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23 *Inc.*

24 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

25 **COUNTY OF SAN BERNARDINO**

26 **SAN BERNARDINO JUSTICE CENTER**

27 ABRAHAM AGUSTINO, LISA
28 ROSANA, individually, and on behalf of
all other similarly situated,

Plaintiffs,

v.

SALEM CHRISTIAN HOMES, INC., a
California corporation; and DOES 1
through 50, inclusive,

Defendants.

CASE NO.: CIVSB2308778

[Assigned for All Purposes to the Hon. Jessica
L. Morgan]

**CLASS ACTION AND PAGA
SETTLEMENT AGREEMENT AND
RELEASE**

Action Filed: April 14, 2023
Trial Date: None Set

1 This Class Action and PAGA Settlement and Release ("Settlement Agreement") is entered
2 into by and between Plaintiffs, Abraham Agustino and Lisa Rosana ("Plaintiffs"), on behalf of
3 themselves and the Class, on the one hand, and Defendant, Salem Christian Homes, Inc., and the
4 Released Parties ("Defendant"), on the other hand. Plaintiffs and Defendant are collectively referred
5 to herein as "Parties" and individually referred to herein as "Party."

6 In consideration of the mutual covenants, promises, and agreements set forth herein, the Parties
7 agree that, pursuant to the terms and conditions set forth herein, which are subject to approval of the
8 Court, this Action and the Released Claims shall be settled and compromised as between Plaintiff and
9 the Class on the one hand and Defendant on the other hand.

10 **DEFINITIONS**

11 1. "Action" means *Agustino v. Salem Christian Homes, Inc.*, Superior Court of the State
12 of California for the County of San Bernardino, Case No. CIVSB2308778.

13 2. "Class" means: All non-exempt employees who worked for Defendant in California
14 from April 14, 2019 through February 29, 2024.

15 3. "Class Counsel" means the Law Office of Scott Ernest Wheeler.

16 4. "Class Counsel Award" means attorneys' fees for Class Counsel's litigation and
17 resolution of this Action and Class Counsel's expenses and costs incurred in connection with this
18 Action.

19 5. "Class Information" means information regarding Class Members that Defendant will
20 in good faith compile from its records and provide to the Settlement Administrator. It shall be
21 formatted as a Microsoft Excel spreadsheet or Microsoft Word Document and shall include: each
22 Class Member's full name; social security number; last known address; last known telephone number;
23 and number of Compensable Work Weeks and Compensable PAGA Work Weeks.

24 6. "Class Member" means each person who is a member of the Class defined above and
25 who is eligible to participate in this Settlement.

26 7. "Class Period" means the time period from April 14, 2019, through February 29, 2024.

27 8. "Class Representative Service Awards" means the amount that the Court authorizes to
28 be paid to Plaintiffs in recognition of, *inter alia*, Plaintiffs' efforts and risks in assisting with the

1 prosecution of the Action and in return for executing a general release with Defendant.

2 9. "Compensable Work Week" or "Compensable Work Weeks" means a reasonable
3 estimate of weeks worked by each Class Member as a non-exempt employee in California for
4 Defendant individually and collectively by all Class Members during the Class Period based on
5 Defendant's records and used as a value to calculate Individual Settlement Payments. The number
6 of Compensable Work Weeks for each Class Member will be determined by adding all the calendar
7 days within the inclusive dates of employment for the employee and dividing that number by seven.
8 Any partial workweek will be expressed as a percentage of a full workweek. If it can be readily
9 determined, workweeks where someone was employed but did not record any hours can be excluded
10 from this calculation.

11 10. "Compensable PAGA Work Week" or "Compensable PAGA Work Weeks" means a
12 reasonable estimate of weeks worked by each PAGA Member, as a nonexempt employee in
13 California for Defendant, individually and collectively by all PAGA Members, during the period
14 from February 11, 2022, through February 29, 2024, based on Defendant's records and used as a
15 value to calculate PAGA Payments. The number of Compensable PAGA Work Weeks for each
16 PAGA Member, will be determined by adding all the calendar days within the inclusive dates of
17 employment for the employee and dividing that number by seven. Any partial workweek will be
18 expressed as a percentage of a full workweek. If it can be readily determined, workweeks where
19 someone was employed but did not record any hours can be excluded from this calculation.

20 11. "Court" means the Superior Court for the County of San Bernardino, State of
21 California.

22 12. "Defendant" means Salem Christian Homes, Inc.

23 13. "Effective Date" means the date on which the Superior Court's Final Approval Order
24 and Judgment becomes final and Defendant fully funds the settlement. The Superior Court's Final
25 Approval Order and Judgment "becomes final" upon the latter of: (a) if there is no Objection to the
26 Settlement, or if there is an Objection but it is withdrawn, then, the date that the Final Approval Order
27 and Judgment is filed by the Court; (b) if there is an Objection to the Settlement that is not withdrawn,
28 but no appeal is commenced thereafter, then, sixty-five (65) calendar days following the date that the

1 Final Approval Order and Judgment is filed by the Court; or (c) if there is an Objection to the
2 Settlement, that is not withdrawn, and any appeal, writ, or other appellate proceeding opposing the
3 Settlement has been filed within sixty-five (65) calendar days following the date that the Final
4 Approval Order and Judgment is filed by the Court, then, when any such appeal, writ, or other
5 appellate proceeding opposing the validity of the Settlement has been resolved finally and
6 conclusively with no right to pursue further remedies or relief.

7 14. "Final Approval Order and Judgment" means an order and judgment that the Court
8 will file which finally approves this Settlement and enters a judgment in favor of Plaintiff.

9 15. "Gross Settlement Amount" means the maximum amount which Defendant is
10 obligated to pay under this Settlement Agreement, which is Four Hundred and Eighty-Five Thousand
11 Dollars (\$485,000.00), subject to increase under the circumstances as set forth in paragraph 58. This
12 is an "all in" non-reversionary Settlement in which Defendant is required to pay the entire Gross
13 Settlement Amount. No portion of the Gross Settlement Amount will revert to Defendant under any
14 circumstances. Payments of any appropriate and lawfully-required employer's share of the payroll
15 taxes on the taxable portion of the settlement payments shall be paid separately from the Gross
16 Settlement Amount by Defendant at the time the Gross Settlement Amount is funded.

17 16. "Individual Settlement Payment" means the amount payable from the Net Settlement
18 Amount to each Settlement Class Member.

19 17. "LWDA" means the California Labor and Workforce Development Agency.

20 18. "Net Settlement Amount" means the Gross Settlement Amount, less the Class Counsel
21 Award, Class Representative Service Award, payment to the LWDA and PAGA Members for PAGA
22 penalties, and Settlement Administration Costs.

23 19. "Notice of Class and PAGA Settlement" means the notice, substantially in the form
24 attached hereto as **Exhibit 1**, which the Settlement Administrator will mail to each Class and PAGA
25 Member, and which explains, *inter alia*, the terms of this Settlement Agreement, the settlement
26 process, and each Class Member's estimated Individual Settlement Payment. Notice of Class
27 Settlement will be provided to the Class in English and Spanish.

28 20. "Operative Complaint" means the Class Action Complaint on file in this action.

1 21. “Objection” means a letter or other written communication submitted by a Class
2 Member to the Settlement Administrator that contains a clear statement by the Class Member that he
3 or she is objecting to any of the terms of the Settlement.

4 22. “PAGA Member” or “PAGA Members” means any Class Member who was
5 employed or has been employed by Defendant at any time during the time period of February 11,
6 2022, through February 29, 2024, through the date the Court grants preliminary approval of this
7 settlement.

8 23. “Parties” means Plaintiffs and Defendant, collectively, and “Party” means either
9 Plaintiffs or Defendant, individually.

10 24. “Payment Ratio” means the respective Compensable Work Weeks for each Settlement
11 Class Member divided by the total Compensable Work Weeks for all Settlement Class Members.

12 25. “PAGA Payment Ratio” means the respective Compensable PAGA Work Weeks for
13 each PAGA Member divided by the total Compensable PAGA Work Weeks for all PAGA Members.

14 26. “PAGA Period” means the time period from February 11, 2022, through February
15 29, 2024.

16 27. “Plaintiffs” refers to Abraham Agustino and Lisa Rosana.

17 28. “Preliminary Approval Date” means the date upon which the Court files an order
18 substantially in the form attached hereto as **Exhibit 2**, and which grants preliminary approval of the
19 Settlement.

20 29. “Request for Exclusion” means a letter or other written communication submitted by
21 a Class Member to the Settlement Administrator that contains a clear statement by the Class Member
22 that he or she is electing to be excluded from the Settlement.

23 30. “Released Claims by Plaintiffs” is set forth in paragraph 47 below. Plaintiffs release
24 the “Released Claims by Plaintiffs” as of the date Defendant fully funds this Settlement.

25 31. “Released Claims by Settlement Class Members” means: As of the date Defendant
26 fully funds this Settlement, Settlement Class Members shall fully and finally release and discharge
27 Released Parties, from April 14, 2019 through February 29, 2024, through the date that the Court
28 grants preliminary approval of the class action settlement, from any and all claims, debts, liabilities,

1 demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, or causes of action
2 contingent or accrued for, that are pleaded, or that could have been pleaded, based on the facts and
3 claims alleged in the Operative Complaint, including any claims for: (a) failure to provide required
4 meal periods, California Labor Code §§ 226.7, 510 and 512; (b) failure to provide required rest
5 periods, California Labor Code §§ 226.7 and 512; (c) failure to pay overtime wages, California Labor
6 Code §§ 510, 1194 and 1198; (d) failure to pay minimum wages, California Labor Code §§ 1194 and
7 1197; (e) failure to timely pay all wages during employment and to discharged and quitting employees,
8 California Labor Code §§ 201-204, 210; (f) failure to timely pay wages §§ 204 and 210; (g) failure to
9 maintain required records; (h) failure to furnish accurate, itemized wage statements, California Labor
10 Code §§ 226 and 226.3; (i) failure to reimburse necessary business expenses, California Labor
11 California Labor Code §2802; and (j) unlawful business practices under California, Business and
12 Professions Code §17200, et seq.; predicated on any of the violations of the California Labor Code
13 and the applicable IWC Wage Order as alleged in the Operative Complaint including but not limited
14 to, claims for restitution and other equitable relief, liquidated damages, or penalties; and any other
15 benefit, wages, penalties, or other amounts claimed on account of the allegations or the primary rights
16 asserted in the Operative Complaint. This release shall apply to any and all claims arising at any point
17 during the Class Period. Upon entry of the Final Approval Order and funding of the total Gross
18 Settlement Amount, all Participating Class Members will forever completely release and discharge
19 the Released Parties from the Released Claims for the Release Period. Plaintiffs and Defendants intend
20 that the Settlement described in this Settlement Agreement will release and preclude any further claim,
21 whether by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind,
22 by each and all of the Participating Class Members to obtain a recovery to any and all of the Released
23 Claims. This release excludes the release of claims not otherwise permitted by law, i.e. Worker's
24 Compensation and unemployment insurance benefits.

