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7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN BERNARDINO**
10

11 ANGEL VASQUEZ MONTES, as an) Case No. CIVSB2214477
individual and on behalf of all others similarly)
12 situated,) Judge: Honorable Joseph T. Ortiz
Plaintiff,) Dept: S-17
13 v.)
14 L & L NURSERY SUPPLY, a California) **JOINT STIPULATION OF SETTLEMENT**
corporation; and DOES 1 through 100,) **AND RELEASE TO SETTLE CLASS AND**
15 Defendant.) **PAGA ACTION**
16) FAC Action Filed: December 30, 2022
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JOINT STIP OF SETTLEMENT AND RELEASE
TO SETTLE CLASS ACTION

1 It is stipulated and agreed by and among the undersigned Parties, subject to the approval of
2 the Court, that the full and final Settlement of this Action shall be effectuated upon and subject to
3 the following terms and conditions. Capitalized terms shall have the meanings set forth in Article I
4 or as defined elsewhere in this Joint Stipulation of Settlement and Release to Settle Class and
5 PAGA Action (hereinafter "Agreement").

6 This Agreement is made and entered into by and between Plaintiff ANGEL VASQUEZ
7 MONTES ("Plaintiff" or "Named Plaintiff") on behalf of himself and other similarly situated
8 employees, on the one hand, and L & L NURSERY SUPPLY ("Defendant" or "L&L"), on the
9 other hand. Plaintiff and Defendant collectively are referred to in the Agreement as "the Parties."

10 The Parties agree that the Action shall be, and hereby is, ended, settled, resolved, and
11 concluded by agreement of Defendant to pay no more than the settlement sum of Four Hundred
12 Sixty Seven Thousand Five Hundred Thousand Dollars (\$467,500.00) as provided in Section
13 3.06(a) below ("Gross Settlement Fund") with the addition of the employer's portion of payroll
14 taxes on the wage portion of the Settlement, upon the terms and conditions of the Agreement and
15 for the consideration set forth herein, including, but not limited to, a general release of claims by
16 Named Plaintiff Angel Vasquez Montes as described herein, and the release of the Class Members'
17 claims as set forth in this Agreement.

18 ARTICLE I

19 DEFINITIONS

20 Unless otherwise defined herein, the following terms used in this Agreement shall have the
21 meanings ascribed to them as set forth below:

22 a. "**Action**" means the class and representative claims asserted in the Complaint filed
23 in San Bernardino Superior Court on July 11, 2022, and the First Amended Complaint filed in San
24 Bernardino County Superior Court on December 30, 2022, titled *Angel Vasquez Montes, on behalf*
25 *of himself and all other similarly situated v. L & L Nursery Supply, and DOES 1 through 100,*
26 *inclusive*, San Bernardino County Superior Court, Case No. CIVSB2214477.

27 b. "**Agreement**" means this Joint Stipulation of Class Settlement and Release to Settle
28 Class and PAGA Action.

1 c. **"BFG"** means BFG Supply, Inc.

2 d. **"Class"** means all current and former hourly employees who worked for L&L
3 Nursery Supply and/or BFG Supply, Inc. within the State of California at any time during the
4 period from July 11, 2018 to May 24, 2024.

5 e. **"Class Counsel"** or **"Plaintiff's Counsel"** means the attorneys for the Settlement
6 Class, who are:

7 HAINES LAW GROUP, APC
8 Paul K. Haines, Esq.
9 phaines@haineslawgroup.com
10 Sean M. Blakely, Esq.
11 sblakely@haineslawgroup.com
12 Joel M. Gordon, Esq.
13 jgordon@haineslawgroup.com
14 2155 Campus Drive, Suite 180
15 El Segundo, CA 90245
16 Telephone: (424) 292-2350
17 Fax: (424) 292-2355

18 f. **"Class List"** means a true and complete list of all Class Members that Defendant
19 will compile, based on its business records, and provide to the Settlement Administrator within
20 twenty-one (21) days after the Court grants preliminary approval of the Settlement. The Class List
21 shall be formatted in Microsoft Office Excel and shall include each Class Member's full name, his
22 or her last known home address, telephone number, social security number, beginning and ending
23 dates of employment, and number of workweeks in the Class Period.

24 g. **"Class Member(s)"** mean(s) all members of the Class.

25 h. **"Class Period"** July 11, 2018 to May 24, 2024.

26 i. **"Court"** means the San Bernardino Superior Court in which the Action is pending.

27 j. **"Defendant's Counsel"** or **"Defense Counsel"** means:

28 CDF LABOR LAW LLP
Brent M. Giddens, Esq.
bgiddens@cdflaborlaw.com
Ashley A. Halberda, Esq.
ahalberda@cdflaborlaw.com
18300 Von Karman Ave., Suite 800
Irvine, CA 92612
Tel: (949) 622-1661

1 k. **“Disposition”** means the method by which the Court adopts the terms of the
2 Settlement and Agreement, which may be by judgment or other final order, and retains jurisdiction
3 over the enforcement, implementation, construction, administration, and interpretation of the
4 Settlement and Agreement.

5 l. **“Effective Date”** of this Settlement shall be the later of the time when: (i) the date
6 of final affirmance of the Judgment on an appeal, the expiration of the time for, or the denial of, a
7 petition to review the Judgment, or if review is granted, the date of final affirmance of the
8 Judgment following review pursuant to that grant, (ii) the date of final dismissal of any appeal from
9 the Judgment or the final dismissal of any proceeding to review the Judgment, provided that the
10 Judgment is affirmed and/or not reversed in any part, (iii) the final resolution (or withdrawal) of
11 any filed appeal in a way that affirms the Final Approval Order and Judgment in a form
12 substantially identical to the form of the Final Approval Order entered by the Court, and the time to
13 petition for review with respect to any appellate decision affirming the Final Approval Order has
14 expired; or (iv) if no appeal is filed, the sixty-first (61st) calendar day after the Court enters final
15 approval of the Settlement and the Judgment approving this Agreement.

16 m. **“Enhancement Award”** means a monetary amount of up to Ten Thousand Dollars
17 and Zero Cents (\$10,000.00), subject to Court approval, for Plaintiff Angel Vasquez Montes, which
18 will be paid pursuant to Section 3.06(c) of this Agreement.

19 n. **“Final Approval Hearing”** means the hearing at which the Court enters a judgment
20 or other order approving the Settlement and Agreement and terminating the Action.

21 o. **“Final Order Approving Settlement of Class Action”** or **“Final Order”** means
22 the final formal Court order signed by the Court at or after the Final Approval Hearing in
23 accordance with the terms herein approving this Agreement.

24 p. **“Gross Settlement Fund”** means the maximum settlement sum of Four Hundred
25 Sixty-Seven Thousand Five Hundred Dollars and Zero Cents (\$467,500.00), to be paid by
26 Defendant under the terms and conditions of this Agreement. Defendant shall remit its share of the
27 employer’s payroll taxes, as provided herein, separately, and in addition to the Gross Settlement
28 Fund.

1 q. **“Individual Settlement Payments”** or **“Verified Class Member Payments”** means
2 the amounts of money from the Net Settlement Amount that shall be paid to the Verified Class
3 Members. Individual Settlement Payments will be each Verified Class Member’s share of the Net
4 Settlement Amount (which share shall be determined by the calculations provided in this
5 Agreement), minus the employee’s share of payroll and income taxes on the portion which is
6 wages and all other applicable deductions or withholding required by law or expressly authorized
7 by the Class Member.

8 r. **“L&L”** means Defendant L&L Nursery Supply.

9 s. **“LWDA”** means the California Labor and Workforce Development Agency.

10 t. **“Named Plaintiff”** or **“Plaintiff”** means Angel Vasquez Montes.

11 u. **“Net Settlement Amount”** means the Gross Settlement Fund of Four Hundred
12 Sixty-Seven Thousand Five Hundred Dollars (\$467,500.00) less all of the following: (a)
13 Enhancement Award to Plaintiff not to exceed Ten Thousand Dollars and Zero Cents (\$10,000.00);
14 (b) an award of attorneys’ fees to Class Counsel in an amount not to exceed one-third of the Gross
15 Settlement Fund, which is currently estimated to be One Hundred Fifty Five Thousand Eight
16 Hundred Thirty-Three Dollars and Thirty-Three Cents (\$155,833.33); (c) documented costs of
17 Class Counsel in an amount not to exceed Thirty Thousand Dollars and Zero Cents (\$30,000.00);
18 (d) Settlement Administration Costs estimated at Eight Thousand Dollars \$8,000.00; and (e) the
19 PAGA Settlement Amount of Thirty Thousand Dollars (\$30,000.00) paid to the LWDA and the
20 PAGA Group Members.

21 v. **“Non-Verified Class Member(s)”** means those Class Members who submit to the
22 Settlement Administrator a valid and timely Opt-Out Request pursuant to Section 3.04(b) below.

23 w. **“Notice Packet”** or **“Class Notice”** means the Notice of Proposed Class Action
24 Settlement substantially in the form attached hereto as Exhibit “A” (the **“Notice”**).

25 x. **“Operative Complaint”** means the First Amended Complaint pursuant to Section
26 II.b. below.

27 y. **“Opt-Out Request”** means a written request to be excluded from the Class pursuant
28 to Section 3.04(b) below.

z. “**PAGA**” means the Private Attorneys General Act of 2004, California *Labor Code* §§2698 *et seq.*

aa. **“PAGA Group Members”** means all current and former hourly employees who worked for L&L Nursery Supply and/or BFG Supply, Inc. within the State of California at any time during the period from April 21, 2021 to May 24, 2024.

bb. **“PAGA Period”** means April 21, 2021 to May 24, 2024.

cc. **“PAGA Settlement Amount”** means Fifty Thousand Dollars (\$30,000.00), of the Gross Settlement Fund allocated to PAGA penalties (PAGA Settlement Amount), seventy-five percent (75%) of which, or Twenty-Two Thousand Five Hundred Dollars (\$22,500.00), was paid to the LWDA, and twenty-five percent (25%) of which, or Seven Thousand Five Hundred Dollars (\$7,500.00) will be distributed to the PAGA Group Members.

dd. **“Parties”** means collectively Plaintiff and Defendant.

ee. **“Pay Period”** means a pay period during the PAGA Period.

ff. **“Preliminary Approval Date”** means the date on which the Court preliminarily approves the Settlement embodied in this Agreement, including, without limitation, the Notice of Proposed Class Action Settlement, which is attached hereto as Exhibit “A.”

gg. **“Settlement”** means the resolution of this Action and all related claims effectuated by this Agreement.

hh. **“Settlement Class Members”** means any Class Members and PAGA Group Members.

ii. **“Settlement Administration Costs”** means all costs incurred by the Settlement Administrator in administration of the Settlement, including, but not limited to, any notices that must be provided to the Class, calculating employer payroll taxes, performing address updates and verifications as necessary prior to the first mailing, performing a single address follow-up on any returned mail, calculating Individual Settlement Payments and tax withholdings, providing declarations, generating Individual Settlement Payment checks and related tax reporting forms, completing administrative work related to unclaimed checks, if any, processing and sending uncashed checks to defense counsel on behalf of Defendant, generating checks to Class Counsel for

attorneys' fees and costs, and to Plaintiff for his Enhancement Award, and any other actions of the Settlement Administrator as set forth in this Agreement, all pursuant to the terms of this Agreement.

jj. **"Settlement Administrator"** means ILYM Group, Inc., which was mutually selected by the Parties for the administration of the Settlement including, without limitation, the distribution of the Individual Settlement Payments to be made by Defendant from the Gross Settlement Fund and related matters under this Agreement.

kk. **"Verified Class Members"** means all Class Members who did not opt-out.

ll. **"Total Workweeks"** means the total aggregate number of Workweeks of all Class Members during the Class Period.

mm. **"Total Pay Periods"** means the total aggregate number of Pay Periods of all PAGA Members during the PAGA Period.

nn. **"Workweek"** means a week during the Class Period commencing on Sunday and ending on the following Saturday in which a Class Member worked one or more days.

