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15 *[additional counsel on following page]*

16 UNITED STATES DISTRICT COURT
17 SOUTHERN DISTRICT OF CALIFORNIA
18

19 FLORENTINO LOPEZ, an individual;

20 *Plaintiff,*

21
22 vs.

23 UTILITY TREE SERVICE, LLC, a
24 Pennsylvania Limited Liability
Company; and DOES 1 through 25,
25 inclusive,

26 Defendants.
27
28

Case No. 22-cv-1404-RSH-DDL

**JOINT STIPULATION OF CLASS
ACTION AND PAGA
SETTLEMENT AND RELEASE**

Trial Date: N/A

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JOINT STIPULATION OF
CLASS ACTION AND PAGA SETTLEMENT AND RELEASE

This Joint Stipulation of Class Action and PAGA Settlement and Release (“Agreement” or “Settlement”) is made and entered into by and between Plaintiff Florentino Lopez (“Lopez”) and Plaintiff Luis Hernandez (“Hernandez”) (collectively, “Plaintiffs”), on behalf of themselves and, subject to the approval of the Court, on behalf of all others similarly situated and purported aggrieved employees pursuant to the California Private Attorneys General Act, and Defendant Utility Tree Service, LLC (“Defendant”) (collectively with Plaintiffs, the “Parties”).

RECITALS

This Settlement is made and entered into by and between Plaintiffs and Defendant, and is subject to the terms and conditions hereof and the Court’s approval. The Parties expressly acknowledge that this Agreement is entered into solely for the purpose of compromising significantly disputed claims and that nothing herein is an admission of liability or wrongdoing by Defendant. If for any reason the Settlement is not approved, it will be of no force or effect, and the Parties shall be returned to their original respective positions.

DEFINITIONS

The following definitions are applicable to this Agreement. Definitions contained elsewhere in this Agreement shall also be effective:

1. “Action” means *Florentino Lopez v. Utility Tree Service, LLC, United States District Court Southern District of California Case No. 22-cv-1404-RSH-DDL* (originally filed on August 1, 2022 in the Superior Court of California, County of San Diego, Case No. 37-2022-00030456 and removed to federal court on September 15, 2022) (“Original Complaint”).

2. “Class Counsel” means Moon Law Group, PC and Wilshire Law Firm, PLC.

3. “Class Counsel’s Award” means attorneys’ fees agreed upon by the

1 Parties and approved by the Court for Class Counsel’s litigation and resolution of the
2 Action, and all reasonable costs/expenses incurred and to be incurred by Class
3 Counsel in the Action. Defendant agrees not to oppose Class Counsel’s request for
4 an award of fees up to a maximum of thirty-three and one third percent (33 1/3%) of
5 the Gross Settlement Amount, or Two Hundred Eighty-Three Thousand Three
6 Hundred Thirty-Three Dollars and Thirty-Three Cents (\$283,333.33), and
7 costs/expenses not to exceed Twenty-Five Thousand Dollars and Zero Cents
8 (\$25,000.00) (together “Class Counsel Award”) subject to the Court finally
9 approving this Settlement and subject to the exhaustion of any and all appeals. Any
10 portion of the Class Counsel Award not awarded to Class Counsel shall be added to
11 the Net Settlement Amount.

12 4. “Class List and Data” means a complete list of all Class Members that
13 Defendant will diligently and in good faith compile from its records and provide to
14 the Settlement Administrator within fourteen (14) calendar days after Preliminary
15 Approval of this Settlement. The Class List shall be formatted in Microsoft Office
16 Excel and shall include each Class Member’s full name, most recent mailing address,
17 Social Security Number, dates of employment with Defendant, and the respective
18 number of Workweeks that each Class Member worked for Defendant as a non-
19 exempt employee in California during the Class Period.

20 5. “Class Member(s)” or “Settlement Class” means all persons who
21 worked for Defendant in California as an hourly-paid, non-exempt employees at any
22 time from the end of the release period in *Torres, et al. v. Utility Tree Service, Inc.*,
23 Santa Clara Superior Court Case No. 115CV286314 (“*Torres*”), or February 15,
24 2020, to the date of the Court’s order preliminarily approving this Settlement, who
25 do not timely submit valid Requests for Exclusion.

26 6. “Class Period” means the period from February 15, 2020, to the date of
27 the Court’s order preliminarily approving this Settlement.

28 7. “Class Representative Enhancement Payments” mean the amounts to be

1 paid to each named Plaintiff in recognition of his effort and work in prosecuting the
2 Action on behalf of Class Members. Subject to Court approval, Defendant agrees to
3 not oppose a request that Lopez shall be paid up to Five Thousand Dollars and Zero
4 Cents (\$5,000.00) and Hernandez shall be paid up to Five Thousand Dollars and Zero
5 Cents (\$5,000.00) from the Gross Settlement Amount, subject to the Court granting
6 final approval of this Agreement and subject to the exhaustion of any and all appeals.
7 Any portion of the Class Representative Enhancement Payments not awarded to
8 Plaintiffs will be added to the Net Settlement Amount.

9 8. “Complaint” means collectively: 1) the Complaint originally filed by
10 Lopez on August 1, 2022 in the Superior Court of California, County of San Diego,
11 Case No. 37-2022-00030456 and removed to federal court on September 15, 2022
12 (“Original Complaint”); 2) the First Amended Class Action Complaint, filed by
13 Lopez on November 4, 2022 in the United States District Court Southern District of
14 California, Case No. 3:22-cv-1404-RSH-DDL; 3) the Second Amended Class Action
15 Complaint filed by Lopez on February 2, 2023 (items numbered 1-3 are collectively
16 referred to as the “Lopez Matter”); 4) the Class Action Complaint filed by Hernandez
17 currently pending in the Central District of California Case No. 2:22-cv-09283-JFW-
18 KS (“Hernandez Matter”); and 5) the Third Amended Complaint to be filed in the
19 Lopez Matter prior to preliminary approval of this settlement, by way of stipulation
20 or joint motion, whereby the claims and parties in the Hernandez Matter will be added
21 to the Lopez Matter for purposes of seeking settlement approval in a single venue.

22 9. “Counsel for Defendant” means Shiva Shirazi Davoudian, of Littler
23 Mendelson, P.C., 2049 Century Park East, 5th Floor, Los Angeles, California 90067.

24 10. “Court” means the United States District Court, Southern District of
25 California, or any other court taking jurisdiction of the Action.

26 11. “Defendant” means Utility Tree Service, LLC.