25 32. "Released Parties" collectively mean: (i) Defendant; (ii) Defendant's respective past,
26 present and future heirs, executors, administrators, parents, subsidiaries and affiliates, successors and
27 assigns; and (iii) the past, present and future shareholders, managers, officers, partners, members,
28 agents, employees, attorneys, insurers, predecessors, successors and assigns of any of the foregoing.

1 33. “Response Deadline” means forty-five (45) days after the postmark date of the Notice
2 of Class Settlement that the Settlement Administrator shall mail to Class Members, and the last date
3 on which Class Members may: (a) submit a Request for Exclusion; or (b) submit an Objection to the
4 Settlement.

5 34. “Settled PAGA Claims”, means penalties only under the Private Attorneys General
6 Act (“PAGA”), based upon the Released Claims by PAGA Members that serves the basis for
7 penalties only pursuant to Labor Code § 2699 *et seq.*, for : (a) failure to provide required meal
8 periods, California Labor Code §§ 226.7, 510 and 512; (b) failure to provide required rest periods,
9 California Labor Code §§ 226.7 and 512; (c) failure to pay overtime wages, California Labor Code
10 §§510, 1194, 1197 and 1198; (d) failure to pay minimum wages, California Labor Code §§ 1194
11 and 1197; (e) failure to timely pay all wages due during employment and to discharged and quitting
12 employees, California Labor Code §§ 201-204, 210; (f) failure to furnish accurate, itemized wage
13 statements, California Labor Code §§ 226 and 226.3; (g) failure to maintain required records,
14 California Labor Code §§ 226, 1174; (h) failure to reimburse for necessary business expenses,
15 California Labor Code § 2802; and primary rights alleged in Plaintiff’s Operative Complaint and in
16 Plaintiff’s PAGA Notice dated February 3, 2023.

17 35. “Settlement” means the disposition of the Action pursuant to this Agreement.

18 36. “Settlement Administration Costs” means the amount to be paid to the Settlement
19 Administrator from the Gross Settlement Amount for administration of this Settlement.

20 37. “Settlement Administrator” means Phoenix Settlement Administrators (“Phoenix”),
21 the Settlement Administrator shall be responsible for, *inter alia*: (a) performing Spanish translations
22 of the Notice of Class Settlement; printing and mailing the Notice of Class Settlement to the Class in
23 English and Spanish; (b) receiving and reporting the Requests for Exclusion and Objections submitted
24 by Class Members; (c) providing declaration(s) as necessary in support of preliminary and/or final
25 approval of this Settlement; (d) processing and mailing payments to Plaintiffs, Class Counsel, the
26 LWDA, and Settlement Class Members; and (e) any other tasks as the Parties mutually agree or the
27 Court orders the Settlement Administrator to perform. The Settlement Administrator shall keep the
28 Parties timely apprised of the performance of all Settlement Administrator responsibilities. The Parties

1 agree that they have no financial interest or other relationship with Phoenix that could create a conflict
2 of interest. Should a conflict of interest or other issue lead to the disqualification of the selected
3 Settlement Administrator, the Parties will meet and confer as to a suitable replacement.

4 38. “Settlement Class” or “Settlement Class Members” means all Class Members who
5 have not opted out of the Class by submitting a valid and timely Request for Exclusion.

6 **RECITALS**

7 39. Procedural History. On April 14, 2023, Plaintiffs filed a complaint against Defendant
8 in San Bernardino Superior Court, Case No. CIVSB2308778.

9 40. Investigation and Discovery. The Parties have conducted significant investigation of
10 the facts and law during the prosecution of this Action and before this Settlement was reached. Such
11 discovery and investigation included, *inter alia*, the exchange of information and extensive documents
12 pertaining to Plaintiffs and the Class, and numerous meetings and informal conferences wherein the
13 Parties exchanged information, class data, and theories of the case. Plaintiffs have also investigated
14 the law as applied to the facts of Plaintiffs’ claims and Defendant’s potential defenses thereto.

15 41. Mediation. The Parties participated in a private mediation session with the highly
16 experienced mediator, Todd Smith, Esq., on February 1, 2024. After a full day of mediation, the
17 Parties were able to reach a proposed settlement regarding the material terms for a proposed class
18 action and PAGA settlement that would fully resolve this matter.

19 42. Benefits of Settlement to Class Members. Plaintiffs and Class Counsel recognize the
20 expense and length of continued proceedings necessary to litigate Plaintiffs’ claims through trial and
21 any possible appeals. Plaintiffs have also taken into account the uncertainty and risk of the outcome
22 of further litigation, and the difficulties and delays inherent in such litigation. Plaintiffs and Class
23 Counsel are also aware of the burdens of proof necessary to establish liability for the claims asserted
24 in the Action, both generally and in response to Defendant’s defenses thereto, and the difficulties in
25 establishing damages for the Class. Plaintiffs and Class Counsel have also taken into account
26 Defendant’s agreement to enter into a settlement that confers substantial relief upon the members of
27 the Class. Based on the foregoing, Plaintiffs and Class Counsel have determined that the Settlement
28

1 set forth in this Settlement Agreement is a fair, adequate, and a reasonable settlement, and is in the
2 best interests of the Class.

3 43. Defendant's Reasons for Settlement. Defendant has concluded that any further defense
4 of this litigation would be protracted and expensive for all Parties. Substantial amounts of Defendant's
5 time, energy, and resources have been and, unless this Settlement is completed, will continue to be
6 devoted to the defense of the claims asserted by Plaintiffs. Defendant has also taken into account the
7 risks of further litigation in reaching its decision to enter into this Settlement. Even though Defendant
8 continues to contend that it is not liable for any of the claims alleged by Plaintiffs in this Action,
9 Defendant has agreed, nonetheless, to settle in the manner and upon the terms set forth in this
10 Settlement Agreement to put to rest the claims in this Action.

11 **STIPULATION AND AGREEMENT**

12 44. NOW THEREFORE, in consideration of the mutual covenants, promises, and
13 agreements set forth herein, the Parties agree, subject to the Court's approval, as follows:

14 45. It is agreed by and among Plaintiffs and Defendant that this Settlement shall bind the
15 Plaintiffs, Settlement Class Members, and Defendant, subject to the terms and conditions hereof.

16 46. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section,
17 the "acknowledging party" and each Party to this Agreement other than the acknowledging party, an
18 "other party") acknowledges and agrees that (1) no provision of this Agreement, and no written
19 communication or disclosure between or among the Parties or their attorneys and other advisers, is or
20 was intended to be, nor shall any such communication or disclosure constitute or be construed or be
21 relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31
22 CFR Part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his, her, or its
23 own, independent legal and tax counsel for advice (including tax advice) in connection with this
24 Agreement, (b) has not entered into this Agreement based upon the recommendation of any other
25 party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any
26 communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty
27 that may be imposed on the acknowledging party; and (3) no attorney or adviser to any other party
28 has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax

1 strategies (regardless of whether such limitation is legally binding) upon disclosure by the
2 acknowledging party of the tax treatment or tax structure of any transaction, including any transaction
3 contemplated by this Agreement.

4 47. Released Claims by Plaintiffs. As of the date Defendant fully funds the Settlement,
5 Plaintiff, agrees to the Release of Claims by Settlement Class Members, which is set forth in paragraph
6 31 above. In addition to Release of Claims by Settlement Class Members and as a material inducement
7 to Defendant to enter into this Settlement Agreement, Plaintiffs do hereby, for themselves and for
8 their heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees,
9 conservators, guardians, personal representatives, and assigns, forever and completely release and
10 discharge the Released Parties from any and all charges, complaints, claims, liabilities, obligations,
11 promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs,
12 losses, debts, and expenses (including back wages, statutory penalties, civil penalties, liquidated
13 damages, exemplary damages, interest, attorneys' fees, and costs) of any nature whatsoever, from the
14 beginning of time through the execution of this Settlement Agreement, whether known or unknown,
15 suspected or unsuspected, including but not limited to all claims arising out of, based upon, or relating
16 to Plaintiffs' employment with or work for Defendant or the remuneration for or termination of such
17 employment.

18 Without limiting the generality of the foregoing, Plaintiffs expressly release all claims arising
19 under the California Labor Code (including, but not limited to, sections 201, 201.3, 202, 203, 204,
20 210, 216, 218.6, 221, 222, 225.5, 223.2, 224, 225, 225.5, 226.7, 227.3, 246, 248.1, 248.2, 248.3, 248.6,
21 450, 510, 511, 512, 558, 1174, 1174.5, 118.12, 1194, 1197, 1197.1, 1197.2, 1198, 2698 et seq., and
22 2802); the Wage Orders of the California Industrial Welfare Commission; the California Private
23 Attorneys General Act of 2004 ("PAGA"); California Business and Professions Code section 17200
24 et seq.; the California Civil Code, to include, but not limited to, section 3336 and 3294; the California
25 common law of contract; the Fair Labor Standards Act, 29 U.S.C. § 201 et seq.; federal common law;
26 and the Employee Retirement Income Security Act, 29 U.S.C. § 1001, et seq. Plaintiffs' Released
27 Claims also include all claims for lost wages and benefits, emotional distress, retaliation, punitive
28 damages, and attorneys' fees and costs arising under federal, state, or local laws for discrimination,

1 harassmen4t, and wrongful termination such as by way of example only, (as amended) 42 U.S.C.
2 section 1981, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age
3 Discrimination in Employment Act, and the California Fair Employment and Housing Act; and the
4 law of contact and tort. This release excludes the release of claims not permitted by law. As to the
5 Plaintiffs' Released Claims only, Plaintiffs expressly waive all rights and benefits under the terms
6 of section 1542 of the California Civil Code. Section 1542 reads as follows:

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

11 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full
12 and complete release and discharge of all parties, Plaintiffs and Class Counsel expressly acknowledge
13 that this Settlement Agreement is intended to include in its effect, without limitation, all claims that
14 Plaintiffs knew of, as well as all claims that they do not know or suspect to exist in their favor against
15 the Released Parties, or any of them, for the time period from the beginning of time to the execution
16 of this Settlement Agreement, and that this Settlement Agreement contemplates the extinguishment
17 of any such claims. Plaintiffs and Plaintiffs' Counsel do not currently intend to pursue any claims
18 against Defendant, including, but not limited to, any and all claims relating to or arising from
19 Plaintiffs' employment with Defendant, and that Plaintiff's Counsel is not currently aware of any
20 facts or legal theories upon which any claims or causes of action could be brought against
21 Defendant, excepting those facts or legal theories alleged in the Operative Complaint in this
22 Action. This release does not include claims which cannot be released such as unemployment or
23 Worker's Compensation benefits.

