

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Leashawn Kathline Garing (“Plaintiff”) and defendants EWC Fresno LLC; EWC El Paseo LLC; EWC La Costa LLC; EWC Oceanside LLC; EWC Clairmont LLC; EWC La Quinta LLC; EWC Palm Desert LLC; EWC Palm Springs LLC; EWC Loma Vista LLC; Newgenocera, LLC (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Defendants captioned Leashawn Kathline Garing v. EWC Fresno LLC, et al. initiated on August 16, 2022 and pending in Superior Court of the State of California, County of San Diego.
- 1.2. “Administrator” means Phoenix Settlement Administrators, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Aggrieved Employee” means all currently or formerly employed by EWC Fresno LLC or Newgenocera, LLC as a non-exempt employee in the State of California at any time during the PAGA Period.
- 1.5. “Class” means all currently or formerly employed by EWC Fresno LLC or Newgenocera, LLC as a non-exempt employee in the State of California at any time during the Class Period.
- 1.6. “Class Counsel” means Kashif Haque, Samuel Wong, Jessica L. Campbell and Stuart H. Kluft of Aegis Law Firm, PC.
- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8. “Class Data” means Class Member identifying information in Defendant’s possession including the Class Member’s name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods.

- 1.9. “Class Member” means a member of the Class, and may be a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee) as defined below.
- 1.10. “Class Member Address Search” Means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.
- 1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.12. “Class Period” means the period from February 20, 2018 to September 5, 2023.
- 1.13. “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.14. “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.15. “Court” means the Superior Court of California, County of San Diego.
- 1.16. “Defendant” means named defendants EWC Fresno LLC; EWC El Paseo LLC; EWC La Costa LLC; EWC Oceanside LLC; EWC Clairmont LLC; EWC La Quinta LLC; EWC Palm Desert LLC; EWC Palm Springs LLC; EWC Loma Vista LLC; Newgenocera, LLC.
- 1.17. “Defense Counsel” means Lagasse Branch Bell + Kinkead.
- 1.18. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
- 1.19. “Final Approval” means the Court’s order granting final approval of the Settlement.

- 1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.21. “Final Judgment” means the Judgment Entered by the Court upon granting Final Approval of the Settlement.
- 1.22. “Gross Settlement Amount” means \$145,000.00 which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment and the Administration Expenses Payment.
- 1.23. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period
- 1.24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period.
- 1.25. “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.26. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under the Labor Code section 2699, subd. (i).
- 1.28. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The Net Settlement Amount is to be paid to Participating Class Members as Individual Class Payments.
- 1.29. “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.30. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.31. “PAGA Notice” means Plaintiff’s letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

- 1.32. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for EWC Fresno LLC or Newgenocera, LLC for at least one day during the PAGA Period.
- 1.33. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$2,500.00) and the 75% to the LWDA (\$7,500.00) in settlement of PAGA claims.
- 1.34. “PAGA Period” means the period from June 12, 2021 to September 5, 2023.
- 1.35. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.36. “Plaintiff” means Leashawn Kathline Garing, the named plaintiff in the Action.
- 1.37. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.
- 1.38. “Preliminary Approval Order” means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.39. “Released Class Claims” means the claims being released as described in Paragraph 6.2 below.
- 1.40. “Released PAGA Claims” means the claims being released as described in Paragraph 6.3 below.
- 1.41. “Released Parties” means Defendant as defined in paragraph 1.16 above and including all entities listed in that paragraph, and for each entity, its former and present directors, officers, shareholders, stockholders, owners, members, attorneys, insurers, agents, fiduciaries, representatives, trustees, administrators, partners, supervisors, employees, predecessors, successors, assigns, subsidiary and parent entities, and affiliated and related companies.
- 1.42. “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.43. “Response Deadline” means 60 days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) email or mail Requests for Exclusion from the Settlement, or (b) email or mail Objections to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.

1.44. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

1.45. “Workweek” means any week during which a Class Member worked for EWC Fresno LLC or Newgenocera, LLC for at least one day, during the Class Period.

2. RECITALS.

2.1. On August 16, 2022, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for failure to pay minimum wages; failure to pay overtime wages; failure to provide meal periods; failure to permit rest breaks; failure to reimburse business expenses; failure to provide accurate itemized wage statements; failure to pay wages timely during employment; failure to pay all wages due upon separation of employment; and Violation of Business and Professions Code §§ 17200, *et seq.* On October 21, 2022, Plaintiff filed a First Amended Complaint alleging an additional cause of action against Defendant for Enforcement of Labor Code § 2698 *et seq.* (“PAGA”). The First Amended Complaint is the operative complaint in the Action (the “Operative Complaint.”) Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint and denies any and all liability for the causes of action alleged.

2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice.