27 12. “Effective Date” means the later of: (i) this Agreement has been
28 executed by Plaintiffs, Defendant, Class Counsel, and Defendant’s Counsel; (ii) the

1 Court entered a Preliminary Approval Order; (iii) the Class Notice has been sent to
2 the Class Members, providing them notice and opportunity to object to the
3 Settlement, and notice and opportunity to opt out of the Settlement; (iv) notice of
4 this Settlement has been sent to the LWDA; (v) the Court has held a Final Approval
5 Hearing and entered a Final Approval Order and Final Judgment; and (vi) the later
6 of the following events: five (5) court days after the period for filing any appeal,
7 writ, or other appellate proceeding opposing the Final Approval Order or Final
8 Judgment has elapsed without any appeal, writ, or other appellate proceeding
9 having been filed (i.e., 35 days from the date the Court enters Final Approval Order
10 and Final Judgment); or, if any appeal, writ, or other appellate proceeding opposing
11 the Final Approval Order or Final Judgment has been filed within that timeframe,
12 then five (5) court days after any appeal, writ, or other appellate proceedings
13 opposing the Settlement has finally and conclusively dismissed with no right to
14 pursue further remedies or relief.

15 13. "Gross Settlement Amount" means the Gross Settlement Amount of
16 Eight Hundred Fifty Thousand and Zero Cents (\$850,000.00) to be paid by
17 Defendant, which includes the Net Settlement Amount, the Class Representative
18 Enhancement Payments to Plaintiffs, the Labor and Workforce Development
19 Agency's ("LWDA") portion of the PAGA Settlement Amount, Settlement
20 Administration Costs to the Settlement Administrator, and Plaintiffs' Counsel
21 Award. This Gross Settlement Amount has been agreed to by Plaintiffs and
22 Defendant based on the aggregation of the agreed-upon settlement value of the
23 claims. In no event will Defendant be liable for more than the Gross Settlement
24 Amount except as otherwise explicitly set forth herein. Defendant will be separately
25 responsible for and shall pay the employer's share of taxes and contributions,
26 including and not limited to FICA, FUTA, and SDI contributions, which are due and
27 payable as a result of this settlement, which shall not be paid from the Gross
28 Settlement Amount.

1 14. “Individual Settlement Payment” means each Class Member’s share of
2 the Net Settlement Amount, to be distributed to the Settlement Class.

3 15. “Net Settlement Amount” means the portion of the Gross Settlement
4 Amount remaining after deduction of the approved Class Representative
5 Enhancement Payments, Settlement Administration Costs, the LWDA’s portion of
6 the PAGA Settlement Amount, and Class Counsel Award. The entire Net
7 Settlement Amount will be distributed to Class Members pursuant to the formula
8 set forth *infra.*, in Paragraph 42.

9 16. “Notice of Objection” means a Class Member’s valid and timely
10 written objection to the Settlement Agreement. For the Notice of Objection to be
11 valid, it must include: (a) the objector’s full name, signature, address, telephone
12 number, and last four digits of Social Security Number, (b) a written statement of
13 all grounds for the objection accompanied by any legal support for such objection;
14 and (c) copies of any papers, briefs, or other documents upon which the objection
15 is based.

16 17. “Notice Packet” means the Notice of Proposed Class Action Settlement
17 and Final Fairness and Approval Hearing (“Notice” or “Class Notice”), substantially
18 in the form attached as **Exhibit A**, and an enclosed self-addressed and postage-
19 prepaid (Business Return Mail) envelope.

20 18. “PAGA Settlement Amount” means the amount of Twenty-Five
21 Thousand Dollars and Zero Cents (\$25,000.00), to be paid from the Gross Settlement
22 Amount, that the Parties have agreed will be allocated toward penalties under the
23 Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*,
24 “PAGA”), as further set forth in Paragraph 38.

25 19. “Parties” means Plaintiffs and Defendant collectively.

26 20. “Plaintiffs” means Florentino Lopez and Luis Hernandez.

27 21. “Preliminary Approval” means the Court order granting preliminary
28 approval of the Settlement.

1 22. “Putative Class Member(s)” means persons who worked for any
2 Defendant in California as an hourly-paid, non-exempt employee at any time from
3 February 15, 2020, to the date of the Court’s order preliminarily approving this
4 Settlement.

5 23. “Released Claims” means, all claims, rights, demands, liabilities and
6 causes of action, whether in law or equity, arising from the same facts and/or claims
7 alleged in the Original Complaint, PAGA Complaint and First Amended
8 Complaint, Second Amended Complaint, or related to claims that were pled or
9 could have been pled based on the facts alleged in the Complaint and in pending
10 PAGA Letters submitted to LWDA by Putative Class Members and/or Class
11 Counsel, including claims for wages, restitution, statutory and civil penalties,
12 interest, fees, and costs, and claims arising from California’s Private Attorneys
13 General Act, including under the California Labor Code and corresponding
14 provisions of Wage Orders, based on the following categories of claims and
15 allegations: (1) failure to pay wages, including minimum wages, regular wages,
16 overtime wages, overtime wages at the regular rate, double time wages, paid sick
17 leave, reporting time wages, vacation wages and shift differentials; (2) failure to
18 provide meal periods and associated premium pay; (3) failure to authorize and
19 permit rest breaks and associated premium pay; (4) failure to timely pay final wages
20 at termination; (5) failure to provide accurate itemized wage statements; (6) failure
21 to timely pay all wages during employment; (7) failure to reimburse business
22 expenses; (8) failure to maintain accurate records of hours worked; (9) failure to
23 maintain accurate records of meal breaks; (10) unfair business practices in violation
24 of California Business and Professions Code sections 17200, *et seq.*, including
25 incorporated or related claims based on alleged violations of California Labor Code
26 sections 201, 202, 203, 204, 210, 221, 226, 226.3, 226.7, 227.3, 233, 246, 246.5,
27 510, 512, 551, 552, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800 and
28 2802 *et seq.*; and (12) civil penalties under the Private Attorneys General Act

1 (California Labor Code sections 2698 *et seq.*, including incorporated or related
2 claims based on alleged violations of California Labor Code sections 201, 202, 203,
3 204, 210, 218, 221, 226, 226.7, 227.3, 246, 510, 512, 551, 552, 558, 1174, 1174.5,
4 1194, 1197, 1197.1, 1198, 2800 and 2802 *et seq.*

5 24. “Released Claims Period” means the period from February 15, 2020, to
6 the date the Settlement is preliminarily approved by the Court.

7 25. “Released Parties” means Defendant, and any of its former and present
8 parents, subsidiaries, and affiliates, divisions, corporations in common control,
9 predecessors, successors, and assigns, as well as all, and their past and present
10 officers, directors, employees, partners, shareholders, agents, attorneys, insurers, and
11 any other successors, or assigns, or legal representatives, except insofar as these
12 individuals are Class Members.

13 26. “Request for Exclusion” means a timely letter submitted by a Putative
14 Class Member indicating a request to be excluded from the settlement. The Request
15 for Exclusion must: (a) be signed by the Putative Class Member; (b) contain the
16 name, address, telephone number and the last four digits of the Social Security
17 Number of the Putative Class Member requesting exclusion; (c) clearly state that
18 the Putative Class Member does not wish to be included in the settlement of the
19 Action; (d) be returned by fax or mail to the Settlement Administrator at the
20 specified address and/or facsimile number; and, (e) be postmarked on or before the
21 Response Deadline. The date of the fax or postmark on the return mailing envelope
22 will be the exclusive means to determine whether a Request for Exclusion has been
23 timely submitted. Except as otherwise provided in Paragraph 38 with respect to the
24 settlement and release of Released Claims arising under PAGA, a Putative Class
25 Member who does not request exclusion from the Settlement Class will be deemed
26 a Class Member and will be bound by all terms of the Settlement, if the Settlement
27 is granted final approval by the Court.