24 48. Class Certification. For settlement purposes only, Defendant will stipulate that the
25 Settlement Class Members described herein who do not request exclusion from the Settlement Class
26 may be conditionally certified as a settlement class. This stipulation to certification is in no way an
27 admission that class action certification is proper and shall not be admissible in this or in any other
28 action except for the sole purposes of enforcing this Agreement. Should the Court fail to issue Final
Approval for any reason, the Parties' stipulation to class certification as part of the Settlement

1 Agreement shall become null and void *ab initio* and shall have no bearing on but remains protected
2 by California Evidence Code Section 1152 and shall not be admissible in connection with, the issue
3 of whether or not certification would be appropriate in a non-settlement context. Defendant expressly
4 reserves its right and declares that Defendant will continue to oppose class certification and contest
5 the substantive merits of the case should the Court fail to issue Final Approval. Plaintiff expressly
6 reserves his rights and declares that he will continue to pursue class certification and a trial should the
7 Court fail to grant Final Approval.

8 49. Approval of Settlement. Plaintiffs will move the Court to grant preliminary and final
9 approval of this class action Settlement. The Parties agree to work diligently and cooperatively to
10 have this matter presented to the Court for preliminary and final approval.

11 50. Release of Claims by Settlement Class Members. Settlement Class Members release
12 the "Released Claims by Settlement Class Members," as defined, as of the date Defendant fully funds
13 the Settlement.

14 51. Release of Settled PAGA Claims. PAGA Members release the "Settled PAGA
15 Claims," as defined, as of the date Defendant fully funds the Settlement.

16 52. Settlement Administration. Within ten (10) calendar days after the Preliminary
17 Approval Date, Defendant shall provide the Settlement Administrator with the Class Information.

18 53. Notice to the Class. Upon receipt of the Class Information, the Settlement
19 Administrator will perform a search based on the National Change of Address Database to update and
20 correct any known or identifiable address changes. Within ten (10) calendar days after receiving the
21 Class Information, the Settlement Administrator shall mail copies of the Notice of Class Settlement
22 to all Class Members via regular First Class U.S. Mail. The Settlement Administrator shall exercise
23 its best judgment to determine the current mailing address for each Class Member. The address
24 identified by the Settlement Administrator as the current mailing address shall be presumed to be the
25 best mailing address for each Class Member.

26 a. Undeliverable Notices. Any Notice of Class Settlement returned to the
27 Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to
28 the forwarding address affixed thereto within ten (10) calendar days. For any undeliverable Notice of

1 Class Settlement returned for which no forwarding address is affixed, the Settlement Administrator
2 will conduct its investigation for an updated address of the Class Member and re-mail the Notice of
3 Class Action Settlement. If an updated address is found, the Settlement Administrator shall have
4 seven (7) days to re-mail the Notice of Class Action Settlement from receipt of the undelivered
5 envelope. The Settlement Administrator will provide a cover letter notifying the Class Member of the
6 extended Response Deadline. Any Class Member who receives a re-mailed Notice of Class Settlement
7 shall have forty-five (45) days after the postmark date of the re-mailed Notice of Class Settlement to:
8 (a) submit a Request for Exclusion; (b) submit an Objection to the Settlement; or (c) submit a
9 workweek dispute.

10 (1) Verification of Class Member Employment Status. If Notice of Class
11 Action Settlement sent to a Class Member is determined to be
12 undeliverable, the Settlement Administrator shall verify the
13 employment status of the Class Member with Defendant within five
14 (5) days of receipt of the undeliverable Notice of Class Action
15 Settlement. If the Class Member is a current employee of Defendant,
16 Defendant shall take all reasonable efforts to obtain the current
17 address from the Class Member and shall provide the same with seven
18 (7) days of notice from the Settlement Administrator.

19 b. Disputes Regarding Individual Settlement Payments. Class Members will have
20 the opportunity, should they disagree with Defendant's records regarding the dates of employment
21 stated in the Notice of Class Settlement, to provide documentation and/or an explanation to show
22 contrary information by the Response Deadline. The dispute form must: (a) contain the full name,
23 address, and telephone number of the Class Member, and the last four digits of the Class Member's
24 social security number or full employee ID number; (b) contain the case name and case number; (c) a
25 clear statement by the Class Member that he or she is disputing the number of Compensable
26 Workweeks and the basis for the dispute; (d) any documentation demonstrating that the number of
27 Compensable Workweeks listed in the Notice of Class Settlement is incorrect; (e) be signed by the
28 Class Member; and (f) be postmarked by the Response Deadline. The date of the postmark on the

1 return mailing envelope on the dispute form shall be the exclusive means used to determine whether
2 it has been timely submitted. If there is a dispute, the Settlement Administrator will consult with the
3 Parties to determine whether an adjustment is warranted. In addition to U.S. Mail, a Class Member
4 may also submit a dispute form by facsimile or email to the Settlement Administrator within the
5 Response Deadline. The Settlement Administrator shall then determine the eligibility for, and the
6 amounts of, any Individual Settlement Payments under the terms of this Agreement. In the absence of
7 circumstances indicating fraud, manipulation or destruction, Defendant's records shall be given a
8 rebuttable presumption of accuracy.

9 c. Request for Exclusion. Class Members who wish to exclude themselves from
10 the Settlement must submit to the Settlement Administrator a Request for Exclusion by the Response
11 Deadline. The Request for Exclusion must: (a) contain the full name, address, and telephone number
12 of the Class Member, and the last four digits of the Class Member's social security number or full
13 employee ID number; (b) contain the case name and case number; (c) a clear statement by the Class
14 Member that he or she is electing to be excluded from the Settlement; (d) be signed by the Class
15 Member; and (e) be postmarked by the Response Deadline if submitted by U.S. Mail. The date of the
16 postmark on the return mailing envelope on the Request for Exclusion submitted by U.S. Mail shall
17 be the exclusive means used to determine whether it has been timely submitted. In addition to U.S.
18 Mail, a Class Member may also submit a Request for Exclusion by facsimile or email to the Settlement
19 Administrator within the Response Deadline. A Request for Exclusion shall not be presumptively
20 invalid if it does not contain the requirements of (a) through (d) if the Settlement Administrator can
21 ascertain the identity of the Class Member who wants to exclude themselves from the Settlement. Any
22 Class Member who requests to be excluded from the Settlement Class shall not be entitled to any
23 recovery under the Settlement and shall not be bound by the terms of the Settlement or have any right
24 to object, appeal or comment thereon except as to any distribution based upon PAGA penalties.
25 PAGA Members will receive their share of the PAGA Payment and the Settled PAGA Claims will be
26 released even if the Class Member submits a timely Request for Exclusion. Class Members who fail
27 to submit a valid and timely Request for Exclusion on or before the Response Deadline shall be bound
28 by all terms of the Settlement and any Final Approval Order and Judgment entered in this Action.

1 d. Objections. Class Members who wish to object to the Settlement can either
2 mail or send by facsimile or email to the Settlement Administrator a written Objection by the
3 Response Deadline. The Objection should: (a) contain the full name, address, and telephone number
4 of the Class Member, and the last four digits of the Class Member's social security number; (b)
5 contain the case name and case number; (c) the dates of employment of the Class Member; (d) be
6 signed by the Class Member; (e) state the basis for the Objection, including any legal briefs, papers
7 or memoranda in support of the Objection; and (f) be postmarked by the Response Deadline. The
8 date of the postmark on the return mailing envelope on the Objection shall be the exclusive means
9 used to determine whether the Objection has been timely submitted. Class Members who submit a
10 timely Objection will have a right to appear at the final approval hearing in order to have their
11 Objection heard by the Court. At no time shall any of the Parties or their counsel seek to solicit or
12 otherwise encourage Class Members to submit Objections to the Settlement or appeal from the Final
13 Approval Order and Judgment. Class Counsel shall not represent any Class Members with respect to
14 any such Objections. The Settlement Administrator will provide the Parties with any Objection
15 within five (5) calendar days of receipt of the Objection. Plaintiff will file any and all Objections
16 with the Court in advance of the Final Approval Hearing. Oral or written Objections may also be
17 made at the Final Approval hearing without a written objection being submitted, but only with the
18 Court's express permission. If the Court rejects the objection, the individual will be bound by the
19 terms of the Settlement.

20 e. If greater than ten (10) percent of the Class Members opt out or object to this
21 Settlement Agreement, Defendant will have the right to rescind and terminate the Settlement without
22 prejudice to its pre-settlement positions and defenses in the litigation. In such a case, the Parties and
23 any funds to be awarded shall be returned to their respective statuses as of the date and time
24 immediately prior to the execution of this Agreement.

25 f. Except for those Settlement Class Members who exclude themselves in
26 compliance with the Request for Exclusion procedures set forth above, all Settlement Class Members
27 will: (i) be deemed to be Participating Class Members for all purposes under this Settlement
28 Agreement; (ii) will be bound by the terms and conditions of this Settlement Agreement, the

Judgment, and the releases set forth herein; and (iii) except as otherwise provided herein, will be deemed to have waived all objections and oppositions to the fairness, reasonableness, and adequacy of the Settlement.

54. Funding Gross Settlement Amount. Within thirty (30) days of the Effective Date, Defendant shall wire transfer the full Gross Settlement Amount along with Defendant's share of the payroll taxes to the Settlement Administrator.