ARTICLE II

FACTUAL BACKGROUND

a. Plaintiff provided a PAGA notice to Defendant and the LWDA on April 21, 2022, articulating the provisions of the Labor Code alleged to have been violated and facts and theories in support of those alleged violations ("PAGA Notice").

b. On or about July 11, 2022, Plaintiff filed an action in California Superior Court, County of San Bernardino, Case No. CIVSB2214477, alleging a representative PAGA claim and individual claims for failure to pay wages, failure to pay overtime, failure to provide meal periods, failure to provide itemized wage statements and unfair competition.

c. On December 30, 2022, a First Amended Complaint was filed in this action adding class claims and claims for waiting time penalties and rest period violations. The First Amended Complaint is the **"Operative Complaint"**.

d. Defendant generally denies all of the allegations asserted in the Action, including those in the Operative Complaint, and specifically denies any violation of the (i) California *Labor*

1 *Code*, (ii) the California Industrial Welfare Commission Wage Orders, and/or (iii) California
2 *Business and Professions Code*. Defendant further denies any pendant or related charges, denies
3 violating any other law or right of Plaintiff or any Settlement Class Member, and denies any
4 liability is owed to Plaintiff and Settlement Class Members.

5 e. On January 29, 2024, the Parties engaged in private mediation with the Honorable
6 Amy D. Hogue (Ret.), an experienced wage and hour class action mediator, and thereafter reached
7 an agreement to resolve this matter. The settlement discussions were conducted at arm's-length.
8 The Settlement is the result of an informed and detailed analysis of the risks facing the parties in
9 litigating this case, including but not limited to, careful consideration of the legal and factual
10 obstacles to Plaintiff's prospects of obtaining class certification and on the merits, and Defendant's
11 defenses, as well as Defendant's potential exposure and the additional costs of litigating the Action.

12 f. It is the desire of the Parties to fully, finally, and forever settle, compromise and
13 discharge any and all claims that were raised, or could have been raised during the Class Period and
14 PAGA Period based upon the facts alleged in this Action, including those to alleged in the
15 Operative Complaint and the PAGA Notice. In order to achieve a full and complete release of
16 Defendant and BFG, each Settlement Class Member acknowledges that this Settlement Agreement
17 is intended to include in its effect all claims of any nature that were raised in the Action, or could
18 have been raised based upon the facts alleged in this Action and the PAGA Notice on behalf of
19 Settlement Class Members, including, but not limited to: (1) all statutory and common law causes
20 of action referenced in the Action and the PAGA Notice and corresponding provisions of the
21 applicable Industrial Welfare Commission Wage Orders, including, but not limited to, failure to
22 pay minimum wages (including off the clock work, COVID-19 screenings), wage statement
23 violations, failure to maintain accurate records, failure to pay all wages due at time of termination,
24 waiting time penalties, failure to pay overtime (including off the clock work, COVID-19 screenings
25 not paying at regular rate), failure to provide rest periods, failure to pay rest period premiums at
26 regular rate, failure to pay meal premiums at regular rate, failure to provide meal periods; the
27 applicable Industrial Welfare Commission Wage Orders; Cal. Code Regs. Title 8, § 11070; and the
28 Business & Professions Code §17200, et seq., interest, attorneys' fees and costs, including as

1 permissible under California Code of Civil Procedure § 1021.5, or (2) any claims that reasonably
2 arise out of the facts alleged in the Operative Complaint and the PAGA Notice.

3 **g.** It is the intention of the parties that this Settlement Agreement shall constitute a full
4 and complete settlement and release of all claims arising from the allegations of the Action on
5 behalf of Settlement Class Members, which release is set forth in Section 5.01 below.

6 **h.** Named Plaintiff and Class Counsel have each conducted a thorough investigation
7 into the facts of this class action case, including an extensive review of relevant documents, and
8 have diligently pursued an investigation of Settlement Class Members' claims against Defendant.
9 Based on their respective own independent investigation and evaluation, Named Plaintiff and Class
10 Counsel are each of the opinion that the Settlement with Defendant for the consideration and on the
11 terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best
12 interest of the Settlement Class in light of all known facts and circumstances, including the risk of
13 significant delay, the risk the Settlement Class will not be certified by the Court, defenses asserted
14 by Defendant, and numerous potential appellate issues.

15 **i.** The Parties agree to cooperate and take all steps necessary and appropriate to
16 consummate this Settlement.

17 **j.** The maximum total payment under the Settlement, including all Individual
18 Settlement Payments, attorneys' fees and costs, the Enhancement Award to the Named Plaintiff,
19 the PAGA Settlement Amount, and any other payments provided by this Settlement, is Four
20 Hundred Sixty Seven Thousand Five Hundred Dollars (\$467,500.00). Additionally, Defendant
21 shall be responsible for paying the employer's portion of payroll taxes on the wage portion of each
22 Individual Settlement Payment. It is understood and agreed that other than the employer's portion
23 of payroll taxes on the wage portion of each Individual Settlement Payment, and subject to Section
24 3.04(e) below, Defendant's maximum total liability under this Settlement shall not exceed Four
25 Hundred Sixty Seven Thousand Five Hundred Dollars (\$467,500.00).

26 **k.** It is understood that the Gross Settlement Fund of Four Hundred Sixty Seven
27 Thousand Five Hundred Dollars (\$467,500.00) is non-reversionary. To the extent that a Notice
28 and/or an Individual Settlement Payment check is (1) undeliverable, after skip tracing performed by

the Settlement Administrator as provided in paragraph 3.03 below, or (2) uncashed 180 days after the date listed on the check, the amount of those checks shall be directed to the California State Controller for deposit in the Unclaimed Property Fund in the name of the employee.

I. It is further understood and agreed that Named Plaintiff and/or Class Counsel shall not issue any public statement to the media, press, or otherwise concerning this Action and/or any business practice, procedure, or policy of Defendant, except as specified in Section 6.24 of this Agreement.

m. The Settlement embodied in this Agreement contemplates the (i) entry of an order approving certification of a Class for settlement purposes only, (ii) entry of a Final Order Approving Settlement of this Action, (iii) entry of Disposition enforcing the terms of the Settlement and retaining jurisdiction, (iv) discharge of Defendant and BFG from liability for any and all Claims relating to this Action, (v) release, as set forth below in Section 5.01 below, by all Settlement Class Members, including Named Plaintiff of all claims based on or arising from the alleged wrongdoing set forth in this Action, and (vi) a general release by Named Plaintiff of all known and unknown claims against Defendant, BFG and its and their respective parents, subsidiaries, affiliates, agents, attorneys, officers, directors, successors, and/or assigns pursuant to California *Civil Code* section 1542.

ARTICLE III.

PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF SETTLEMENT

Because the Parties have stipulated to the certification of the Class with respect to all causes of action alleged in the Operative Complaint in this Action for settlement purposes only, this Agreement requires preliminary and final approval by the Court. Accordingly, the Parties enter into this Agreement on a conditional basis. This Agreement is contingent upon the approval and certification of a settlement Class by the Court. If the Effective Date does not occur, this Agreement shall be deemed null and void, shall be of no force or effect whatsoever, and shall not be referred to or used for any purpose whatsoever.

The Parties and their respective counsel shall take all reasonable steps that may be requested by the Court relating to the approval and implementation of this Agreement and shall

1 otherwise use their respective best efforts to obtain Court approval and implement this Agreement.
2 If the Court does not grant the motion for Preliminary Approval and/or the motion for Final
3 Approval, the Parties agree to meet and confer to address the Court's concerns.

4 The procedure for obtaining Court approval of and implementing this Agreement shall be as
5 follows:

6 **Section 3.01 Motion for Conditional Class Certification and Preliminary Approval**

7 Promptly upon execution of this Agreement, the Parties shall submit this Agreement to the
8 Court and request preliminary approval and determination by the Court as to its fairness, adequacy,
9 and reasonableness. Class Counsel will prepare and file the motion for preliminary approval of
10 settlement. Upon receipt of the motion for preliminary approval and all supporting documents,
11 Defendant shall have a minimum of three (3) calendar days to review the motion for preliminary
12 approval of settlement before Class Counsel files the motion for preliminary approval with the
13 Court.

14 Pursuant to Labor Code section 2699(1)(2), Plaintiff will file this Joint Stipulation of
15 Settlement with the LWDA using the appropriate website and intake forms located at:

16 <https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>.

17 In seeking preliminary approval of this Agreement, the Parties shall apply to the Court for
18 the entry of a preliminary order seeking certification of this Action under section 382 of the
19 California *Code of Civil Procedure* and Rules 3.760 *et seq.* of the California Rules of Court as a
20 class action for purposes of settlement only with respect to the Class; approving the proposed
21 Notice as to form and content; directing the mailing of the notice to the Class Members;
22 preliminarily approving the settlement subject only to the objections of Class Members and final
23 review by the Court; preliminarily approving Class Counsel's request for attorneys' fees and costs
24 subject to final review by the Court; preliminarily approving estimated costs of administration
25 payable to the Settlement Administrator; and preliminarily approving Named Plaintiff's
26 Enhancement Award.

27 ///

28 ///

1 **Section 3.02 The Settlement Administrator**

2 The Parties have chosen ILYM Group, Inc. to administer this Settlement and to act as the
3 Settlement Administrator, including, but not limited to, distributing any notices that must be
4 provided to the Settlement Class Members, performing address updates and verifications as
5 necessary prior to the first mailing, performing a single address follow-up on any returned mail,
6 responding to inquiries about the Notice of Proposed Class Action Settlement, determining the
7 validity of all Opt-Out Requests, calculating the Net Settlement Amount and the Individual
8 Settlement Payments, calculating employer payroll taxes, preparing tax statements and/or reports
9 and remitting the necessary tax payments, providing necessary progress reports, preparing
10 declarations required by the Court, preparing a detailed declaration for Defendant that sets forth
11 each of Class Members who did not submit valid Opt-Out Requests, and, with notice and consent
12 of the Parties, generating and issuing the Individual Settlement Payment checks and distributing
13 them to Verified Class Members, and issuing the payments to Class Counsel for attorneys' fees and
14 costs, the Enhancement Award check to the Named Plaintiff, processing and sending any uncashed
15 checks (if any) to the California State Controller for deposit in the Unclaimed Property Fund, and
16 any other actions of the Settlement Administrator as set forth in this Agreement, all pursuant to the
17 terms of this Agreement.

18 The Settlement Administrator shall expressly agree to all of the terms and conditions of this
19 Agreement relating to the administration of the Settlement. The Parties each represent that they do
20 not have any financial interest in the Settlement Administrator or otherwise have a relationship
21 with the Settlement Administrator that could create a conflict of interest.

22 The Settlement Administrator shall provide Defense Counsel and Class Counsel a weekly
23 report that certifies: (i) the number of Settlement Class Members to whom the Settlement
24 Administrator has mailed the Notice Packet; (ii) the number of Notice Packets that were returned as
25 undeliverable; (iii) the number of Class Members who have submitted valid Opt Out Requests; (iv)
26 the number of Class Members who have submitted challenges or objections to any information
27 contained in the Notice Packet; and (v) the number of Settlement Class Members who have
28 submitted objections to the Settlement. Additionally, the Settlement Administrator will provide to

1 Defense Counsel and Class Counsel any updated reports regarding the administration of the
2 Settlement Agreement.

3 The Settlement Administrator shall maintain throughout the administration of the
4 Settlement all of the Opt-Out Requests that it receives. At the conclusion of the administration of
5 the Settlement, the Settlement Administrator shall retain all Opt-Out Requests for an additional
6 four years. The Settlement Administrator shall provide to Defense Counsel all Opt-Out Requests.

