

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement” or “Agreement”) is made and entered into between Plaintiff Arthur Jenkins (“Plaintiff”), on behalf of himself and on behalf of similarly situated aggrieved PAGA members, and Defendant Alpine Twister, Inc. d/b/a Kaelin’s Supermarket (“Defendant”).

I. DEFINITIONS

The following terms, when used in this Settlement, shall have the following meanings:

1. “Action” means the matter entitled *Arthur Jenkins v. Alpine Twister Inc.*, San Diego County Superior Court, Case No. 37-2023-00034762-CU-OE-CTL, filed on or about August 14, 2023.
2. “Aggrieved Employees” consist of all persons within the State of California who are or were employed by Defendant in the State of California as hourly-paid or non-exempt from February 13, 2022, 2020 through September 15, 2023 or the Effective Date (defined below), whichever is earlier.
3. “Complaint” means the Representative Action Complaint entitled *Arthur Jenkins v. Alpine Twister Inc.*, San Diego County Superior Court, Case No. 37-2023-00034762-CU-OE-CTL, filed on or about August 14, 2023.
4. “Court” means the Superior Court of California for the County of San Diego.
5. “Effective Date” means the date upon entry of an Order by the Court approving this Settlement.
6. “Individual PAGA Payment” means the amount to be paid to each Aggrieved Employee based on the formula described herein.
7. “LWDA” means the California Labor and Workforce Development Agency.
8. “Gross Settlement Amount” is the non-reversionary sum of One Hundred Twenty-Seven Thousand Five Hundred Dollars and Zero Cents (\$127,500.00), which represents the total amount payable under this Settlement by Defendant, including, without limitation, payments to all Aggrieved Employees, Plaintiff’s enhancement payment, payment to the LWDA, payment of Plaintiff’s Counsel’s fees and costs, and payment to the Settlement Administrator for administration costs.
9. “Net Settlement Amount” is the amount remaining to distribute to the LWDA and Aggrieved Employees after the following amounts (if approved by the Court) are subtracted from the Gross Settlement Amount: (a) Plaintiff’s Counsel’s fees up to one third of the Gross Settlement Amount, currently estimated at Forty-Two Thousand Four Hundred and Fifty-Seven Dollars and Fifty Cents (\$42,457.50); (b) Plaintiff’s verified costs up to Six Hundred Dollars and Zero Cents (\$600.00); (c) administration costs up to Five Thousand Dollars and Zero Cents (\$5,000.00); and (d) enhancement payment to Plaintiff of Sixty Thousand Dollars and Zero Cents (\$60,000.00) for service as the PAGA representative and in exchange for execution of a complete and separate full release of claims, including a section 1542 waiver.

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

11. “PAGA Period” means the time period from February 13, 2022 to September 15, 2023 or the date when the Court grants approval of the settlement, whichever is earlier

12. “Released Parties” means Defendant Alpine Twister, Inc. d/b/a Kaelin’s Supermarket and all persons, agents, servants, representatives, officers, directors, stockholders, owners, employees, associations, joint ventures, corporations, parent corporations, subsidiaries, affiliates, partners, members, predecessors and successors in interest, insurers, re-insurers, and assigns, and all other legal entities with whom Defendant has been, is now, or may hereafter be affiliated with.

13. “PAGA Released Claims” mean any and all claims relating to any and all facts and claims asserted in the Action or that could have been asserted in the action, including, but not limited to, any and all claims for PAGA penalties and/or for wages or penalties for violations of the California Labor Code governing: meal and rest breaks; minimum wages, overtime and double time wages (including, but not limited to, any and all theories related to rounding, “off the clock work” or incorrect calculation of the “regular rate of pay”); expense reimbursement; late payment of wages; failure to properly record and maintain employment records; waiting time penalties; wage statement violations; separation pay violations; and unfair business practices, and any related claims for attorneys’ fees, costs, or interest resulting therefrom.

14. “Parties” mean Plaintiff and Defendant.

15. “Plaintiff’s Counsel” means James Joseph of Jurewitz Law Group.

16. “Settlement Administrator” means ILYM Group, Inc.