55. Allocation of Settlement. Individual Settlement Payments will be paid from the Net Settlement Amount and shall be paid pursuant to the settlement formula set forth herein. Individual Settlement Payments shall be mailed by regular First Class U.S. Mail to Settlement Class Members' last known mailing address.

a. The Settlement Administrator shall calculate the total Compensable Work Weeks and Compensable PAGA Work Weeks for all Settlement Class Members based on the Class Information provided by Defendant. The respective Compensable Work Weeks for each Settlement Class Member will be divided by the total Compensable Work Weeks for all Settlement Class Members, resulting in the Payment Ratio for each Settlement Class Member; a similar calculation will apply to determining the Payment Ratio for Compensable PAGA Work Weeks. Each Settlement Class Member's Payment Ratio will then be multiplied by the Net Settlement Amount to determine his or her Individual Settlement Payment.

b. Individual Settlement Payments due to each Settlement Class Member shall be designated as follows:

1. Thirty-Three and One Third percent (33.33%) of the Individual Settlement Payment shall represent payment for alleged unpaid wages. This payment shall be subject to the withholding of all applicable local, state, and federal taxes. Applicable payroll taxes and/or contributions will be deducted from the amount paid to Settlement Class Members. The Settlement Administrator will issue a W-2 Form to each Settlement Class Member in relation to this payment.

2. Thirty-Three and One Third percent (33.33%) of the Individual Settlement Payment shall represent payment of all penalties. These payments will not be subject to

1 withholding of local, state, and federal taxes. The Settlement Administrator will issue an IRS Form
2 1099 to each Settlement Class Member in relation to these payments.

3 3. Thirty-Three and One Third percent (33.33%) of the Individual
4 Settlement Payment shall represent payment of all interest. These payments will not be subject to
5 withholding of local, state, and federal taxes. The Settlement Administrator will issue an IRS Form
6 1099 to each Settlement Class Member in relation to these payments.

7 (a). Class Members With Missing/Unverifiable Social Security
8 Numbers and Withholdings of Taxes and Applicable Penalties. In the event that an Individual
9 Settlement Payment exceeds the threshold amount that must be reported to the Internal Revenue
10 Service by means of a Form 1099, Class Counsel, and the Settlement Administrator, will take all
11 necessary and reasonable steps to obtain W-9's from Class Members and to comply with applicable
12 IRS regulations on issuing 1099's without a social security number or tax entity identification number,
13 and shall take all reasonable and necessary steps to avoid imposition of IRS penalties against the Gross
14 Settlement Amount, including, but not limited to limiting payments below the reportable threshold
15 and/or withholding of taxes and any applicable penalties. The Settlement Administrator will contact
16 Class Members who are entitled to payments that exceed the taxable income threshold twice, with at
17 least 30 days between the two contacts.

18 c. Uncashed Settlement Checks. Individual Settlement Payment checks shall
19 remain negotiable for one hundred and eighty (180) days from the postmark date of issuance. If the
20 Settlement Check is not cashed, deposited, or otherwise negotiated within the 180-day deadline, the
21 check will be voided, and the funds associated with any such voided checks shall be distributed to the
22 State of California Controller's Office, Unclaimed Property Division, in the name of the affected Class
23 Member. The Release will be binding upon all Participating Class Members, including those who do
24 not cash their checks within the 180-day period. The Parties agree that this disposition results in no
25 "unpaid cash residue," or "unclaimed or abandoned funds" as the entire Net Settlement Amount will
26 be paid out to the Participating Class Members, whether or not they all cash their payment checks.

27 d. Certification By Settlement Administrator. The Parties have the right to
28 monitor and review administration of the Settlement. Any disputes not resolved by the Settlement

1 Administrator concerning the administration of the Settlement will be resolved by the Court, under
2 the laws of the State of California. Prior to any such involvement of the Court, counsel for the Parties
3 will confer in good faith to resolve the disputes without the necessity of involving the Court. Upon
4 completion of administration of the Settlement, the Settlement Administrator shall provide written
5 certification of such completion to counsel for the Parties, and which shall be filed with the Court as
6 necessary.

7 e. Settlement Awards Do Not Trigger Additional Benefits. All monies received
8 by Settlement Class Members shall be deemed to be income to such Settlement Class Members solely
9 in the year in which such awards actually are received by the Settlement Class Members. It is expressly
10 understood and agreed that the receipt of such Individual Settlement Payments will not entitle any
11 Settlement Class Member to additional compensation or benefits under any company compensation
12 or benefit plan or agreement in place during the period covered by the Settlement, nor will it entitle
13 any Settlement Class Member to any increased pension and/or retirement, or other deferred
14 compensation benefits. It is the intent of this Settlement that any Individual Settlement Payments
15 provided for in this Agreement are the sole payments to be made by Defendant to the Settlement Class
16 Members in connection with this Settlement, and that the Settlement Class Members are not entitled
17 to any new or additional compensation or benefits as a result of having received the Individual
18 Settlement Payments (notwithstanding any contrary language or agreement in any benefit or
19 compensation plan document that might have been in effect during the period covered by this
20 Settlement).

21 f. Class Representative Service Awards. Defendant agrees not to oppose or
22 object to a Class Representative Service Awards to Plaintiffs of up to Twelve Thousand Dollars
23 (\$12,000), combined, or Six Thousand Dollars (\$6,000.00), to each Plaintiff, subject to Court
24 approval. The Settlement Administrator shall issue an IRS Form 1099 – MISC to Plaintiffs in
25 connection with the Class Representative Service Award payment. Plaintiffs shall be solely and
26 legally responsible to pay any and all applicable taxes on his Class Representative Service Award and
27 shall hold harmless Defendant and Class Counsel from any claim or liability for taxes, penalties, or
28 interest arising as a result of the Class Representative Service Award payment. The Class

1 Representative Service Award shall be in addition to Plaintiffs' Individual Settlement Payments. This
2 Settlement is not contingent upon the Court awarding Plaintiffs Class Representative Service Awards
3 in any amount, and any amount requested by Plaintiffs for the Class Representative Service Award
4 that is not granted by the Court shall return to the Net Settlement Amount and be distributed to
5 Settlement Class Members as provided in this Amended Agreement.

6 g. Class Counsel Award. Defendant agrees not to oppose or object to any
7 application or motion by Class Counsel for attorneys' fees not to exceed one-third from the Gross
8 Settlement Amount, or One Hundred and Sixty-Two Thousand Dollars (\$162,000.00), or more if
9 Paragraph 58 is triggered. Defendant further agrees not to oppose any application or motion by Class
10 Counsel for the reimbursement of any costs or expenses associated with Class Counsel's prosecution
11 of this matter from the Gross Settlement Amount not to exceed Twenty Thousand Dollars
12 (\$20,000.00). Class Counsel shall be solely and legally responsible to pay all applicable taxes on the
13 payment made pursuant to this paragraph. The Settlement Administrator shall issue an IRS Form 1099
14 – MISC to Class Counsel for the payments made pursuant to this paragraph. This Settlement is not
15 contingent upon the Court awarding Class Counsel any particular amount in attorneys' fees and costs.
16 Any amount requested by Class Counsel for the Class Counsel Award and costs that is not granted by
17 the Court shall return to the Net Settlement Amount and be distributed to Settlement Class Members
18 as provided in this Agreement.

19 h. Settlement Administration Costs. The Settlement Administrator shall be paid
20 for the costs of administration of the Settlement from the Gross Settlement Amount. The costs of
21 notice and administration for the disbursement of the Gross Settlement Amount shall not exceed
22 Twenty Thousand Dollars (\$20,000.00). Prior to the filing of a motion for final approval of this
23 Settlement, the Settlement Administrator shall provide the Parties with a statement detailing the costs
24 of administration. Any amount requested by the Settlement Administrator for administration costs that
25 is not granted by the Court shall return to the Net Settlement Amount and be distributed to Settlement
26 Class members as provided in this Amended Agreement. Defendant will pay any fees incurred by the
27 Settlement Administrator if the settlement is not approved.

1 i. PAGA Payment. Fifty Thousand dollars (\$50,000) from the Gross Settlement
2 Amount will be allocated to penalties under the Private Attorneys General Act of 2004. Seventy-five
3 percent (75%) of that amount, or \$37,500, will be paid to the LWDA and twenty-five (25%) of that
4 amount, or \$12,500, will be paid to the PAGA Members based upon Compensable PAGA Work
5 Weeks as determined by the PAGA Payment Ratio as set forth in Paragraph 26. This PAGA Payment
6 is made pursuant to California Labor Code § 2699(i).

7 56. Tax Liability: Class Counsel and Defendant make no representation as to the tax
8 treatment or legal effect of payments called for hereunder, and Plaintiffs and the Settlement Class
9 Members are not relying on any statement or representation by Class Counsel or Defendant in this
10 regard. Plaintiffs and Participating Class Members understand and agree that they will be solely
11 responsible for the payment of any taxes and penalties assessed on their respective payments described
12 herein. The amount of federal income tax withholding will be based upon a flat withholding rate for
13 supplemental wage payments in accordance with Treas. Reg. § 31.3402(g)-1(a)(2) as amended or
14 supplemented. Income tax withholding will also be made pursuant to applicable state and/or local
15 withholding codes or regulations. Forms W-2 and/or Forms 1099 will be distributed at times and in
16 the manner required by the Internal Revenue Code of 1986 (the "Code") and consistent with this
17 Settlement Agreement. If the Code, the regulations promulgated thereunder, or other applicable tax
18 law, is changed after the date of this Settlement Agreement, the processes set forth in this Section may
19 be modified in a manner to bring Defendant into compliance with any such changes.

20 57. Distribution of Settlement Payments. Individual Settlement Payments to Settlement
21 Class Members, the Class Representative Service Awards, the Class Counsel Award, Settlement
22 Administration Costs, Defendant's share of employer payroll taxes and PAGA Payment, shall all be
23 distributed by the Settlement Administrator within ten (10) calendar days of receipt of the full Gross
24 Settlement Amount from Defendant. Prior to distribution of Individual Settlement Payments to the
25 Settlement Class Members and PAGA Members, the Settlement Administrator shall update the Class
26 and PAGA Members addresses using the National Change of Address Database.

27 58. Additional Class Members. It is currently estimated that there are 33,052 Work Weeks
28 in the Class Period through February 1, 2024 based upon the information provided by Defendant.

