written certification,
2 under penalty of perjury, of such completion to the Court and counsel for all Parties.

3 4.9.4 Upon completion of administration of the Settlement, the Settlement
4 Administrator shall provide written certification, under penalty of perjury, of such completion to
5 the Court, Class Counsel and Defendant's Counsel.

6 4.10 **Uncashed Checks.** After one hundred and eighty (180) calendar days of issuance,
7 funds from undeposited Individual Settlement Payment and Individual PAGA Payment checks
8 will be held by the Settlement Administrator. If a Participating Class Member or PAGA Member
9 does not cash or deposit his or her settlement payment check(s) within one-hundred eighty (180)
10 calendar days of issuance, the Stipulation of Settlement, including its release, will be binding on
11 that Participating Class Member or PAGA Member, and the amount of that uncashed settlement
12 payment shall be transmitted to the State of California, to be held and disposed of by the
13 Controller in accordance with California's Unclaimed Property Law for the benefit of the
14 Participating Class Member and PAGA Member who did not cash the settlement checks until
15 such time that they claim their property. The Parties agree that this disposition results in no
16 "unpaid residue," as the entire Net Settlement Amount will be paid out to Participating Class
17 Members, whether or not they timely cash their Individual Settlement Payments.

18 5. **MISCELLANEOUS PROVISIONS**

19 5.1 **This Settlement is Fair, Adequate and Reasonable.** The Parties believe this
20 Settlement is a fair, adequate and reasonable settlement of the Lawsuits and have arrived at this
21 Settlement in arms-length negotiations, taking into account all relevant factors, present and
22 potential.

23 5.2 **Invalidity of Any Provision.** Before declaring any provision of this Settlement
24 Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest
25 extent possible consistent with applicable precedents so as to define all provisions of this
26 Settlement Agreement valid and enforceable. Should the Court deem any clause or provision of
27 this Agreement be invalid, illegal, or unenforceable, it shall first attempt to modify or reform it as
28 minimally necessary to be valid, lawful, and enforceable.

1 **5.3 No Admission.** Neither the acceptance nor the performance by Defendant of the
2 terms of this Stipulation, nor any of the related negotiations or proceedings, is or shall be claimed
3 to be, construed as, or deemed to be, an admission by Defendant of the truth of any of the
4 allegations in the Complaint, the representative character of the Action, the validity of any of the
5 claims that were or could have been asserted by Plaintiff, Settlement Class Members and/or
6 PAGA Members in the Action, or of any liability or guilt of Defendant or the Released Parties in
7 the Action. Nothing in this Stipulation shall be construed to be or deemed an admission by
8 Defendant of any liability, culpability, negligence, or wrongdoing toward Plaintiff, the Settlement
9 Class Members, or any other person, and Defendant specifically disclaims any liability,
10 culpability, negligence, or wrongdoing toward Plaintiff, the Settlement Class Members, PAGA
11 Members and any other person. Each of the Parties has entered into this Stipulation with the
12 intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and
13 contingencies.

14 **5.4 Cooperation.** The Parties agree to cooperate fully with one another to accomplish
15 and implement the terms of this Settlement. Such cooperation shall include, but not be limited to,
16 execution of such other documents and the taking of such other action as may reasonably be
17 necessary to fulfill the terms of this Settlement. The Parties to this Settlement shall exercise
18 reasonable efforts, including all efforts contemplated by this Settlement and any other efforts that
19 may become necessary by Court order, or otherwise, to effectuate this Settlement and the terms
20 set forth herein.

21 **5.5 Privacy of Documents and Information.** Plaintiff and Class Counsel agree that
22 none of the documents and information provided to them by Defendant in connection with the
23 Action and this Settlement shall be used for any purpose (including in any other litigation) other
24 than settlement of the Action.