II. RECITALS

1. Plaintiff alleges that Defendant: (1) retaliated against him; (2) failed to provide meal periods, (3) failed to provide rest periods, (4) failed to timely pay final wages, and (5) failed to furnish accurate wage statements; and as a result of the foregoing, are liable for civil penalties under PAGA.

2. On February 13, 2023, Plaintiff provided written notice to the LWDA and Defendant asserting claims for civil penalties pursuant to PAGA stemming from alleged violations of the California Labor Code including those described above.

3. The Parties engaged in an informal discovery exchange prior to mediation. In response to Plaintiff’s Counsel’s informal discovery requests, Defendant provided Plaintiff’s Counsel with information and documents pertaining to Plaintiff and other Aggrieved Employees and the claims in the Action in order for Plaintiff’s Counsel to investigate Plaintiff’s allegations and value the PAGA claim.

4. On July 11, 2023, the Parties participated in mediation before mediator Steven G. Pearl. With the assistance of Mr. Pearl, the Parties agreed to fully and finally resolve, subject to Court approval, the PAGA Released Claims as to Plaintiff and the Aggrieved Employees, and to resolve any and all claims as to Plaintiff, including general release with a waiver under California *Civil Code* Section 1542.

5. On August 14, 2023, Plaintiff filed the operative complaint in the Action for the sole purpose of effectuating this settlement.

III. OPERATIVE TERMS OF SETTLEMENT AGREEMENT

The Parties agree as follows:

1. **Non-Admission.** Nothing in this Settlement shall be construed to be an admission by Plaintiff that his claims do not have merit or by Defendant of any liability or wrongdoing as to Plaintiff, Aggrieved Employees or any other person, and Defendant specifically disclaims any such liability or wrongdoing. The Parties have entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses and risks. This Settlement and any related court documents or orders are not and may not be cited or admitted as evidence of liability.

2. **Gross Settlement Amount.** Defendant shall pay One Hundred Twenty-Seven Thousand Five Hundred Dollars and Zero Cents (\$127,500.00) as the non-reversionary Gross Settlement Amount. Defendant will not pay more than the Gross Settlement Amount. Defendant shall deposit the Gross Settlement Amount with the Settlement Administrator within thirty (30) calendar days after the Effective Date.

a. **Gross Settlement Installments.** Defendant will pay the Gross Settlement Amount in two (2) separate installments, one to be made within fifteen (15) days of final approval of the Agreement by the Court, and the second installment to be made ninety (90) days following the first installment payment.

3. **Net Settlement Amount.** The Parties agree that the following amounts should be subtracted from the Gross Settlement Amount, if approved by the Court, resulting in a Net Settlement Amount to distribute to the LWDA and Aggrieved Employees:

a. **Plaintiff's Counsel's Fees and Costs.** Defendant will not oppose Plaintiff's request for attorneys' fees in the amount up to one third (33.3%) of the Gross Settlement Amount (currently estimated at Forty-Two Thousand Four Hundred and Fifty-Seven Dollars and Fifty Cents [\$42,457.50]) and costs incurred in prosecuting this Action, up to Six Hundred Dollars and Zero Cents (\$600.00). In the event the Court approves a payment of less than these amounts, the difference will be added to the Net Settlement Amount (although Plaintiff may appeal an order granting less than the full amount sought for attorneys' fees and costs). If the Court believes the attorneys' fees and/or costs should be reduced, the other terms of this Settlement will remain in effect and any such reduction will not affect the remaining terms, other than adjusting the Net Settlement Amount. Defendant, via the Settlement Administrator, will report these payments on IRS Form 1099 issued to Plaintiff's Counsel.

b. **Administration Costs.** Defendant will not oppose the Settlement Administrator's costs in the amount up to Five Thousand Dollars and Zero Cents (\$5,000.00) for administering the Settlement. In the event the Court approves a payment of less than this amount, the difference will be added to the Net Settlement Amount. Defendant, via the Settlement Administrator, will report this payment on IRS Form 1099 issued to the Settlement Administrator.

c. **Enhancement Payment to Plaintiff.** Defendant will not oppose the Enhancement award to Plaintiff in the amount up to Sixty Thousand Dollars and Zero Cents (\$60,000.00) for service as

the PAGA representative and for executing a general release of claims including a section 1542 waiver, set forth in paragraph 7 below.