1 Defendant shall provide Plaintiffs within ten (10) days of notice that Plaintiffs intends to file a Motion
2 for Preliminary Approval, the current number of Work Weeks. If seven (7%) percent more than
3 33,052 Work Weeks are identified by Defendant's counsel for the Class Period through February 1,
4 2024, the Gross Settlement Amount will be increased on a pro rata basis according to the number of
5 additional compensable workweeks/pay periods worked by all Class Members in excess of seven (7%)
6 percent, i.e. 35,366 with respect to the total number of Work Weeks worked by the entire Class.

7 59. Final Settlement Approval Hearing and Entry of Final Judgment. Upon expiration of
8 the Response Deadline, a final approval hearing shall be conducted to determine, *inter alia*, final
9 approval of the Settlement and amounts properly payable for: (a) Individual Settlement Payments; (b)
10 the Class Counsel Award; (c) the Class Representative Service Awards; (d) PAGA Payment; and (e)
11 the Settlement Administration Costs.

12 60. Nullification of Settlement Agreement. In the event: (a) the Court does not enter the
13 Order for preliminary approval of the Settlement; (b) the Court does not finally approve the
14 Settlement; (c) the Court does not enter a Final Approval Order and Judgment as provided herein;
15 (d) the Settlement does not become final for any other reason; or (e) the Court fails or refuses to
16 approve any material condition of this Settlement Agreement which effects a fundamental change of
17 the Settlement Agreement, this entire Settlement Agreement shall be null and void and
18 unenforceable as to all Parties herein at the option of any Party but remains protected by California
19 Evidence Code Section 1152, and any order or judgment entered by the Court in furtherance of this
20 Settlement shall be treated as void from the beginning. In such cases, the Parties and any funds to be
21 awarded under this Settlement shall be returned to their respective statuses as of the date and time
22 immediately prior to the execution of this Agreement, and the Parties shall proceed in all respects as
23 if this Agreement had not been executed, except that any fees already incurred by the Settlement
24 Administrator shall be paid by Defendant. Further, if the Settlement Agreement is voided or fails
25 for any reason, Plaintiffs and Defendant will have no further obligations under the Settlement
26 Agreement, including any obligation by Defendant to pay the Settlement Amount, or any amounts
27 that otherwise would have been owed under this Settlement Agreement. In the event an appeal is
28 filed from the Court's Final Approval Order and Judgment, or any other appellate review is sought,

1 administration of the Settlement shall be stayed pending final resolution of the appeal or other
2 appellate review, and any fees incurred by the Settlement Administrator prior to it being notified of
3 the filing of an appeal from the Court's Final Approval Order and Judgment, or any other appellate
4 review, shall be paid to the Settlement Administrator by the party or person that filed the appeal,
5 within thirty (30) calendar days of said notification.

6 61. No Effect on Employee Benefits. Amounts paid to Plaintiffs or other Settlement Class
7 Members pursuant to this Agreement shall be deemed not to be pensionable earnings and shall not
8 have any effect on the eligibility for, or calculation of, any of the employee benefits (e.g., vacations,
9 holiday pay, retirement plans, etc.) of Plaintiffs or Settlement Class Members.

10 62. No Admission by Defendant. Defendant denies any and all claims alleged in this
11 Action and denies all wrongdoing whatsoever. This Settlement Agreement is not a concession or
12 admission and shall not be used against Defendant as an admission or indication with respect to any
13 claim of any fault, concession, or omission by Defendant. Nonetheless, Defendant desires to settle
14 and compromise the matters at issue in the Action to avoid further substantial expense and the
15 inconvenience and distraction of protracted and burdensome litigation. Defendant also has taken into
16 account the uncertainty and risks inherent in litigation, and without conceding any infirmity in the
17 defenses that it has asserted or could assert against Plaintiffs and/or any Settlement Class Member,
18 has determined that it is desirable and beneficial that the claims of Plaintiff and the Settlement Class
19 be settled in the manner and upon the terms and conditions set forth in this Settlement Agreement.

20 63. No Publicity. Plaintiff and Plaintiff's Counsel agree not to disclose or publicize the
21 settlement, including the Memorandum of Understanding, the fact of the Settlement, its terms or
22 contents, and the negotiations underlying the Settlement, in any manner or form, directly or
23 indirectly, to any person or entity, except potential class members and as shall be contractually
24 required to effectuate the terms of the Settlement as set forth herein. For the avoidance of doubt,
25 this section means Plaintiff and Class Counsel will not to issue press releases, communicate with,
26 or respond to any media or publication entities, publish information in manner or form, whether
27 printed or electronic, on any medium or otherwise communicate, whether by print, video,
28 recording or any other medium, with any person or entity concerning the Settlement, including

1 the fact of the Settlement, its terms or contents and the negotiations underlying the Settlement,
2 except as shall be contractually required to effectuate the terms of the Settlement as set forth
3 herein. However, for the limited purpose of allowing Class Counsel to prove adequacy as class
4 counsel in other actions, Class Counsel may disclose the name of the Parties in this action and the
5 venue/case number of this action (but not any other settlement details) for such purposes.

6 64. Exhibits and Headings. The terms of this Settlement Agreement include the terms set
7 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth herein.
8 Any Exhibits to this Agreement are an integral part of the Settlement. The descriptive headings of any
9 paragraphs or sections of this Agreement are inserted for convenience of reference only and do not
10 constitute a part of this Agreement.

11 65. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action,
12 except such proceedings necessary to implement and complete the Settlement, holding the Action in
13 abeyance pending the final approval hearing to be conducted by the Court.

14 66. Dispute Resolution. Except as otherwise set forth herein, all disputes concerning the
15 interpretation, calculation or payment of Settlement claims, or other disputes regarding compliance
16 with this Agreement shall be resolved as follows:

17 a. If Plaintiffs or Class Counsel, on behalf of Plaintiffs or any Settlement Class
18 Member, or Defendant's Counsel, on behalf of Defendant, at any time believe that the other Party has
19 breached or acted contrary to the Agreement, that Party shall notify the other Party in writing of the
20 alleged violation.

21 b. Upon receiving notice of the alleged violation or dispute, the responding Party
22 shall have ten (10) calendar days to correct the alleged violation and/or respond to the initiating Party
23 with the reasons why the Party disputes all or part of the allegation.

24 c. If the response does not address the alleged violation to the initiating Party's
25 satisfaction, the Parties shall negotiate in good faith for up to ten (10) calendar days to resolve their
26 differences.

27 d. If Class Counsel and Defendant's Counsel are unable to resolve their
28 differences after twenty (20) calendar days, either Party shall first contact the mediator (Todd Smith)

1 to try to resolve the dispute. If that proves unsuccessful, the party may file an appropriate motion for
2 enforcement with the Court. The briefing of such motion should be in letter brief form and shall not
3 exceed five (5) single-spaced pages (excluding exhibits).

4 e. Reasonable attorneys' fees and costs for work done in resolving a dispute under
5 this Section may be recovered by any Party that prevails under the standards set forth within the
6 meaning of applicable law.

7 67. Notice. Unless otherwise specifically provided herein, all notices, demands or other
8 communications given hereunder shall be in writing and shall be deemed to have been duly given as
9 of the third business day after (i) emailing and (ii) mailing by United States registered or certified
10 mail, return receipt requested, addressed:

11 To the Settlement Class:

12 LAW OFFICE OF SCOTT ERNEST WHEELER
13 Scott Ernest Wheeler
14 Justin A. Wheeler
15 250 West First Street, Suite 216
16 Claremont, California 91711
Telephone: (909) 621-4988
Facsimile: (909) 621-4622

17 To Defendant:

18 FISHER & PHILLIPS LLP
19 Todd B. Scherwin (SBN 239848)
20 Areen Babajianian (SBN 290130)
21 Vana Ebrahimi (SBN 332805)
22 444 South Flower Street, Suite 1500
23 Los Angeles, California 90071
24 Telephone: (213) 330-4500
25 Facsimile: (213) 330-4501

26 68. Amendment or Modification. This Agreement may be amended or modified only by
27 a written instrument signed by counsel for all Parties and approved by the Court.

28 69. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute
the entire Agreement among these Parties, and no oral or written representations, warranties, or
inducements have been made to any Party concerning this Agreement or its Exhibits other than the
representations, warranties, and covenants contained and memorialized in the Agreement and its
Exhibits.

1 70. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and
2 represent they are expressly authorized by the Parties whom they represent to negotiate this
3 Agreement and to take all appropriate actions required or permitted to be taken by such Parties
4 pursuant to this Agreement to effectuate its terms, and to execute any other documents required to
5 effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other
6 and use their best efforts to affect the implementation of the Settlement. In the event the Parties are
7 unable to reach agreement on the form or content of any document needed to implement the
8 Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of
9 this Settlement, the Parties may seek the assistance of the Court or the mediator to resolve such
10 disagreement. The persons signing this Agreement on behalf of Defendant represent and warrant that
11 they are authorized to sign this Agreement on behalf of Defendant. Plaintiff represents and warrants
12 that he is authorized to sign this Agreement and that he has not assigned any claim, or part of a claim,
13 covered by this Settlement to a third-party.

14 71. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure
15 to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

16 72. No Prior Assignments. The Parties hereto represent, covenant, and warrant that they
17 have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or
18 encumber to any person or entity any portion of any liability, claim, demand, action, cause of action
19 or rights released and discharged by this Settlement Agreement.

20 73. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
21 Order and Judgment, nothing contained herein, nor the consummation of this Settlement Agreement,
22 is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the
23 part of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this
24 Settlement Agreement with the intention of avoiding further disputes and litigation with the attendant
25 inconvenience and expenses. This Settlement Agreement is a settlement document, and it, along with
26 all related documents such as the notices, and motions for preliminary and final approval, shall,
27 pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be
28 inadmissible as evidence in any proceeding, except an action or proceeding to approve the Settlement,

1 and/or interpret or enforce this Settlement Agreement. The stipulation for class certification as part
2 of this Settlement Agreement is for settlement purposes only and if for any reason the Settlement is
3 not approved, the stipulation will be of no force or effect.

4 74. California Law Governs. All terms of this Settlement Agreement and the Exhibits
5 hereto shall be governed by and interpreted according to the laws of the State of California.

6 75. Counterparts. This Settlement Agreement may be executed in one or more
7 counterparts. All executed counterparts and each of them shall be deemed to be one and the same
8 instrument.

9 76. This Settlement is Fair, Adequate and Reasonable. The Parties believe this Settlement
10 is a fair, adequate, and reasonable settlement of this Action and have arrived at this Settlement after
11 extensive arms-length negotiations, taking into account all relevant factors, present and potential.