25 **5.6 Notices.** Unless otherwise specifically provided herein, all notices, demands, or
26 other communications given hereunder shall be in writing and shall be deemed to have been duly
27 given as of the third business day after mailing by United States certified mail, return receipt
28 requested, addressed as follows:

1 **To the Class Counsel:**

2 Kane Moon
3 Allen Feghali
4 Charlotte Mikat-Stevens
5 Moon & Yang, APC
6 1055 W. Seventh St., Suite 1880
7 Los Angeles, California 90017

8 **To Defendant:**

9 Sarah Zenewicz
10 Morgan, Lewis & Bockius LLP
11 One Market, Spear Street Tower
12 San Francisco, California 94105-1126

13 5.7 **Drafting.** The Parties hereto agree that the terms and conditions of this
14 Stipulation of Settlement are the result of lengthy, intensive, arm's-length negotiations between
15 the Parties and that this Stipulation shall not be construed in favor of or against any party by
16 reason of the extent to which any party or its counsel participated in the drafting of this
17 Stipulation.

18 5.8 **Publicity.** Neither Plaintiff nor Class Counsel shall issue any press release or
19 announcement of any kind related in any way to the settlement. Plaintiff and Class Counsel agree
20 that, prior to seeking preliminary approval of the settlement, they will keep the terms of the
21 settlement confidential. From and after preliminary approval of the settlement, Plaintiff and Class
22 Counsel may: (1) as required by law; (2) as required under the terms of the settlement; or (3) as
23 required under counsel's duties and responsibilities as class counsel, comment regarding the
24 specific terms of the settlement. In all other cases, Plaintiff and Class Counsel agree to limit their
25 statements regarding the terms of the settlement, whether oral, written or electronic (including the
26 world wide web), to say the Action has been resolved and that Plaintiff and Class Counsel are
27 satisfied with the settlement terms. Nothing in this Paragraph is intended to interfere with Class
28 Counsel's duties and obligations to faithfully discharge their duties as Class Counsel, including
29 but not limited to, communicating with Settlement Class Members regarding the settlement, and
30 nothing shall prohibit Class Counsel from referring to the settlement in adequacy of counsel
31 declarations or related court filings.

1 **5.9 No Exclusion by Class Representative.** The Class Representative, by signing
2 this Stipulation, is bound by the terms herein and further agrees not to request to be excluded
3 from the Settlement and not to object to any terms of this Stipulation. Any such request for
4 exclusion or objection shall therefore be void and of no force or effect. Defendant, Class
5 Counsel, and the Class Representative waive their rights to file an appeal, writ, or any challenge
6 whatsoever to the terms of this Stipulation, except either Party may appeal in the event an
7 objector's objection is upheld by the trial court.

8 **5.10 Modification.** This Stipulation may not be changed, altered, or modified, except
9 in writing signed by the Parties hereto and approved by the Court. This Stipulation may not be
10 discharged except by performance in accordance with its terms or by a writing used by the Parties
11 hereto.

12 **5.11 Binding on Successors.** This Stipulation shall be binding upon and inure to the
13 benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
14 successors, and assigns.

15 **5.12 Execution in Counterparts.** This Stipulation shall become effective upon its
16 execution by all of the undersigned. The Parties may execute this Stipulation in counterparts, and
17 execution of counterparts shall have the same force and effect as if all Parties had signed the same
18 instrument.

19 **5.13 Jurisdiction.** The Court shall retain jurisdiction with respect to the
20 implementation and enforcement of the terms of the Stipulation, and all Parties hereto submit to
21 the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied
22 in the Stipulation. Any action to enforce this Stipulation shall be commenced and maintained
23 only in the Court.

24 **5.14 Headings.** Paragraph titles or captions contained in the Stipulation are inserted as
25 a matter of convenience and for reference, and in no way define, limit, extend, or describe the
26 scope of this Stipulation, or any provision thereof.

27 IN WITNESS WHEREOF, this Stipulation of Settlement is executed by the Parties and
28 their duly authorized attorneys, as of the day and year herein set forth.

