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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

JEFFREY REYES, as an individual on behalf of
himself and on behalf of all others similarly
situated,

Plaintiff,

vs.

THE YERBA MATE CO., LLC, a Delaware
Limited Liability Company; GUAYAKI
SUSTAINABLE RAINFOREST PRODUCTS,
INC., a California Corporation; and DOES 1-
100, inclusive,

Defendants

Case No.: 34-2022-00331592

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

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

2 This Joint Stipulation of Class Action Settlement and Release (“Settlement” or “Settlement
3 Agreement”) is made and entered into by and between Plaintiff Jeffrey Reyes (“Plaintiff” or “Class
4 Representative”), as an individual and on behalf of all others similarly situated, and Defendants The
5 Yerba Mate Co., LLC, and Guayaki Sustainable Rainforest Products, Inc. (“Defendants”) (collectively
6 with Plaintiff, the “Parties”).

7 **DEFINITIONS**

8 The following definitions are applicable to this Settlement Agreement. Definitions contained
9 elsewhere in this Settlement Agreement will also be effective:

10 1. “Action” means *Reyes v. The Yerba Mate Co., LLC and Guayaki Sustainable*
11 *Rainforest Products, Inc.*, Case No.: 34-2022-00331592 (Sacramento County Superior Court).

12 2. “Attorneys’ Fees and Costs” means attorneys’ fees agreed upon by the Parties and
13 approved by the Court for Class Counsel’s litigation and resolution of the Action, and all out-of-pocket
14 costs incurred and to be incurred by Class Counsel in the Action, including but not limited to
15 expert/consultant fees, investigation costs, and costs associated with documenting the Settlement,
16 providing any notices required as part of the Settlement or Court order, securing the Court’s approval of
17 the Settlement, administering the Settlement, and obtaining entry of a Judgment terminating the Action.
18 Class Counsel will request attorneys’ fees not in excess of one-third (1/3) of the Gross Settlement
19 Amount, or Ninety-One Thousand, Six Hundred and Sixty-Six. Dollars (\$91,666). The Attorneys’ Fees
20 and Costs will also mean and include the additional reimbursement of any costs and expenses associated
21 with Class Counsel’s litigation and settlement of the Action, up to Twenty Thousand Dollars
22 (\$20,000.00), subject to the Court’s approval. Defendants have agreed not to oppose Class Counsel’s
23 request for fees and reimbursement of costs as set forth above.

24 3. “Class Counsel” means Crosner Legal P.C.

25 4. “Class List” means a complete list of all Class Members that Defendants will diligently
26 and in good faith compile from their records and provide to the Settlement Administrator within twenty
27 (20) calendar days after Preliminary Approval of this Settlement. The Class List will be formatted in
28 Microsoft Office Excel and will include each Class Member’s full name; most recent mailing address;

1 Social Security number; dates of employment; the respective number of Workweeks that each Class
2 Member worked during the Class Period and PAGA Period; and any other relevant information needed
3 to calculate settlement payments.

4 5. “Class Member(s)” or “Settlement Class” means all non-exempt employees, including
5 Plaintiff, who worked for Defendants during the Class Period, but excluding those non-exempt
6 employees covered by the settlement in *Casey Troyer v. The Yerba Mate Co., LLC, et al.*, known as
7 District Case No. 3:20-cv-06065-WHA and as Alameda County Superior Court Case No. RG20068307
8 whose employment ended prior to April 12, 2021.

9 6. “Class Period” means the period that is covered by the settlement, which is December
10 19, 2018 through the earlier of: (a) October 14, 2023 or (b) the date of preliminary approval.

11 7. “Class Representative Enhancement Payment” means the amount to be paid to Plaintiff
12 in recognition of his effort and work in prosecuting the Action on behalf of Class Members and for the
13 release of those claims alleged in the operative First Amended Complaint, Released Class Claims, and
14 Released PAGA Claims, as defined below. Subject to the Court granting final approval of this
15 Settlement Agreement and subject to the exhaustion of any and all appeals, Plaintiff will request Court
16 approval of a Class Representative Enhancement Payment of up to Five Thousand Dollars (\$5,000).

17 8. “Court” means the Sacramento County Superior Court.

18 9. “Defendants” means Defendants The Yerba Mate Co., LLC, and Guayaki Sustainable
19 Rainforest Products, Inc.

20 10. “Effective Date” means the later of: (a) the date that the deadline for seeking appellate
21 review of the trial court’s final approval of the settlement has passed without the filing of a timely appeal
22 or timely request for review, or if any timely objections are withdrawn prior to Final Approval, then the
23 date of Final Approval; or (b) if a Class Member files an objection to the Settlement, the Effective Date
24 shall be the sixty-first (61) calendar day after the date of Final Approval, provided no appeal is initiated
25 by an objector; or (c) if a timely appeal is initiated by an objector, then the Effective Date will be the date
26 of final resolution of that appeal (including any requests for rehearing and/or petitions for certiorari),
27 resulting in final judicial approval of the Settlement.

28 11. “Final Approval” means the date on which the Court enters an order granting final

1 approval of the Settlement Agreement after the filing of an appropriate motion by Plaintiff and following
2 appropriate notice to Class Members giving Class Members an opportunity to request exclusion from the
3 class and settlement and to object to the settlement.

4 12. "Gross Settlement Amount" means the maximum amount Defendants shall pay in
5 connection with this settlement. Subject to Court approval and the terms of this Agreement, the
6 maximum Gross Settlement Amount Defendants shall be required to pay is Two Hundred Seventy-Five
7 Thousand Dollars (\$275,000), to be paid by Defendants in full satisfaction of all Released Class Claims
8 and Released PAGA Claims, which includes all Individual Settlement Payments, Attorneys' Fees and
9 Costs, the Class Representative Enhancement Payment, the PAGA Settlement Amount, and Settlement
10 Administration Costs. This Gross Settlement Amount has been agreed to by Plaintiff and Defendants
11 based on the aggregation of the agreed-upon settlement value of individual claims. In no event will
12 Defendants be liable for more than the Gross Settlement Amount except as otherwise explicitly set forth
13 herein. There will be no reversion of the Gross Settlement Amount to Defendants. Defendants will be
14 separately responsible for any employer payroll taxes required by law, including the employer FICA,
15 FUTA, and SDI contributions, which shall not be paid from the Gross Settlement Amount.

16 13. "Individual Settlement Payment" means each Participating Class Member's and PAGA
17 Member's respective shares of the Net Settlement Fund and PAGA Fund as provided by this Settlement
18 Agreement.

19 14. "Net Settlement Fund" means the portion of the Gross Settlement Amount remaining
20 after deducting the Court-approved amounts for the Attorneys' Fees and Costs, the Class Representative
21 Enhancement Payment, the PAGA Settlement Amount, and Settlement Administration Costs. The Net
22 Settlement Fund will be distributed to Participating Class Members. There will be no reversion of the
23 Net Settlement Fund to Defendants.

24 15. "Notice of Objection" means a Class Member's valid and timely written objection to the
25 Settlement Agreement. For the Notice of Objection to be valid, it must include: (a) the objector's full
26 name, signature, address, and telephone number, (b) a written statement of all grounds for the objection
27 accompanied by any legal support for such objection; (c) copies of any papers, briefs, or other
28 documents upon which the objection is based; and (d) a statement whether the objector intends to appear

1 at the final fairness hearing.

2 16. "Notice Packet" means the Notice of Class Action Settlement, substantially in the form
3 attached as Exhibit A (other than formatting changes to facilitate printing by the Settlement
4 Administrator) along with the Spanish translation of the Notice of Class Action Settlement.

5 17. "PAGA Members" means all non-exempt employees, including Plaintiff, who worked
6 for Defendants during the PAGA Period.

7 18. "PAGA Period" means the period from December 19, 2021 through the earlier of: (a)
8 October 14, 2023 or (b) the date of Preliminary Approval.