12 77. Jurisdiction of the Court. Pursuant to California Code of Civil Procedure section 664.6,
13 the Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement
14 of the terms of this Settlement Agreement and all orders and judgments entered in connection
15 therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes
16 of interpreting, implementing, and enforcing the settlement embodied in this Agreement and all orders
17 and judgments entered in connection therewith. All terms of this Settlement Agreement are subject to
18 approval by the Court.

19 78. Construction. The Parties hereto agree that the terms and conditions of this Settlement
20 Agreement are the result of lengthy, intensive arms'-length negotiations among the Parties and that
21 this Settlement Agreement shall not be construed in favor of or against any Party based on the extent
22 to which any Party or their counsel participated in the drafting of this Settlement Agreement. Plaintiffs
23 and Defendant expressly waive the common-law and statutory rule of construction that ambiguities
24 should be construed against the drafter of an agreement and further agree, covenant, and represent that
25 the language in all parts of this Settlement Agreement shall be in all cases construed as a whole,
26 according to its fair meaning.

27 79. Captions and Interpretations. Paragraph titles or captions contained herein are inserted
28 as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope

1 of this Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is
2 contractual and not merely a recital.

3 80. Binding On Assigns. This Settlement Agreement shall be binding upon and inure to
4 the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
5 successors and assigns.

6 81. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
7 because the members of the Settlement Class are numerous, it is impossible or impractical to have
8 each Settlement Class Member execute this Settlement Agreement. The Notice will advise all
9 Settlement Class Members of the binding nature of the release provided herein and such Release
10 shall have the same force and effect as if this Settlement Agreement were executed by each
11 Settlement Class Member.

12 82. Voluntary Agreement. The Parties acknowledge that they have entered into this
13 Settlement Agreement voluntarily, on the basis of their own judgment and without coercion, duress,
14 or undue influence of any Party, and not in reliance on any promises, representations, or statements
15 made by the other Parties other than those contained in this Settlement Agreement. Each of the
16 Parties hereto expressly waves any right they might ever have to claim that this Settlement
17 Agreement was in any way induced by fraud.

18 83. Opportunity to Consult with Counsel. Prior to execution of this Settlement
19 Agreement, each Party has read this entire Settlement Agreement and has been given the
20 opportunity to consult with independent counsel of their choosing and to have such independent
21 counsel advise as to the meaning of this Settlement Agreement and its legal effect.

22 84. Counterparts. This Settlement Agreement may be executed in counterparts, and when
23 each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed
24 an original, and, when taken together with other signed counterparts, shall constitute one fully-signed
25 Settlement Agreement, which shall be binding upon and effective as to all Parties. Electronic
26 signatures shall have the same force and effect as an original.

27 85. Invalidity of Any Provision. Before declaring any provision of this Settlement
28 Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent

1 possible consistent with applicable precedents so as to define all provisions of this Agreement valid
2 and enforceable.

3
4 Dated: _____

By: _____
Abraham Agustino

5
6 Dated: _____

By: _____
Lisa Rosan

8
9 Salem Christian Homes, Inc.

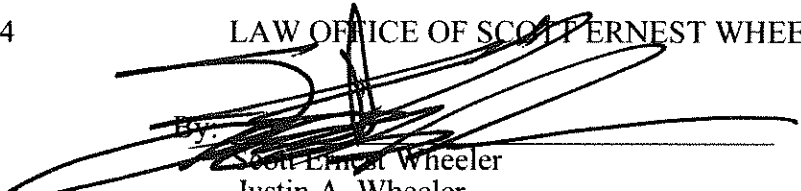
10 Dated: _____

By: _____
Title: _____
Rod Bollins

13 **APPROVED AS TO FORM:**

14 *M. A. A.*
DATED: February 15, 2024

LAW OFFICE OF SCOTT ERNEST WHEELER

15
16 By: 
Scott Ernest Wheeler
Justin A. Wheeler

17
18 *Attorneys for Plaintiffs*

19 DATED: February ___, 2024

FISHER & PHILLIPS LLP

20
21 By: _____
Todd Scherwin
Areen Babajanian

22
23 *Attorneys for Defendant*

possible consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable.

Dated: 3/15/2024

DocuSigned by:
Agustino Abraham
3E9167EBAA534A9
By: Abraham Agustino

Dated:

By: Lisa Rosana

Salem Christian Homes, Inc.

Dated:

By:
Title: Rod Bollins

APPROVED AS TO FORM:

DATED: February __, 2024

LAW OFFICE OF SCOTT ERNEST WHEELER

By: Scott Ernest Wheeler
Justin A. Wheeler

Attorneys for Plaintiffs

DATED: February __, 2024

FISHER & PHILLIPS LLP

By: Todd Scherwin
Areen Babajanian

Attorneys for Defendant

possible consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable.

Dated: _____

By: _____
Abraham Agustino

Dated: 3/15/2024

By: _____
Lisa Rosana
DocuSigned by:
3E9167EBAA634A9...

Salem Christian Homes, Inc.

Dated: _____

By: _____
Title: _____
Rod Bollins

APPROVED AS TO FORM:

DATED: February ___, 2024

LAW OFFICE OF SCOTT ERNEST WHEELER

By: _____
Scott Ernest Wheeler
Justin A. Wheeler

Attorneys for Plaintiffs

DATED: February ___, 2024

FISHER & PHILLIPS LLP

By: _____
Todd Scherwin
Areen Babajanian

Attorneys for Defendant

1 possible consistent with applicable precedents so as to define all provisions of this Agreement valid
2 and enforceable.

3
4 Dated: _____

By: _____
Abraham Agustino

5
6 Dated: _____

By: _____
Lisa Rosan

8
9 Salem Christian Homes, Inc.

10 Dated: 3/14/24

By: [Signature]
Title: CEO
Rod Bollins

11
12
13 **APPROVED AS TO FORM:**

14 DATED: February __, 2024

LAW OFFICE OF SCOTT ERNEST WHEELER

15

16

By: _____
Scott Ernest Wheeler
Justin A. Wheeler

17

18

Attorneys for Plaintiffs

19

DATED: ~~February~~ __, 2024
March 14, 2024

FISHER & PHILLIPS LLP

20

21

By: [Signature]
Todd Scherwin
Areen Babajanian

22

23

Attorneys for Defendant

24

25

26

27

28

EXHIBIT 1

NOTICE OF CLASS ACTION AND PAGA SETTLEMENT

Abraham Agustino, et al. v. Salem Christian Homes, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF SAN BERNARDINO CASE NO. CIVSB2308778

PLEASE READ THIS NOTICE

A class and representative action under the Private Attorneys General Act, California Labor Code sections 2699-2699.5. ("PAGA") against Defendant Salem Christian Homes, Inc. ("Defendant") has been preliminarily approved for settlement. In the lawsuit, Plaintiffs, Abraham Agustino and Lisa Rosana ("Plaintiffs") alleged that Defendant failed to properly compensate Class Members for all hours worked, failed to provide Class Members with compliant meal and/or rest periods or compensation in lieu thereof, failed to pay overtime wages, failed to pay minimum wages, failed to timely pay all wages, failed to pay all wages due to quitting and discharged employees at the time of separation, failed to maintain accurate payroll records, failed to provide accurate wage statements, failed to reimburse business expenses, engaged in unfair business practices, and penalties predicated on the Labor Code violations pursuant to Labor Code sections 2699-2699.5 ("PAGA"). Defendant denies Plaintiffs' allegations and contends that it complied with applicable law.

Class Member(s) are defined as: All non-exempt employees who worked for Defendant in California from April 14, 2019 through February 29, 2024. ("Class Period" and collectively, the Class Members are referred to as the "Class").

The PAGA period is February 11, 2022 to February 29, 2024.

You have been identified by Defendant's records as a Class Member in the above-entitled action, and as such, you are subject to the terms of the Class Action and PAGA Settlement Agreement And Release ("Settlement"), preliminarily approved by the Court. Please read this notice carefully. It may affect your legal rights. Defendant will not retaliate against you for any actions you take with respect to the settlement.

YOUR LEGAL RIGHTS AND OPTIONS WITH RESPECT TO THE SETTLEMENT	
Participate in the Settlement	If you want to remain in the Class, be bound by the Settlement and receive your Individual Settlement Payment, and if eligible, PAGA Payment , then you need not do anything.
Exclude Yourself From the Settlement	If you do not want to be bound by the Settlement, you must follow the instructions in Section 6 to exclude yourself. If you exclude yourself, you will not receive your Individual Settlement Payment, and you will not release the Settled Claims against Released Parties defined in Section 4 below. If this Settlement is approved by the Court, and you are a PAGA Member, you will receive your PAGA payment and the Settled PAGA Claims will be released even if you exclude yourself from the Settlement.
Object to the Settlement	If you want to object to the Settlement, you must follow the instructions in Section 7. If you object, you will still be bound by the terms of the Settlement, if approved by the Court.

1. WHY DID I GET THIS NOTICE?

You have received this Notice because Defendant's records reflect that you are a Class Member as defined above. This Notice provides you with information about (1) the terms of the Settlement, including the claims that are being released, (2) the total monetary amount of the Settlement, (3) your estimated Individual Settlement Payment provided you remain a Settlement Class Member, and (4) where to find additional information regarding the case and the Settlement.

NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE SETTLEMENT: If you do nothing, then you will be automatically included in the Settlement and do not need to take any further action to receive a payment.

2. WHAT IS THIS CASE ABOUT?

The Class Action Complaint for Damages was filed on April 14, 2023, in the Superior Court of California, County of San Bernardino, commencing the lawsuit entitled *Abraham Agustino, et al. v. Salem Christian Homes, Inc.*, Superior Court of the State of California for the County of San Bernardino, Case No. CIVSB2308778. Plaintiffs alleged on behalf of themselves and the Class the following claims against Defendant: (1) failure to provide meal periods; (2) failure to provide rest periods; (3) failure to pay overtime wages; (4) failure to pay minimum wages; (5) failure to pay timely wages; (6) failure to pay all wages due to discharged and quitting employees; (7) failure to furnish accurate, itemized wage statements; (8) failure to maintain records; (9) unfair business competition; (10) failure to reimburse necessary business expenses; and (11) violation of PAGA, predicated on the violations of the California Labor Code and applicable IWC Wage Order as alleged in the Operative Complaint.