28 27. “Response Deadline” means the deadline by which Putative Class

1 Members must postmark to the Settlement Administrator valid Requests for
2 Exclusion, or file and serve objections to the settlement. The Response Deadline
3 will be thirty (30) calendar days from the initial mailing of the Notice Packet by the
4 Settlement Administrator, unless the 30th day falls on a Sunday or Federal holiday,
5 in which case the Response Deadline will be extended to the next day on which the
6 U.S. Postal Service is open. The Response Deadline for Requests for Exclusion
7 will be extended ten (10) calendar days for any Putative Class Member who is re-
8 mailed a Notice Packet by the Settlement Administrator in accordance with the
9 notice procedure set forth herein. Under no circumstances will the re-mailing of a
10 Notice Packet extend the original deadline of thirty (30) calendar days by more than
11 ten (10) calendar days, except by express agreement between Class Counsel and
12 Defendant. Additionally, under no circumstances will the Settlement Administrator
13 have the authority to extend the deadline for Putative Class Members to submit a
14 Request for Exclusion, or objection to the Settlement.

15 28. "Settlement Administrator" means Simpluris Class Action Settlement
16 Administration, or any other third-party class action settlement administrator agreed
17 to by the Parties and approved by the Court for the purposes of administering this
18 Settlement. The Parties each represent that they do not have any financial interest in
19 the Settlement Administrator or otherwise have a relationship with the Settlement
20 Administrator that could create a conflict of interest.

21 29. "Settlement Administration Costs" means the costs payable from the
22 Gross Settlement Amount to the Settlement Administrator for administering this
23 Settlement, including, but not limited to, printing, distributing, and tracking
24 documents for this Settlement, tax reporting, distributing the Gross Settlement
25 Amount, and providing necessary reports and declarations, as requested by the
26 Parties. The Settlement Administration Costs shall be paid from the Gross Settlement
27 Amount, including, if necessary, any such costs in excess of the amount represented
28 by the Settlement Administrator as being the maximum costs necessary to administer

1 the Settlement. The Settlement Administration Costs are estimated not to exceed
2 Fifteen Thousand Dollars (\$15,000.00).

3 30. "Settlement Payment Check" means the payment to Class Members
4 pursuant to this Settlement reflecting a gross and net amount after applicable
5 withholdings. The back of the Settlement Payment Check shall state, immediately
6 next to the space where the check is to be endorsed by the payee: "By endorsing this
7 check, I acknowledge that I read and understood the Notice of Proposed Class Action
8 Settlement and Final Fairness and Approval Hearing and did not exclude myself from
9 the Settlement as set forth in the Notice. I also understand that even if I choose not
10 to endorse this check, I am bound by all the terms of the Settlement and the final
11 judgment in the matter."

12 31. "Workweeks" means the number of weeks of employment in California
13 for each Class Member (excluding vacation and leaves of absence) as a non-exempt
14 employee from February 15, 2020, to date upon which the Court grants preliminary
15 approval of the Settlement. Defendant will calculate the number of Workweeks by
16 calculating the number of weeks in which each Class Member earned non-vacation
17 wages from Defendant in California between February 15, 2020, to the date upon
18 which the Court grants preliminary approval of this Settlement. Any Class Member
19 with less than one week of employment will be credited with one Workweek.

20 32. "Workweek Value" means the value of each compensable Workweek,
21 as determined by the formula set forth in Paragraph 31 herein.

22 23 **TERMS OF AGREEMENT**

24 The Plaintiffs, on behalf of themselves and the Settlement Class, and
25 Defendant agree as follows:

26 33. No Admission or Concession by the Released Parties. Defendant and
27 the Released Parties deny any and all claims alleged in this Action and deny all
28 wrongdoing whatsoever. Defendant reserves the right to contest any issues relating

1 to certification and liability if the Settlement is not approved. This Agreement is
2 not a concession or admission, and shall not be used against Defendant or any of
3 the Released Parties as an admission or indication with respect to any claim of any
4 fault, concession or omission by Defendant or any of the Released Parties. Whether
5 or not the Settlement is finally approved, neither the Settlement, nor any document,
6 statement, proceeding or conduct related to this Agreement, nor any reports or
7 accounts thereof, shall in any event be construed as, offered or admitted in evidence
8 as, received as evidence of a presumption, concession, indication or admission by
9 any of the Released Parties of any liability, fault, wrongdoing, omission, concession
10 or damage; or disclosed, referred to or offered or received in evidence against any
11 of the Released Parties, in any further proceeding in the Action, or any other civil,
12 criminal or administrative action or proceeding except for purposes of enforcing
13 this Agreement. However, the Released Parties may file the Final Judgment,
14 Settlement Agreement, or any other papers and records on file in the Action as
15 evidence of the Settlement to support a defense of *res judicata*, *collateral estoppel*,
16 release, waiver, or other theory of claim preclusion or issue preclusion or similar
17 defense as to the Released Claims and/or in defense of any future claim in this or
18 any other proceeding.

19 34. Funding of the Gross Settlement Amount and Disbursement of
20 Payments. Within twenty (20) calendar days after the Effective Date of the
21 Settlement, Defendant will make a one-time deposit of the Gross Settlement
22 Amount into a Qualified Settlement Fund account to be established by the
23 Settlement Administrator. Within fifteen (15) calendar days of the funding of the
24 Settlement, the Settlement Administrator will issue payments to (a) Class Members;
25 (b) the Labor and Workforce Development Agency; (c) Plaintiffs; and (d) Class
26 Counsel. The Settlement Administrator will also issue a payment to itself for Court-
27 approved services performed in connection with the settlement.

28 35. Class Counsel and Class Counsel's Award.

1 35(a) Solely for purposes of this Settlement, the Parties stipulate
2 and agree that Moon Law Group, PC and Wilshire Law Firm,
3 PLC shall be appointed as Class Counsel for the Class.

4 35(b) Defendant agrees not to oppose or impede any application or
5 motion by Class Counsel for attorneys' fees and costs of up
6 to a maximum of thirty-three and one-third percent (33 1/3%)
7 of the Gross Settlement Amount, or Two Hundred Eighty-
8 Three Thousand Three Hundred Thirty-Three Dollars and
9 Thirty-Three Cents (\$283,333.33), and costs/expenses not to
10 exceed Twenty-Five Thousand Dollars and Zero Cents
11 (\$25,000.00) subject to the Court finally approving this
12 Settlement and subject to the exhaustion of any and all
13 appeals. The Settlement Administrator (and not the
14 Defendant) shall issue an IRS Form 1099 to Class Counsel
15 reflecting the awarded attorneys' fees, costs and expenses.
16 Any portion of the Class Counsel Award not awarded to
17 Class Counsel shall be a part of the Net Settlement Amount.