4. **Allocation of Net Settlement Amount.** The Net Settlement Amount shall be distributed pursuant to Lab. Code § 2699(i) as follows:

a. 75% of the Net Settlement Amount shall be distributed to the LWDA.

b. 25% of the Net Settlement Amount shall be paid to Aggrieved Employees. This portion of the Net Settlement Amount shall be paid to all Aggrieved Employees on a pro rata basis which is based on the proportional number of pay periods worked by each Aggrieved Employee during the PAGA Period.

The Parties agree that should the Court deny approval of the Settlement based on the allocation of the Gross Settlement Amount or the Net Settlement Amount, the Parties agree to re-negotiate the allocation of funds in good faith in an effort to obtain approval of the Settlement.

5. **Representative PAGA Release.** In his capacity as a Private Attorney General or “aggrieved employee” acting on behalf of himself, the State of California and Aggrieved Employees, Plaintiff hereby releases Defendant and Released Parties from any and all of the PAGA Released Claims that arose during the PAGA Period.

6. **PAGA Released Claims.** Plaintiff agrees that upon entry of an Order approving the Settlement, Plaintiff and all Aggrieved Employees will have released any and all PAGA Released Claims against the Released Parties that arose and/or existed during the PAGA Period. Upon entry of the Order approving the Settlement and judgment entered thereon, Plaintiff and all Aggrieved Employees will be forever barred from pursuing any and all of the PAGA Released Claims that arose and/or existed during the PAGA Period against the Released Parties.

7. **Plaintiff’s General Release.**

a. As consideration for Plaintiff’s Enhancement, Plaintiff personally agrees to release, in addition to the PAGA Released Claims, all claims, whether known or unknown, under federal law or state law, to the fullest extent permitted by law, against the Released Parties. This release includes, without limiting the generality of the foregoing: any and all claims, demands, causes of actions, obligations, charges, liabilities, attorneys’ fees, costs, actual, compensatory and punitive damages, and all claims for any other type of relief relating to, arising out of, or based upon: all claims of harassment, discrimination, and/or retaliation in violation of State or Federal law; all claims for failure to accommodate and/or failure to engage in the interactive process; violations, interference with and/or retaliation for requesting and taking a leave of absence under state or Federal law; all claims of violation of public policy, including a claim for wrongful and/or constructive termination of employment; all claims for fraud or misrepresentation; all claims based on tort and/or breach of contract, whether written or oral, express or implied, and any covenant of good faith and fair dealing; all claims for unpaid wages, commissions, or other benefits, including minimum wage, regular, overtime, double time, vacation, associated penalties and/or premiums, and expense reimbursement; all claims for rest or meal periods and associated penalties and/or premiums; all claims for stock options; all claims for inaccurate wage statements; all claims for the alleged failure to pay all wages at separation; all claims for failure to timely provide documents for review and/or inspection; any claim for unlawful or unfair business practices; and claim regarding rights created

in response to COVID-19, and any other applicable laws, regulations, and rules; all claims for emotional distress; and any and all claims generally relating to Plaintiff's employment with Defendant and the cessation thereof, including any alleged violation of any federal, state or other governmental statute, regulation, ordinance, or executive order, including without limitation:

- (1) The Civil Rights Acts of 1866, 1964, and 1991, as amended;
- (2) 42 U.S.C. § 1981;
- (3) The California Fair Employment and Housing Act;
- (4) Section 503 of the Rehabilitation Act of 1973;
- (5) The Fair Labor Standards Act (including the Equal Pay Act);
- (6) The California and United States Constitutions;
- (7) The California Labor Code, specifically including, but not limited to, the Private Attorneys General Act pursuant to *Labor Code* § 2699, *et seq.*;
- (8) The California Business and Professions Code;
- (9) The Employee Retirement Income Security Act, as amended;
- (10) The California Family Rights Act;
- (11) The Americans with Disabilities Act;
- (12) The Family Medical Leave Act;
- (13) The California Pregnancy Discrimination Act;
- (14) The California Wage Orders;
- (15) The National Labor Relations Act;
- (16) The Immigration Reform and Control Act;
- (17) California Occupational Safety and Health Act, or the Federal equivalent;
- (18) The Worker Adjustment and Retraining Notification Act;
- (19) The Families First Coronavirus Response Act; and
- (20) COVID-19 Supplemental Paid Sick Leave.