2.3. Prior to negotiating the Settlement, the Parties obtained Plaintiff’s and the Class’s documents related to their employment and time records, testimony from the Plaintiff, handbooks and policy documents and other employment information obtained through formal and informal discovery. Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).

2.4. At the time of this Settlement, the Court has not held a hearing on class certification and has not decided any issues related to class certification.

2.5. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendant promises to pay \$145,000.00 and no more as the Gross Settlement Amount and to separately pay any employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this

Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

- 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

- 3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$5,000.00 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defendant will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will allocate the difference to the Net Settlement Amount for disbursement as specified in this Agreement. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for taxes owed on the Class Representative Service Payment.
- 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than one-third (1/3) of the Gross Settlement Amount, which is currently estimated to be \$48,333.33 and a Class Counsel Litigation Expenses Payment of not more than \$10,000.00. Defendant will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the difference to the Net Settlement Amount for disbursement as specified in this Agreement. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fees Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of the aforementioned payments.

- 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$7,750 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$7,750, the Administrator will allocate the difference to the Net Settlement Amount.
- 3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.
- 3.2.4.1. Tax Allocation of Individual Class Payments. 30% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The 70% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.
- 3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.
- 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$10,000.00 to be paid from the Gross Settlement Amount, with 75% (\$7,500.00) allocated to the LWDA PAGA Payment and 25% (\$2,500.00) allocated to the Individual PAGA Payments.
- 3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties \$2,500.00 by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.
- 3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the difference to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

- 4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendant estimates there are 111 Class Members who collectively worked a total of 3,556 Workweeks, and 97 Aggrieved Employees who worked a total of 1,618 PAGA Pay Periods.
- 4.2. Class Data. Not later than 15 days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of administering the terms of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator's employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.
- 4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than 14 days after the Effective Date or 60 days after the Order Granting Final Approval, whichever is later.
- 4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
 - 4.4.1. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a

single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

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

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

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

6.1. Plaintiff's Release. Plaintiff and his or her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, unconditionally and forever release, waive, and discharge all demands, damages, debts, liabilities, contracts, obligations, actions, causes of action and claims of every kind, nature, and description whatsoever, whether now known or unknown, suspected or unsuspected including in equity or otherwise, which she ever had or now has against the Released Parties arising or accruing at any time prior to the Effective Date, including, without limitation any matter, cause or claim arising out or related to facts or events occurring prior to the execution of this Agreement, related to Plaintiff's employment with Defendant. The claims released by Plaintiff include but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiff's PAGA Notice, or ascertained during the Action and released under paragraphs 6.2 and 6.3, below. Claims released by Plaintiff also include but are not limited to: (a) any

claims that were or could have been brought under California Labor Code sections 132a, 201, 202, 203, 204, 210, 216, 218, 218.5, 218.6, 225.5, 226, 226.3, 226.7, 432.5, 510, 512, 558, 1050, 1054, 1194, 1194.2, 1197, 1198, 2698 et seq., 2800, et seq., the applicable Industrial Welfare Commission Wage Orders, the Fair Labor Standards Act (“FLSA”), and all related or corresponding federal laws, and all implementing regulations and interpreting guidance; (b) any claims that were or could have been brought under California Corporations Code, and California Business and Professions Code, including but not limited to the California Business and Professions Code section 17200 et seq.; (c) any other causes of action, including those seeking premiums, statutory or civil penalties, interest, punitive damages, costs, attorneys’ fees, injunctive relief, declaratory relief, or accounting, whether such causes of action are in tort, contract, equity, statute, or common law; (d) any claims under the Fair Employment and Housing Act, Americans with Disabilities Act, Age Discrimination in Employment Act, and Title VII of the Civil Rights Act of 1964, and (e) any other claims the Plaintiff could have made related to her employment with Defendant. Plaintiff’s Release does not extend to any claims or actions to enforce this Agreement, or to any claims for: (a) state disability insurance benefits pursuant to the terms of applicable state law; (b) any benefit entitlements vested as of the date of the Plaintiff’s termination, pursuant to written terms of any benefit plan; (c) continued participation in certain group benefit plans on a temporary basis pursuant to the federal Consolidated Omnibus Budget Reconciliation Act of 1985 (commonly known as COBRA); and (d) any other claims that may not be waived or released pursuant to statute or other applicable law.. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff’s Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff’s discovery of them.