18 36. Class Representatives and Class Representative Enhancement
19 Payments.

20 36(a) Solely for purposes of this Settlement, the Parties stipulate
21 and agree that Plaintiffs shall be appointed as Class
22 Representatives for the Class.

23 36(b) In recognition of their efforts and work in prosecuting the
24 Action on behalf of Class Members, Defendant agrees not to
25 oppose or impede an application or motion by Plaintiffs for a
26 Class Representative Enhancement Payment of up to Five
27 Thousand Dollars and Zero Cents (\$5,000.00) from the Gross
28 Settlement Amount, to each Plaintiff, subject to the Court

1 granting final approval of this Agreement and subject to the
2 exhaustion of any and all appeals. Any portion of the Class
3 Representative Enhancement Payments not awarded to
4 Plaintiffs will be added to the Net Settlement Amount. The
5 Class Representative Enhancement Payment, which shall be
6 paid from the Gross Settlement Amount, shall be in addition
7 to Plaintiffs' Individual Settlement Payment paid pursuant to
8 the Settlement. Plaintiffs shall execute a general release in
9 favor the Released Parties. The Settlement Administrator
10 (and not the Defendant) shall issue an IRS Form 1099 to the
11 Class Representatives reflecting the class representative
12 payment. Any portion of the Class Representative
13 Enhancement Payment not awarded to Plaintiffs shall remain
14 a part of the Net Settlement Amount.

15 37. Settlement Administration Costs. The Settlement Administrator will
16 be paid for the reasonable costs of administration of the Settlement and distribution
17 of payments from the Gross Settlement Amount, which are not to exceed Fifteen
18 Thousand Dollars (\$15,000.00). These costs will include, *inter alia*, the required
19 tax reporting on the Individual Settlement Payments, the issuing of 1099 and W-2
20 IRS Forms, distributing the Notice Packet, calculating and distributing the
21 payments, and providing necessary reports and declarations.

22 38. PAGA Settlement and Release. The Parties acknowledge and agree
23 that for purposes of the PAGA and Judgment, all Putative Class Members were
24 allegedly aggrieved in the same manner pursuant to Labor Code § 2698, *et. seq.*, in
25 that each Putative Class Member allegedly suffered at least one of the alleged Labor
26 Code violations asserted in the Complaint for which the PAGA provides an
27 available remedy. The Parties also acknowledge and agree that, by law, non-party
28 employees have no right to opt out of, or object to, the settlement of PAGA claims,

1 that the settlement of PAGA claims is subject to Court approval, and a judgment
2 with respect to PAGA claims is binding with respect to non-party employees upon
3 Court approval, pursuant to California Labor Code section 2699(l), *Arias v.*
4 *Superior Ct. (Dairy)*, 46 Cal. 4th 969, and *Cardenas v. McLane Foodservice, Inc.*,
5 2011 WL 379413 at *3 (C.D. Cal. Jan. 31, 2011). As such, irrespective of whether
6 a Putative Class Member submits a Request for Exclusion, upon approval of the
7 Settlement, all Putative Class Members will be issued payment for PAGA penalties
8 as provided herein, and upon the Effective Date, shall be deemed to have released
9 the Released Claims arising under PAGA, as set forth in Paragraph 23.

10 38(a) The Parties agree that the amount of Twenty Thousand
11 Dollars and Zero Cents (\$25,000.00) from the Gross
12 Settlement Amount (“PAGA Settlement Amount”) will be
13 paid as follows.

14 (i) Seventy-Five Percent (75%) of the PAGA Settlement
15 Amount, or \$18,750.00, of this sum will be paid to the
16 California Labor and Workforce Development Agency
17 (“LWDA”). The Settlement Administrator shall be
18 responsible for transmitting the LWDA’s portion of the
19 PAGA Settlement Amount to the LWDA in conformity
20 with the rules and procedures that are in effect at the time
21 that payment is being made.

22 (ii) Twenty-Five Percent (25%) of the PAGA Settlement
23 Amount (“Employees’ PAGA Portion”), or \$6,250.00,
24 will be distributed to Class Members as part of the Net
25 Settlement Amount on a *pro rata* basis based on
26 Workweeks during the applicable PAGA limitations
27 period of February 15, 2020, to the date of the Court’s
28 order preliminarily approving this Settlement.

1 39. Net Settlement Amount. The Net Settlement Amount will be used to
2 satisfy Individual Settlement Payments to Class Members from the Gross
3 Settlement Amount in accordance with the terms of this Agreement. Defendant
4 shall not maintain any reversionary right to any portion of the Gross Settlement
5 Amount.

6 40. Acknowledgment of Potential Administration Cost Increases. The
7 Parties hereby acknowledge that Settlement Administration Costs may increase
8 above the current estimate of \$15,000.00 and that any such additional Settlement
9 Administration Costs shall be taken out of the Gross Settlement Amount. Any
10 portion of the estimated or designated Settlement Administration Costs that are not
11 in fact required to fulfill the total Settlement Administration Costs shall be a part of
12 the Net Settlement Amount.

13 41. Calculation of Gross Settlement Amount. The Gross Settlement
14 Amount was calculated with, and is premised on, the understanding that as of March
15 18, 2023, there are approximately 876 Putative Class Members eligible to participate
16 in the Settlement. If, as of the date of Preliminary Approval, the total number of
17 Putative Class Members exceeds the original estimates by more than fifteen percent
18 (15%), then Defendant, at its sole discretion, may adjust the date of the release
19 period.

20 42. Individual Settlement Payment Calculations. Individual Settlement
21 Payments shall be calculated and apportioned from the Net Settlement Amount based
22 on the number of Workweeks a Class Member worked during the Class Period.
23 Specific calculations of Individual Settlement Payments shall be made as follows:

24 42(a) The Settlement Administrator will divide the Net Settlement
25 Amount by the total number of Workweeks worked by all
26 Putative Class Members. This calculation will yield the
27 Initial Workweek Amount.

28 42(b) Next, the Initial Workweek Amount is multiplied by each

Putative Class Member's total number of Workweeks to arrive at the amount that each Putative Class Member is eligible to claim ("Estimated Settlement Share").

42(c) If the Estimated Settlement Shares attributed to Class Members, as calculated, equals less than the Net Settlement Amount, the Individual Settlement Payments to be issued to the Class Members will be proportionately increased for each Class Member such that the total Individual Settlement Payments equal not less than the Net Settlement Amount.

42(d) The Individual Settlement Payment will be reduced by the employee's share of taxes and withholdings with respect to the portion of the payment that is deemed wages.

43. No Credit Toward Benefit Plans. Any and all payments made pursuant to this Agreement, shall not be utilized to calculate any additional benefits under any benefit plans to which any Putative Class Members may be eligible, including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement will not affect any rights, contributions, or amounts to which any Putative Class Members may be entitled under any benefit plans.