1 **AGREED AND UNDERSTOOD.**

2
3
4 DATED: March 8, 2023


Cesar Garcia (March 8, 2023 PST)

Cesar Garcia

SAN JOSE WATER COMPANY

By: _____

7 DATED: _____, 2023

Willie Brown

Its: Vice President, General Counsel and
Corporate Secretary

9
10 **APPROVED AS TO FORM:**

MOON & YANG, APC

11
12 Dated: March 8, 2023

By: Charlotte Mikat-Stevens

Kane Moon

Allen Feghali

Charlotte Mikat-Stevens

Counsel for Plaintiff

MORGAN, LEWIS & BOCKIUS LLP

13
14
15
16
17 Dated: _____

By: _____

Sarah Zenewicz

Attorneys for Defendant

1 **AGREED AND UNDERSTOOD.**

2

3

4 DATED: _____, 2023

Cesar Garcia

5 SAN JOSE WATER COMPANY

DocuSigned by:

Willie Brown

6 March 7, 2023 | 2:37 PM PST

19C2FCB54CC3486...

WILLIE BROWN

7 DATED: _____, 2023

8 Its: Vice President, General Counsel and
9 Corporate Secretary

10 **APPROVED AS TO FORM:**

11 MOON & YANG, APC

12 Dated: _____

13 By: _____

Kane Moon

Allen Feghali

Charlotte Mikat-Stevens

Counsel for Plaintiff

14 MORGAN, LEWIS & BOCKIUS LLP

15 March 8, 2023 | 1:51 PM EST

DocuSigned by:

Sarah Zenewicz

DFE181B83E5C4DF...

16 Dated: _____

17 By: _____

18 Sarah Zenewicz
19 Attorneys for Defendant

EXHIBIT 1

Cesar Garcia v. San Jose Water Company
Santa Clara County Superior Court, Case No. 22CV396328

*A court has authorized this notice. This is not a solicitation.
This is not a lawsuit against you and you are not being sued.
Your legal rights are affected whether you act or do not act.*

NOTICE OF CLASS AND PAGA ACTION SETTLEMENT

To: All current and former California non-exempt employees of San Jose Water Company (“Defendant”), who worked in California any time between March 22, 2018, and [Insert End Date] (the “Settlement Class”).

SETTLEMENT CLASS MEMBERS ARE ELIGIBLE TO RECEIVE PAYMENT FROM THE CLASS AND PAGA SETTLEMENT DESCRIBED IN THIS NOTICE.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	To receive a settlement payment, you do not need to do anything. Your payment will be mailed to you, automatically, after the Court grants final approval to the settlement. <i>You must, however, keep a current address on file with the Settlement Administrator to ensure receipt of your check.</i>
CHANGE CONTACT AND ADDRESS INFORMATION	Update your address with the Administrator to ensure your check is sent to the correct address.
EXCLUDE YOURSELF FROM THE CLASS SETTLEMENT	If you do not want to participate in the class settlement, you may exclude yourself (opt out) of the class portion of the settlement. If you exclude yourself from the class settlement, you will not receive any payment from the Net Settlement Amount (defined below). This is the only option that allows you to pursue your own claims (in your own lawsuit) against Defendant about the legal claims in this case. However, if you are a PAGA Member (defined below), then even if you exclude yourself from the class settlement, you will still receive a portion of the PAGA settlement and be bound by it.
OBJECT	Write to the Court if you think the settlement is not fair.
GO TO A HEARING	Ask to speak in Court about why you think the settlement is not fair.

- **YOUR RIGHTS AND OPTIONS – AND THE DEADLINES TO EXERCISE THEM – ARE EXPLAINED IN THIS NOTICE.**
- **DEFENDANT WILL NOT RETALIATE IN ANY MANNER AGAINST ANY SETTLEMENT CLASS MEMBER FOR PARTICIPATING OR NOT PARTICIPATING IN THIS SETTLEMENT.**

BACKGROUND ON THE LAWSUIT

1. **What is this Class and PAGA Lawsuit and Settlement about?**

Plaintiff Cesar Garcia initiated this lawsuit on March 22, 2022, by filing a Class Action Complaint in Santa Clara County Superior Court (the “Lawsuit” or the “Action”). The operative Class and Representative Complaint alleges causes of action for (1) failure to pay minimum wages for all hours worked; (2) failure to pay overtime compensation; (3) failure to provide meal periods; (4) failure to authorize and permit rest breaks; (5) failure to indemnify necessary business expenses; (6) failure to timely pay all final wages; (7) failure to provide accurate itemized wage statements; (8) unfair and unlawful competition; and (9) civil penalties under PAGA.