6.1.1. Plaintiff’s Waiver of Rights Under California Civil Code Section 1542.

For purposes of Plaintiff’s Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

6.2. Release by Participating Class Members.

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from any and all claims, damages, or causes of action that were alleged in the Operative Complaint or PAGA Notice, or reasonably could have been alleged, based on the facts alleged in the Operative and ascertained in the course of the Action and (ii) any and all claims, damages, or causes of actions alleged in, or claims, damages or causes of action that could have been alleged in the Operative Complaint or PAGA Notice which occurred during or arise out of the Class Period,

including but not limited to, claims under state, or local law; claims for unpaid wages, claims for the failure to pay minimum wages, claims for the failure to pay overtime wages, claims related to missed meal and rest breaks or periods and nonpayment of premium pay for such, failure to comply with itemized employee wage statement provisions, failure to pay timely wages, failure to pay wages due at separation, and the failure to reimburse for employment-related expenses; California Labor Code sections 201, 202, 203, 210, 226, 226.7, 510, 512(a), 558, 558.1, 1174(d), 1194, 1197, 1197.1, and 2802; claims, damages, or causes of action arising under the applicable Industrial Welfare Commission Wage Orders; violates of California Business and Professions Code section 17200, et seq.; and claims, damages, interest, and claims for attorneys' fees Except as set forth in Section 6.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

6.3. Release by Aggrieved Employees.

All Aggrieved Employees, even those who requested exclusion from the class, are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from any and all claims for PAGA civil penalties, including under California Labor Code section 2698, et seq. that were alleged in the Operative Complaint or PAGA Notice, or reasonably could have been alleged based on the facts alleged in the Operative Complaint or in the PAGA Notice, and ascertained in the course of the Action which occurred during or arise out of the PAGA Period.

7. MOTION FOR PRELIMINARY APPROVAL. Class Counsel will prepare and file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with any and all requirements, rules, and standing orders applicable to the preliminary approval motion in the relevant venue and department.

7.1. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is solely responsible for obtaining a prompt hearing date for the Motion for Preliminary Approval, filing the Motion for Preliminary Approval with the Court, and for delivering the Court's Preliminary Approval Order to the Administrator.

7.2. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations, documents, or Proposed Order, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in

person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

8. SETTLEMENT ADMINISTRATION.

- 8.1. Selection of Administrator. The Parties have jointly selected Phoenix Settlement Administrators to serve as the Administrator and verified that, as a condition of appointment, Phoenix Settlement Administrators agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of the Administration Expenses Payment. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 8.2. Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports to state and federal tax authorities.
- 8.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.
- 8.4. Notice to Class Members.
 - 8.4.1. No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the total number of Class Members, total number of Aggrieved Employees, total number of Workweeks, and total number of Pay Periods in the Class Data.
 - 8.4.2. Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall include the estimated dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.
 - 8.4.3. Not later than 3 business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or

send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

8.4.4. The deadlines for Class Members' written objections, challenges to Workweeks and/or PAGA Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

8.4.5. If the Administrator, Defendant or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

8.5. Requests for Exclusion (Opt-Outs).

8.5.1. Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by email or mail, a signed written Request for Exclusion not later than 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be (1) signed by the Class Member himself or herself, and (2) timely emailed or postmarked by the Response Deadline to the settlement Administrator, and not filed with the Court.

8.5.2. The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded, and the request is signed by the Class Member. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

8.5.3. Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement,

including the Participating Class Members' Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

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

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

8.7. Objections to Settlement.

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

8.7.2. Participating Class Members may send written objections to the Administrator, by email or mail. In the alternative, Participating Class Members who timely submit a written objection to the Administrator may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than the Response Deadline (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

8.7.3. Non-Participating Class Members have no right to object to the Settlement.

- 8.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.
- 8.8.1. Website, Email Address, and Toll-Free Number. The Administrator will establish, maintain, and use an internet website to post information of interest to Class Members including the date, time, and location for the Final Approval Hearing and copies of the Settlement Agreement, the Motion for Preliminary Approval, the Order Granting Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and Class Representative Service Payment, the Order Granting Final Approval, and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls and emails.
- 8.8.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; and (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).
- 8.8.3. Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed and remailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received. The Weekly Reports must also include the value of checks for Individual Class Payments and Individual PAGA Payments cashed or negotiated.
- 8.8.4. Workweek and/or PAGA Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or PAGA Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.
- 8.8.5. Administrator’s Declaration. Not later than 14 days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed

declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including but not limited to, its mailing of the Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will attach all written objections and Requests for Exclusion received to its declaration. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

- 8.8.6. Final Report by Settlement Administrator. Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement, the number of checks mailed and remailed, the number of checks cashed, the value of checks cashed, the number of checks that remain uncashed, the value of checks that remain uncashed, and the value of the monies remaining in the QSF. Class Counsel is responsible for filing the Administrator's declaration in Court.

- 9. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE.** If the number of workweeks exceeds 3,556 by more than 12%, the Gross Settlement Amount will increase pro rata per additional workweek.

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

- 10.1. Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.
- 10.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or Administrator Expenses Payment

shall not constitute a material modification to the Agreement within the meaning of this paragraph.