44. Settlement Administration Process. The Parties agree to cooperate in the administration of the Settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in the administration of the Settlement. The Settlement Administrator will provide the following services:

44(a) Establish and maintain a Qualified Settlement Fund account.

44(b) Confirm the calculation of the total number of Workweeks worked by each Putative Class Member and calculate the amount of the Net Settlement Amount that each Putative

1 Class Member is eligible for.

2 44(c) Updating, verifying, and searching for the last known
3 addresses of Putative Class Members.

4 44(d) Printing and mailing the Notice Packets to each Putative Class
5 Member.

6 44(e) Establishing and maintaining a toll-free informational
7 telephone support line to assist Putative Class Members who
8 have questions regarding the Settlement or Notice.

9 44(f) Receiving, calculating, and processing Individual Settlement
10 Payments for Class Members. This service will include claim
11 amount calculations, printing and issuance of checks, and
12 preparation of W-2 and/or 1099 Forms. Basic accounting and
13 tax preparation and handling for and payment of employee tax
14 withholdings will also be included as part of this service.

15 44(g) Informing Defendant of the employer-side tax liability.

16 44(h) Providing declarations and/or other information to this Court
17 as requested by the Parties and/or the Court.

18 45. Delivery of the Class List and Data. Within fourteen (14) calendar days
19 of Preliminary Approval, Defendant shall provide the Class List and Data to the
20 Settlement Administrator.

21 46. Notice by First-Class U.S. Mail.

22 46(a) Within ten (10) calendar days after receiving the Class List
23 and Data from Defendant, the Settlement Administrator shall
24 mail a Notice Packet to all Putative Class Members via
25 regular First-Class U.S. Mail, using the most current, known
26 mailing addresses identified in the Class List. Prior to the
27 mailing, the Settlement Administrator shall perform a search
28 based on the National Change of Address Database or any

1 other similar service available, such as provided by Experian,
2 to update and correct the Class List for any known or
3 identifiable address changes.

4 46(b) If a new address is obtained by a way of a returned Notice
5 Packet, then the Settlement Administrator shall promptly
6 forward the original Notice Packet to the updated address via
7 First-Class U.S. Mail indicating on the original Notice Packet
8 the date of such re-mailing. Where a Notice Packet is
9 returned as undeliverable, without a forwarding address, the
10 Settlement Administrator will perform a computer/SSN and
11 “skip trace” search to obtain an updated address. The Parties
12 agree to cooperate with the Settlement Administrator to
13 locate a more recent address for Putative Class Members,
14 where necessary.

15 46(c) Not more than thirty calendar (30) calendar days nor fewer
16 than twenty (20) calendar days after mailing of the original
17 Notice Packet, the Settlement Administrator shall mail one
18 reminder postcard to all Putative Class Members who have
19 not yet submitted Requests for Exclusion. The reminder
20 postcard shall be mailed to such Putative Class Members via
21 First-Class U.S. Mail, using the most current mailing address
22 information then available for the Putative Class Members.
23 The reminder postcard shall include the estimated Individual
24 Settlement Payment and a reminder about the Response
25 Deadline.

26 47. Notice Packets. All Putative Class Members will be mailed a Notice
27 Packet, with Spanish translation. Each Notice Packet will provide: (a) information
28 regarding the nature of the Action; (b) a summary of the Settlement’s principal

1 terms; (c) the Settlement Class definition; (d) the total number of Workweeks each
2 respective Putative Class Member worked for Defendant during the Class Period;
3 (e) each Putative Class Member's estimated Individual Settlement Payment and the
4 formula for calculating Individual Settlement Payments; (f) the dates which
5 comprise the Class Period; (g) instructions on how to submit valid Requests for
6 Exclusion, or objections; (h) instructions on how to dispute the Workweeks
7 allocated to a Putative Class Member as reflected in the Notice Packet, (i) the
8 deadlines by which the Putative Class Member must submit disputes, submit
9 Requests for Exclusions, or file and serve objections to the Settlement; (j) the claims
10 to be released, as set forth herein; and (k) the date for the final approval hearing.

11 48. Dispute Procedures.

12 48(a) A Putative Class Member may dispute the number of
13 Workweeks allocated to him or her, as reflected in his or her
14 Notice, by submitting a written dispute. The Putative Class
15 Member shall be required to submit the dispute in this
16 manner, prior to the Response Deadline, along with
17 supporting documentation to show the number of workweeks
18 that he or she contends are appropriately attributable to the
19 Putative Class Member. A written dispute shall at a
20 minimum contain (1) the name and current address of the
21 Putative Class Member, (2) the last four digits of his or her
22 Social Security Number, (3) the name of the case, (4) a
23 statement that he or she disputes the Workweeks attributed to
24 him or her, (5) a statement of the number of Workweeks that
25 he or she contends are correctly attributable to him or her,
26 and (6) the Putative Class Member's signature. If a Putative
27 Class Member disputes the number of Workweeks attributed
28 to him or her, Defendant's records shall presumptively

1 control. If there is a dispute, the Settlement Administrator
2 will consult with the Parties to determine whether an
3 adjustment to the Putative Class Member's Workweeks is
4 warranted. The Parties shall engage in a good faith effort to
5 reach an agreement as to whether an adjustment for the
6 Putative Class Member is warranted and, if the Parties are
7 unable to reach an agreement, the Claims Administrator shall
8 resolve the issue based on information made available to the
9 Claims Administrator by the Parties and the Class Member.

10 49. Request for Exclusion Procedures. Any Putative Class Member
11 wishing to opt-out from the Settlement Agreement must sign and submit, either by
12 mail or fax, a written Request for Exclusion to the Settlement Administrator, which
13 is postmarked or fax-stamped within the Response Deadline. The date of fax or the
14 postmark on the return mailing envelope will be the exclusive means to determine
15 whether a Request for Exclusion has been timely submitted. All Requests for
16 Exclusion will be submitted to the Settlement Administrator, who will certify to
17 Class Counsel and Defendant's Counsel, jointly, the Requests for Exclusion that
18 were timely submitted.

19 50. Settlement Terms Bind All Putative Class Members Who Do Not Opt-
20 Out. Except as otherwise provided in Paragraph 38 with respect to the settlement
21 and release of Released Claims arising under PAGA, any Putative Class Member
22 who does not affirmatively opt-out of the Settlement Class by submitting a timely
23 and valid Request for Exclusion will become a Class Member and will be bound by
24 all of the Settlement Agreement's terms, including those pertaining to the Released
25 Claims, as well as any Judgment that may be entered by the Court if it grants final
26 approval to the Settlement.