7 All costs of administering the Settlement, including, but not limited to, all costs and fees
8 associated with preparing, issuing, and mailing any and all notices to Settlement Class Members
9 and/or Verified Class Members, all costs and fees associated with computing, processing,
10 reviewing, and mailing the Individual Settlement Payments, all costs and fees associated with
11 preparing any tax returns and any other filings required by any governmental taxing authority or
12 agency, all costs and fees associated with preparing any other checks, notices, reports, or filings to
13 be prepared in the course of administering disbursements from the Net Settlement Amount, and any
14 other costs and fees incurred and/or charged by the Settlement Administrator in connection with the
15 carrying out of its duties under this Agreement, shall be deducted from the Gross Settlement Fund.

16 The Settlement Administrator shall be required to acknowledge that in its role as Settlement
17 Administrator it owes fiduciary obligations to the Named Plaintiff and Settlement Class Members
18 and will be required to attest that it will make payments consistent only with the terms of this
19 Agreement, including the allocation instructions set forth in this Agreement, or as ordered by the
20 Court. In no event shall the Settlement Administrator permit the disbursement of any portion of the
21 Gross Settlement Fund before the Effective Date. The obligations of the Settlement Administrator
22 are released upon all funds being disbursed by the Settlement Administrator pursuant to this
23 Agreement and/or order(s) of the Court.

24 **Section 3.03 Notice to the Settlement Class**

25 Notice of the Settlement shall be provided to the Settlement Class Members, and the Class
26 Members may submit objections to the Settlement and/or requests for exclusion from the Class
27 Members by using the following procedures:

28 ///

1 Within twenty-one (21) days after the Court preliminarily approves the Settlement, Defense
2 Counsel will provide the Class List to the Settlement Administrator.

3 Within ten (10) business days after Defense counsel provides the Class List to the Settlement
4 Administrator, the Settlement Administrator shall update the addresses using the United States Postal
5 Service's NCOALink system and mail the Notice Packet by first-class United States mail in English
6 and Spanish to each Settlement Class Member. Any Notice returned to the Settlement Administrator
7 as non-delivered on or before the Dispute Deadline Date shall be re-mailed once to the forwarding
8 address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall
9 promptly attempt to determine a correct address by use of telephonic inquiry, skip-tracing, or other
10 search using the name, address and/or Social Security number of the Settlement Class Members
11 involved, and shall then perform one re-mailing, if another mailing address is identified by the
12 Settlement Administrator. The Settlement Administrator shall promptly notify Class Counsel and
13 Defense Counsel if any Notice Packets are returned as undeliverable and no forwarding address is
14 available. Settlement Class Members who receive a re-mailed Notice within ten business (10) days
15 of the Dispute Deadline Date and Objection/Exclusion Deadline Date, as set forth in Sections 3.04(a)
16 and (b) below, shall have their Dispute Deadline Date and Objection/Exclusion Deadline Date
17 extended ten business (10) days from the original Dispute Deadline Date and Objection/Exclusion
18 Deadline Date.

19 No later than twenty-one (21) days prior to the Final Approval Hearing, or seven (7) days
20 prior to Plaintiff's submission of the motion for final approval and for approval of fees and costs,
21 whichever is earlier, the Settlement Administrator shall provide Class Counsel and Defense
22 Counsel with a declaration attesting to completion of the notice process, including any attempts to
23 obtain valid mailing addresses for Settlement Class Members and re-sending any returned Notice
24 Packets, as well as the number of Opt Out Requests or objections that the Settlement Administrator
25 received and the dates that the Settlement Administrator received those Opt Out Requests and/or
26 objections.

27 Compliance with the procedures described in this Section shall constitute due and sufficient
28 notice to Settlement Class Members of this proposed Settlement and the Final Approval Hearing,

1 and shall satisfy the requirements of due process. Nothing else shall be required of, or done by, the
2 Parties, Class Counsel, Defense Counsel, or the Settlement Administrator to provide notice of the
3 proposed Settlement and the Final Approval Hearing.

4 **Section 3.04 Responses to Notice**

5 **a. No Claim Forms**

6 Settlement Class Members are not required to submit claim forms for their share of the Net
7 Settlement Amount.

8 Any Verified Class Member who disagrees with the data used to calculate his or her claim
9 as reflected on the Notice shall be allowed to indicate and explain such disagreement. Such written
10 dispute must be postmarked or faxed to the Settlement Administrator no later than forty-five (45)
11 days after the date the Notice is first mailed (the “**Dispute Deadline Date**”). The Settlement
12 Administrator shall resolve the disagreement with the Verified Class Member using the employee
13 records provided by Defendant and the Settlement Class Member, in consultation with Class
14 Counsel and Defense Counsel. Any disputes not otherwise resolved by the Settlement
15 Administrator and Class Counsel and Defense Counsel concerning administration of the Settlement
16 shall be resolved by the Court, under the laws of the State of California. Prior to any such
17 involvement of the Court, counsel for the Parties will confer in good faith to resolve the disputes
18 without necessity of involving the Court. The date of the postmark on the return envelope or the
19 fax confirmation of the Settlement Administrator shall be the exclusive means used to determine
20 whether a Class Member has “timely” disputed the calculation or application of the formula for
21 determining Individual Settlement Payments.

22 **b. Request for Exclusion from Class**

23 By entering into this Agreement, Named Plaintiff agrees that he is not requesting and will
24 not be requesting exclusion from the Class.

25 The Notice shall provide that Class Members who wish to exclude themselves from the
26 Class must submit a written Opt-Out Request to the Settlement Administrator requesting exclusion
27 from the Class on or before forty-five (45) days from the date the Notice is first mailed (the
28 “**Objection/Exclusion Deadline Date**”). Such Opt-Out Request must contain the name, address,

1 telephone number, and last four digits of the Social Security number of the person requesting
2 exclusion, must be signed by the Class Member requesting exclusion; must be returned by mail to
3 the Settlement Administrator at a specified address; and must be postmarked on or before the
4 Objection/Exclusion Deadline Date, and must contain any other language as set forth in the Notice.
5 Class Members will also be able to opt out of the Settlement via facsimile or e-mail, on or before
6 the Objection/Exclusion Deadline Date, as provided in this paragraph. The date of the postmark on
7 the return mailing envelope shall be the exclusive means used to determine whether an Opt-Out
8 Request has been timely submitted. Any Class Member who opts out of the Class will not be
9 entitled to any recovery under the Class Settlement and will not be bound by the Settlement or any
10 release of claims in the Action or have any right to object, appeal, or comment on the Settlement.
11 This will not affect a Settlement Class Member's entitlement to recovery under the PAGA
12 Settlement Amount and Settlement Class Members will still be bound by the release of PAGA
13 claims regardless of whether they opt-out of the Class Settlement. Class Members who fail to
14 submit a valid and timely Opt-Out Request on or before the Objection/Exclusion Deadline Date
15 shall be bound by all terms of the Settlement and any Final Judgment entered in this Class Action if
16 the Settlement is approved by the Court, including a full and final release of all claims set forth in
17 the Action. No later than five (5) days after the Exclusion Deadline Date, the Settlement
18 Administrator shall provide Defense Counsel with a complete list of all Class Members who have
19 timely and properly requested exclusion from the Class.

20 **c. Objections to Settlement**

21 The Notice shall provide that Class Members who wish to object to the Settlement must
22 either submit a written statement to the Settlement Administrator (who shall serve all objections as
23 received on Class Counsel and Defense Counsel, as well as file all such objections with the Court)
24 objecting to the Settlement or appear at the Final Approval Hearing and make an oral objection.
25 Any written statement of objection must be submitted to the Settlement Administrator on or before
26 the Objection/Exclusion Deadline Date, unless extended by re-mailing by ten (10) business days, as
27 provided in section 3.03, above. All objections in writing must include the Class Member's name,
28 address, telephone number, and last four digits of his or her Social Security number, and must state

1 the basis on which the objections are asserted and whether the Class Member intends to appear at
2 the Final Approval Hearing. The Parties will be permitted to respond in writing to such objections
3 before the Final Approval Hearing or within the time period set by the Court. Class Members who
4 fail to make objections in the manner specified above shall be deemed to have waived any
5 objections and shall be foreclosed from making any objections (whether by appeal or otherwise) to
6 the Settlement.

7 **d. No Solicitation of Settlement Objections or Exclusions**

8 The Parties agree to use their best efforts to carry out the terms of this Settlement. At no
9 time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members
10 to submit oral or written objections to the Settlement or Opt-Out Requests, appeal from the Court's
11 Final Judgment or seek to vacate or set aside the final judgment. Further, at no time shall any of
12 the Parties or their counsel discourage any Class Members from participating in the Settlement.

13 **e. Failure to Object**

14 Any Class Member who fails to timely submit a written statement of his or her intention to
15 object to the Settlement and Agreement shall be foreclosed from making any objection to this
16 Settlement and Agreement, unless otherwise ordered by the Court, except that any Class Member
17 may appear at the Final Approval Hearing and make an oral objection, as provided in subsection
18 (c), above.

19 **f. Right of Defendants to Void Agreement**

20 If five percent (5%) or more of the Class Members submit timely and valid Opt-Out
21 Requests as described in Section 3.04(b) above and thus become Non-Verified Class Members,
22 Defendant will have the right, but not the obligation, to revoke and void this Agreement at their
23 discretion. Defendant must exercise its right to revoke this Agreement within fourteen (14) days of
24 being informed by the Settlement Administrator that more than five percent (5%) of the Class
25 Members opted out of this Agreement. If Defendant exercises its right to void the Agreement, then
26 the Parties will have no further obligations under the Agreement, including, without limitation, any
27 obligation by Defendant to pay the Gross Settlement Fund, or any amounts that otherwise would

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1 have been owed under this Agreement, except that Defendant shall be responsible for any
2 settlement administration costs incurred as of the date it elects to revoke this Agreement.

3 **e. Escalator Clause**

4 The Gross Settlement Fund is based on Defendant's representations that there are
5 approximately 13,505 aggregate workweeks worked during the Class Period. If, at the time of
6 preliminary approval, the number of workweeks has increased by 10% or more (i.e., if there are
7 14,856 or more workweeks), Defendant will have the choice of (a) increasing the Gross Settlement
8 Fund on a proportional basis according to the number of additional compensable workweeks
9 worked by Settlement Class members in excess of ten percent (10%); or (b) ending the Class
10 Period on the last day before the ten percent (10%) threshold is exceed.

11 **Section 3.05 Final Approval Hearing**

12 A Final Approval Hearing shall be held before the Court on the date set forth in the Order
13 for Preliminary Approval and Notice of Proposed Class Action and PAGA Settlement, which shall
14 be approximately ninety (90) days after the initial mailing of the Notice of Proposed Class and
15 PAGA Action Settlement. At the Final Approval Hearing, the Court shall (1) review this
16 Agreement and determine whether the Court should give it final approval, (2) set the amounts of
17 the Enhancement Award and Class Counsel award of attorneys' fees and reimbursement of costs,
18 and (3) consider any timely objections made pursuant to Section 3.04(c) above and all responses by
19 the Parties to such objections. At the Final Approval Hearing, the Parties shall ask the Court to
20 give final approval to this Settlement Agreement and shall submit to the Court a Proposed Final
21 Order Approving Settlement of Class and PAGA Action, which the Parties shall jointly agree upon
22 in advance and which shall be entered in the Action.