9 19. "PAGA Settlement Amount" means the amount that the Parties have agreed to pay to
10 the Labor and Workforce Development Agency ("LWDA") and PAGA Members in connection with
11 Plaintiff's claim under the Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698,
12 *et seq.*, "PAGA") ("PAGA Settlement"). The Parties have agreed that Twenty Thousand Dollars
13 (\$20,000) of the Gross Settlement Amount will be allocated to the PAGA Settlement. Pursuant to
14 PAGA, Seventy-Five Percent (75%), or Fifteen Thousand Dollars (\$15,000), of the PAGA Settlement
15 Amount will be paid to the California Labor and Workforce Development Agency ("Labor and
16 Workforce Development Agency Payment"), and Twenty-Five Percent (25%), or Five Thousand
17 Dollars (\$5,000) ("PAGA Fund"), of the PAGA Settlement will be disbursed to PAGA Members, and
18 regardless whether they request to be excluded from the Settlement Class. One hundred percent (100%)
19 of the PAGA Payment is in settlement of claims for penalties, and therefore shall not be subject to wage
20 withholdings, and shall therefore be reported on IRS Form 1099.

21 20. "Parties" means Plaintiff and Defendants collectively.

22 21. "Participating Class Members" means all Class Members who do not submit timely and
23 valid Requests for Exclusion.

24 22. "Plaintiff" means Plaintiff Jeffrey Reyes.

25 23. "Preliminary Approval" means the date on which the Court enters an order granting
26 preliminary approval of the Settlement Agreement.

27 24. "Released Class Claims" means all claims, rights, demands, liabilities, and causes of
28 action that were alleged, or reasonably could have been alleged, reasonably arising from, or related to,

1 the same set of operative facts as those set forth in the operative First Amended Complaint during the
2 Class Period, including but not limited to: (a) all claims for unpaid minimum wages; (b) all claims for
3 unpaid overtime; (c) all claims for meal and rest break violations; (d) all claims for the failure to
4 reimburse for necessary business expenses; (e) all claims for the failure to timely pay wages upon
5 termination; (f) all claims for wage statement violations; and (g) all claims asserted through California
6 Business & Professions Code §§ 17200, *et seq.*

7 25. “Released PAGA Claims” means all claims for civil penalties under California Labor
8 Code §§ 2698, *et seq.*, that were brought or could reasonably have been brought based on the facts
9 alleged in Plaintiff’s LWDA letter during the PAGA Period, or as were alleged in Plaintiff’s operative
10 First Amended Complaint. The release of the Released PAGA Claims shall be effective as to all PAGA
11 Members, regardless of whether a PAGA Member submitted a request for an exclusion from the Class.

12 26. “Released Parties” means Defendants, their respective past, present, and future officers,
13 directors, shareholders, managers, partners, members, employees, attorneys, trustees, investors, agents,
14 principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and their
15 respective past, present, and future successors and predecessors in interest and assigns, subsidiaries,
16 corporations, divisions, affiliates, parents and attorneys, if any.

17 27. “Request for Exclusion” means a timely letter submitted by a Class Member indicating a
18 request to be excluded from the Settlement Class. The Request for Exclusion must: (a) set forth the
19 name, address, telephone number and last four digits of the Social Security Number of the Class
20 Member requesting exclusion; (b) be signed by the Class Member; (c) be returned to the Settlement
21 Administrator; (d) clearly state that the Class Member does not wish to be included in the Settlement;
22 and (e) be faxed or postmarked on or before the Response Deadline.

23 28. “Response Deadline” means the deadline by which Class Members must postmark or
24 fax to the Settlement Administrator Requests for Exclusion, postmark or fax disputes concerning the
25 calculation of Individual Settlement Payments, or postmark Notices of Objection to the Settlement
26 Administrator. The Response Deadline will be sixty (60) calendar days from the initial mailing of the
27 Notice Packet by the Settlement Administrator, unless the sixtieth (60) calendar day falls on a Sunday or
28 State holiday, in which case the Response Deadline will be extended to the next day on which the U.S.

Postal Service is open.

29. “Settlement Administration Costs” means the costs payable from the Gross Settlement Amount to the Settlement Administrator for administering this Settlement, including, but not limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, distributing the Gross Settlement Amount, and providing necessary reports and declarations, as requested by the Parties. The Settlement Administration Costs will be paid from the Gross Settlement Amount, including, if necessary, any such costs in excess of the amount represented by the Settlement Administrator as being the maximum costs necessary to administer the Settlement. Based on an estimated Settlement Class of approximately 250 Class Members, the Settlement Administration Costs are currently estimated to be Eight Thousand Five Hundred Dollars (\$8,500.00).

30. “Settlement Administrator” means Phoenix Class Action Administration Solutions, or any other third-party class action settlement administrator agreed to by the Parties and approved by the Court for the purposes of administering this Settlement. The Parties each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

31. “Workweeks” means the number of days of employment for each Class Member during the Class Period, subtracting days on leave of absence (if any), dividing by seven (7), and rounding up to the nearest whole number. All Class Members will be credited with at least one Workweek during the Class Period, and all PAGA Members will be credited with at least one Workweek during the PAGA Period.

RECITALS

32. On December 19, 2022, Plaintiff filed a Complaint against Defendants in the Superior Court of the State of California, County of Sacramento. On April 19, 2023, Plaintiff filed a First Amended Complaint against Defendants in the Action, wherein Plaintiff asserted claims that Defendants:

32(a) Failed to pay minimum wages for all hours worked;

32(b) Failed to pay overtime wages;

32(c) Failed to provide meal periods;

1 32(d) Failed to provide rest periods;
2 32(e) Failed to provide accurate wage statements;
3 32(f) Failed to provide wages when due;
4 32(g) Failed to reimburse business expenses;
5 32(h) Violated California Business and Professions Code § 17200 *et seq.*; and
6 32(i) Violation of the Private Attorneys General Act of 2004 (“PAGA”)
7 33. On May 24, 2023, Defendants filed a general denial along with 90 affirmative defenses
8 to the Action.
9 34. On August 14, 2023, the Parties participated in a mediation . During the mediation, with
10 the assistance of the mediator, Plaintiff and Defendants, represented by their respective counsel, agreed
11 to settle the Action which was memorialized in the form of a Memorandum of Understanding, which
12 was fully executed on or about August 15, 2023. This Settlement Agreement replaces and supersedes
13 the Memorandum of Understanding and any other agreements, understandings, or representations
14 between the Parties.
15 35. This Settlement Agreement represents a compromise and settlement of highly disputed
16 claims. Nothing in this Settlement Agreement is intended or will be construed as an admission by
17 Defendants that the claims in the Action of Plaintiff or the Class have merit or that Defendants bear any
18 liability to Plaintiff or the Class on those claims or any other claims, or as an admission by Plaintiff that
19 Defendants’ defenses in the Action have merit. The Parties agree to certification of the Class for
20 purposes of this settlement only. If for any reason the settlement does not become effective, Defendants
21 reserve the right to contest certification of any class for any reason and reserves all available defenses to
22 the claims in the Action.
23 36. Benefits of Settlement to Plaintiffs and the Class Members. Plaintiff and Class Counsel
24 recognize the expense and length of continued proceedings necessary to litigate Plaintiff’s claims in the
25 Action through trial and through any possible appeals. Plaintiff also has taken into account the
26 uncertainty and risks of the outcome of further litigation, and the difficulties and delays inherent in such
27 litigation. Plaintiff and Class Counsel are also aware of the burdens of proof necessary to establish
28 liability for the claims asserted in the Action, both generally and in response to Defendants’ defenses

1 thereto, and the difficulties in establishing damages, penalties, restitution and other relief sought in the
2 Action. Plaintiff and Class Counsel also have taken into account Defendants' agreement to enter into a
3 settlement that confers substantial benefits upon the Class Members and Defendants' financial condition.
4 Based on the foregoing, Plaintiff and Class Counsel have determined that the settlement set forth in this
5 Settlement Agreement is fair, adequate, and reasonable and is in the best interests of all Class Members.