Plaintiff, by executing this release, is representing and acknowledging that he is currently unaware of any basis to make a claim for workers' compensation benefits. This release in all respects has been voluntarily and knowingly executed with the express intention of effecting the legal consequences provided in the California *Civil Code* section 1541, that is, the extinguishment of obligations herein designated. This release does not cover any claims that cannot be waived as a matter of law.

b. Waiver Under Section 1542 of the California Civil Code. Plaintiff further understands that this release includes unknown claims and that he is, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

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

Notwithstanding the above nor anything else in this Agreement, this waiver and release does not apply to: (i) those rights as a matter of law that cannot be waived, including, but not limited to, workers' compensation claims; (ii) rights or claims arising out of this Agreement after the date this Agreement is executed by Plaintiff and (iii) rights or claims arising out of this Agreement. The Agreement in no way

affects Plaintiff's entitlement and/or benefits to be received by Plaintiff in workers' compensation pursuant to the jurisdiction of workers' compensation.

8. **No Right to Opt-Out.** The Parties agree that there is no statutory right for any Aggrieved Employee to opt out or otherwise exclude himself or herself from the Settlement.

9. **Covenants and Representations by Plaintiff and Plaintiff's Counsel.**

a. Plaintiff represents and warrants that he has not assigned or transferred or purported to assign or transfer to any person or entity, any claim or portion thereof, or interest therein, which is or may be subject to this Settlement.

b. Plaintiff acknowledges that he has read this Settlement, that he fully understands his rights, privileges and duties under the Settlement, and enters into this Settlement freely and voluntarily, and without duress. Plaintiff further acknowledges that he had the opportunity to consult with his attorneys to explain the terms of this Settlement and the consequences of signing this Settlement.

10. **Confidentiality.** Except as provided below, to the extent necessary to effectuate the Settlement or as required by court or legal process, Plaintiff and Plaintiff's Counsel will keep the terms of this Settlement confidential. Neither Plaintiff nor Plaintiff's Counsel shall issue a press release, hold a press conference, publish information about the Settlement on any website or through any social media or otherwise publicize the Settlement or communicate its terms (including the amount) in public or in private, other than as necessary to obtain Court approval of this Settlement and/or unless otherwise ordered by the Court or required by law. The Parties and Plaintiff's Counsel agree that they will not initiate or have contact with the press, respond to any press inquiry, or have any communication with the press about the Action. Notwithstanding the above, for the limited purpose of establishing adequacy of counsel in future actions, Plaintiff's Counsel may reference the Action by name and case number in a declaration establishing adequacy as class or representative counsel.

To permit judicial review and approval of the PAGA Payment, as required by Labor Code Section 2698, *et seq.*, Plaintiff's Counsel will file the Settlement with the Court and submit the Settlement to the LWDA as part of the Parties seeking Court approval of the Settlement, pursuant to Lab. Code § 2699(1)(2).

11. **Termination of Settlement.** If the Court does not approve the Settlement, if the Court does not enter judgment as provided for in this Settlement, or if appellate review is sought and, on such review, the Court's decision is materially modified or reversed, or, except as otherwise set forth herein, if one or more of the terms of the Settlement is not approved or is materially modified or reversed or found to be invalid, then either of the Parties shall have the right within ten (10) days of written notice thereof to elect to terminate the Settlement, in which case the Settlement shall have no force or effect, and the Parties shall be deemed to have reverted to their respective status as of the date and time immediately prior to the mediation on July 11, 2023.

12. **Judgment.** As part of the Motion to approve the Settlement, Plaintiff shall submit a proposed order and judgment which enters judgment in the Action in accordance with the terms of the Settlement and retains jurisdiction over the Action for the purpose of enforcing the terms of the Settlement following approval of the Settlement. This Settlement is expressly conditioned upon the Court entering judgment as set forth herein. The judgment will not release or bar any claims other than the PAGA Released Claims as to Plaintiff and Aggrieved Employees.

IV. ADMINISTRATION OF SETTLEMENT

1. **Settlement Administrator.** The Parties agree to use ILYM Group, Inc. to handle the administration of this Settlement.