23 After entry of the Final Judgment, the Court shall have continuing jurisdiction with respect
24 to the interpretation, implementation, and enforcement of the terms of this Agreement and all
25 orders and judgments entered in connection with this Agreement, and the Parties and their counsel
26 submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the
27 settlement embodied in this Agreement, and all orders and judgments entered in connection with
28 this Agreement.

1 Within three (3) business days of the Court's entry of the Final Judgment, Class Counsel
2 shall submit the Final Judgment to the LWDA using the appropriate website and intake forms
3 located at: [https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html)
4 [Act.html](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html).

5 **a. Waiver of Right to Appeal**

6 Provided that the Final Order is consistent with the terms and conditions of this Agreement,
7 Named Plaintiff, as well as any Class Members who did not timely submit an objection to the
8 Settlement and/or appear at the Final Approval Hearing, hereby waive any and all rights to appeal
9 from the Final Order, including all rights to any post-judgment proceeding and appellate
10 proceeding, such as a motion to vacate or set aside judgment, a motion for new trial, and any
11 extraordinary writ, and the Final Order therefore will become final and non-appealable at the time
12 it is entered. This waiver does not include any waiver of the right to oppose any appeal, appellate
13 proceedings, or post-judgment proceedings nor does this waiver preclude Plaintiff and/or Class
14 Counsel from appealing any award of an Enhancement or attorneys' fees and costs of suit.

15 **b. Vacating, Reversal, or Material Modification on Appeal or Review**

16 If, after a notice of appeal or a petition for a writ of *certiorari* or any other motion, petition,
17 or application, the reviewing court vacates, reverses, or modifies the Final Order such that there is a
18 material modification to the Settlement and Agreement, and that court's decision is not completely
19 reversed and the Final Order is not fully affirmed on review by a higher court, then Named Plaintiff
20 and Defendant will each have the right to void the Settlement and Agreement, which the Parties
21 must do by giving written notice to the other Parties, the reviewing court, and the Court not later
22 than fourteen (14) days after the reviewing court's decision vacating, reversing, or materially
23 modifying the Final Order becomes final. A vacation, reversal, or modification of the Court's
24 award of an Enhancement or Class Counsel's fees or costs will not constitute a vacation, reversal,
25 or material modification of the Final Order within the meaning of this paragraph, provided that
26 Defendant's obligation to make payments remains limited as set forth in this Agreement.

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1 **c. Rendering the Settlement Null and Void**

2 In the event: (i) 5% or more of the Class Members submit valid Opt-Out Requests and
3 Defendant elects to void this Agreement; (ii) the Court does not enter any order specified in this
4 Agreement; (iii) the Court does not finally approve the Settlement as provided in this Agreement;
5 (iv) the Court does not enter a Final Judgment as provided in this Agreement which becomes final
6 as a result of the occurrence of the Effective Date; or (v) the Settlement does not become final for
7 any other reason, then, in any such case, this Settlement Agreement shall be null and void and any
8 order or judgment entered by the Court in furtherance of this Settlement shall be treated as void, the
9 Parties and any funds to be awarded under this Settlement shall be returned to their respective
10 positions at the time of the execution of this Settlement Agreement, and the Parties shall proceed in
11 all respects as if this Settlement Agreement had not been executed, except that any fees already
12 incurred by the Settlement Administrator shall be split between the Parties.

13 **d. Administration of the Settlement with Appeal Pending**

14 In the event an appeal is filed from the Court's Final Judgment, or any other appellate
15 review is sought prior to the Date of Finality, administration of the Settlement shall be stayed
16 pending final resolution of the appeal or other appellate review.

17 **Section 3.06 Settlement Payment Procedures**

18 **a. Settlement Sum**

19 The Gross Settlement Fund of Four Hundred Sixty Seven Thousand Five Hundred Dollars
20 (\$467,500.00) includes the following: (a) Enhancement Award to Plaintiff Montes not to exceed
21 Ten Thousand Dollars (\$10,000.00); (b) an award of attorneys' fees to Class Counsel in an amount
22 not to exceed one-third of the Gross Settlement Fund which is currently estimated to be One
23 Hundred Fifty-Five Thousand Eight Hundred Thirty-Three Dollars and Thirty-Three Cents
24 (\$155,833.33); (c) documented costs of Class Counsel in an amount not to exceed Thirty Thousand
25 Dollars (\$30,000.00); (d) the Settlement Administration Costs not to exceed Eight Thousand
26 Dollars (\$8,000.00); and (e) the PAGA Settlement Amount of Thirty Thousand Dollars
27 (\$30,000.00) paid to the LWDA and PAGA Group Members.

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1 The Gross Settlement Fund has a maximum value of Four Hundred Sixty-Seven Thousand
2 Five Hundred Dollars (\$467,500.00). Under no circumstances will Defendant be required to pay
3 more than Four Hundred Sixty Seven Thousand Five Hundred Dollars (\$467,500.00), pursuant to
4 the terms set forth in this Agreement, except that Defendant shall pay for the employer's portion of
5 any payroll taxes due on the wage portion of each Individual Settlement Payment, and as outlined
6 in Section 3.04(e) above.

7 **b. Payment of Attorneys' Fees and Costs**

8 Class Counsel may request that the Court approve, and Defendant will not oppose, an award
9 of up to one-third of the Gross Settlement Fund, which is currently estimated to be One Hundred
10 Fifty-Five Thousand Eight Hundred Thirty-Three Dollars and Thirty-Three Cents (\$155,833.33) in
11 attorneys' fees and up to Thirty Thousand Dollars (\$30,000.00) in documented litigation costs per
12 Class Counsel's billing records ("**Fees and Costs Award**") to be distributed from the Gross
13 Settlement Fund. The Fees and Costs Award will cover: all work performed and all fees and costs
14 incurred to date and all work to be performed and all fees and costs to be incurred in connection
15 with the approval by the Court of this Settlement, the administration of the Settlement, and
16 obtaining final approval of this Settlement and entry of judgment. Plaintiff's Counsel shall not be
17 permitted to petition the Court for, or accept, any additional payments for attorneys' fees or costs.
18 Plaintiff's Counsel will be issued an IRS Form 1099 by the Settlement Administrator for the Fees
19 and Costs Award. The Settlement shall not be contingent upon the Court awarding Class Counsel
20 any particular amount for attorneys' fees and costs. The Parties agree that any reduction in the
21 amount of attorney's fees and costs awarded by the Court is not a basis to void the Agreement and
22 Plaintiff's Counsel has the right to appeal the Court's ruling regarding the fees. If Plaintiff's
23 Counsel appeals an adverse ruling of the Court regarding its fee and cost application, the ruling of
24 the appellate court (regardless of its substance) shall not constitute a material alteration of a term of
25 this Agreement. The Fees and Costs Award shall be paid by the Settlement Administrator to Class
26 Counsel no later than eighty (80) calendar days after the Effective Date.

27 The Settlement Administrator's payment of the Fees and Costs Award to Class Counsel
28 shall constitute full satisfaction of the obligation to pay any amounts to any person, attorney, or law

1 firm for attorneys' fees or costs in the Action incurred by any attorney on behalf of the Named
2 Plaintiffs, and Class Members, and shall relieve Defendant, the Settlement Administrator, and
3 Defense Counsel of any other claims or liability to any other attorney or law firm for any attorneys'
4 fees or costs to which any of them may claim to be entitled on behalf of the Named Plaintiff and
5 Class Members.

6 **c. Payment of Enhancement Award to Named Plaintiff**

7 Class Counsel may request that the Court approve, and Defendant will not oppose, an
8 Enhancement Award to the Named Plaintiff in an amount not to exceed Ten Thousand Dollars
9 (\$10,000.00) to be paid to the Named Plaintiff from the Gross Settlement Fund for his time and
10 effort spent pursuing the Action. Defendant agrees not to oppose such an application, so long as it
11 is consistent with the provisions of this Agreement. The Settlement Administrator shall deliver any
12 Enhancement Award to Named Plaintiff within eighty (80) calendar days after the Effective Date.
13 The Named Plaintiff will also be entitled to receive an Individual Settlement Payment pursuant to
14 this Agreement in addition to this Enhancement Award. The Settlement shall not be contingent
15 upon the Court awarding Named Plaintiff any particular amount for the enhancement award or
16 service award. Class Counsel and Named Plaintiff shall have no right or ability to nullify the
17 Settlement in the event that the Court awards an amount less than the Enhancement Award
18 described in this Agreement.

19 Because it is the intent of the Parties that the Enhancement Award represents payment to
20 the Named Plaintiff for his services to the Class Members, and not wages, the Settlement
21 Administrator will not withhold any taxes from the Enhancement Award. The Enhancement
22 Award will be reported on a Form 1099 to Named Plaintiff. Although it is the contemplation of the
23 Parties that the Enhancement Award does not represent wages, the Internal Revenue Service, the
24 California Franchise Tax Board, or some other taxing authority may take the position that the
25 Enhancement Award constitutes compensation for income tax and withholding purposes. Named
26 Plaintiff agrees to assume the responsibility of remitting to the Internal Revenue Service, the
27 California Franchise Tax Board, and any other relevant taxing authority the amounts required by
28 law, if any, to be withheld by Defendant from the Enhancement Award paid under this Agreement.

1 In addition, Named Plaintiff shall hold Defendant harmless and indemnify Defendant for all taxes,
2 interest, penalties, and costs, excluding attorneys' fees, incurred by Defendant by reason of any
3 claims relating to the non-withholding of taxes from the Enhancement Award. The Settlement
4 Administrator will issue a Form 1099 to the Named Plaintiff with regards to the Enhancement
5 Award payment. The Settlement Administrator will provide a copy of these Form 1099s issued to
6 counsel for Defendant.

7 **d. Payment of Settlement Administration Costs**

8 The Settlement Administration Costs shall be deducted from the Gross Settlement Fund.
9 All disputes relating to the Settlement Administrator's performance of its duties will be referred to
10 the Court, if necessary, which will have continuing jurisdiction over this Settlement until all
11 payments and obligations contemplated by this Settlement have been fully carried out.

12 **e. Payment of Individual Settlement Payments to Verified Class Members**

13 The Parties agree that the Net Settlement Amount shall be used to fund Individual
14 Settlement Payments. The Parties agree that the Net Settlement Amount shall be divided between
15 all Verified Class Members based on the number of Workweeks for which they were employed by
16 Defendant in California during the Class Period. The maximum amount that each Verified Class
17 Member is entitled to receive is determined by multiplying Net Settlement Amount by a ratio that
18 is determined by dividing a Verified Class Member's total Workweeks worked during the Class
19 Period in California by the total number of Workweeks worked during the Class Period by all
20 Verified Class Members employed by Defendant in California, as expressed in the following
21 formula:

$$\begin{array}{rcccl} \text{Individual} & & \text{Net} & & \text{Verified Class Member's} \\ \text{Settlement} & = & \text{Settlement} & \times & \text{Total Number of Workweeks} \\ \text{Payment} & & \text{Amount} & & \text{Total Number of Workweeks of all} \\ & & & & \text{Verified Class Members} \end{array}$$

25 If a Verified Class Member worked any day during Workweek, it will be counted as a
26 Workweek for purposes of calculating the Individual Settlement Payment.

27 It is the intent of the Parties that the Net Settlement Amount shall be sufficient to pay
28 Verified Class Members in accordance with the formula set forth above. Accordingly, if for any

1 reason the total value of all claims made by Verified Class Members exceeds the Net Settlement
2 Amount, then the Individual Settlement Payments will be adjusted on a pro-rata basis so that the
3 total payout to Verified Class Members does not exceed the Net Settlement Amount.