The resolution of the PAGA claim ("PAGA Settlement") includes any Class Members who are employed or have been employed by Defendant in the State of California during the time period from February 11, 2022, through February 29, 2024 ("PAGA Members").

Defendant denies any liability or wrongdoing of any kind. Defendant contends, among other things, that it complied at all times with the California Labor Code and the Business and Professions Code, and that employees were correctly and timely paid all wages, and that meal periods and rest breaks are provided as required by applicable law.

The Court has not ruled on the merits of Plaintiffs' claims. By preliminarily approving the Settlement and issuing this Notice, the Court is not suggesting which side would win or lose this case on the merits. Rather, the Court has determined only that there is sufficient evidence to determine on a preliminary basis that the proposed Settlement is fair, adequate, and reasonable and any final determination of those issues will be made at the final approval hearing.

3. THE SETTLEMENT TERMS AND CALCULATION OF INDIVIDUAL SETTLEMENT PAYMENTS AND PAGA PAYMENTS.

Without admitting any wrongdoing, and to avoid the business disruptions caused by litigating these claims, Defendant has agreed to pay a Gross Settlement Amount of Four Hundred and Eighty-Five Thousand Dollars (\$485,000.00) to settle the Action if approved by the Court.

The following amounts will be paid from the Maximum Settlement Amount:

- Service Payment to Plaintiffs for their service as Class Representatives in the amount of up to combined Twelve Thousand Dollars and Zero Cents (\$12,000.00);
- Attorneys' Fees not to exceed One Hundred and Sixty-Two Thousand Dollars (\$162,000.00) (i.e., 1/3 of the Gross Settlement Amount) to Class Counsel and reasonable costs relating to the reimbursement of litigation costs and expenses ("Attorneys' Costs");
- The amount of Fifty Thousand Dollars and Zero Cents (\$50,000.00) allocated to the payment of civil penalties under PAGA (the "PAGA Allocation");
- The costs associated with administration of the Settlement, estimated to be Nine Thousand and Two Hundred and Fifty Dollars and Zero Cents (\$9,250.00) ("Settlement Administration Costs").

Individual Settlement Payment: The amount remaining from the Gross Settlement Amount after the above deductions is called the "Net Settlement Amount". The Net Settlement Amount will be allocated to all Class Members who do not request to be excluded from the Settlement ("Settlement Class Members") on a *pro rata* basis, based on their number of Compensable Work Weeks. Each payment is called an "Individual Settlement Payment" and will be calculated as follows:

1. The Settlement Administrator will determine the number of work weeks worked by Class Members in California as a non-exempt employee during the Class Period ("Compensable Work Weeks");
2. The Settlement Administrator will determine the value of a single Compensable Work Week by dividing the Net Settlement Amount by the total number of Compensable Work Weeks for each Settlement Class Member resulting in a payment ratio; and
3. Each Settlement Class Member shall receive a gross Individual Settlement Payment equal to his or her Compensable Work Week payment ratio multiplied by the Net Settlement Amount.

Based on your Compensable Work Weeks, your individual settlement payment as a Settlement Class Member is estimated to be \$.

PAGA Payment: A total of Fifty Thousand Dollars and Zero Cents (\$50,000.00) of the Gross Settlement Amount has been allocated to PAGA Settlement. Of this amount, 75% or Seventy-Five Thousand Dollars (i.e., \$37,500.00) will be paid to California's Labor &

Workforce Development Agency, and 25% or **Twenty-Five Thousand Dollars (i.e., \$12,500.00)** (the “Net PAGA Distribution Amount”) will be paid on a *pro-rata* basis to PAGA Members.

1. The Settlement Administrator will determine the number of weeks worked by PAGA Members as non-exempt employees in California during the period from February 11, 2022 through February 29, 2024 (“Compensable PAGA Work Weeks”);
2. The Settlement Administrator will determine the value of a single Compensable PAGA Work Week by dividing the Net PAGA Distribution Fund by the total number Compensable PAGA Work Weeks by all PAGA Members.
3. Each PAGA Member shall receive a PAGA Payment equal to his or her Compensable PAGA Work Weeks multiplied by the value of a single Compensable PAGA Work Week.

Based on these PAGA Compensable Work Weeks, your PAGA Payment is estimated to be \$ 40,000.00.

If you dispute the above information, you may submit a written dispute to the number of Compensable Work Weeks and/or Compensable PAGA Work Weeks allocated to you ("Dispute") to the Settlement Administrator. Your Dispute must: (1) contain your name, address, and telephone number and the case name and number of this action, *Abraham Agustino, et al. v. Salem Christian Homes, Inc.*, Superior Court of the State of California for the County of San Bernardino, Case No. CIVSB2308778; (2) be signed by you; (3) be postmarked, emailed or fax stamped on or before (INSERT DATE) and returned to the Settlement Administrator at the address, email or fax number listed below; (4) clearly state the number of Compensable Work Weeks and/or Compensable PAGA Work Weeks you believe are correct; and (5) attach any documentary evidence you have to prove the number of contented Compensable Work Weeks and/or Compensable PAGA Work Weeks.

Phoenix Settlement Administrators
Re: *Abraham Agustino, et al. v. Salem Christian Homes, Inc.*
INSERT ADDRESS
Phone: (800)
Facsimile: (714)
Email: INSERT EMAIL ADDRESS

Thirty-three and one-third (33.33%) of each Individual Settlement Payment will be allocated to wages and subject to all applicable employee state and federal tax withholdings; thirty-three percent and one-third (33.33%) of each Individual Settlement Payment will be considered penalties and any other non-wage related amount; and thirty-three and one-third (33.33%) of each Individual Settlement Payment will be considered interest. The amount allocated as wages will be reported on an IRS form W-2, and the remaining amount allocated as penalties, liquidated damages, interest and other non-wage payments will be reported on an IRS form 1099. One hundred percent (100%) of each PAGA Payment will be allocated as penalties and be reported on an IRS form 1099.

In addition to the Gross Settlement Amount, Defendant will pay all employer-payroll taxes and contributions in connection with the portion of the Settlement allocated towards wages at the time the Gross Settlement Amount is funded.

Class Members are responsible for paying taxes on any amounts received. This Notice is not tax advice and you should consult your tax advisor. Checks will be valid and negotiable for one-hundred and eighty (180) days; after that checks will become void and a stop payment will be placed on the uncashed checks. Settlement checks that are not cashed within one-hundred and eighty (180) days of mailing, or are returned to the Settlement Administrator, will be cancelled and the Settlement Administrator shall send the funds associated with uncashed checks to the State of California Controller's Office, Unclaimed Property Division, in the name of the affected Class Member. **Class Members will be bound by the Settlement even if they do not cash their settlement checks.**

4. WHAT AM I RELEASING AS A CLASS MEMBER UNDER THE SETTLEMENT?

If you do nothing, you will receive your Individual Settlement Payment.

If and when the Court grants final approval of the Settlement, as of the Effective Date, all Class Members who do not opt out of the Settlement ("Settlement Class Members") hereby do and shall fully and finally release and discharge Released Parties, from April 14, 2019, through February 29, 2024, from any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, or causes of action contingent or accrued for, that are pleaded, or that could have been pleaded, based on the facts and claims alleged in the Operative Complaint, including any claims for: (a) failure to provide required meal periods, California Labor Code §§ 226.7, 510 and 512; (b) failure to provide required rest periods, California Labor Code §§ 226.7 and 512; (c) failure to pay overtime wages, California Labor Code §§ 510, 1194 and 1198; (d) failure to pay minimum wages, California Labor Code §§ 1194 and 1197; (e) failure to timely pay wages §§ 204 and 210; (f) failure to timely pay all wages during employment and to discharged and quitting employees, California Labor Code §§ 201-204, 210; (f) failure to furnish accurate, itemized wage statements, California Labor Code §§ 226 and 226.3; (g) failure to reimburse for necessary business expenses, California Labor Code §2802, and (h) unlawful business practices under California, Business and Professions Code §17200, et seq.; predicated on any of the violations of the California Labor

Code and the applicable IWC Wage Order as alleged in the Operative Complaint including but not limited to, claims for restitution and other equitable relief, liquidated damages, or penalties; and any other benefit, wages, penalties, or other amounts claimed on account of the allegations or the primary rights asserted in the Operative Complaint. This release shall apply to any and all claims arising at any point during the Class Period. Upon entry of the Final Approval Order and funding of the total Gross Settlement Amount, all Class Members will forever completely release and discharge the Released Parties from the Released Claims for the Release Period.

“Released Parties” collectively mean: (i) Defendant; (ii) Defendant’s respective past, present and future heirs, executors, administrators, parents, subsidiaries and affiliates, successors and assigns; and (iii) the past, present and future shareholders, managers, officers, partners, members, agents, employees, attorneys, insurers, predecessors, successors and assigns of any of the foregoing.

5. WHAT AM I RELEASING AS A PAGA MEMBER UNDER THE SETTLEMENT?

As of the Effective Date, all PAGA Members, hereby do and shall be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged any and all of the Released Parties of and from any and all Settled PAGA Claims.

“Settled PAGA Claims” means penalties under PAGA only, and not for underlying wage and hour claims which the claims for penalties are based upon, as alleged in the Operative Complaint and the PAGA Notice filed by Plaintiffs, and as described in section 4, above.

Released Parties is defined in section 4 of this Notice above.

PAGA MEMBERS CANNOT OPT-OUT OR EXCLUDE THEMSELVES FROM THE PAGA SETTLEMENT OR RELEASE OF SETTLED PAGA CLAIMS AND WILL RECEIVE A PAGA PAYMENT EVEN IF THEY OPT-OUT OF THE CLASS SETTLEMENT.

6. WHAT IF I DON’T WANT TO PARTICIPATE IN THE CLASS SETTLEMENT?

You have the right to request exclusion from the Settlement as a Class Member and with regards to the settlement of Settled Claims, but you are not able to exclude yourself as a PAGA Member. To exclude yourself as a Settlement Class Member, you must submit a written Request for Exclusion to the Settlement Administrator (“Opt-Out Request”) at the address, email or fax number listed in section 3 of this Notice above.