2. **Provision of Information for Aggrieved Employees.** Within ten (10) calendar days after the Effective Date, Defendant shall provide the Settlement Administrator confidentially with information for Aggrieved Employees. Defendant will in good faith compile from its records a list of Aggrieved Employees that will be in a computer-readable format, such as a Microsoft Excel spreadsheet, and shall include each Aggrieved Employee's full name, last known mailing address, total pay periods worked and/or dates of employment during the PAGA Period, and Social Security number. Because Social Security numbers are included in the list, the Settlement Administrator will maintain the list in confidence, and access shall be limited to those with a need to use the list as part of the administration of the Settlement.

Within seven (7) calendar days of receiving the Aggrieved Employees' information from Defendant, the Settlement Administrator will circulate to counsel for both Parties an anonymized spreadsheet containing the estimated individual settlement payments to each Aggrieved Employee and the data used to calculate said payments. The Settlement Administrator shall obtain approval from all counsel of the calculations before mailing Individual PAGA Payments.

3. **Explanatory Letter and Individual PAGA Payments.** Upon receipt of the information for Aggrieved Employees, the Settlement Administrator will perform a search on the National Change of Address database to update the Aggrieved Employees' addresses.

Within two (2) calendar days of receiving approval from counsel of the payment calculations as provided above, the Settlement Administrator shall mail copies of the explanatory letter, which has been mutually approved by the Parties and is attached hereto as **Exhibit A**, in English, along with Individual PAGA Payments to all Aggrieved Employees via regular First-Class U.S. Mail.

The Settlement Administrator will calculate the amount to be received by each Aggrieved Employee, which will be based on the formula set forth in Section III.4., *supra*. The Settlement Administrator will send each Aggrieved Employee a check for his or her Individual PAGA Payment along with an explanatory letter. Checks will remain negotiable for 180 days. Each Individual PAGA Payment shall be deemed penalties/interest and reported using IRS Form 1099.

4. **Undeliverable Notices.** The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Aggrieved Employee. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Aggrieved Employee.

Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a single skip-trace or other search using the name, address or Social Security number of the Aggrieved Employee involved and will perform a single re-mailing.

Defendant fully discharges its obligations to those Aggrieved Employees to whom they will pay an Individual PAGA Payment through the mailing of a check, regardless of whether such checks are

actually received and/or negotiated by Aggrieved Employees. Funds represented by checks returned as undeliverable after a re-mailing, and funds represented by checks remaining un-cashed for more than 180 days after issuance, will be tendered to the State Controller's Office under the unclaimed property fund laws in the names of the Aggrieved Employees to whom the checks were issued.

5. **Payment of Remainder.** Within two (2) calendar days of receiving approval from counsel of the payment calculations, the Settlement Administrator will distribute the following additional payments: (1) the 75% share of the Net Settlement Amount to the LWDA; (2) Court-approved attorneys' fees and costs to Plaintiff's Counsel; (3) the Plaintiff's Enhancement Payment; and (4) the Court-approved administration costs to the Settlement Administrator.

6. **Accounting.** Within fifteen (15) calendar days of receiving approval from counsel of the payment calculations, the Settlement Administrator will provide an accounting under oath to the Parties of the amounts paid from the Settlement.

7. **Tax Consequences.** Individual PAGA Payments made under this Settlement will be attributed 100% as penalties and interest and paid via IRS Form 1099 issued to each Aggrieved Employee. Neither Plaintiff nor Defendant, nor counsel for the Parties, make any representations or warranties with respect to tax consequences of any payment under this Settlement.

V. MISCELLANEOUS PROVISIONS

1. **Mutual Preparation and Drafting.** The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement. The Parties agree that the terms and conditions of this Settlement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that neither Plaintiff nor Defendant shall be considered the "drafter" of this Settlement for purposes of having terms construed against that Party. This Settlement will not be construed more strictly against one Party merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement.

2. **Successors.** This Settlement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, assigns, administrators and successors.

3. **Costs and Fees.** The Parties shall each bear their own costs, attorneys' fees, expert fees, mediator fees and other fees incurred in connection with this Settlement, the Action and Plaintiff's claims, except as otherwise set forth specifically herein.