Defendant denies all allegations in the Lawsuit and contends that it has fully complied with federal, state and local wage and hour laws. The settlement is not an admission of any wrongdoing by Defendant or an indication that any law was violated or that this case was suitable for class or representative treatment. Through arms-length negotiations with an experienced wage and hour mediator, the Parties reached a class and PAGA settlement subject to Court approval, which is summarized in this Notice.

2. **Why did I get this notice?**

You received this Notice because records identify you as a Settlement Class Member during the period March 22, 2018, and [Insert End Date] (the “Class Settlement Period”). The settlement will resolve Settlement Class Members’ claims, summarized above, during the Class Settlement Period. The Settlement will also resolve claims for civil penalties under the California Private Attorneys’ General Act (“PAGA”). You may also be a “PAGA Member” if you worked for Defendant during the period from March 12, 2021, through [INSERT] (the “PAGA Settlement Period”).

The purpose of this notice is to explain the lawsuit, the pending Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the case is the California Superior Court for the County of Santa Clara, and the case is known as *Garcia v. San Jose Water Company*, Case No. 22CV396328. The Court held a hearing on _____, 2023, and the Honorable Theodore C. Zayner preliminarily approved this Settlement and directed that you receive this Notice. The Court will hold a Final Approval hearing concerning the Settlement on _____, 2023 at _____, in Department 19 of the Santa Clara Superior Court, 191 North First Street San Jose, CA 95113. The Final Approval Hearing may be continued to another date without further notice.

3. **Why is there a settlement?**

The Court has not decided in favor of Plaintiff or Defendant or made any decision as to whether this case could proceed on a class or representative basis. There was no trial. Instead, both sides agreed to a no-fault settlement of the Lawsuit.

4. **Who are the Attorneys for the Settlement Class and the PAGA Members?**

The Court has appointed Class Counsel to represent the Settlement Class and the PAGA Members in connection with this Settlement, Kane Moon, Allen Feghali and Charlotte Mikat-Stevens of Moon & Yang, APC, 1055 W. Seventh St., Suite 1880, Los Angeles, California 90017, (213) 232-3128.

5. **Who are the Attorneys for the Defendants?**

Defendant is represented by Sarah Zenewicz of Morgan, Lewis & Bockius, LLP, One Market, Spear Street Tower, San Francisco, California 94105-1596.

THE TERMS OF THE SETTLEMENT

6. What is the Settlement Amount?

The proposed Settlement provides for a maximum payment of \$1,200,000.00 (referred to as the “Gross Settlement Amount”). From the Gross Settlement Amount, Class Counsel will apply to the Court for: attorneys’ fees of \$400,000 and up to \$20,000 in costs; a Class Representative Enhancement Award of \$10,000 to Plaintiff for his work and efforts prosecuting this case, for undertaking the risks of payment of costs (in the event of an unsuccessful outcome of this Lawsuit) and for signing a general release of any claims he may have against Defendant; a \$100,000 payment as settlement for claims for civil penalties under PAGA (the “PAGA Payment”), of which 75% will go to the California Labor Workforce Development Agency (“LWDA”) and 25% will be divided among the PAGA Members as described below; and Settlement Administration Costs to Phoenix Settlement Administrators, estimated at \$10,000. The exact amount of the attorneys’ fees, litigation costs, Class Representative Enhancement Award, and Settlement Administration Costs will be determined by the Court at the Final Approval hearing. The remaining portion of the Gross Settlement Amount is the “Net Settlement Amount,” which is currently estimated to be approximately \$660,000. The Net Settlement Amount will be apportioned and paid out as Individual Settlement Payments to the Participating Class Members, who are the Settlement Class Members who do not request to be excluded (“opt out”) of the settlement.