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

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

12. ADDITIONAL PROVISIONS.

- 12.1. No Admission of Liability, Class Certification, or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that class certification and representative treatment

is for purposes of this Settlement only. If, for any reason the Court does not grant Preliminary Approval, Final Approval, or enter Judgment, the following apply: (i) Defendant reserves the right to contest certification of any class for any reasons; (ii) Defendant reserves all available defenses to the claims in the Action; (iii) Plaintiff reserves the right to move for class certification on any grounds available; (iv) Plaintiff reserves the right to contest Defendant's defenses. The Settlement, this Agreement, and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

- 12.2. No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 12.3. Plaintiff's Waiver of Right to be Excluded, Object, or Appeal. Plaintiff agrees that by signing this Settlement Agreement, she is bound by the terms herein stated and further agrees not to request to be excluded from the Settlement and agrees not to object to any of the terms of this Agreement. Any such letter requesting to be excluded from the Settlement or object shall be void and of no force or effect. Plaintiff further agrees not to appeal, challenge, or attempt to oppose the validity or execution of the Settlement or Agreement. Any efforts by Class Counsel to circumvent the terms of this paragraph shall be void and of no force or effect.
- 12.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 12.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required to effectuate the terms of this Agreement, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 12.6. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence, and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator or the Court to facilitate resolution.

- 12.7. No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 12.8. No Tax Advice. Neither Plaintiff, Class Counsel, Defendant, nor Defense Counsel are providing any advice regarding taxes or taxability, and nothing in this Settlement shall be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 12.9. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 12.10. Agreement Binding on Successors and Assigns. This Agreement will be binding upon, and inure to the benefit of, the Parties hereto and their respective heirs, trustees, executors, administrators, and successors.
- 12.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without regard to conflict of law principles.
- 12.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 12.13. Confidentiality. To the extent permitted by law, all agreements made, and orders entered during this Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement. The Plaintiff and Class Counsel agree the terms of this Settlement, including but not limited to the Gross Settlement Amount and any related amounts, the negotiations leading to this Settlement, and all documents related to the Settlement shall not be discussed with, publicized, or promoted to the public, except as necessary to effectuate and/or enforce the terms of the Agreement. Plaintiff and Class Counsel will not publish or publicize the terms of this Settlement or Agreement in any medium, format, or space, and will not issue any press releases or respond to any media inquiries regarding this Action, Agreement, or Settlement. Notwithstanding the foregoing, Plaintiff and Class Counsel may represent to the public in general only that “the matter is resolved by the parties” and Class Counsel may communicate with Class Members regarding the terms of the Agreement to the extent necessary to effectuate this Agreement. The above does not prohibit Class Counsel from referring to the Court’s orders in this case approving its motion for attorneys’ fees in subsequent declarations in future cases in which they file a motion for attorneys’ fees.
- 12.14. Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this

Agreement.

12.15. Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

12.16. Notice. All notices, demands, or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger. All such notices, demands, or other communications must be addressed as follows:

To Plaintiff: Aegis Law Firm, PC
Kashif Haque
Samuel Wong
Jessica L. Campbell
Stuart H. Kluff
9811 Irvine Center Drive, Suite 100
Irvine, California 92618
jcampbell@aegislawfirm.com
skluff@aegislawfirm.com

To Defendant: Lagasse Branch Bell + Kinhead
Michael W. Healy
Jenny Yu
4365 Executive Drive, Suite 950
San Diego, CA 92121
mhealy@lbbklaw.com
jyu@lbbklaw.com

12.17. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterparts will be admissible in evidence to prove the existence and contents of this Agreement.

12.18. Stay of Litigation. The Parties agree that upon the execution of this Agreement, the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process beginning on June 27, 2023.

Date: 12/6/2023

PLAINTIFF LEASHAWN KATHLINE
GARING

DocuSigned by:

6042123AD020425...
Leashawn Kathline Garing

Date: Dec 1, 2023

DEFENDANTS EWC FRESNO LLC; EWC
EL PASEO LLC; EWC LA COSTA LLC;
EWC OCEANSIDE LLC; EWC
CLAIRMONT LLC; EWC LA QUINTA
LLC; EWC PALM DESERT LLC; EWC
PALM SPRINGS LLC; EWC LOMA
VISTA LLC; NEWGENOCERA, LLC;


Cole Genovese (Dec 1, 2023 13:03 PST)

By: Cole Genovese

AGREED AS TO FORM:

Date: December 1, 2023

AEGIS LAW FIRM, PC



Samuel Wong
Kashif Haque
Jessica Campbell
Stuart H. Kluft
Attorneys for Plaintiff

Date: 12/01/2023

LAGASSE BRANCH BELL + KINKEAD



Michael W. Healy
Jenny Yu
Attorneys for Defendants