6 37. Defendants' Reasons for Settlement. Defendants have concluded that any further
7 defense of the Action would be protracted and expensive for all Parties. Substantial amounts of
8 Defendants' time, energy, and resources have been, and unless this settlement is completed, shall
9 continue to be, devoted to the defense of the claims asserted by Plaintiff. Defendants also have taken
10 into account the risks of further litigation in reaching their decision to enter into this settlement. Even
11 though Defendants contend they are not liable for any of the claims alleged by Plaintiff in the Action,
12 Defendants have agreed, nonetheless, to settle in the manner and upon the terms set forth in this
13 Settlement Agreement and to put to rest the claims alleged in the Action. Defendants have asserted and
14 continue to assert that the claims alleged by Plaintiff have no merit and do not give rise to any liability,
15 damages, restitution, penalties or other payments. This Settlement Agreement is a compromise of
16 disputed claims. Nothing contained in this Settlement Agreement, no documents referred to herein, and
17 no action taken to carry out this Settlement Agreement, shall be construed or used as an admission by or
18 against Defendants as to the merits or lack thereof of the claims asserted in the Action. Defendants
19 contend they has complied with all applicable state, federal and local laws.

20 Based on these Recitals that are a part of this Agreement, the Parties agree, subject to the
21 Court's approval, as follows:

22 **TERMS OF AGREEMENT**

23 The Plaintiff, on behalf of himself and the Settlement Class, and Defendants agree as follows:

24 38. Funding of the Gross Settlement Amount. Defendants will make a one-time deposit of
25 the Gross Settlement Amount of Two Hundred Seventy-Five Thousand Dollars (\$275,000) into a
26 Qualified Settlement Account to be established by the Settlement Administrator. Defendants will pay the
27 employer's share of payroll taxes separately. After the Effective Date, the Gross Settlement Amount will
28

1 be used for: (a) Individual Settlement Payments; (b) the Labor and Workforce Development Agency
2 Payment; (c) the Class Representative Enhancement Payment; (d) Attorneys' Fees and Costs; and (e)
3 Settlement Administration Costs. If no objection to the Settlement is made, then Defendants will deposit
4 the Gross Settlement Amount and the employer's share of payroll taxes within twenty-one (21) calendar
5 days after the Effective Date ("Funding Date"). If an objection to the Settlement is made but no appeal is
6 filed, then Defendants shall fund the Gross Settlement Amount and the amount necessary to pay
7 Defendants' share of payroll taxes within thirty (30) calendar days of the of the running of the appeal
8 period. If an appeal is filed, then Defendants shall fund the Gross Settlement Amount and the amount
9 necessary to pay Defendants' share of payroll taxes within thirty (30) calendar days of the date the
10 Judgment is Final and no longer subject to appeal. All of the Gross Settlement Amount will be
11 disbursed pursuant to this Settlement Agreement without the need to submit a claim form and none of
12 the Gross Settlement Amount will revert to Defendants. If this Settlement is not finally approved by the
13 Court in full, or is terminated, rescinded, canceled or fails to become effective for any reason, then no
14 portion of the Gross Settlement Amount shall be paid.

15 39. Attorneys' Fees and Costs. Defendants agree not to oppose or impede any application or
16 motion by Class Counsel for Attorneys' Fees and Costs of not more than Ninety-One Thousand Six
17 Hundred and Sixty-Six Dollars (\$91,666), plus the reimbursement of all out-of-pocket costs and
18 expenses associated with Class Counsel's litigation and settlement of the Action (including
19 expert/consultant fees, investigations costs, etc.), not to exceed Twenty Thousand Dollars (\$20,000.00),
20 both of which will be paid from the Gross Settlement Amount. If the Court approves Attorneys' Fees
21 and Costs of less than this amount, the remainder will be retained in the Net Settlement Fund for
22 distribution to Participating Class Members. Payroll tax withholding and deductions, if any, will not be
23 taken from the Attorneys' Fees and Costs amount and instead one or more Forms 1099 will be issued to
24 Class Counsel with respect to those payments. Class Counsel shall be solely and legally responsible to
25 pay all applicable taxes on the Attorneys' Fees and Costs. This Settlement is not conditioned upon the
26 Court awarding Class Counsel any particular amount of Attorneys' Fees or Costs.

27 40. Class Representative Enhancement Payment. In recognition of his effort and work in
28 prosecuting the Action on behalf of Class Members, Defendants agree not to oppose or impede any

1 application or motion for a Class Representative Enhancement Payment of up to Five Thousand Dollars
2 (\$5,000). The Class Representative Enhancement Payment will be paid from the Gross Settlement
3 Amount and will be in addition to Plaintiff's Individual Settlement Payment paid pursuant to the
4 Settlement. Plaintiff will be solely and legally responsible to pay any and all applicable taxes on the Class
5 Representative Enhancement Payment. Payroll tax withholding and deductions will not be taken from
6 the Class Representative Enhancement Payment and instead a Form 1099 will be issued to the Plaintiff
7 with respect to the payment, who will assume full responsibility and liability for the taxes, penalties,
8 and/or any interest arising as a result of payment of the Class Representative Enhancement Payment.
9 Plaintiff understands and agrees that this Settlement Agreement shall remain in full force and effect even
10 if the full amount of Class Representative Enhancement Payment sought by Plaintiff is not ultimately
11 awarded by the Court. If the Court approves a Class Representative Enhancement Payment of less than
12 \$5,000, the remainder will be retained in the Net Settlement Fund for distribution to Participating Class
13 Members.

14 41. Settlement Administration Costs. The Settlement Administrator will be paid for the
15 reasonable costs of administration of the Settlement and distribution of payments from the Gross
16 Settlement Amount, which is currently estimated to be Eight Thousand Five Hundred Dollars
17 (\$8,500.00). These costs, which will be paid from the Gross Settlement Amount, will include, *inter alia*,
18 the required tax reporting on the Individual Settlement Payments, the issuing of 1099 and W-2 IRS
19 Forms, distributing Notice Packets, calculating and distributing the Gross Settlement Amount, and
20 providing necessary reports and declarations. Prior to Plaintiff filing a motion for final approval of the
21 Settlement, the Settlement Administrator shall provide the Parties with a statement detailing the
22 Settlement Administration Costs to date. The Parties agree to cooperate in the Settlement Administration
23 process and to make all reasonable efforts to control and minimize Settlement Administration Costs.

24 42. PAGA Settlement Amount. Subject to Court approval, the Parties agree that the amount
25 of Twenty Thousand Dollars (\$20,000) from the Gross Settlement Amount will be designated for
26 satisfaction of Plaintiff's PAGA claim. Pursuant to PAGA, Seventy-Five Percent (75%), or Fifteen
27 Thousand Dollars (\$15,000), of this sum will be paid to the LWDA and Twenty-Five Percent (25%), or
28 Five Thousand Dollars (\$5,000), will be paid to PAGA Members in proportion to the number of

1 Workweeks worked during the PAGA Period. If the Court approves a PAGA Settlement Amount of less
2 than \$20,000, the remainder will be retained in the Net Settlement Fund for distribution to Participating
3 Class Members. All PAGA Members will be sent their share of the PAGA Settlement Amount and will
4 be subject to the release of the Released PAGA Claims as set forth below, whether or not they opt out of
5 the settlement. One hundred percent (100%) of the PAGA Settlement Amount is in settlement of claims
6 for penalties and not be subject to wage withholdings, and shall be reported on IRS Form 1099.

7 43. No Right to Exclusion or Objections to the PAGA Settlement. Because this settlement
8 resolves claims and actions brought pursuant to PAGA by Plaintiff acting as a proxy and as a Private
9 Attorney General of, and for, the State of California and the LWDA, the Parties agree that no PAGA
10 Member has the right to exclude himself or herself from the release of the Released PAGA Claims, and
11 all PAGA Members will receive their shares of the PAGA Fund. The Parties also agree that no PAGA
12 Member has the right to object to the PAGA Settlement Amount.