7. How will the Individual Settlement Payments to Participating Class Members be calculated?

Participating Class Members will receive Individual Settlement Payments from the Net Settlement Amount. **A claim form is not required to become a Participating Class Member.** Settlement Class Members who opt out of the class settlement will not become Participating Class Members and will not receive Individual Settlement Payments and will not be bound by the class portion of this Settlement.

Each Participating Class Member’s Individual Settlement Payment will be a pro rata share of the Net Settlement Amount based on the number of workweeks that each Participating Class Member worked for Defendant during the Class Settlement Period (March 22, 2018, through [Insert End Date]) (“Eligible Workweeks”) as a proportion of all Eligible Workweeks for all Participating Class Members.

All Individual Settlement Payments to Participating Class Members shall be allocated as follows for tax purposes: 20% of each Individual Settlement Payment reflects a compromise of a claim for alleged unpaid wages; 80% of each Individual Settlement Payment reflects compromise of a claim for alleged interest and penalties. The portion of the Individual Settlement Payment attributable to unpaid wages will be subject to regular and/or applicable payroll and income tax withholdings, and will be reported on an IRS Form W-2. Participating Class Members will receive an IRS Form 1099 for the portion of the Individual Settlement Payment attributable to alleged interest and penalties if required by law. Participating Class Members will be responsible for correctly characterizing the Individual Settlement Payment for tax purposes and paying taxes due, if any.

Your total estimated Eligible Workweeks is _____. Based on that, your anticipated approximate Individual Settlement Payment is _____.

8. How will the PAGA Payment be allocated to the LWDA and PAGA Members?

The Parties will ask the Court to approve the \$100,000 PAGA Payment in settlement of claims for civil penalties under PAGA. As required under PAGA, 75% of the PAGA Payment, or \$75,000, will be paid to the

LWDA. The remaining 25% of the PAGA Payment, or \$25,000, will be distributed to the PAGA Members as Individual PAGA Payments.

Not all Settlement Class Members are PAGA Members who are entitled to an Individual PAGA Payment. If you are a PAGA Member, you are entitled to receive an Individual PAGA Payment; no claim form is required. Because PAGA Members cannot opt out of the PAGA settlement, if you are a PAGA Member and you opt out of the class settlement, you will still receive an Individual PAGA Payment and be bound by the PAGA settlement.

Each PAGA Member's Individual PAGA Payment will be a pro rata share of the 25% of the PAGA Payment to be distributed to PAGA Members. It will be based on the number of pay periods that each PAGA Member worked for Defendant during the PAGA Period (March 12, 2021, through [End Date]) ("Eligible Pay Periods") as a proportion of all Eligible Pay Periods for all PAGA Members. For tax purposes, 100% of the Individual PAGA Payments will be allocated as penalties for which an IRS Form 1099, if required by law.

Your total estimated Eligible Pay Periods is _____. Based on that, your anticipated approximate Individual PAGA Payment is _____.

HOW TO GET A PAYMENT

9. How can I get a settlement payment?

If you do nothing, you will automatically receive your Individual Settlement Payment and Individual PAGA Payment (if any) after the Court approves the Settlement at a Final Approval Hearing. You must notify the Settlement Administrator of any change in your name, mailing address and/or telephone number if the information shown on this is not correct. **It is your responsibility to keep the Settlement Administrator informed of any change in your address. Settlement payments will be mailed to the last known address the Settlement Administrator has on file for you.** You can contact the Settlement Administrator by U.S. Mail, email or phone at _____ if you need to update contact information.