4. **Governing Law.** This Settlement shall be construed under and governed by the laws of the State of California. This Settlement shall be deemed to have been entered into in the County of San Diego, California, and all questions of validity, interpretation or performance of any of its terms or of any rights or obligations of the Parties to this Settlement shall be governed by California law. If any legal or equitable action is necessary to enforce the terms of this Settlement, it shall be brought in the State of California, County of San Diego.

5. **Complete Agreement.** The Parties each acknowledge and represent that no promise or representation not contained in this Settlement has been made to them and acknowledge and represent that this Settlement contains the entire understanding between them and contains all terms and conditions

pertaining to the compromise and settlement of the PAGA Released Claims in the Action. This Settlement cannot be amended or modified except by a writing signed by the Parties hereto.

6. **Nullification of Settlement.** In the event that: (i) the Court does not approve the Settlement as provided herein; or (ii) the Settlement does not become final for any other reason, then this Settlement and any documents generated to bring it into effect, will be null and void, and the Parties will be returned to their original respective positions unless otherwise required under this Agreement.

7. **Judgment and Continued Jurisdiction.** After approval of this Settlement, the Court will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii) settlement administration matters, and (iii) such post-Judgment matters as may be appropriate under court rules or as set forth in this Settlement. Plaintiff will submit a proposed judgment in conformity with this Agreement to be entered by the Court, which shall constitute a final and binding resolution of the claims in the Action.

8. **Amendment or Modification.** This Settlement may be amended or modified only by a written instrument, signed by either the Parties or their successors-in-interest or counsel for all Parties.

9. **Authorization to Enter into Settlement.** Counsel for all Parties warrant and represent that they are expressly authorized by the Parties whom they represent to negotiate this Settlement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Settlement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

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

11. **Acknowledgement that the Settlement is Fair and Reasonable.** The Parties believe this Settlement is a fair, adequate and reasonable settlement of the Action, and have arrived at this Settlement after arms-length negotiations by experienced counsel and with the assistance of an experienced mediator. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement.

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

13. **Severability.** If any term or provision of this Settlement is held to be invalid or unenforceable, the remaining portions of this Settlement will continue to be valid and will be performed, construed and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will

be deemed amended and limited in accordance with the intent of the Parties, as determined from the face of the Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

14. **Waiver.** No waiver of any condition or covenant contained in this Settlement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such Party of the same or any other condition, covenant, right or remedy.

15. **Enforcement Action.** In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions. In any proceeding to enforce the terms of this Agreement, the Parties may disclose the terms of this Agreement to the extent necessary to enforce the Agreement, but shall make all efforts to preserve the confidentiality of this Agreement, including, but not limited to, filing the relevant provisions of the Agreement and/or discussion of these terms under seal or conditionally under seal to the fullest extent appropriate and possible.

16. **Representation by Counsel.** The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement, and this Settlement has been executed with the consent and advice of counsel and reviewed in full.

17. **Binding Agreement.** The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement will be fully enforceable and binding on all Parties and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms under California Code of Civil Procedure section 664.6 and any other applicable statute or law, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

18. **Denial of Liability.** The Parties expressly recognize that the making of this Settlement does not in any way constitute an admission or concession of wrongdoing on the part of Defendant. Nothing in this Settlement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of this Action, is intended by the Parties to, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in any other judicial, arbitral, administrative, investigative or other forum or proceeding, as evidence of any violation of any federal, state or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this Settlement may be used in any Court proceeding that has as its purpose the interpretation, implementation or enforcement of the Settlement or any orders or judgments of the Court entered into in connection therewith.

19. **Escalator Provision.** Defendant represents that there are approximately 2,661 cumulative pay periods worked by the Aggrieved Employees during the period of February 13, 2022 to July 11, 2023. Should the number of pay periods increase by more than 15%, the payout will increase proportionately over the 15% grace (*i.e.* if the pay periods increase by 16% the settlement will increase by 1%). However, if the escalator clause is triggered, Defendant may alternatively choose to end the PAGA Period on the date that the increase would otherwise be triggered. As used here, "pay periods" refers to pay periods during which an Aggrieved Employee recorded at least one hour of work, unless determining that is not possible and in which case dates of employment can be used instead.