13 44. Net Settlement Fund. The entire Net Settlement Fund will be distributed to Participating
14 Class Members. No portion of the Net Settlement Fund will revert to or be retained by Defendants.

15 45. PAGA Fund. The entire PAGA Fund will be distributed to all PAGA Members. No
16 portion of the PAGA Fund will revert to or be retained by Defendants.

17 46. Individual Settlement Payment Calculations. Individual Settlement Payments will be
18 calculated and apportioned from the Net Settlement Fund and PAGA Fund based on the number of
19 Workweeks a Class Member worked during the Class Period and PAGA Period. The Parties recognize
20 that the Individual Settlement Payments to be paid to the Participating Class Members are for wages,
21 interest, and penalties. Specific calculations of Individual Settlement Payments will be made as follows:

22 46(a) Payments from the Net Settlement Fund. Defendants will calculate the total
23 number of Workweeks worked by each Class Member during the Class
24 Period and the aggregate total number of Workweeks worked by all Class
25 Members during the Class Period. To determine each Class Member's
26 estimated "Individual Settlement Payment" from the Net Settlement Fund,
27 the Settlement Administrator will use the following formula: The Net
28 Settlement Fund will be divided by the aggregate total number of

1 Workweeks, resulting in the “Workweek Value.” Each Class Member’s
2 “Individual Settlement Payment” will be calculated by multiplying each
3 individual Class Member’s total number of Workweeks by the Workweek
4 Value. The Individual Settlement Payment will be reduced by any required
5 deductions for each Participating Class Member as specifically set forth
6 herein, including employee-side tax withholdings or deductions. The entire
7 Net Settlement Fund will be disbursed to all Class Members who do not
8 submit timely and valid Requests for Exclusion. If there are any valid and
9 timely Requests for Exclusion, the Settlement Administrator shall
10 proportionately increase the Individual Settlement Payment for each
11 Participating Class Member according to the number of Workweeks
12 worked, so that the amount actually distributed to the Settlement Class
13 equals 100% of the Net Settlement Fund. The Settlement Administrator’s
14 determination of the eligibility for and amount of each Individual Settlement
15 Payment shall be binding upon the Class Member and the Parties, yet
16 subject to review by Class Counsel, Defendants’ Counsel, and the Court. In
17 the absence of fraud or gross negligence, Defendants’ records shall be
18 presumed accurate.

19 46(b) Payments from the PAGA Fund. Defendants will calculate the total number
20 of Workweeks worked by each PAGA Member during the PAGA Period
21 and the aggregate total number of Workweeks worked by all PAGA
22 Members during the PAGA Period. To determine each PAGA Member’s
23 estimated “Individual Settlement Payment,” the Settlement Administrator
24 will use the following formula: The PAGA Fund will be divided by the
25 aggregate total number of Workweeks, resulting in the “PAGA Workweek
26 Value.” Each PAGA Member’s “Individual Settlement Payment” will be
27 calculated by multiplying each individual PAGA Member’s total number of
28 Workweeks by the PAGA Workweek Value. The entire PAGA Fund will

1 be disbursed to all PAGA Members. The Settlement Administrator's
2 determination of the eligibility for and amount of each PAGA Member's
3 Individual Settlement Payment shall be binding upon the PAGA Member
4 and the Parties, yet subject to review by Class Counsel, Defendants'
5 Counsel, and the Court. In the absence of fraud or gross negligence,
6 Defendants' records shall be presumed accurate.

7 47. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
8 Participating Class Members under this Settlement, as well as any other payments made pursuant to this
9 Settlement, will not be utilized to calculate any additional benefits under any benefit plans to which any
10 Class Members may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k)
11 plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan.
12 Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions,
13 or amounts to which any Class Members may be entitled under any benefit plans.

14 48. Appointment of Settlement Administrator. After obtaining a quote from mutually
15 acceptable and qualified settlement administrators, the Parties have mutually agreed to ask the Court to
16 appoint Phoenix Class Action Administration Solutions as the qualified administrator, to serve as the
17 Settlement Administrator, which, as a condition of appointment, will agree to be bound by this
18 Settlement Agreement with respect to the performance of its duties and its compensation. The
19 Settlement Administrator's duties will include (i) translating the Class Notice into Spanish; (ii) preparing,
20 printing, and mailing the Notice Packet to all Class Members; (iii) conducting a National Change of
21 Address search to update Class Member addresses before mailing the Notice Packets; (iv) re-mailing
22 Notice Packets that are returned to the Class Member's new address; (v) setting up a toll-free telephone
23 number to receive calls from Class Members; (vi) receiving and reviewing for validly completed
24 Requests for Exclusion; (vii) providing the Parties with weekly status reports about the delivery of
25 Notice Packets and receipt of completed Requests for Exclusion; (viii) calculating Individual Settlement
26 Payments; (ix) issuing the checks to effectuate the payments due under the Settlement; (x) issuing the tax
27 reports required under this Settlement; (xi) keeping the Parties timely apprised of the performance of all
28 Settlement Administrator responsibilities required by the Settlement; and (xii) otherwise administering

1 the Settlement pursuant to this Settlement Agreement. The Settlement Administrator will have the
2 authority to resolve all disputes concerning the calculation of a Participating Class Member's Individual
3 Settlement Payment, subject to the dollar limitations and calculations set forth in this Settlement
4 Agreement. The Settlement Administration Expenses, including the cost of printing and mailing the
5 Notice Packet, will be paid out of the Gross Settlement Amount.

6 The Settlement Administrator shall have its own Employer Identification Number under Internal
7 Revenue Service Form W-9 and shall use its own Employer Identification Number in calculating payroll
8 withholdings for taxes and shall transmit the required employers' and employees' share of the
9 withholdings to the appropriate state and federal tax authorities. The Settlement Administrator shall
10 establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under
11 US Treasury Regulation section 468B-1.

12 49. Administration Process. The Parties agree to cooperate in the administration of the
13 settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in
14 administration of the Settlement. The Parties also have the right to monitor and review the administration
15 of the Settlement to verify that the monies allocated under the Settlement are distributed in the correct
16 amount, as provided for in this Settlement Agreement.

17 50. Delivery of the Class List. Within twenty (20) calendar days of Preliminary Approval,
18 Defendants will provide the Class List to the Settlement Administrator. To protect Class Members'
19 privacy rights, the Settlement Administrator must maintain the Class List in confidence, use the Class
20 List only for purposes of this Settlement and for no other purpose, and restrict access to the Class List to
21 Settlement Administrator employees who need access to the Class List to effect and perform under this
22 Settlement Agreement. Defendants have a continuing duty to immediately notify Class Counsel if they
23 discover that the Class List omitted class member identifying information and to provide a corrected or
24 updated Class List as soon as reasonably feasible. If any or all of the Class List is unavailable to
25 Defendants, Defendants will so inform Class Counsel and the Parties will make their best efforts to
26 reconstruct or otherwise agree upon the Class List prior to when it must be submitted to the Settlement
27 Administrator.

28 51. Notice by First-Class U.S. Mail. Within ten (10) calendar days after receiving the Class

1 List from Defendants, the Settlement Administrator will mail a Notice Packet to all Class Members via
2 regular First-Class U.S. Mail, using the most current, known mailing addresses identified in the Class
3 List.