10. What do I do if I believe my Eligible Workweeks or Eligible Pay Periods are incorrect?

If you believe the Eligible Workweeks and Eligible Pay Periods above are not correct, you may send a letter to the Settlement Administrator indicating what you believe to be the correct information. Your letter must be postmarked on or before _____, 2023. *[60 days within mailing of Notice]*. You should include any documents or other information which supports what you believe support that you worked a different number of Eligible Workweeks or Eligible Pay Periods.

11. When can I expect to receive a settlement check?

Individual Settlement Payments and Individual PAGA Payments will be mailed to Settlement Class Members and PAGA Members approximately 30 days after the order granting final approval of the Settlement becomes a final order.

Settlement checks should be cashed promptly upon receipt. Proceeds of checks which remain uncashed after 180 days from the date of issuance will be forwarded to the State of California Unclaimed Property Fund in the name of each Participating Class Member and/or PAGA Member who did not cash his or her settlement check. If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the Unclaimed Property Fund for instructions on how to retrieve the funds.

WHAT HAPPENS IF THE COURT APPROVES THE SETTLEMENT

12. What am I giving up to get an Individual Settlement Payment?

If the Court approves this Settlement, and unless you exclude yourself, you will become a Participating Class Member, and that means that you cannot sue, continue to sue, or be a part of any other lawsuit against Defendant concerning the legal claims being resolved in this Settlement. Specifically, you will be giving up or “releasing” the claims described below:

Released Class Claims: Effective on the date when Defendant fully funds the Settlement the Participating Class Members, shall be deemed to have fully, finally, and forever released Defendant and any parent, subsidiary, affiliated or related entities (including any companies, corporations, partnerships, alter egos, joint venturers, and actual or alleged joint employers), and each of their respective past, present and future agents, employees, servants, officers, directors, partners, members, trustees, fiduciaries, representatives, shareholders, stockholders, attorneys, equity sponsors, (defined as a company/corporation and/or partnership that is, directly or indirectly, under common control with that Defendant or any of its parents and/or affiliates), divisions, assigns, predecessors, successors, insurers, and consultants (the “Released Parties”), from all federal, state and local law claims, rights, demands, liabilities, and causes of action, asserted in any of the complaints filed in the Lawsuit, and all claims that could have been asserted in the Lawsuit arising from the same alleged facts or in any PAGA letter sent by Plaintiff to the LWDA, including causes of action for (1) failure to pay minimum wages for all hours worked; (2) failure to pay overtime compensation; (3) failure to provide meal periods; (4) failure to authorize and permit rest breaks; (5) failure to indemnify necessary business expenses; (6) failure to timely pay all final wages; (7) failure to provide accurate itemized wage statements; (8) unfair and unlawful competition based on the Labor Code violations alleged in (1)-(7); and (9) all claims for interest, penalties, attorneys’ fees, costs and any other monetary relief based upon the claims described above and including, but not limited to, pursuant to Labor Code §§ 210, 218.5, 218.6, Code of Civil Procedure §1021.5, and/or Civil Code §§ 3287(b) and 3289, costs, attorneys' fees, injunctive relief, declaratory relief, or accounting that are based on or related to the alleged Labor Code, Wage Order, and Business & Professions Code violations, that accrue during the Class Settlement Period (the “Released Class Claims”).

13. What PAGA Claims are released by this Settlement?

Effective on the date when Defendant fully funds the Settlement, the PAGA Members will fully and finally release the Released Parties from all claims for civil penalties under PAGA asserted in any of the complaints filed in the Action, and all claims that could have been asserted in the Action based on the same alleged facts in the complaint or in any PAGA letter sent by Plaintiff to the LWDA, including but not limited to claims for violations of the California Labor Code for unpaid minimum wages, unpaid overtime wages, unpaid meal period premiums, unpaid rest period premiums, inaccurate wage statements, failure to keep accurate records, failure to indemnify for all necessary business expenses, failure to timely pay wages during employment or at termination and violations of Labor Code sections 201-204, 210, 226, 226.3, 227.3, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, and 2802 (the “Released PAGA Claims”).