27 51. Objection Procedures. Putative Class Members who do not opt-out of
28 the Settlement may object to the Settlement. To object to the Settlement, a Class

1 Member should file a valid Notice of Objection with the Court and serve copies of
2 the Notice of Objection on the Parties' Counsel before the Response Deadline. The
3 Notice of Objection should be signed by the Class Member and contain all
4 information required by this Settlement Agreement. The postmark date of the filing
5 and service will be deemed the exclusive means for determining that the Notice of
6 Objection is timely. Irrespective of whether a Notice of Objection is submitted,
7 Class Members will have a right to appear at the Final Approval Hearing in order
8 to have their objections heard by the Court. At no time will any of the Parties or
9 their counsel seek to solicit or otherwise encourage Class Members to submit
10 written objections to the Settlement Agreement or appeal from the Order and
11 Judgment. Class Counsel will not represent any Class Members with respect to any
12 such objections to this Settlement.

13 52. Certification Reports Regarding Individual Settlement Payment
14 Calculations. The Settlement Administrator will provide Defendant's counsel and
15 Class Counsel a weekly report which certifies: (a) the number of Putative Class
16 Members who have submitted valid Requests for Exclusion; and (b) whether any
17 Putative Class Member has submitted a challenge to the workweeks attributed to
18 him or her as reflected in their Notice Packet. Additionally, the Settlement
19 Administrator will provide to counsel for both Parties any updated reports regarding
20 the administration of the Settlement Agreement as needed or requested.

21 53. Uncashed Settlement Checks. Any checks issued to Class Members,
22 including those issued pursuant to Paragraph 18 herein, will be negotiable for one
23 hundred and eighty (180) calendar days. Thereafter, those funds represented by
24 settlement checks that are returned as undeliverable or which remain uncashed shall
25 be transmitted to the State of California's Unclaimed Property Fund in the name of
26 the Class Members who fail to timely negotiate their checks.

27 54. Certification of Completion. Upon completion of administration of the
28 Settlement, the Settlement Administrator will provide a written declaration under

1 oath to certify such completion to the Court and counsel for all Parties.

2 55. Treatment of Individual Settlement Payments. All Individual
3 Settlement Payments will be allocated as follows: one-third of each Individual
4 Settlement Payment will be allocated as wages, one-third will be allocated as
5 penalties, and the remaining one-third will be allocated as interest. The portion
6 allocated to wages will be reported on an IRS Form W-2 and the portions allocated
7 to interest and penalties will be reported on an IRS Form-1099 by the Settlement
8 Administrator.

9 56. Administration of Taxes by the Settlement Administrator. The
10 Settlement Administrator will be responsible for issuing to Plaintiffs, Class
11 Members, and Class Counsel any W-2, 1099, or other tax forms as may be required
12 by law for all amounts paid pursuant to this Agreement. The Settlement
13 Administrator will also be responsible for forwarding all employees' share of taxes
14 and withholdings to the appropriate government authorities.

15 57. Tax Liability. Defendant makes no representation as to the tax
16 treatment or legal effect of the payments called for hereunder, and Plaintiffs and
17 Putative Class Members are not relying on any statement, representation, or
18 calculation by Defendant or by the Settlement Administrator in this regard.
19 Plaintiffs and Putative Class Members understand and agree that except for the
20 payment of the employer's portion of any payroll taxes, Plaintiffs and Class
21 Members will be solely responsible for the payment of any taxes and penalties
22 assessed on the payments described herein and will defend, indemnify, and hold
23 Defendant free and harmless from and against any claims resulting from treatment
24 of such payments as non-taxable damages.

25 58. Circular 230 Disclaimer. Each party to this agreement (for purposes of
26 this section, the "acknowledging party" and each party to this agreement other than
27 the acknowledging party, an "other party") acknowledges and agrees that (1) no
28 provision of this agreement, and no written communication or disclosure between or

1 among the parties or their attorneys and other advisers, is or was intended to be, nor
2 shall any such communication or disclosure constitute or be construed or be relied
3 upon as, tax advice within the meaning of united states treasury department
4 circular 230 (31 cfr part 10, as amended); (2) the acknowledging party (a) has relied
5 exclusively upon his, her or its own, independent legal and tax counsel for advice
6 (including tax advice) in connection with this agreement, (b) has not entered into this
7 agreement based upon the recommendation of any other party or any attorney or
8 advisor to any other party, and (c) is not entitled to rely upon any communication or
9 disclosure by any attorney or adviser to any other party to avoid any tax penalty that
10 may be imposed on the acknowledging party; and (3) no attorney or adviser to any
11 other party has imposed any limitation that protects the confidentiality of any such
12 attorney's or adviser's tax strategies (regardless of whether such limitation is legally
13 binding) upon disclosure by the acknowledging party of the tax treatment or tax
14 structure of any transaction, including any transaction contemplated by this
15 agreement.

16 59. No Prior Assignments. Plaintiffs, Putative Class Members, and Class
17 Counsel represent, covenant, and warrant that they have not directly or indirectly
18 assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
19 any person or entity any portion of any liability, claim, demand, action, cause of
20 action or right herein released and discharged.

21 60. Release of Claims by Class Members. Upon payment of all funds due
22 hereunder and the occurrence of the Effective Date, Plaintiffs and all Putative Class
23 Members who did not timely submit a Request for Exclusion will be deemed to
24 have fully, finally and forever released, settled, compromised, relinquished, and
25 discharged any and all Released Claims with respect to all of the Released Parties,
26 except that, as provided by Paragraph 38, as of the Effective Date and upon payment
27 of all funds due, Plaintiffs and all Putative Class Members will be deemed to have
28 fully, finally and forever released, settled, compromised, relinquished, and

1 discharged any and all Released Claims arising under PAGA, with respect to all of
2 the Released Parties.

3 61. Release of Additional Claims and Rights by Plaintiffs. Upon payment
4 of all funds due hereunder and the occurrence of the Effective Date, as a condition
5 of receiving any portion of their Class Representative Enhancement Payment,
6 Plaintiffs will agree to the additional following General Release: In consideration
7 of Defendant's promises and agreements as set forth herein, each Plaintiff hereby
8 fully releases the Released Parties from any and all Released Claims and also
9 generally releases and discharges the Released Parties from any and all claims,
10 demands, obligations, causes of action, rights, or liabilities of any kind which have
11 been or could have been asserted against the Released Parties arising out of or
12 relating to Plaintiffs' employment by Defendant or termination thereof, including
13 but not limited to claims for wages, restitution, penalties, retaliation, or wrongful
14 termination of employment, and including any other claims whatsoever, including
15 any interest thereon, including claims based on alleged discrimination on the basis
16 of sex, race, national origin, ancestry, age, religion, disability, handicap, and/or
17 veteran status, and/or any other state or federal or common law, statutory, or other
18 claims arising out of or relating to Plaintiffs' employment by Defendant. This
19 release specifically includes any and all claims, demands, obligations and/or causes
20 of action for damages, restitution, penalties, interest, and attorneys' fees and costs
21 (except provided by the Agreement) relating to or in any way connected with the
22 matters referred to herein, whether or not known or suspected to exist, and whether
23 or not specifically or particularly described herein. Thus, Plaintiffs expressly waive
24 any right or claim or right to assert hereafter that any claim, demand, obligation,
25 and/or cause of action has, through ignorance, oversight, or error, been omitted from
26 the terms of this Settlement Agreement. Specifically, Plaintiffs waive all rights and
27 benefits afforded by California Civil Code Section 1542, which provides:
28

1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT
2 THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR
3 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
4 EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR
5 HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
6 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

7 The release of claims set forth in this paragraph does not include claims for workers'
8 compensation benefits or any of claims that may not be released by law.