4 52. Confirmation of Contact Information in the Class Lists. Prior to mailing, the Settlement
5 Administrator will perform a search based on the National Change of Address Database for information
6 to update and correct for any known or identifiable address changes. The Settlement Administrator shall
7 exercise its best judgment to determine the current mailing address for each Class Member. Any Notice
8 Packets returned to the Settlement Administrator as non-deliverable on or before the Response Deadline
9 will be sent promptly (i.e., no later than seven (7) business days after receipt of the undelivered Notice
10 Packet) via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement
11 Administrator will indicate the date of such re-mailing on the Notice Packet. If no forwarding address is
12 provided, the Settlement Administrator will promptly attempt to determine the correct address using a
13 skip-trace, or other search using the name, address and/or Social Security number of the Class Member
14 involved, and will then perform a single re-mailing. Those Class Members who receive a re-mailed
15 Notice Packet, whether by skip-trace or by request, will have either (a) an additional fifteen (15) calendar
16 days from the date the Settlement Administrator re-mails the Notice Packet or (b) until the Response
17 Deadline, whichever is later, to submit a Request for Exclusion or an objection to the Settlement.

18 53. Notice Packets. All Class Members will be mailed a Notice Packet. Each Notice Packet
19 will provide: (a) information regarding the nature of the Action; (b) a summary of the Settlement's
20 principal terms; (c) the Settlement Class and PAGA Member definitions; (d) the total number of
21 Workweeks each respective Class Member and PAGA Member worked for Defendants during the Class
22 Period and PAGA Period; (e) each Class Member's and PAGA Member's estimated Individual
23 Settlement Payment and the formula for calculating Individual Settlement Payments; (f) the dates which
24 comprise the Class Period and PAGA Period; (g) instructions on how to submit Requests for Exclusion
25 or Notices of Objection; (h) the deadlines by which the Class Member must postmark or fax Request for
26 Exclusions, or postmark Notices of Objection to the Settlement; and (i) the claims to be released.

27 If the procedures detailed in this Settlement Agreement are followed, notice to Class Members
28 shall be deemed to have been fully satisfied, and if the intended recipient of the Notice Packet does not

1 receive the Notice Packet, the intended recipient shall nevertheless remain a Class Member and shall be
2 bound by all terms of the Settlement and the Judgment.

3 54. Disputed Information on Notice Packets. Class Members will have an opportunity to
4 dispute the information provided in their Notice Packets. To the extent Class Members dispute their
5 employment dates or the number of Workweeks on record, Class Members may produce evidence to the
6 Settlement Administrator showing that such information is inaccurate. Defendants' records will be
7 presumed correct, but the Settlement Administrator shall contact the Parties regarding the dispute and the
8 Parties will work in good faith to resolve it. All disputes must be submitted by the Response Deadline,
9 and will be decided within ten (10) business days after the Response Deadline. Any dispute as to this
10 allocation shall be resolved by the Settlement Administrator. If a Notice Packet is re-mailed less than
11 fifteen (15) days prior to the Response Deadline, the response date for disputes will be extended an
12 additional fifteen (15) days.

13 55. Defective Submissions. If a Class Member's Request for Exclusion is defective as to the
14 requirements listed herein, that Class Member will be given an opportunity to cure the defect(s). The
15 Settlement Administrator will mail the Class Member a cure letter within three (3) business days of
16 receiving the defective submission to advise the Class Member that his or her submission is defective
17 and that the defect must be cured to render the Request for Exclusion valid. The Class Member will have
18 until (a) the Response Deadline or (b) fifteen (15) calendar days from the date of the cure letter,
19 whichever date is later, to postmark or fax a revised Request for Exclusion. If the revised Request for
20 Exclusion is not postmarked or received by fax within that period, it will be deemed untimely.

21 56. Request for Exclusion Procedures. Any Class Member wishing to opt-out from the
22 Settlement Agreement must sign and fax or postmark a written Request for Exclusion to the Settlement
23 Administrator within the Response Deadline. In the case of Requests for Exclusion that are mailed to the
24 Settlement Administrator, the postmark date will be the exclusive means to determine whether a Request
25 for Exclusion has been timely submitted. If a Notice Packet is re-mailed less than fifteen (15) days prior
26 to the Response Deadline, the response date for opt-outs will be extended an additional fifteen (15) days.
27 If a question is raised about the authenticity of a signed Request for Exclusion, the Settlement
28 Administrator will have the right to demand additional proof of the Class Member's identity.

1 A Non-Participating Class Member will not participate in or be bound by the settlement and the
2 Judgment, except that a PAGA Member will still be paid their allocation of the PAGA Fund and will
3 remain bound by the release of the Released PAGA Claims regardless of their request for exclusion.
4 Defendants will remain free to contest any claim brought by any Class Member that would have been
5 barred by this Settlement Agreement, and nothing in this Settlement Agreement will constitute or be
6 construed as a waiver of any defense Defendants have or could assert against such a claim. Persons who
7 submit a Request for Exclusion shall not be permitted to file objections to the settlement or appear at the
8 Final Approval Hearing to voice any objections to the settlement.

9 56(a) Report. Not later than ten (10) calendar days after the deadline for
10 submission of Requests for Exclusion, the Settlement Administration will
11 provide Class Counsel and Defendant's Counsel with a complete and
12 accurate list of all Participating Class Members and all non-Participating
13 Class Members.

14 57. Escalator. If the number of Workweeks covered by the Settlement is greater than Seven
15 Thousand (7,000) total Workweeks, then Defendants will proportionally increase the Gross Settlement
16 Amount according to the following formula: Proportionally Increased Gross Settlement Amount = Total
17 Number of Workweeks ÷ 7,000 × \$275,000.

18 58. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class Member
19 who does not affirmatively opt-out of the Settlement Agreement by submitting a timely and valid
20 Request for Exclusion will be bound by all of its terms, including those pertaining to the Released Class
21 Claims, as well as any Judgment that may be entered by the Court if it grants final approval to the
22 Settlement.

23 59. Releases by Participating Class Members. Upon the Funding Date, and except as to such
24 rights or claims as may be created by this Settlement Agreement, each Participating Class Member,
25 together and individually, on their behalf and on behalf of their respective heirs, executors,
26 administrators, agents, successors, assigns, representatives, and attorneys, shall fully and forever release
27 and discharge all of the Released Parties, or any of them, from each of the Released Class Claims arising
28 during the Class Period.

1 60. Releases by PAGA Members. Upon the Funding Date, and except as to such rights or
2 claims as may be created by this Settlement Agreement, each PAGA Member, together and individually,
3 on their behalf and on behalf of their respective heirs, executors, administrators, agents, successors,
4 assigns, representatives, and attorneys, shall fully and forever release and discharge all of the Released
5 Parties, or any of them, from each of the Released PAGA Claims during the PAGA Period.

6 61. Defendants' Right to Rescind. Defendants will have, in their sole discretion, the right to
7 void and withdraw from the Settlement if, at any time prior to Final Approval, Ten Percent (10%) or
8 more of Class Members opt out of the settlement. Defendants must exercise this right of rescission in
9 writing to Class Counsel within fourteen (14) calendar days after the Response Deadline. If the option to
10 rescind is exercised, then Defendants will be solely responsible for all Settlement Administration Costs
11 incurred to the date of rescission. However, the Parties will have no further obligations under the
12 settlement, including any obligation by Defendants to pay the Gross Settlement Amount, or any amounts
13 that otherwise would have been owed under this Settlement Agreement,

14 62. Objection Procedures. To object to the Settlement Agreement, a Class Member may fax,
15 email, or mail a valid Notice of Objection to the Settlement Administrator on or before the Response
16 Deadline, or appear in person at the Final Approval Hearing. Class Members who fail to object either by
17 submitting a valid Notice of Objection or appearing in person at the Final Approval Hearing will be
18 deemed to have waived all objections to the Settlement and will be foreclosed from making any
19 objections, whether by appeal or otherwise, to the Settlement Agreement. At no time will any of the
20 Parties or their counsel seek to solicit or otherwise encourage Class Members to submit written
21 objections to the Settlement Agreement or appeal from the final approval order and judgment. Class
22 Counsel will not represent any Class Members with respect to any such objections to this Settlement. If a
23 Class Member timely submits both a Notice of Objection and a Request for Exclusion, the Request for
24 Exclusion will be given effect and considered valid, the Notice of Objection shall be rejected, and the
25 Class Member shall not participate in or be bound by the Settlement. Class Members who do not submit
26 written objections or appear at the Final Approval Hearing to explain their objection(s) shall be deemed
27 to have waived any objections and shall be foreclosed from making any objections (whether by appeal or
28 otherwise) to the Settlement Agreement.