EXCLUDING YOURSELF FROM THE CLASS SETTLEMENT

14. How do I opt out of the class settlement?

If you wish to pursue your own separate lawsuit against any of the Released Parties for the claims asserted in the Action on behalf of the Settlement Class, or if you otherwise wish not to participate in the class settlement for whatever reason, you should exclude yourself from the class settlement (that is, opt out of the class portion of the Settlement). However, you cannot opt out of the PAGA portion of the settlement. Those who opt out of this Settlement and who are also PAGA Members will still be bound by the release of PAGA in this Settlement and will receive an Individual PAGA Payment.

To opt out of the class portion of the Settlement and the Released Class Claims, you must provide a signed and dated letter to the Settlement Administrator requesting to be excluded. The letter must include the case name and number, your name, address, and last four of your social security number, must be signed by you, and must reasonably communicate your election to be excluded from the class Settlement. The letter must be postmarked and mailed to the Settlement Administrator at the following address (or in the enclosed envelope) on or before _____, 2023. [60 days within mailing of Notice] Opt-out requests postmarked after the deadline will be invalid.

[Settlement Admin address]

15. If I don't exclude myself from the class settlement, can I sue Defendant for the same thing?

No. Unless you exclude yourself, you give up any right to sue the Released Parties for the Released Class Claims. If you have a claim or lawsuit already filed against Defendant or any of the Released Parties, you should speak to your lawyer in that case immediately.

You cannot exclude yourself from the PAGA portion of the Settlement and you cannot sue the Released Parties for the Released PAGA Claims later if this Settlement is approved.

OBJECTING TO THE SETTLEMENT

16. How do I tell the Court that I don't like the Settlement?

If you don't think the Settlement is fair you can object to some or all of the Settlement. Even if you object, if the Court approves the Settlement, you will still receive the Class Settlement Payments unless you opt-out of the Class Settlement and you will be bound by Released Class Claims and the Released PAGA Claims.

You may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing at your expense, either in person, telephonically, or through an attorney, provided you notify the Court of your intention to do so. All written objections, supporting papers and/or notices of intent to appear at the Final Approval Hearing must (a) clearly identify the case name and number (*Garcia v. San Jose Water Company*, Case No. 22CV396328), (b) be submitted to the Court either by mailing the objection to: Clerk of the Court, Superior Court of California, County of Santa Clara, 191 N. 1st Street, San Jose, California 95113, or by filing in person at the same location; (c) also be mailed to the law firms identified above in sections 4 and 5 and (d) be filed or postmarked on or before _____, 20**.

THE COURT'S FINAL APPROVAL HEARING

17. When and where will the Court decide whether to grant final approve the settlement?

The Court will hold a Final Approval hearing in Department 19 of the Santa Clara Superior Court, located at 191 North First Street San Jose, CA 95113 on _____ 2023, at ____ p.m. At this hearing the Court will determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court

will also be asked to approve Class Counsel's request for attorneys' fees and costs, the Class Representative's Enhancement Award, and the Settlement Administrator's fees and expenses.

The Court may reschedule the Final Approval hearing without further notice to Settlement Class Members. However, any Settlement Class Member who has filed a Notice of Intention to Appear at the Final Fairness hearing will be notified by Class Counsel of any rescheduling of the date and time of the Final Fairness hearing.

18. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Judge may have. But you are welcome to come at your own expense. If you timely submit a written objection, you don't have to come to Court to talk about it. You may also hire and pay your own lawyer to attend if you so desire.

GETTING MORE INFORMATION

19. Whom may I contact if I have questions about the settlement?

You may contact Class Counsel at the contact information listed above in Paragraph 4 if you have any questions about the Settlement. You may also contact the court-appointed Settlement Administrator, Phoenix Settlement Administrators, by calling toll free 1-800_____, or you can write to [Admin at Address].

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, OR DEFENDANT'S MANAGERS, SUPERVISORS, OR ATTORNEYS FOR MORE INFORMATION.

DB2/ 44617804.5