9 62. Nullification of Settlement Agreement. If three-percent (3%) or more
10 of the Putative Class Members exclude themselves from the Settlement, Defendant
11 may, at its election, rescind the Settlement and all actions taken in its furtherance
12 will be thereby null and void. Defendant must exercise this right of rescission, in
13 writing, to Class Counsel, within fourteen (14) calendar days after the Settlement
14 Administrator notifies the Parties of the total number of opt-outs. However, if
15 Defendant exercises this right of rescission, Defendant must pay the Settlement
16 Administration Costs incurred as of that date. In the event that: (a) the Court does
17 not finally approve the Settlement as provided herein; or (b) the Settlement does
18 not become final for any other reason, then this Settlement Agreement, and any
19 documents generated to bring it into effect, will be null and void. Any order or
20 judgment entered by the Court in furtherance of this Settlement Agreement will
21 likewise be treated as void from the beginning.

22 63. Preliminary Approval Hearing. Plaintiffs will obtain a hearing before
23 the Court to request the Preliminary Approval of the Settlement Agreement, and the
24 entry of a Preliminary Approval Order for: (a) conditional certification of the
25 Settlement Class for settlement purposes only, (b) Preliminary Approval of the
26 proposed Settlement Agreement, and (c) setting a date for a Final
27 Approval/Settlement Fairness Hearing. The Preliminary Approval Order will
28 provide for the Notice Packet to be sent to all Putative Class Members as specified
herein. In conjunction with the Preliminary Approval Hearing, Plaintiffs shall submit

1 this Agreement, which sets forth the terms of this Settlement, and will include the
2 proposed Notice Packet. Class Counsel will be responsible for drafting all
3 documents necessary to obtain preliminary approval.

4 64. Final Settlement Approval Hearing and Entry of Judgment. Upon
5 expiration of the deadlines to submit disputes, Requests for Exclusion, or file and
6 service objections to the Settlement Agreement, and with the Court's permission, a
7 Final Approval/Settlement Fairness Hearing will be conducted to determine the
8 Final Approval of the Settlement Agreement along with the amounts properly
9 payable for (a) Individual Settlement Payments; (b) the Labor and Workforce
10 Development Agency's portion of the PAGA Payment; (c) the Class Counsel
11 Award; (d) the Class Representative Enhancement Payment; and (e) all Settlement
12 Administration Costs. The Final Approval/Settlement Fairness Hearing will not be
13 held earlier than thirty (30) calendar days after the Response Deadline. Class
14 Counsel will be responsible for drafting all documents necessary to obtain final
15 approval. Class Counsel will also be responsible for drafting the attorneys' fees
16 and costs application to be heard at the Final Approval Hearing.

17 65. Judgment and Continued Jurisdiction. At or after the Final
18 Approval/Settlement Fairness Hearing, the Parties will present the Judgment to the
19 Court for its approval and entry. After entry of the Judgment, the Court will have
20 continuing jurisdiction solely for purposes of addressing: (a) the interpretation and
21 enforcement of the terms of the Settlement, (b) settlement administration matters,
22 and (c) such post-Judgment matters as may be appropriate under court rules or as
23 set forth in this Agreement.

24 66. Exhibits Incorporated by Reference. The terms of this Agreement
25 include the terms set forth in any attached Exhibits, which are incorporated by this
26 reference as though fully set forth herein. Any Exhibits to this Agreement are an
27 integral part of the Settlement.

28 67. Confidentiality Preceding Preliminary Approval. The Parties and their

1 counsel agree that they will not issue any press releases, initiate any contact with the
2 press, respond to any press inquiry, or have any communication with the press about
3 the fact, amount or terms of the Settlement. In addition, the Parties and their counsel
4 agree that they will not engage in any advertising or distribute any marketing
5 materials relating to the Settlement of this case, including but not limited to any
6 postings on any websites maintained by Class Counsel. Any communication about
7 the Settlement to Class Members prior to the court approved mailing will be limited
8 to a statement that a settlement has been reached and the details will be
9 communicated in a forthcoming Court-approved notice. However, nothing herein
10 shall prevent the Parties from informing counsel purporting to represent Putative
11 Class Members that the Action has been resolved subject to the approval by the
12 Court and will settle Released Claims. Further, Defendant may disclose the
13 existence of the Settlement and Preliminary Approval status in its quarterly earnings
14 press release and related quarterly Form 10-Q report.

15 68. Entire Agreement. This Settlement Agreement and any attached
16 Exhibits constitute the entirety of the Parties' settlement terms. No other prior or
17 contemporaneous written or oral agreements may be deemed binding on the Parties.
18 The Parties expressly recognize California Civil Code Section 1625 and California
19 Code of Civil Procedure Section 1856(a), which provide that a written agreement
20 is to be construed according to its terms and may not be varied or contradicted by
21 extrinsic evidence, and the Parties agree that no such extrinsic oral or written
22 representations or terms will modify, vary or contradict the terms of this Agreement.

23 69. Amendment or Modification. This Settlement Agreement may be
24 amended or modified only by a written instrument signed by counsel for all Parties
25 or their successors-in-interest.

26 70. Authorization to Enter into Settlement Agreement. Counsel for all
27 Parties warrant and represent they are expressly authorized by the Parties whom
28 they represent to negotiate this Settlement Agreement and to take all appropriate

1 action required or permitted to be taken by such Parties pursuant to this Settlement
2 Agreement to effectuate its terms and to execute any other documents required to
3 effectuate the terms of this Settlement Agreement. The Parties and their counsel
4 will cooperate with each other and use their best efforts to effect the implementation
5 of the Settlement. If the Parties are unable to reach agreement on the form or
6 content of any document needed to implement the Settlement, or on any
7 supplemental provisions that may become necessary to effectuate the terms of this
8 Settlement, the Parties may seek the assistance of the Court to resolve such
9 disagreement.

10 71. Binding on Successors and Assigns. This Settlement Agreement will
11 be binding upon, and inure to the benefit of, the successors or assigns of the Parties
12 hereto, as previously defined.

13 72. California Law Governs. All terms of this Settlement Agreement and
14 Exhibits hereto will be governed by and interpreted according to the laws of the
15 State of California.

16 73. Execution and Counterparts. This Settlement Agreement is subject
17 only to the execution of all Parties. However, the Agreement may be executed in
18 one or more counterparts. All executed counterparts and each of them, including
19 facsimile and scanned copies of the signature page, will be deemed to be one and
20 the same instrument provided that counsel for the Parties will exchange among
21 themselves original signed counterparts.