63. Certification Reports Regarding Individual Settlement Payment Calculations. The Settlement Administrator will provide Defendants' counsel and Class Counsel a weekly report that certifies the number of Class Members who have submitted valid Requests for Exclusion or objections to the Settlement, any re-mailings of the Notice Packet, and whether any Class Member has submitted a challenge to any information contained in their Notice Packet. Additionally, the Settlement Administrator will provide to counsel for both Parties any updated reports regarding the administration of the Settlement Agreement as needed or requested.

64. Distribution Timing of Individual Settlement Payments. Within ten (10) calendar days of the Funding Date, the Settlement Administrator will issue payments to: (a) Participating Class Members and PAGA Members; (b) the Labor and Workforce Development Agency; (c) Plaintiff; and (d) Class Counsel. The Settlement Administrator will also issue a payment to itself for Court-approved services performed in connection with the Settlement.

65. Un-cashed Settlement Checks. Funds represented by Individual Settlement Payment checks returned as undeliverable and Individual Settlement Payment checks remaining un-cashed for more than one hundred and eighty (180) calendar days after issuance will be tendered to the State Controller's Office, Unclaimed Property Division in the name of and for the benefit of the individual who did not cash their check, and the Participating Class Member or PAGA Member will remain bound by the Settlement. The Parties agree that this disposition results in no "unpaid residue" within the meaning of California Code of Civil Procedure Section 384, as the entire Net Settlement Fund will be paid out to Participating Class Members or PAGA Members, whether or not they all cash their Individual Settlement Payment checks.

66. Certification of Completion. Upon completion of administration of the Settlement, and no later than ten days after final disbursement of all funds from the Gross Settlement Amount, the Settlement Administrator will provide a written declaration under oath to certify such completion to the Court and counsel for all Parties, which will include a final report on the disbursements of all funds from the Gross Settlement Amount.

67. Treatment of Individual Settlement Payments. All Individual Settlement Payments will be allocated as follows: (a) Twenty-Five Percent (25%) of each Individual Settlement Payment will be

1 allocated as wages for which IRS Forms W-2 will be issued (i.e., the “Wage Portion”); and (b) Seventy-
2 Five (75%) will be allocated as non-wages for which IRS Forms 1099-MISC will be issued (i.e., the
3 “Non-Wage Portion”). Accordingly, the Wage Portion is subject to wage withholdings, and the Non-
4 Wage Portion shall not be subject to wage withholdings.

5 68. Administration of Taxes by the Settlement Administrator. The Settlement Administrator
6 will be responsible for issuing to Plaintiff, Participating Class Members, PAGA Members, and Class
7 Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid pursuant to
8 this Settlement. The Settlement Administrator will also be responsible for forwarding all payroll taxes
9 and penalties to the appropriate government authorities in a timely manner.

10 69. Tax Liability. Defendants make no representation as to the tax treatment or legal effect
11 of the payments called for hereunder, and Plaintiff and Participating Class Members are not relying on
12 any statement, representation, or calculation by Defendants or by the Settlement Administrator in this
13 regard. Class Members and Class Counsel understand and agree that they shall be responsible for the
14 payment of all taxes and penalties assessed on the payments specified herein, and shall hold the Parties,
15 Class Counsel, and Defendant’s Counsel free and harmless from and against any claims resulting from
16 treatment of such payments as non-taxable, including the treatment of such payments as not subject to
17 withholding or deduction for payroll and employment taxes.

18 70. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES
19 OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS
20 AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”)
21 ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND
22 NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES
23 OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR
24 WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED
25 OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
26 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
27 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER, OR ITS
28 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX

1 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS
2 AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY
3 ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY
4 UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO
5 ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
6 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
7 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF
8 ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER
9 SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
10 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
11 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
12 AGREEMENT.

13 71. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant
14 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
15 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of
16 action or right herein released and discharged in this Settlement.

17 72. Nullification of Settlement Agreement. In the event that: (a) the Court does not finally
18 approve the Settlement as provided herein; or (b) the Settlement does not become final for any other
19 reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be null
20 and void. Any order or judgment entered by the Court in furtherance of this Settlement Agreement will
21 likewise be treated as void from the beginning, and this Settlement Agreement and any documents
22 related to it shall not be used by any Class Member or Class Counsel to support any claim or request for
23 class certification in the Action, and shall not be used in any other civil, criminal, or administrative action
24 against Defendants or any of the other Released Parties. In the event an appeal is filed from the order
25 granting final approval or Judgment, or any other appellate review is sought, administration of the
26 Settlement shall be stayed pending final resolution of the appeal or other appellate review. Any fees
27 incurred by the Settlement Administrator prior to it being notified of the filing of an appeal from the
28 Judgment, or any other appellate review, shall be split 50/50 by Plaintiff and Defendants and paid to the

1 Settlement Administrator.

2 73. Preliminary Approval Hearing. Plaintiff will obtain a hearing before the Court to request
3 the Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary Approval Order
4 for: (a) conditional certification of the Settlement Class for settlement purposes only, (b) preliminary
5 approval of the proposed Settlement Agreement, (c) setting a date for a final fairness hearing. The
6 Preliminary Approval Order will provide for the Notice Packet to be sent to all Class Members as
7 specified herein. In conjunction with the Preliminary Approval hearing, Plaintiff will submit this
8 Settlement Agreement, which sets forth the terms of this Settlement, and will include the proposed
9 Notice of Class Action Settlement, attached as Exhibit A. Class Counsel will be responsible for drafting
10 all documents necessary to obtain preliminary approval. The Parties agree that provisional certification of
11 the class is for settlement purposes only and is in no way an admission by Defendants in the Action or in
12 any other proceeding that class certification is proper. At the hearing on the Motion for Preliminary
13 Approval, the Parties will jointly appear and support the granting of the motion. Should the Court decline
14 to preliminarily approve material aspects of the Settlement (including but not limited to the scope of
15 release to be granted by Participating Class Members or the binding effect of the Settlement on
16 Participating Class Members), the Parties shall work together in good faith to address any concerns
17 raised by the Court and propose a revised Settlement for the Court's approval.

18 74. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of the
19 deadlines to postmark Requests for Exclusion or objections to the Settlement Agreement, and with the
20 Court's permission, a final fairness hearing will be conducted to determine the Final Approval of the
21 Settlement Agreement along with the amounts properly payable for: (a) Attorneys' Fees and Costs; (b)
22 the Class Representative Enhancement Payment; (c) Individual Settlement Payments; (d) the Labor and
23 Workforce Development Agency Payment; (e) all Settlement Administration Costs. The final fairness
24 hearing will not be held earlier than thirty (30) calendar days after the Response Deadline. Class Counsel
25 will be responsible for drafting all documents necessary to obtain final approval. Class Counsel will also
26 be responsible for drafting the attorneys' fees and costs application to be heard at the final approval
27 hearing. If the Court does not grant final approval of the Settlement or grants final approval conditioned
28 on any material change to the Settlement (including, but not limited to, the scope of release to be granted

1 by Participating Class Members), then the Parties shall work together in good faith to address any
2 concerns raised by the Court and propose a revised Settlement for the Court's approval. However, an
3 award by the Court of a lesser amount than that sought by Plaintiffs and Class Counsel for the PAGA
4 Fund, Class Representative Enhancement Payments, or the Attorneys' Fees and Costs, will not constitute
5 a material modification to the Settlement within the meaning of this paragraph.