A valid and complete Opt-Out Request must (1) contain the name, address, and telephone number of the Class Member requesting exclusion and the case name and number of the *Agustino* Action (i.e., *Abraham Agustino, et al. v. Salem Christian Homes, Inc.*, Superior Court of the State of California for the County of San Bernardino, Case No. CIVSB2308778); (2) be signed by the Class Member; (3) be postmarked, emailed or fax stamped on or before [INSERT DATE] and returned to the Settlement Administrator at the specified address, email address or fax number listed in section 3 of this Notice above; and (4) contain a statement something substantially similar to:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT OF CLASS CLAIMS IN THE GERARDO MARTINEZ V. INVAPHARM, INC. LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE AN INDIVIDUAL SETTLEMENT PAYMENT FROM THE SETTLEMENT OF THE LAWSUIT. I UNDERSTAND THAT THE PAGA CLAIM WILL STILL BE RELEASED AND SETTLED.”

It is your responsibility to ensure that the Settlement Administrator timely receives your request to be excluded from the Settlement. Unless you timely request to be excluded from the Settlement, you will be bound by the judgment upon final approval of the Settlement.

Class Members who request to be excluded from the Settlement will NOT receive their Individual Settlement Payment and will not release any of the Settled Claims. However, Class Members who are also PAGA Members will receive their PAGA Payment and release the Settled PAGA Claims regardless of whether they submit an Opt-Out Request.

7. WHAT IF I WANT TO OBJECT TO THIS SETTLEMENT?

Any Settlement Class Member may object to the Settlement or to any settlement term. If the Court denies approval, no payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

If you wish to object, you must submit the written objection to the Settlement Administrator (“Objection”) to the following address or fax number listed in section 3 of this Notice above. A valid and timely Objection must (1) contain the name, address, and telephone number of the Settlement Class Member objecting and the case name and number of the *Agustino* Action (i.e., *Abraham Agustino, et al. v. Salem Christian Homes, Inc.*, Superior Court of the State of California for the County of San Bernardino, Case No. CIVSB2308778; (2) be signed by the Settlement Class Member; (3) give the legal and factual basis for their objection; and (4) be postmarked, emailed or fax stamped on or before [INSERT DATE] and returned to the Settlement Administrator at the specified address, email address or

fax number in section 3 of the Notice above. Any written objection will not be presumptively invalidated if the objections do not comply with requirements (1), (2) and (3) as long as the written objection is timely received pursuant to requirement (4).

The submission of an objection will **not** exclude you from the Settlement. If the Court grants final approval of the Settlement, you will still receive an Individual Settlement Payment and will be barred from pursuing the Settled Claims. **Do not file both an Objection and Opt-Out Request.** If you file both an Objection and an Opt-Out Request, you will be excluded from the Settlement and the Objection will not be considered.

8. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?

The Final Approval Hearing is scheduled to take place on [INSERT DATE AND TIME] in Department S-26 of the Superior Court of the State of California, San Bernardino Superior Court – Civil Justice Center, located at 247 West 3rd Street, San Bernardino, California 92415. The final approval hearing may be continued without further notice to Class Members. You are not required to attend the Final Approval Hearing in order to receive payment under the Settlement.

9. WHO ARE THE ATTORNEYS?

Attorneys for Plaintiffs and the Class are:

LAW OFFICE OF SCOTT ERNEST WHEELER

Scott Ernest Wheeler (SBN 187998)
Justin A. Wheeler (SBN 342226)
250 West First Street, Suite 216
Claremont, California 91711
Telephone: (909) 621-4988
Facsimile: (909) 621-4622

Attorneys for Defendant are:

FISHER & PHILLIPS LLP

Todd B. Scherwin (SBN 239848)
Areen Babajanian (SBN 290130)
444 South Flower Street, Suite 1500
Los Angeles, California 90071
Telephone: (213) 330-4500
Facsimile: (213) 330-4501
E-Mail: tscherwin@fisherphillips.com
ababajanian@fisherphillips.com

The Court has decided that the Attorney for Plaintiffs and the Class are qualified to represent the Settlement Class Members. Other than the Attorneys' Fees and Attorneys' Costs approved by the Court, which will be paid out of the Gross Settlement Amount, you will not be charged for their services.

10. SHOULD I GET MY OWN LAWYER?

You do not need to get your own lawyer. If you want your own lawyer to speak for you or appear in Court, you have the right to hire one, but you will have to pay for that lawyer yourself.

11. FURTHER INFORMATION.

This Notice summarizes the Action and the basic terms of the Settlement. For more complete information, the pleadings and other records in this litigation may be examined during regular court hours at the Superior Court of the State of California, San Bernardino Superior Court – Civil Justice Center, located at 247 West 3rd Street, San Bernardino, California 92415 or at the Court's website at: <https://www.SB-court.org>. Documents regarding this Settlement may also be found on the Internet at: <https://www.sb-court.org/divisions/civil-general-information/court-case-information-and-document-sales>.

12. SAN BERNARDINO COUNTY SUPERIOR COURT SOCIAL DISTANCING PROCEDURES

Please go to www.sb-Court.org for all updates regarding the Court's current social distancing procedures for attendance at hearings and review of court files.

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE
ABOUT THIS SETTLEMENT.**

EXHIBIT 2

1 **LAW OFFICE OF SCOTT ERNEST WHEELER**

2 Scott Ernest Wheeler (SBN 187998)

3 Justin A. Wheeler (SBN 342226)

4 250 West First Street, Suite 216

5 Claremont, California 91711

6 Telephone: (909) 621-4988

7 Facsimile: (909) 621-4622

8 Email: sew@scottwheelerlawoffice.com

9 *Attorneys for Plaintiffs and the Putative Class*

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SAN BERNARDINO**

12
13 ABRAHAM AGUSTINO, LISA ROSANA,
14 individually, and on behalf of all others
15 similarly situated,

16 Plaintiffs,

17 v.

18 SALEM CHRISTIAN HOMES, INC., a
19 California corporation; and DOES 1 through
20 50, inclusive,

21 Defendants.

CASE NO.: CIVSB2308778

[Hon. Jessica L. Morgan, Dept. S-26]

**[PROPOSED] PRELIMINARY
APPROVAL ORDER**

1 **[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL**

2 The Court now has before it, Plaintiffs' unopposed Motion for Preliminary Approval of
3 Class Action Settlement ("Motion"). After reviewing the Motion, the Class Action and PAGA
4 Settlement Agreement and Release ("Settlement Agreement") and exhibits attached thereto, and
5 good cause appearing therefore, the Court hereby finds and orders as follows:

6 1. The Court finds on a preliminary basis that the settlement memorialized in the
7 Settlement Agreement appears to be fair and adequate, and falls within the range of reasonableness,
8 and therefore meets the requirement for preliminary approval.

9 2. The Court conditionally certifies for settlement purposes the following class (the
10 "Class" or "Settlement Class"):

11 All non-exempt employees who worked for Defendant in California from
12 April 14, 2019 through February 29, 2024.

13 The Class Period is from April 14, 2019 through February 29, 2024.

14 3. The Court conditionally approves for settlement purposes the PAGA allocation of
15 this settlement to the California Labor and Workforce Development Agency ("LWDA") and
16 PAGA Members.

17 The PAGA Period is from February 11, 2022 through preliminary approval.

18 4. The Court finds, for settlement purposes, that the Class meets the requirements for
19 certification under California Code of Civil Procedure § 382 in that: (1) the Class is so numerous
20 that joinder is impractical; (2) there are questions of law and fact that are common, or of general
21 interest, to the Class, which predominate over any individual issues; (3) Plaintiff's claims are
22 typical of the claims of the Class; (4) Plaintiff and Plaintiff's counsel will fairly and adequately
23 protect the interests of the Class; and (5) a class action is superior to other available methods for
24 the fair and efficient adjudication of the controversy.

25 5. The Court appoints, for settlement purposes, Plaintiffs Abraham Agustino and Lisa
26 Rosana as Representatives for the Class.

27 6. The Court appoints, for settlement purposes, the Law Office of Scott Ernest Wheeler
28 as Counsel for the Class.

1 7. The Parties are ordered to carry out the Settlement according to the terms of the
2 Settlement Agreement.

3 8. The Court appoints Phoenix Settlement Administrators ("Phoenix") as the
4 Settlement Administrator and is ordered to carry out the administration of the settlement according
5 to the terms of the Settlement Agreement.

6 9. The Court approves as to form and content of the Class Action and PAGA
7 Settlement Notice. The Court finds that the dates selected for the mailing and distribution of the
8 Notice Packet meet the requirements of due process, provide the best notice practicable under the
9 circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.

10 10. If any Class Member objects to the Settlement Agreement, the objecting party is not
11 required, either personally or through counsel: 1) to appear at the hearing on the motion for final
12 approval for that party's objection to be considered; or 2) to file or serve, or to state in the objection,
13 a notice of intention to appear at the hearing on the motion for Final Approval of the Class
14 Settlement.

15 11. Phoenix, the Settlement Administrator, shall provide notice to any objecting party
16 of any continuance of the hearing of Plaintiff's Motion for Final Approval.

17 12. The Parties are ordered to carry out the Settlement according to the following
18 implementation schedule:

Event	Date
Last day for Defendant to provide the Settlement Administrator with the Class Information	April 29, 2024
Last day for Settlement Administrator, Phoenix to mail Class Notice	May 9, 2024
Last day for Class Members to submit a dispute regarding Workweeks, Request for Exclusion, or Objection	June 26, 2024
Last Day for Plaintiff to file Motion for Final Approval of the Class Settlement, Attorneys' Fees and Costs and Class Representative Service Awards	Per Code.
Final Approval Hearing	July 23, 2024

1 13. The Court finds that the method of giving notice to the Class constitutes the best
2 means practicable of providing notice under the circumstances. The Court further finds that the
3 Notice Packet and the method of giving notice to the Class meet the requirements of California
4 Code of Civil Procedure § 382, California Rules of Court, Rules 3.766 and 3.769, and due process
5 under the California and United States Constitutions, and other applicable law.

6 14. At the Final Approval Hearing, the Court will consider whether the Settlement
7 should be finally approved as fair, reasonable and adequate, whether a final judgment should be
8 entered, and whether the payments provided for under the Settlement, including attorneys' fees and
9 costs and class representative service award, should be finally approved and granted.

10 15. Pending the Final Approval Hearing, all proceedings in this Action, other than
11 proceedings necessary to implement the Settlement and this Order, are stayed.

12 **IT IS SO ORDERED.**

13
14 DATED: _____

HONORABLE JESSICA L. MORGAN
JUDGE OF THE SUPERIOR COURT