20. **Calendar Days.** In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

IN WITNESS THEREOF, the Parties each acknowledge that they have read the foregoing Settlement, accept and agree to the provisions contained in this Settlement and hereby execute it voluntarily and with full understanding of its consequences.

Dated: 1/5/2024

Electronically Signed: 2024-01-05 10:48:25 UTC - 38 105 18 54
Notary AccessID: 80487509-04c9-4a56-9100-b0e0f12ae0d4

Arthur Jenkins, Plaintiff

Dated: 1-10-24

Defendant Alpine Twister, Inc. d/b/a Kaelin's Supermarket

By: TERRY NAFSO

Its: CEO

EXHIBIT A

[Administrator's Letterhead]

To: «FirstName» «LastName»
«Address1» «Address2»
«City» «State» «Zip»

Enclosed please find a check in the amount of [INDIVIDUAL SETTLEMENT SHARE].

You are receiving this check because of a lawsuit brought by Arthur Jenkins ("Plaintiff") against Defendant Alpine Twister, Inc. d/b/a Kaelin's Supermarket ("Defendant") for civil penalties pursuant to the Private Attorneys General Act, California Labor Code § 2698 et seq. ("PAGA"). The claim was filed in the San Diego County Superior Court under Case No. 37-2023-00034762-CU-OE-CTL (the "Action").

Plaintiff's claim against Defendant is for civil penalties pursuant to the PAGA, a law that allows Plaintiff to attempt to stand in the shoes of the government and to seek penalties on the government's behalf and on behalf of those employees who Plaintiff claims were "aggrieved" by Defendant's alleged unlawful conduct. Specifically, Plaintiff alleges that Defendant failed to comply with wage-and-hour laws as to non-exempt employees who worked for Defendant.

Defendant strongly denies these claims and maintains that it fully complied with all applicable wage-and-hour laws. Nevertheless, to avoid further costs and uncertainty from further litigation, the parties agreed to settle the matter. The settlement covers Defendant and all persons, agents, servants, representatives, officers, directors, stockholders, employees, associations, joint ventures, corporations, parent corporations, subsidiaries, affiliates, partners, members, predecessors and successors in interest, insurers, re-insurers, and assigns, and all other legal entities with whom Defendant has been, is now, or may hereafter be affiliated with (all of whom are referred to here as the "Released Parties"). The Court has approved the settlement and release of claims described below. By settling this claim, Defendant and the Released Parties are not admitting they have done anything wrong, and they deny that they owe any penalties to the government or to you.

On [insert date], 2023, the settlement was approved by the Court. A portion of the settlement is being paid to the government and a portion is being paid to each non-exempt or hourly-paid employee who worked for Defendant in California from February 13, 2022 to September 15, 2023 (the "Aggrieved Employees"). You are receiving a portion of the settlement because Defendant's records indicate that you worked for Defendant during at least one pay period from February 13, 2022 to September 15, 2023.

You will not be retaliated against for cashing the check. It is entirely up to you if you cash your check or not. Checks that are not cashed within 180 days of issuance shall be sent to the California Department of Unclaimed Property. Regardless of what you do with the check issued to you, by law and Court order, you have released the Released Parties from the released claims described below.

One hundred percent (100%) of your payment under this settlement will be considered penalties and will be reported to the IRS and state tax authorities.

This settlement bars you and other Aggrieved Employees, for the period spanning February 13, 2022 to September 15, 2023, from pursuing any and all claims relating to any and all facts and claims asserted in the Action or that could have been asserted in the Action, including, but not limited to, any and all claims for PAGA penalties and for wages of penalties for violations of the California Labor Code governing:

meal and rest breaks; minimum wages, overtime and double time wages (including, but not limited to, any and all theories related to “off the clock work” or incorrect calculation of the “regular rate of pay”); expense reimbursement; late payment of wages; failure to properly record and maintain employment records; waiting time penalties; wage statement violations; separation pay violations; and unfair business practices, and any related claims for attorneys’ fees, costs, or interest resulting therefrom.

Do not call or write the Court or Office of the Clerk to ask questions about the settlement.

If you have any questions, you may call or write [insert], at the following phone number or address: [insert address and telephone number for Administrator’s contact person]