6 Additionally, no later than ten (10) days before the date by which the Plaintiff file the motion for
7 final approval of the Settlement, the Settlement Administrator will provide the Parties for filing with the
8 Court a declaration of due diligence setting forth its compliance with its obligations under this Settlement
9 Agreement and detailing the Requests for Exclusion it received (including the numbers of valid and
10 deficient Requests) and objections received. Prior to the final approval hearing, the Settlement
11 Administrator will supplement its declaration of due diligence if any material changes occur from the
12 date of the filing of its prior declaration.

13 75. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by the
14 Court or after the final fairness hearing, the Parties will present the Judgment to the Court for its
15 approval. After entry of the Judgment, the Court will have continuing jurisdiction under CCP Section
16 664.6 solely for purposes of addressing: (a) the interpretation, implementation, and enforcement of the
17 terms of the Settlement and all orders and judgments entered in connection therewith, (b) Settlement
18 administration matters, and (c) such post-Judgment matters as may be appropriate under court rules or
19 applicable law or as set forth in this Settlement Agreement. Further, upon the Court's final approval of
20 the Settlement, the Settlement Administrator shall post a copy of the Judgment on its website within
21 seven (7) calendar days of entry of the Judgment.

22 76. Release by Plaintiff. Plaintiff's release will be limited to those claims alleged in the
23 operative First Amended Complaint and include the same claims released by Class Members and PAGA
24 Members. Plaintiff acknowledges that he may discover facts or law different from, or in addition to the
25 facts or law that he knows or believes to be true with respect to the claims and matters released by way of
26 this Settlement Agreement and agrees, nonetheless, that this Settlement Agreement and the releases
27 contained in it shall be and remain effective in all respects, notwithstanding such different or additional
28 facts or the discovery of them. The Parties declare and represent that they intend this Settlement

1 Agreement to be complete and not subject to any claim of mistake, and that the releases herein express
2 full and complete releases, and that they intend that the releases herein shall be final and complete.

3 77. Release by Class Counsel. Upon full funding of the Gross Settlement Amount, and
4 except as otherwise provided by this Settlement Agreement and the Judgment, Class Counsel and any
5 counsel associated with Class Counsel waive any claim to costs and attorneys' fees and expenses against
6 Defendants arising from or related to the Action.

7 78. Exhibits Incorporated by Reference. The terms of this Settlement Agreement include the
8 terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth
9 herein. Any Exhibits to this Settlement Agreement are an integral part of the Settlement.

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

18 80. Amendment or Modification. No amendment, change, or modification to this Settlement
19 Agreement will be valid unless in writing and signed, either by the Parties or their counsel, and approved
20 by the Court.

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

1 may seek the assistance of the Court to resolve such disagreement. The Parties have cooperated in the
2 drafting and preparation of this Agreement. Hence, in any construction made of this Agreement, the
3 same shall not be construed against any of the Parties.

4 82. Binding on Successors and Assigns. This Settlement Agreement will be binding upon,
5 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

6 83. California Law Governs. All terms of this Settlement Agreement and Exhibits hereto
7 will be governed by and interpreted according to the laws of the State of California.

8 84. Execution and Counterparts. This Settlement Agreement is subject only to the execution
9 of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All
10 executed counterparts and each of them, including electronic (e.g., DocuSign), facsimile, and scanned
11 copies of the signature page, will be deemed to be one and the same instrument provided that counsel for
12 the Parties will exchange between themselves signed counterparts. Any executed counterpart will be
13 admissible in evidence to prove the existence and contents of this Settlement Agreement.

14 85. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this
15 Settlement Agreement is a fair, adequate and reasonable settlement of the Action and have arrived at this
16 Settlement after arm's-length negotiations and in the context of adversarial litigation, taking into account
17 all relevant factors, present and potential. The Parties further acknowledge that they are each represented
18 by competent counsel and that they have had an opportunity to consult with their counsel regarding the
19 fairness and reasonableness of this Settlement.

20 86. Invalidity of Any Provision. Before declaring any provision of this Settlement
21 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent
22 possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement
23 valid and enforceable.

24 87. Waiver of Certain Appeals. Provided that the Judgment is consistent with the terms and
25 conditions of this Settlement Agreement, Plaintiff and Participating Class Members who did not timely
26 submit an objection to the Settlement, Defendants, and their respective counsel hereby agree to: (1)
27 waive any and all rights to appeal from the Judgment, including all rights to any post-judgment
28 proceeding and appellate proceeding, such as, but not limited to, a motion to vacate judgment, a motion

1 for new trial, and any extraordinary writ; and (2) stipulate to class certification for purposes of this
2 Settlement only; except, however, that Plaintiff or Class Counsel may appeal any reduction to the
3 Attorneys' Fees and Costs below the amount they request from the Court, and either party may appeal
4 any court order that materially alters the Settlement Agreement's terms. The waiver of appeal does not
5 include any waiver of the right to oppose any appeal, appellate proceedings or post-judgment
6 proceedings. If an appeal is taken from the Judgment, the time for consummation of the Settlement
7 (including making payments under the Settlement) will be suspended until such time as the appeal is
8 finally resolved and the Judgment becomes final.

9 88. Vacating, Reversal, or Material Modification of Judgment on Appeal or Review. If,
10 after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other motion, petition, or
11 application, the reviewing Court vacates, reverses, or modifies the Judgment such that there is a material
12 modification to the Settlement (including, but not limited to, the scope of release to be granted by
13 Participating Class Members), and that Court's decision is not completely reversed and the Judgment is
14 not fully affirmed on review by a higher Court, then the Parties shall work together in good faith to
15 address any concerns raised by the reviewing Court and propose a revised Settlement for the approval of
16 the Court not later than fourteen court days after the reviewing Court's decision vacating, reversing, or
17 materially modifying the Judgment becomes Final. A vacation, reversal, or modification of the Court's
18 award of the Class Representative Enhancement Payments or the Attorneys' Fees and Costs will not
19 constitute a vacation, reversal, or material modification of the Judgment within the meaning of this
20 paragraph, provided that Defendants' obligation to make payments under this Settlement will remain
21 limited by the Gross Settlement Amount.

22 89. Class Action Certification for Settlement Purposes Only. The Parties agree to stipulate to
23 class action certification for purposes of the Settlement only. If, for any reason, the Settlement is not
24 approved, the stipulation to certification will be void. The Parties further agree that certification for
25 purposes of the Settlement is not an admission that class action certification is proper under the standards
26 applied to contested certification motions and that this Settlement Agreement will not be admissible in
27 this or any other proceeding as evidence that either (a) a class action should be certified or (b) Defendants
28 are liable to Plaintiff or any Class Member, other than according to the Settlement's terms. If, for any

1 reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendants
2 reserve the right to contest certification of any class for any reasons, and Defendants reserve all available
3 defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any
4 grounds available and to contest Defendants' defenses.

5 90. Non-Admission of Liability. This Settlement Agreement represents a compromise and
6 settlement of highly disputed claims. Nothing in this Settlement Agreement is intended or should be
7 construed as an admission by Defendants that any of the allegations in the Operative Complaint have
8 merit or that Defendants have any liability for any claims asserted; nor should it be intended or construed
9 as an admission by Plaintiff that Defendants' defenses in the Action have merit. In entering into this
10 Settlement, Defendants do not admit, and specifically deny, that they violated any federal, state, or local
11 law; violated any regulations or guidelines promulgated pursuant to any statute or any other applicable
12 laws, regulations or legal requirements; breached any contract; violated or breached any duty; engaged in
13 any misrepresentation or deception; or engaged in any other unlawful conduct with respect to their
14 employees. Neither this Settlement Agreement, nor any of its terms or provisions, nor any of the
15 negotiations connected with it, is intended to be or should be construed as an admission or concession by
16 Defendants of any such violations or failures to comply with any applicable law. Except as necessary in
17 a proceeding to enforce the terms of this Settlement, this Settlement Agreement and its terms and
18 provisions will not be offered or received as evidence in any action or proceeding to establish any
19 liability or admission on the part of Defendants or to establish the existence of any condition constituting
20 a violation of, or a non-compliance with, federal, state, local or other applicable law. The Parties have
21 entered into this settlement with the intention of avoiding further disputes and litigation with the
22 attendant inconvenience, expenses and risks.