4 Each Individual Settlement Payment will be allocated as twenty percent (20%) to wages,
5 thirty percent (30%) to interest, and fifty percent (50%) to penalties. The Settlement Administrator
6 shall calculate, withhold, and remit to applicable governmental agencies sufficient amounts as may
7 be owed for Verified Class Members' taxes due on the portion of the Individual Settlement
8 Payment allocated to wages that will be reported on an IRS Form W2 basis. These amounts shall
9 be paid from the Net Settlement Amount.

10 The Settlement Administrator shall also report those portions of the Individual Settlement
11 Payments allocated to penalties on an IRS Form 1099 basis as required by law.

12 The Settlement Administrator shall also calculate, and remit to the applicable government
13 agencies such amount as may be owed by Defendant as an employer for payroll taxes on a
14 maximum wage allocation of twenty percent (20%) of the Net Settlement Amount that will be
15 reported on an IRS Form W2 basis. These employer payroll taxes allocated to the wage portion of
16 the Individual Settlement Payments shall be paid by Defendant in addition to the Gross Settlement
17 Fund.

18 No later than fifteen (15) calendar days after the Effective Date, Defendant will pay the
19 Gross Settlement Fund to the Settlement Administrator. No later than thirty (30) calendar days
20 after the Effective Date, the Settlement Administrator shall prepare and mail the checks for the
21 Individual Settlement Payments, minus applicable withholdings, to Verified Class Members.

22 To the extent that a Notice or an Individual Settlement Payment check is (1) undeliverable,
23 or (2) uncashed 180 days after the date listed on the check, the Individual Settlement Payment
24 check shall be directed to the California State Controller for deposit in the Unclaimed Property
25 Fund in the name of the employee.

26 **f. Payment to the LWDA**

27 No later than thirty (30) calendar days after the Effective Date, the Settlement
28 Administrator shall deliver to the LWDA a payment in the amount of Twenty-Two Thousand Five

1 Hundred Dollars (\$22,500.00) as the LWDA's share of the settlement of the PAGA penalties,
2 which the Parties believe in good faith is a fair and reasonable apportionment.

3 **g. Payment to the PAGA Group Members**

4 No later than thirty (30) calendar days after the Effective Date, the Settlement
5 Administrator shall prepare and mail the checks for the Individual PAGA Payments in the total
6 amount of Seven Thousand Five Hundred Dollars (\$7,500.00) which shall be allocated to the
7 PAGA Group Members based on each PAGA Group Member's pro rata share of the total pay
8 periods.

9 **h. No Additional Contribution by Defendant**

10 Defendant's monetary obligation under this Settlement and Agreement is limited to the
11 Gross Settlement Fund and the employer's portion of payroll taxes. Defendant shall not be called
12 upon or required to contribute additional monies above the Gross Settlement Fund under any
13 circumstances whatsoever, except as to Defendant's share of the employer payroll taxes, and as
14 outlined in Section 3.04(e) of this Agreement. All costs, fees, and expenses arising out of or in
15 connection with the performance of this Agreement shall be paid from the Gross Settlement Fund,
16 but shall not include attorneys' fees incurred (if any) in enforcing the Settlement Agreement caused
17 by a breach of the Settlement Agreement by Defendant.

18 If, for whatever reason and however it may occur, this Agreement is canceled, rescinded,
19 terminated, voided, or nullified or the Settlement is barred by operation of law, or invalidated, or
20 ordered not to be carried out by a court of competent jurisdiction, Defendant shall cease to have
21 any obligation to pay any portion of the Gross Settlement Fund to anyone under the terms of this
22 Agreement, and all previous disbursements from the Gross Settlement Fund will immediately be
23 paid back to Defendant by the person or entity who received such disbursement. Any unpaid costs
24 already incurred by the Settlement Administrator shall be split by the Parties.

25 **i. No Claims Resulting from Payments**

26 No person shall have any claim of any kind whatsoever against any of the Parties, Defense
27 Counsel, Class Counsel, any Class Member, or the Settlement Administrator, based on the
28 distribution of Individual Settlement Payments made in accordance with this Agreement.

1 **j. No Effect on Employee Benefit Plans**

2 The payment to any Class Member or PAGA Group Member as provided for in this
3 Agreement (including, without limitation, any Individual Settlement Payment, any Individual
4 PAGA Payments and any Enhancement Award paid to Named Plaintiff) is not and shall not be
5 deemed to constitute an addition to, a modification of, or a change in any previously credited hours
6 of service, compensation and/or wages under any collective bargaining agreement, employee
7 benefit plan, employment policy, or stock option plan of or sponsored by Defendant or any of its
8 present or former parent corporations or affiliates or any jointly trusted benefit plans. Any such
9 payment to any Class Member shall not form the basis for additional contributions to, additional
10 benefits under, or any other additional entitlements under any collective bargaining agreement,
11 employee benefit plan, employment policy, or stock option plan of or sponsored by Defendant or
12 any of its present or former parent corporations or affiliates or any jointly trusted benefit plans.
13 Defendant and each of its present and former parent corporations and affiliates retain the right to
14 modify and/or amend the language of their employee benefit plans, employment policies, and stock
15 option plans, and to seek to have modified and/or amended the language of any collective
16 bargaining agreement, jointly trusted benefit plans, to make clear that any amounts paid as a result
17 of this Agreement are not compensation or wages, or payments for “hours worked,” as defined by
18 the applicable agreement(s), plans and policies, and that no additional contributions or benefits are
19 required by reason of the Settlement and this Agreement.

20 **k. Notice of the Order and Judgment Granting Final Approval**

21 The Parties shall request that pursuant to California Rule of Court 3.771(b), the Court
22 approve that Notice of Entry of Judgment and the Order and Judgment granting final approval of
23 this Settlement will be posted on the Settlement Administrator’s website within three (3) days of
24 Entry of Judgment and the Order and Judgment granting final approval.

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ARTICLE IV

LIMITATIONS ON USE OF THIS SETTLEMENT

Section 4.01: No Admission

Defendant vigorously disputes the allegations in the Action. This Agreement is entered into solely for the purpose of compromising claims that are highly disputed by the Parties. Nothing in this Agreement is intended to be or will be construed as an admission of liability or wrongdoing by Defendant and/or any of the Released Parties.

Section 4.02: Non-Evidentiary Use

Whether or not the Effective Date occurs, neither this Agreement nor any of its terms will be: (a) construed as, offered, or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Defendant or any of the Released Parties, including, but not limited to, evidence of a presumption, concession, indication, or admission by Defendant or any of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage; (b) disclosed, referred to, or offered in evidence against any of the Defendant or Released Parties in any further proceeding in the Action, or any other civil, criminal, or administrative action or proceeding except for the purposes of effectuating the Settlement pursuant to this Agreement or for Defendant to establish that a Class Member or PAGA Group Member has resolved any of his/her claims released through this Agreement, (c) but may be used as evidence in any subsequent action for breach or enforcement of this Agreement.

Section 4.03: Nullification

The Parties have agreed to the certification of the Class encompassing all causes of action pled in the Action for the sole purpose of effectuating this Agreement. If (a) the Court should for any reason fail to certify the Class for settlement, or (b) the Court should for any reason fail to approve this Settlement in the form agreed to by the Parties, or (c) the Court should for any reason fail to enter the Final Order, or (d) the Final Order is reversed, modified, or declared or rendered void, or (e) the Court should for any reason fail to dispose of the Action in its entirety, with the exception of the Court's retention of exclusive and continuing jurisdiction of this Action over all Parties and Class Members to interpret and enforce the terms, conditions, and obligations of the

1 Settlement, then (i) this Agreement shall be considered null and void; (ii) neither this Agreement
2 nor any of the related negotiations or proceedings shall be of any force or effect; (iii) all Parties to
3 this Agreement shall stand in the same position, without prejudice, as they were at the time
4 immediately prior to the execution of the Settlement Agreement and if the Settlement Agreement
5 had been neither entered into nor filed with the Court; and (iv) the fact that the Parties were willing
6 to stipulate to class certification of all causes of action pled in the Action as part of the Settlement
7 for settlement purposes only will not have any bearing whatsoever on the remainder of the
8 litigation of the Action.

9 Invalidation of any material portion of this Agreement shall invalidate this Agreement in its
10 entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall
11 remain in full force and effect.

12 In the event of a timely appeal from the Final Order, the Final Order shall be stayed and the
13 Gross Settlement Fund shall not be distributed pending the completion and results of the appeal.

ARTICLE V

RELEASES

Section 5.01: Release of Claims As To All Class Members.

Any Verified Class Member, including the Named Plaintiff, who does not timely opt out of the settlement as described in Section 3.04(b) shall be bound by this Agreement and shall be deemed to have fully and finally released all claims against any of the Released Parties that were set forth, or that reasonably arise from facts alleged in the Action.

21 Upon the Court's Final Order of this Stipulation of Settlement, and except as to such rights
22 or claims as may be created by this Agreement, the Verified Class Members, comprised of each
23 member of the Class who has not submitted a valid Opt Out Request, fully and finally release and
24 discharge Defendant and its parent company, BFG Supply Company, and each of its and their
25 respective past, present, and future parent companies, subsidiaries, successors, divisions, related or
26 affiliated companies, shareholders, officers, directors, employees, agents, attorneys, insurers,
27 investors, successors and assigns, owners, partners, units, assigns, principals, heirs, representatives,
28 accountants, auditors, consultants, reinsurers, predecessors in interest, beneficiaries, executors,

1 members, privies, administrators, fiduciaries, and trustees and any individual or entity which could
2 be jointly liable with Defendant, and each of them (collectively, the “**Released Parties**”), from any
3 and all applicable state law wage-and-hour claims, rights, demands, liabilities, and causes of action
4 of every nature and description, arising during the Class Period, including without limitation,
5 statutory, constitutional, contractual or common law claims for wages, damages, unpaid costs, civil
6 or statutory penalties, liquidated damages, interest, attorneys’ fees, litigation costs, restitution, or
7 equitable relief, based on the following categories of allegations: failure to pay minimum wages
8 (including off the clock work and/or time spent submitting to COVID-19 screenings), wage
9 statement violations, failure to maintain accurate records, failure to pay all wages due at time of
10 termination, waiting time penalties, failure to pay overtime (including for off the clock work and/or
11 time spent submitting to COVID-19 screenings not paying at regular rate) failure to provide rest
12 periods, failure to pay rest period premiums at regular rate, failure to pay meal premiums at regular
13 rate, failure to provide meal periods, and unlawful competition (collectively, “**Class Members’**
14 **Released Claims**”). The Class Members’ Released Claims include claims meeting the above
15 definition under any and all applicable California laws, statutes, regulations, and Wage Orders.

16 It is agreed that because the Class Members are so numerous, it is impossible or impractical
17 to have each Class Member execute this Agreement. The Notice of Proposed Class and PAGA
18 Action Settlement will advise all Class Members of the binding nature of the releases. Excepting
19 only the Class Members who timely submit a valid Opt-Out Request, the Notice of Proposed Class
20 Action Settlement shall have the same force and effect as if this Settlement and Agreement were
21 executed by each Class Member with regard to the claims that he or she is releasing pursuant to the
22 Settlement and Agreement.

23 **Section 5.02: Release of Claims As To All PAGA Group Members.**

24 Any PAGA Group Member, including the Named Plaintiff, shall be bound by this
25 Agreement and shall be deemed to have fully and finally released all PAGA claims that were set
26 forth, or reasonably arise from the facts alleged in the Action.