22 74. Acknowledgement that the Settlement is Fair and Reasonable. The
23 Parties believe this Settlement Agreement is a fair, adequate, and reasonable
24 settlement of the Action and have arrived at this Settlement after extensive
25 investigation, research of the law, formal and informal discovery, data and valuation
26 analysis, and arms-length negotiations, in the context of adversarial litigation,
27 taking into account all relevant factors, present and potential. The Parties further
28 acknowledge that they are each represented by competent counsel and that they

1 have had an opportunity to consult with their counsel regarding the fairness and
2 reasonableness of this Agreement.

3 75. Invalidity of Any Provision. Before declaring any provision of this
4 Agreement invalid, the Court shall first attempt to construe the provision as valid to
5 the fullest extent possible consistent with applicable precedents so as to define all
6 provisions of this Agreement valid and enforceable. Any invalid, illegal, or
7 unenforceable provision determined by the Court shall in no way affect any other
8 provision if Defendant and Class Counsel, on behalf of the Parties and the
9 Settlement Class, mutually elect in writing to proceed as if such invalid, illegal, or
10 unenforceable provision had never been included in this Agreement.

11 76. Plaintiffs' Waiver of Right to Be Excluded and Object. Plaintiffs agree
12 to sign this Settlement Agreement and, by signing this Settlement Agreement, are
13 hereby bound by the terms herein. For good and valuable consideration, Plaintiffs
14 further agree that they will not request to be excluded from the Settlement
15 Agreement, nor object to any terms herein, provided that the Court does not seek to
16 materially alter the terms of the Settlement. Any such request for exclusion or
17 objection by Plaintiffs will be void and of no force or effect. Efforts by Plaintiffs
18 to circumvent the terms of this paragraph will be void and of no force or effect.

19 77. Waiver of Certain Appeals. The Parties agree to waive appeals and to
20 stipulate to class certification for purposes of this Settlement only; except, however,
21 that Plaintiffs or Class Counsel may appeal any reduction in the Class Counsel's
22 Award below the amount Class Counsel requests from the Court, and either party
23 may appeal any court order that materially alters the Agreement's terms.

24 78. Class Action Certification for Settlement Purposes Only. The Parties
25 agree to stipulate to class action certification solely for purposes of the Settlement.
26 The Parties are not certifying the Released Claims, as defined in Paragraph 23,
27 which arise under PAGA, for settlement purposes. This stipulation shall not
28 constitute, in this or any other proceeding, an admission of any kind by Defendant,

1 including without limitation, that certification of a class for trial or any other
2 purpose is appropriate or proper or that Plaintiffs could establish any of the requisite
3 elements for class treatment of any of the claims in this Action. If, for any reason,
4 the Settlement is not approved, the stipulation to certification will be void and the
5 Settlement Class shall be automatically vacated. The Parties further agree that this
6 Agreement will not be admissible in this or any other proceeding as evidence that
7 either (i) a class action should be certified or (ii) Defendant are liable to Plaintiffs or
8 any Class Member, other than according to the Settlement's terms. In the event that
9 the Settlement is not approved or is otherwise voided, Defendant expressly reserve
10 all rights to challenge certification of a class for trial purposes in this Action or in
11 any other action on all available grounds as if no class had been certified for
12 settlement purposes in this Action, and no reference to the prior certification of a
13 class, or any documents related thereto, shall be made for any purpose.

14 79. Appointment of Class Representative. Defendant agrees that solely for
15 purposes of this Settlement, Plaintiffs Lopez and Hernandez shall be appointed as
16 Class Representatives for the Class.

17 80. Appointment of Class Counsel. Defendant agrees that solely for
18 purposes of this Settlement, Moon Law Group, PC and Wilshire Law Firm, PLC
19 shall be appointed as Class Counsel for the Class.

20 81. Captions. The captions and section numbers in this Agreement are
21 inserted for the reader's convenience, and in no way define, limit, construe or
22 describe the scope or intent of the provisions of this Agreement.

23 82. Waiver. No waiver of any condition or covenant contained in this
24 Agreement or failure to exercise a right or remedy by any of the Parties hereto shall
25 be considered to imply or constitute a further waiver by such party of the same or any
26 other condition, covenant, right or remedy.

27 83. Mutual Preparation. The Parties have had a full opportunity to
28 negotiate the terms and conditions of this Agreement. Accordingly, this Agreement

1 will not be construed more strictly against one party than another merely by virtue
2 of the fact that it may have been prepared by counsel for one of the Parties, it being
3 recognized that, because of the arms-length negotiations between the Parties, all
4 Parties have contributed to the preparation of this Agreement.

5 84. Enforcement Actions. In the event that one or more of the Parties
6 institutes any legal action or other proceeding against any other Party or Parties to
7 enforce the provisions of this Settlement or to declare rights and/or obligations under
8 this Settlement, the successful Party or Parties shall be entitled to recover from the
9 unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert
10 witness fees incurred in connection with any enforcement actions.

11 85. Representation By Counsel. The Parties acknowledge that they have
12 been represented by counsel throughout all negotiations that preceded the execution
13 of this Agreement, and that this Agreement has been executed with the consent and
14 advice of counsel and reviewed in full. Further, Plaintiffs and Class Counsel
15 warrant and represent that there are no liens on the Settlement Agreement.

16 86. All Terms Subject to Final Court Approval. All amounts and
17 procedures described in this Settlement Agreement herein will be subject to final
18 Court approval.

19 87. Cooperation and Execution of Necessary Documents. All Parties will
20 cooperate in good faith and execute all documents to the extent reasonably
21 necessary to effectuate the terms of this Settlement Agreement.

22 88. Binding Agreement. The Parties warrant that they understand and have
23 full authority to enter into this Agreement, and further intend that this Agreement
24 will be fully enforceable and binding on all Parties, and agree that it will be
25 admissible and subject to disclosure in any proceeding to enforce its terms,
26 notwithstanding any mediation confidentiality provisions that otherwise might
27 apply under federal or state law.
28

1 **THE UNDERSIGNED HAVE CAREFULLY READ THE ABOVE TERMS**
2 **BEFORE SIGNING, AND HEREBY AGREE TO THE ABOVE TERMS.**

3 **FLORENTINO LOPEZ**

4 Dated:

5 _____
6 Plaintiff Florentino Lopez

7 **LUIS HERNANDEZ**

8 Dated:

9 _____
10 Plaintiff Luis Hernandez

11 **UTILITY TREE SERVICE, LLC**

12
13 Dated:

14 _____
15 Please Print Name of Authorized Signatory

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28 //

APPROVED AS TO FORM

Dated:

LITTLER MENDELSON, P.C.

SHIVA SHIRAZI DAVOUDIAN
Attorneys for Defendant
UTILITY TREE SERVICE, LLC

Dated:

MOON & LAW GROUP, PC

KANE MOON
ALLEN FEGHALI
CHRIS GARCIA
Attorneys for Plaintiffs

Dated:

WILSHIRE LAW FIRM, PLC

JUSTIN F. MARQUEZ
BENJAMIN H. HABER
DANIEL J. KRAMER
Attorneys for Plaintiffs

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