23 90(a) Whether or not the Judgment becomes Final, neither the Settlement, this
24 Settlement Agreement, any document, statement, proceeding or conduct
25 related to the Settlement or the Settlement Agreement, nor any reports or
26 accounting of those matters, will be (i) construed as, offered or admitted in
27 evidence as, received as, or deemed to be evidence for any purpose adverse
28 to Plaintiff or Defendants or any of the Released Parties, including, but not

1 limited to, evidence of a presumption, concession, indication or admission
2 by any of the Released Parties of any liability, fault, wrongdoing, omission,
3 concession or damage; or (ii) disclosed, referred to or offered in evidence
4 against any of the Released Parties, in any further proceeding in the Action,
5 or any other civil, criminal or administrative action or proceeding except for
6 purposes of effectuating the Settlement pursuant to this Settlement
7 Agreement.

8 90(b) This section and all other provisions of this Settlement Agreement
9 notwithstanding, any and all provisions of this Settlement Agreement may
10 only be admitted in evidence and otherwise used in any and all proceedings
11 for the limited purpose of enforcing any or all terms of this Settlement
12 Agreement or defending any claims released or barred by this Settlement
13 Agreement.

14 91. No Public Comment: The Parties and their counsel agree that they will not issue any
15 press releases, initiate any contact with the press, respond to any press inquiry, or have any
16 communication with the press about the fact, amount or terms of the Settlement. Prior to the date of the
17 filing of the motion for preliminary approval, Plaintiff and Class Counsel will not initiate any contact
18 with Settlement Class Members or anyone else about the settlement, except that: (a) Class Counsel, if
19 contacted by a Class Member, may respond that a settlement has been reached and that the details will be
20 communicated in a forthcoming Court-approved notice; and (b) Plaintiff, if contacted by a Class
21 Member, may respond only that the Class Member should contact Class Counsel. If Plaintiff or Class
22 Counsel or Defendants or Defendants' Counsel receives an inquiry about the settlement from the media,
23 they may respond only after the Motion for Preliminary Approval has been filed and only by confirming
24 the accurate terms of the Settlement. This provision shall not prohibit Class Counsel from
25 communicating with Class Members after preliminary approval is granted for the sole purpose of
26 administering the Settlement. This provision also does not limit Class Counsel from complying with
27 ethical obligations or from posting court-filed documents on their website for viewing by Class Members
28 after preliminary approval. The motions for approval, the motion for attorneys' fees and the Judgment

1 shall be posted on a website as set forth in the Class Notice. Nothing in this provision shall prevent
2 Defendants or Plaintiff from making any required disclosures. If Plaintiff or Class Counsel violate this
3 paragraph, including without limitation, by making a disclosure to any non-party that (a) a settlement has
4 been reached; or (b) any of the terms of the Settlement, before the Court has preliminarily approved the
5 settlement, Defendants may rescind the settlement, rendering it null and void.

6 92. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendants and
7 Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed,
8 they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person
9 to disclose, disseminate or publicize, any of the terms of the Settlement Agreement directly or indirectly,
10 specifically or generally, to any person, corporation, association, government agency, or other entity
11 except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this
12 Settlement Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report
13 income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response
14 to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to
15 immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such
16 information. Plaintiff, Class Counsel, Defendants and Defense Counsel separately agree not to, directly
17 or indirectly, initiate any conversation or other communication, before the filing of the Motion for
18 Preliminary Approval, any with third party regarding this Settlement Agreement or the matters giving
19 rise to this Settlement Agreement except to respond only that "the matter was resolved," or words to that
20 effect. This paragraph does not restrict Class Counsel's communications with Class Members in
21 accordance with Class Counsel's ethical obligations owed to Class Members.

22 93. The Parties Will Not Encourage Class Members to Opt Out or Object. The Parties
23 separately agree that they and their respective counsel and employees will not encourage any Class
24 Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph
25 shall be construed to restrict Class Counsel's ability to communicate with, and to advise, Class Members
26 in accordance with Class Counsel's ethical obligations owed to Class Members.

27 94. Confidentiality. To the extent permitted by law, all agreements made, and orders entered
28 during Action and in this Settlement Agreement relating to the confidentiality of information shall

1 survive the execution of this Settlement Agreement.

2 95. Waiver. No waiver of any condition or covenant contained in this Settlement Agreement
3 or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or
4 constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

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

10 97. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and
11 conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed
12 more strictly against one party than another merely by virtue of the fact that it may have been prepared
13 by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations
14 between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

15 98. Representation By Counsel. The Parties acknowledge that they have been represented
16 by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and
17 that this Settlement Agreement has been executed with the consent and advice of counsel. Further,
18 Plaintiff and Class Counsel warrant and represent that there are no liens on the Settlement Agreement.

19 99. All Terms Subject to Final Court Approval. All amounts and procedures described in
20 this Settlement Agreement herein will be subject to final Court approval.

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

24 101. Headings. The descriptive heading of any section or paragraph of this Settlement
25 Agreement is inserted for convenience of reference only and does not constitute a part of this Settlement
26 Agreement.

27 102. Binding Agreement. The Parties warrant that they understand and have full authority to
28 enter into this Settlement Agreement, and further intend that this Settlement Agreement will be fully

1 enforceable and binding on all Parties and all Class Members, subject to the terms and conditions hereof
2 and the Court's approval, and agree that it will be admissible and subject to disclosure in any proceeding
3 to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply
4 under federal or state law.

5 103. Binding Nature of Notice of Class Action Settlement. It is agreed that because the Class
6 Members are so numerous, it is impossible or impractical to have each Class Member execute the
7 Settlement Agreement. The Class Notice shall advise all Class Members of the binding nature of the
8 Settlement, and the release of Released Claims and shall have the same force and effect as if this
9 Settlement Agreement were executed by each Class Member.

10 104. Stay of Litigation. The Parties agree that upon the execution of this Settlement
11 Agreement the litigation shall be stayed, except to effectuate the terms of this Settlement Agreement.
12 The Parties further agree that upon the signing of this Settlement Agreement that pursuant to CCP
13 Section 583.330 to extend the date to bring a case to trial under CCP Section 583.310 for the entire
14 period of this settlement process from the mediation with Hon. Carl West on August 14, 2023 until the
15 earlier of the Effective Date or the date this Settlement Agreement shall not longer be of any force or
16 effect.

17 105. Use and Return of Documents and Data. All originals, copies, and summaries of
18 documents and data provided to Class Counsel by Defendants in connection with the mediation or other
19 settlement negotiations in this matter may be used only with respect to this Settlement, and no other
20 purpose, and may not be used in any way that violates any existing contractual agreement, statute, or
21 rule. Within thirty days after the Defendants fully funds the Gross Settlement Amount, Class Counsel
22 will return or destroy and confirm in writing to Defendants the destruction of all such documents and
23 data.

24 **READ CAREFULLY BEFORE SIGNING**

25
26 **PLAINTIFF**

27 Dated: 10 / 20 / 2023

28 

Jeffrey Reyes

DEFENDANTS

Dated: 10/23/2023

DocuSigned by:



Navine Karim

Yerba Mate Co., LLC and Guayaki Sustainable
Rainforest Products, Inc

APPROVED AS TO FORM

CROSNER LEGAL P.C.

Dated: 10/20/2023

By: 

Brandon Brouillette

Attorneys for Plaintiff Jeffrey Reyes

MICHELMAN & ROBINSON, LLP

Dated: October 23, 2023

By: 

Kelly Hagemann

Attorneys for Defendants Yerba Mate Co., LLC and
Guayaki Sustainable Rainforest Products, Inc