27 Upon the Court’s Final Order of this Stipulation of Settlement, and except as to such rights
28 or claims as may be created by this Agreement, the PAGA Group Members, fully and finally

1 release and discharge any and all Released Parties for theories of liability under PAGA for failure
2 to pay minimum wages (including off the clock work and/or time spent submitting to COVID-19
3 screenings), wage statement violations, failure to maintain accurate records, failure to pay all wages
4 due at time of termination, waiting time penalties, failure to pay overtime (including for off the
5 clock work and/or time spent submitting to COVID-19 screenings) failure to provide rest periods,
6 failure to pay rest period premiums at regular rate, failure to pay meal premiums at regular rate, and
7 failure to provide meal periods.

8 **Section 5.03: General Release by Named Plaintiff.**

9 Plaintiff Angel Vasquez Montes agrees to release all claims known or unknown, accrued or
10 unaccrued, he has or may have against Defendant and the Released Parties, including execution of
11 a California *Civil Code* section 1542 release and waiver.

12 In consideration of the monetary sum provided to them by Defendant, subject to Court
13 approval, the Named Plaintiff fully releases and forever discharges the Released Parties from any
14 and all actions, causes of action, claims, charges, complaints, liabilities, obligations, promises,
15 agreements, controversies, damages, actions, suits, rights, demands, liens, costs, losses, debts,
16 penalties, fines, wages, liquidated damages, restitutionary amounts, attorneys' fees and costs,
17 interest, punitive damages and expenses (including, without limitation, back wages, penalties,
18 liquidated damages, and attorneys' fees and costs actually incurred) or liabilities of any kind which
19 have been or could have been asserted against the Released Parties arising out of or relating to
20 Plaintiff's employment with Defendant, and/or any other occurrence taking place on or before the
21 effective date of this Agreement, known or unknown, suspected or unsuspected, including but not
22 limited to claims arising out of, based upon, or relating to Plaintiff's employment with the
23 Defendant, or the remuneration for such employment, and the matters referred to herein, whether or
24 not known or suspected to exist, and whether or not specifically or particularly described herein.
25 Without limiting the generality of the foregoing, Plaintiff expressly releases all claims or rights that
26 exist at the time of the execution of this Agreement arising out of alleged violations of any
27 contracts, express or implied (including but not limited to any contract of employment); any
28 contract or covenant of good faith or fair dealing (express or implied); any tort, including, without

1 limitation, negligence, fraud, misrepresentation under California Labor Code § 970, negligent
2 infliction of emotional distress, intentional infliction of emotional distress, slander and defamation;
3 wrongful or constructive termination; any “retaliation” claims; any claims relating to any breach of
4 public policy; any legal restrictions on Defendant’s right to discharge employees or refuse to hire
5 applicants; and any federal, state, or other governmental statute, regulation, order or ordinance,
6 including, without limitation: (1) Title VII of the Civil Rights Act of 1964 (race, color, religion,
7 sex, and national origin discrimination or harassment, including retaliation for reporting
8 discrimination or harassment); (2) 42 U.S.C. § 1981 (discrimination); (3) sections 503 and 504 of
9 the Rehabilitation Act of 1973 (handicap discrimination); (4) Equal Pay Act, 29 U.S.C. § 209(4)(1)
10 (equal pay); (5) Americans with Disabilities Act, 42 U.S.C. § 12100 *et seq.* (disability
11 discrimination); (6) Family and Medical Leave Act, 29 U.S.C. § 2601 *et seq.* (family/medical
12 leave); (7) California Fair Employment and Housing Act, Cal. Gov’t Code § 12900 *et seq.*
13 (discrimination or harassment in employment and/or housing, including discrimination or
14 harassment based on race, religious creed, color, national origin, ancestry, disability, marital status,
15 sex (including pregnancy), sexual orientation, or age, including, without limitation, retaliation for
16 reporting discrimination or harassment); (8) California Family Rights Act, Cal. Gov’t Code
17 § 12945.1 *et seq.* (family/medical leave); (9) California Labor Code, or any Industrial Welfare
18 Commission Wage Order; (10) the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*; (11)
19 Executive Order 11246 (race, color, religion, sex, and national origin discrimination or
20 harassment); (12) Executive Order 11141 (age discrimination); (13) California Business and
21 Professions Code Section 17200, *et. seq.*, and (14) Employee Retirement Income Security Act, 29
22 U.S.C. § 1000 *et seq.* (employee benefits). The Parties understand and agree that the Named
23 Plaintiff is not, by way of this release, releasing any workers’ compensation claims, unemployment
24 insurance claims, nor any other claims which cannot be released as a matter of law.

25 **Section 5.04: Named Plaintiff’s Release of Unknown Claims**

26 Named Plaintiff expressly waives any right or claim of right to assert hereafter that any
27 claim, demand, obligation, and/or cause of action, existing at the time of the execution of this
28 Agreement, has, through ignorance, oversight, or error, been omitted from the terms of this

1 Agreement. Named Plaintiff agrees there is a risk that each and every injury he may have suffered
2 by reason of the Released Parties' relationship with him might not now be known, and there is
3 further risk that said injuries, whether known or unknown at the date of this Agreement, might
4 possibly become progressively worse, and that as a result thereof further damages may be sustained
5 by them. Nevertheless, Named Plaintiff desires to forever and fully release and discharge the
6 Released Parties, and each of them, and understands that by the execution of this Agreement no
7 further claims for any such injuries that existed at the time of the execution of this Agreement may
8 ever be asserted by him. Named Plaintiff expressly waives and relinquishes all rights and benefits
9 afforded by section 1542 of the Civil Code of the State of California and does so understanding and
10 acknowledging the significance of such specific waiver of section 1542. Specifically, Named
11 Plaintiff waives his rights under Section 1542 of the Civil Code, which states:

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

15 Named Plaintiff makes this waiver with full knowledge of his rights and with the specific
16 intent to release all known and unknown claims arising on or before the effective date of this
17 Agreement, and therefore specifically waives the provisions of any statute in any state of the
18 United States which prevents release of unknown claims. Thus, subject to and in accordance with
19 this Agreement, even if Named Plaintiff may hereafter discover facts in addition to or different
20 from those he now knows or believes to be true, Named Plaintiff, upon the Effective Date, shall be
21 deemed to have fully, finally, and forever settled and released any and all claims against the
22 Released Parties that were alleged or could have been alleged in the Action, as well as any other
23 claims, whether known or unknown, suspected or unsuspected, contingent or non-contingent, that
24 now exist, upon any theory of law or equity, including, without limitation, conduct that is
25 negligent, intentional, with or without malice, or a breach of any duty, law, or rule, without regard
26 to the subsequent discovery or existence of such different or additional facts.

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1 **Section 6.02: Additional Representations and Warranties**

2 Class Counsel and Named Plaintiff jointly and severally represent and warrant to Defendant
3 that they are not aware of any attorneys beyond those named as Class Counsel who have claims for
4 fees or costs arising out of the Action or the Settlement contemplated hereby.

5 Class Counsel certifies that it is not soliciting any individuals for the purpose of pursuing an
6 individual, class, representative or mass action against Defendant, other than for the claims alleged
7 in the Action.

8 This Agreement is contingent upon Defendant paying a maximum of Four Hundred Sixty
9 Seven Thousand Five Hundred Dollars (\$467,500.00) for a complete resolution of the claims at
10 issue in the Action, including, without limitation, attorneys' fees and costs, but excluding any
11 employer's payroll taxes.

12 **Section 6.03: Assignment**

13 None of the rights, commitments, or obligations recognized under this Agreement may be
14 assigned by any Party, Settlement Class Member, Class Counsel, or Defense Counsel without the
15 express written consent of each other Party and its or their respective counsel. The representations,
16 warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the
17 Parties, the Class Members, the PAGA Group Members, and the Released Parties, and shall not be
18 construed to confer any right or to avail any remedy to any other person or entity.

19 **Section 6.04: Entire Agreement**

20 This Agreement, including, without limitation, the Exhibit referred to herein, which form an
21 integral part hereof, contains the entire understanding of the Parties hereto with respect to the
22 subject matter contained herein. In case of any conflict between text contained in Articles I
23 through VI of this Agreement and text contained in the Exhibits to this Agreement, the former (*i.e.*,
24 Articles I through VI) shall be controlling. There are no restrictions, promises, representations,
25 warranties, covenants, or undertakings governing the subject matter of this Agreement other than
26 those expressly set forth or referred to herein. Upon its full execution, this Agreement supersedes
27 all prior agreements and understandings among the Parties hereto with respect to the Settlement,

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1 including, without limitation, correspondence between Class Counsel and Defense Counsel, and
2 drafts of prior agreements or proposals.

3 **Section 6.05: Waiver of Compliance**

4 Any failure of any Party, Defense Counsel, or Class Counsel hereto to comply with any
5 obligation, covenant, agreement, or condition herein may be expressly waived in writing, to the
6 extent permitted under applicable law, by the Party or Parties and their respective counsel hereto
7 entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to
8 insist upon strict compliance with any representation, warranty, covenant, agreement, or condition
9 shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

10 **Section 6.06: Counterparts and Fax/PDF Signatures**

11 This Agreement, and any amendments hereto, may be executed in any number of
12 counterparts and any Party and/or their respective counsel hereto may execute any such
13 counterpart, each of which when executed and delivered shall be deemed to be an original and all
14 of which counterparts taken together shall constitute one instrument. A fax, electronic, DocuSign
15 or PDF signature on this Agreement shall be as valid as an original signature.

16 **Section 6.07: Attorneys' Fees and Costs**

17 No Settlement Class Member or Class Counsel or any other attorney acting for any
18 Settlement Class Member may recover or seek to recover any amounts for fees, costs, or
19 disbursements from the Defendant and/or the Released Parties or the Gross Settlement Fund except
20 as expressly provided herein.

21 **Section 6.08: Meet and Confer Regarding Disputes**

22 If any dispute arises among the Parties or their respective counsel regarding the
23 implementation or interpretation of this Agreement, Class Counsel, and Defendant's counsel shall
24 meet and confer in an attempt to resolve such dispute prior to submitting it to the Court.

25 **Section 6.09: Administration Costs**

26 The Parties agree to cooperate in the Settlement administration process and to make all
27 reasonable efforts to control and minimize the costs and expenses incurred in administration of the
28 Settlement.

1 **Section 6.10: Circular 230 Disclaimer**

2 EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE
3 “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT OTHER
4 THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES
5 AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN
6 COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR
7 THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR
8 SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE
9 CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF
10 UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 C.F.R. PART 10,
11 AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
12 EXCLUSIVELY UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX
13 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
14 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON
15 THE RECOMMENDATION OF ANY OTHER PARTY, OR ANY ATTORNEY OR
16 ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON
17 ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO
18 ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON
19 THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY
20 OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE
21 CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX
22 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY
23 BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX
24 TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY
25 TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

16 **Section 6.11: Privacy of Documents and Information**

17 The Named Plaintiff and Class Counsel agree that none of the documents and information
18 provided to them by Defendant shall be used for any purpose other than prosecution of this Action.

19 **Section 6.12: No Admission by the Parties**

20 Defendant and the Released Parties deny any and all claims alleged in this Action and deny
21 all wrongdoing whatsoever. The Parties have stipulated to class certification as set forth herein for
22 settlement purposes only. This Agreement is not a concession or admission, and shall not be used
23 against Defendant or any of the Released Parties as an admission or indication with respect to any
24 claim of any fault, concession, or omission by Defendant or any of the Released Parties. Whether
25 the Settlement is finally approved, the Settlement, any document, statement, proceeding or conduct
26 related to this Agreement, and/or any reports or accounts of this Agreement, shall not in any event
27 be:

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1 a. construed as, offered, or admitted in evidence as, received as, or deemed to be
2 evidence for any purpose adverse to the Released Parties, including, but not limited to, evidence of
3 a presumption, concession, indication, or admission by any of the Released Parties of any liability,
4 fault, wrongdoing, omission, concession, or damage; or,

5 b. disclosed, referred to, or offered or received in evidence against any of the Released
6 Parties, in any further proceeding in the Action, or any other civil, criminal, or administrative
7 action or proceeding except for purposes of settling this Action pursuant to this Agreement.

8 **Section 6.13: Exhibit and Headings**

9 The terms of this Agreement include the terms set forth in any attached Exhibit, which are
10 incorporated by this reference as though fully set forth in this Agreement. Any Exhibit to this
11 Agreement is an integral part of the Settlement. The descriptive headings of any paragraphs or
12 sections of this Agreement are inserted for convenience of reference only and do not constitute a
13 part of this Agreement.

14 **Section 6.14: Interim Stay of Proceedings**

15 The Parties agree that all orders and deadlines in the litigation are stayed, except such
16 proceedings necessary to implement and complete the Settlement. In the event the Settlement is
17 not approved by the Court, the Parties shall return to the current status of the litigation.

18 **Section 6.15: Amendment or Modification**

19 Except as otherwise stated herein, this Agreement may be amended or modified only by a
20 written instrument signed by the Parties and counsel for all Parties or their successors-in-interest.

21 **Section 6.16: Authorization to Enter Into Settlement Agreement**

22 Counsel for all Parties warrant and represent they are expressly authorized by the Parties
23 whom they represent to negotiate this Agreement and to take all appropriate action required or
24 permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to
25 execute any other documents required to effectuate the terms of this Agreement. The Parties and
26 their counsel will cooperate with each other and use their best efforts to affect the implementation
27 of the Settlement. In the event the Parties are unable to reach agreement on the form or content of
28 any document needed to implement the Settlement, or on any supplemental provisions that may

1 become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of
2 the Court to resolve such disagreement. The persons signing this Agreement on behalf of
3 Defendants represent and warrant that he/she is authorized to sign this Agreement on behalf of
4 Defendants.

5 **Section 6.17: Binding on Successors and Assigns**

6 This Agreement shall be binding upon, and inure to the benefit of, the Parties, the Released
7 Parties, and their respective successors or assigns.

8 **Section 6.18: California Law Governs**

9 All terms of this Agreement and the attached Exhibit A shall be governed by and
10 interpreted according to the laws of the State of California and the procedures of the Court.

11 **Section 6.19: This Settlement is Fair, Adequate, and Reasonable**

12 The Parties believe this Settlement is a fair, adequate, and reasonable settlement of this
13 Action and have arrived at this Settlement in arm's length negotiations, taking into account all
14 relevant factors, present and potential. This Settlement was reached after extensive negotiations,
15 including an arms' length negotiation at mediation before respected mediator Honorable Amy D.
16 Hogue (Ret.) on or about January 29, 2024.

17 **Section 6.20: Cooperation and Drafting**

18 Each of the parties has cooperated in the drafting and preparation of this Agreement.
19 Hence, in any construction made to this Agreement, the same shall not be construed against any of
20 the Parties.

21 **Section 6.21: Invalidity of Any Provision**

22 Before declaring any provision of this Agreement invalid, the Court shall first attempt to
23 construe the provisions valid to the fullest extent possible consistent with applicable precedents so
24 as to define all provisions of this Agreement valid and enforceable. The provisions of this
25 Agreement are severable. To the extent any provision is deemed unlawful, to the extent possible,
26 such provision shall be severed and the remainder of the Agreement shall remain valid and
27 enforceable.

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1 **Section 6.22: Defense**

2 To the extent permitted by law, this Agreement may be pleaded as a full and complete
3 defense to, and may be used as the basis for an injunction against, any action, suit, or other
4 proceedings that may be instituted, prosecuted, or attempted with respect to the Released Claims in
5 breach of or contrary to this Settlement.

6 **Section 6.23: Named Plaintiff's Waiver of Right to be Excluded**

7 The Named Plaintiff agrees to sign this Agreement and, by signing this Agreement, he
8 agrees: (1) to be bound by its terms, (2) not to request to be excluded from the Class, and (3)
9 represents that he has no objection to any of the terms of this Agreement. Non-compliance by the
10 Named Plaintiff with this paragraph shall be void and of no force or effect. Any such request for
11 exclusion or objection shall therefore be void and of no force or effect.

12 **Section 6.24: Public Statements**

13 Named Plaintiff, Defendant, Defense Counsel, and Class Counsel agree to limit public
14 comment on this Settlement and Agreement, the Action, and the claims asserted in the Action, to
15 stating that the matter has been resolved to the satisfaction of the Parties. Named Plaintiff,
16 Defendant, Defense Counsel, and Class Counsel shall not initiate public comment on this
17 Settlement and Agreement, the Action and the claims asserted in the Action with the exception that
18 Class Counsel shall not be precluded from communicating with Class Members. Defendant and/or
19 the Released Parties can communicate the terms of this Agreement and/or the existence of and/or
20 use the Agreement as a defense to any claim(s) covered by the releases in this Agreement, to any of
21 its or their financial and/or tax advisors, and as required in any governmental or regulatory filings.

22 **Section 6.25: Enforcement**

23 The Parties agree this Agreement shall be enforceable by the Court and the Court shall
24 retain exclusive and continuing jurisdiction of this Action over all Parties and Settlement Class
25 Members to interpret and enforce the terms, conditions, and obligations of the Settlement. The
26 Named Plaintiff, Settlement Class Members, and Defendant hereby submits to the personal and
27 exclusive jurisdiction of the Court for purposes of interpreting, implementing and enforcing the
28 Settlement embodied in this Agreement and all orders and judgments entered in connection

1 therewith. The prevailing party in any action or proceeding to enforce this Agreement or otherwise
2 concerning the terms of the Settlement shall be awarded his, her, or its costs and attorneys' fees.

3 IN WITNESS WHEREOF, the parties hereto knowingly and voluntarily executed this Joint
4 Stipulation of Settlement and Release between Plaintiff and Defendant as of the date(s) set forth
5 below:

6
7 Dated: May 30, 2024

HAINES LAW GROUP, APC

8
9 By: Sean Blakely
Paul K. Haines Sean M. Blakely
10 Attorneys for Plaintiff
Angel Vasquez Montes

11
12 Dated: May 30, 2024

13
14 By: Angel Vasquez Montes
Angel Vasquez Montes
15 Named Plaintiff

16
17 Dated: May 30, 2024

CDF LABOR LAW LLP

18
19 By: _____
Brent M. Giddens
20 Attorneys for Defendant
L & L Nursery Supply

21
22 Dated: May 30, 2024

L & L Nursery Supply

23
24 By: _____
25 on behalf of L & L Nursery Supply
26
27
28

1 therewith. The prevailing party in any action or proceeding to enforce this Agreement or otherwise
2 concerning the terms of the Settlement shall be awarded his, her, or its costs and attorneys' fees.

3 IN WITNESS WHEREOF, the parties hereto knowingly and voluntarily executed this Joint
4 Stipulation of Settlement and Release between Plaintiff and Defendant as of the date(s) set forth
5 below:

6
7 Dated: May 30, 2024

HAINES LAW GROUP, APC

8
9 By: _____
Paul K. Haines
10 Attorneys for Plaintiff
Angel Vasquez Montes
11

12 Dated: May 30, 2024

13 By: _____
Angel Vasquez Montes
14 Named Plaintiff
15

16 June 18
17 Dated: ~~May 30~~, 2024

CDF LABOR LAW LLP

18
19 By:  _____
Brent M. Giddens
20 Attorneys for Defendant
L & L Nursery Supply
21

22 Dated: May 30, 2024

L & L Nursery Supply

23
24 By: Lora Lewis _____
on behalf of L & L Nursery Supply
25
26
27
28

EXHIBIT 1

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

ANGEL VASQUEZ MONTES, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

L & L Nursery Supply, a California corporation; and
DOES 1 through 100,

Defendants.

Case No. CIVSB2214477

**NOTICE OF PENDENCY OF CLASS
ACTION AND PROPOSED SETTLEMENT**

To: All current and former hourly employees who worked for L&L Nursery Supply and/or BFG Supply, Inc. ("L&L") within the State of California at any time during the period from July 11, 2018 to May 24, 2024.

**PLEASE READ THIS NOTICE CAREFULLY
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT**

Why should you read this notice?

The San Bernardino Superior Court ("Court") has granted preliminary approval of a proposed class action settlement (the "Settlement") in the case of *Angel Vasquez Montes v. L & L Nursery Supply, et al.*, San Bernardino Superior Court Case No. CIVSB2214477 (the "Action"). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

You may be entitled to money from this Settlement. L&L's records show that you were employed by L&L in California as a non-exempt employee at any time during the period from July 11, 2018 to May 24, 2024 (the "Class Period"). The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this notice is to provide you with a brief description of the Action, to inform you of the terms of the Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound by the terms of the Settlement and any final judgment.

What is this case about?

Plaintiff Angel Vasquez Montes ("Plaintiff") brought this Action against L&L seeking to assert claims on behalf of a class of current and former non-exempt employees who worked for L&L in California. Plaintiff is known as the "Class Representative," and his attorneys, who also represent the interests of all Settlement Class members, are known as "Class Counsel."

The Action alleges that L&L failed to pay Settlement Class members for all earned minimum and overtime wages and failed to provide all required meal and rest periods to Settlement Class members. The Action also alleges that L&L failed to provide Settlement Class Members with accurate itemized wage statements and failed to timely pay all final wages at the time of separation of employment, and as a result of the foregoing alleged violations, that L&L engaged in unfair business practices, and that L&L is liable for civil penalties under the Labor Code Private Attorneys General Act ("PAGA").

L&L denies that it has done anything wrong, that the Action is appropriate to proceed as a class action, and that it owes Plaintiff or Settlement Class members any wages, restitution, penalties, or other damages.

Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of L&L, which expressly denies all liability.

The Court has not ruled on the merits of Plaintiff's claims. However, to avoid additional expense, inconvenience, and interference with its business operations, L&L has concluded that it is in its best interests and the interests of Settlement Class members to settle the Action on the terms summarized in this Notice. After L&L provided relevant information to Class Counsel, the Settlement was reached after mediation and arm's-length negotiations between the parties.

The Class Representative and Class Counsel support the Settlement. Among the reasons for support are the defenses to liability potentially available to L&L, the risk of denial of class certification, the inherent risks of trial on the merits, and the delays and uncertainties associated with litigation.

If you are still employed by L&L, your decision about whether to participate in the Settlement will not affect your employment. California law and L&L's policy strictly prohibit unlawful retaliation. L&L will not take any adverse employment action against or otherwise retaliate, or discriminate, against any Settlement Class member because of the Settlement Class member's decision to either participate or not participate in the Settlement.

Who are the Attorneys?

Attorneys for the Plaintiff/Settlement Class members:	Attorneys for Defendant L&L:
HAINES LAW GROUP, APC Paul K. Haines phaines@haineslawgroup.com Sean M. Blakely sblakely@haineslawgroup.com Joel M. Gordon jgordon@haineslawgroup.com 2155 Campus Drive, Suite 180 El Segundo, California 90245 Tel: (424) 292-2350 Fax: (424) 292-2355 haineslawgroup.com	CDF LABOR LAW LLP Brent M. Giddens bgiddens@cdflaborlaw.com Ashley A. Halberda ahalberda@cdflaborlaw.com 18300 Von Karman Avenue, Suite 800 Irvine, CA 92612 Telephone: (949) 622-1661 cdflaborlaw.com

What are the terms of the Settlement?

On **<<PRELIM APPROVAL DATE>>**, the Court preliminarily certified a class, for settlement purposes only, of all current and former non-exempt employees who worked for L&L in California at any time during the period from July 11, 2018 to May 24, 2024. Settlement Class members who do not opt out of the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release their claims against L&L as described below.

L&L has agreed to pay \$467,500.00 (the "Gross Settlement Fund") to fully resolve all claims in the Action, including payments to Settlement Class members, attorneys' fees and expenses, Settlement Administration costs, PAGA civil penalties, and the Class Representative's Enhancement Award.

The following deductions from the Gross Settlement Fund will be requested by the parties:

Settlement Administration Costs. The Court has approved ILYM Group, Inc. to act as the "Settlement Administrator," who is sending this Notice to you and will perform many other duties relating to the Settlement. The Court has approved setting aside up to \$8,000.00 from the Gross Settlement Fund to pay the Settlement Administration costs.

Attorneys' Fees and Expenses. Class Counsel have been prosecuting the Action on behalf of the Settlement Class members on a contingency fee basis (that is, without being paid any money to date)

and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys' fees, which will be paid from the Gross Settlement Fund. Settlement Class members are not personally responsible for any of Class Counsel's attorneys' fees or expenses. Class Counsel will ask for fees of up to one-third of the Gross Settlement Fund, which is estimated to be \$155,833.33, as reasonable compensation for the work Class Counsel performed and will continue to perform in this Action through Settlement finalization. Class Counsel also will ask for reimbursement of up to \$30,000.00 for verified costs Class Counsel incurred in connection with the Action.

Enhancement Award to Class Representative. Class Counsel will ask the Court to award the Class Representative an enhancement award in the amount of \$10,000.00 to compensate him for his service and extra work provided on behalf of the Settlement Class members.

PAGA Payment to State of California. \$22,500.00 will be paid to the California Labor & Workforce Development Agency ("LWDA"), representing 75% of the \$30,000.00 the parties have agreed to allocate to the settlement of Plaintiff's claim on behalf of the Settlement Class members under the PAGA. The remaining \$7,500.00 will be payable to certain of the Settlement Class members as the "PAGA Amount," as described below.

Calculation of Settlement Class Members' Individual Settlement Awards. After deducting the Court-approved amounts for attorneys' fees and costs, administration costs, PAGA penalties, and Class Representative Enhancement Award, the balance of the Gross Settlement Fund will form the Net Settlement Amount ("NSA"), which will be distributed to all Settlement Class members who do not exclude themselves from the Settlement ("Verified Class Members") (as described below). The NSA is estimated at approximately \$233,666.67. Together with the \$7,500.00 PAGA Amount, the total amount to be paid to Verified Class Members is estimated at approximately \$241,166.67. Individual Settlement Awards will be calculated as follows:

- (i) Payments to all Verified Class Members: The NSA shall be divided between all Verified Class Members based on the number of workweeks for which they were employed by L&L in California during the Class Period. The maximum amount that each Verified Class Member is entitled to receive is determined by multiplying NSA by a ratio that is determined by dividing a Verified Class Member's total workweeks worked during the Class Period in California by the total number of workweeks worked during the Class Period by all Verified Class Members employed by L&L in California. If a Verified Class Member worked any day during workweek, it will be counted as a workweek for purposes of calculating the Individual Settlement Payment
- (ii) PAGA Amount: \$7,500.00 has been designated as the "PAGA Settlement Amount" and will be allocated to each current and former hourly employee who worked for L&L within the State of California at any time during the period from April 21, 2021 to May 24, 2024 ("PAGA Group Members") based on each PAGA Group Member's pro rata share of the total pay periods.
- (iii) Individual Settlement Award: L&L's records show that you worked [REDACTED] workweeks during the Class Period, and [REDACTED] pay periods during the PAGA Period. Based on these records, your Individual Settlement Award is estimated at \$ [REDACTED].

Payments to Settlement Class Members. If the Court grants final approval of the Settlement and there are no objections to the Settlement, Individual Settlement Awards will be mailed to Verified Class Members approximately 30 calendar days after the Court grants final approval. Each Settlement check will be valid for 180 days from the date the Settlement Administrator mails it. Any funds payable to Verified Class Members whose checks were not cashed within 180 days shall be directed to the California State Controller for deposit in the Unclaimed Property Fund in the name of the employee.

Allocation and Taxes. For tax purposes, each Settlement Award will be treated as follows: all amounts from the NSA will be treated as 20% wages, 50% penalties, and 30% interest. The Settlement Administrator shall

also report those portions of the Individual Settlement Awards allocated to penalties on an IRS Form 1099 basis as required by law. The Settlement Administrator shall also calculate, and remit to the applicable government agencies such amount as may be owed by L&L as an employer for payroll taxes on a maximum wage allocation of twenty percent (20%) of the NSA that will be reported on an IRS Form W2 basis. The Settlement Administrator, L&L and its counsel, and Plaintiff and Class Counsel cannot provide tax advice. Accordingly, Settlement Class members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. Upon the Court's final approval of the Settlement, and except as to such rights or claims as may be created by the Settlement, the Verified Class Members fully and finally release and discharge L&L, and each of its respective past, present, and future parent companies, subsidiaries, successors, divisions, related or affiliated companies, shareholders, officers, directors, employees, agents, attorneys, insurers, investors, successors and assigns, owners, partners, units, assigns, principals, heirs, representatives, accountants, auditors, consultants, reinsurers, predecessors in interest, beneficiaries, executors, members, privies, administrators, fiduciaries, and trustees and any individual or entity which could be jointly liable with L&L, and each of them (collectively, the "Released Parties"), from any and all applicable state law wage-and-hour claims, rights, demands, liabilities, and causes of action of every nature and description, arising during the Class Period, including without limitation, statutory, constitutional, contractual or common law claims for wages, damages, unpaid costs, civil or statutory penalties, liquidated damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief, based on the following categories of allegations: failure to pay minimum wages (including off the clock work and/or time spent submitting to COVID-19 screenings), wage statement violations, failure to maintain accurate records, failure to pay all wages due at time of termination, waiting time penalties, failure to pay overtime (including for off the clock work and/or time spent submitting to COVID-19 screenings not paying at regular rate) failure to provide rest periods, failure to pay rest period premiums at regular rate, failure to pay meal premiums at regular rate, failure to provide meal periods, and unlawful competition (collectively, "Class Members' Released Claims"). The Class Members' Released Claims include claims meeting the above definition under any and all applicable California laws, statutes, regulations, and Wage Orders. In addition, upon the Court's final approval of the Settlement, and except as to such rights or claims as may be created by the Settlement, the PAGA Group Members, fully and finally release and discharge any and all Released Parties for theories of liability under PAGA for failure to pay minimum wages (including off the clock work and/or time spent submitting to COVID-19 screenings), wage statement violations, failure to maintain accurate records, failure to pay all wages due at time of termination, waiting time penalties, failure to pay overtime (including for off the clock work and/or time spent submitting to COVID-19 screenings) failure to provide rest periods, failure to pay rest period premiums at regular rate, failure to pay meal premiums at regular rate, and failure to provide meal periods.

Conditions of Settlement. The Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class, and the entry of Judgment.

How can I claim money from the Settlement?

Do Nothing. If you do nothing, you will be entitled to your Individual Settlement Award based on the number of workweeks you worked during the Class Period, as stated above. You also will be bound by the Settlement, including the release of claims stated above.

What other options do I have?

Dispute Information in Notice of Settlement Award. As noted above, your estimated Settlement Award is based on the number of workweeks you worked during the Class Period. The information contained in L&L's records regarding each of these factors, along with your estimated Individual Settlement Award, is listed above. If you dispute the above information from L&L's records, L&L's records will control unless you are able to provide documentation that establishes otherwise and that L&L's records are mistaken. If there is a dispute about whether L&L's information or yours is accurate, and the dispute cannot be resolved informally, the dispute will be resolved by the Parties and the Settlement Administrator as described in this Notice. Any disputes, along with supporting documentation, must be postmarked no later than <<RESPONSE

DEADLINE>>. DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.

The Parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Settlement Class members. The Settlement Administrator's decision regarding any dispute will be final.

Exclude Yourself from the Class Settlement. If you **do not** wish to take part in the class portion of the Settlement, you may exclude yourself by sending to the Settlement Administrator a written "Request for Exclusion" letter or card postmarked no later than **<<RESPONSE DEADLINE>>**, with your name, address, telephone number, last four digits of your social security number, and your signature. The Request for Exclusion must clearly state that you wish to exclude yourself from the Settlement, and must include the case name and number, *Angel Vasquez Montes v. L & L Nursery Supply, et al.*, San Bernardino Superior Court Case No. CIVSB2214477.

Send the Request for Exclusion directly to the Settlement Administrator at **<<INSERT ADMINISTRATOR CONTACT INFO>>**. Any person who submits a timely Request for Exclusion from the Settlement shall, upon receipt by the Settlement Administrator, be barred from participating in the class portion of the Settlement, and shall receive no benefits from the Settlement (except for that Settlement Class member's share of the PAGA Amount, if applicable). **Do not submit both a Dispute and a Request for Exclusion.** If you do, the Request for Exclusion will be invalid, you will be included in the Settlement Class, and you will be bound by the terms of the Settlement.

Objecting to the Settlement. If you do not exclude yourself from the Settlement, you have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you must mail a written objection to the Settlement Administrator. Your written objection must include your name, address, as well as contact information for any attorney representing you regarding your objection, the case name and number, each specific reason in support of your objection, and any legal or factual support for each objection together with any evidence in support of your objection. Objections must be in writing and must be postmarked on or before **<<RESPONSE DEADLINE>>**.

You may also appear at the Final Approval Hearing scheduled for **<<FINAL APPROVAL HEARING DATE/TIME>>** in Department S-17 of the San Bernardino County Superior Court, located at 247 W. Third Street, San Bernardino, CA. 92415. You have the right to appear either in person or through your own attorney at this hearing. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before **<<RESPONSE DEADLINE>>**. All objections or other correspondence must state the name and number of the case, which is *Angel Vasquez Montes v. L & L Nursery Supply, et al.*, San Bernardino Superior Court Case No. CIVSB2214477.

If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class members who do not object. In other words, by submitting an objection to the Settlement you are not excluding yourself from the Settlement.

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on **<<FINAL APPROVAL HEARING DATE/TIME>>**, in Department S-26 of the San Bernardino County Superior Court, located at 247 W. Third Street, San Bernardino, CA. 92415. The Court also will be asked to rule on Class Counsel's request for attorneys' fees, reimbursement of costs and expenses, the Enhancement Award to the Class Representative, the payment to the LWDA, and payment to the Settlement Administrator. **You are not required to attend the Final Approval Hearing, although any Settlement Class member is welcome to attend the hearing.**

If you intend to attend the Final Approval Hearing or otherwise visit the Court, please visit the Court's website, <https://www.sb-court.org>.

How can I get additional information?

This Notice is only a summary of the Action and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Office of the Clerk of the San Bernardino County Superior Court, located at 247 W. Third Street, San Bernardino, CA. 92415, during regular court hours. You may also download case-related documents from the Court's website, for a fee. You may also contact Class Counsel using the contact information listed above for more information.

**PLEASE DO NOT CALL OR WRITE THE COURT, L&L, OR ITS ATTORNEYS FOR INFORMATION
ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS**

REMINDER AS TO TIME LIMITS

The deadline for submitting any Disputes, Requests for Exclusion, or Objections is <<RESPONSE DEADLINE>>. These deadlines will be strictly enforced.