

1 **CLASS ACTION AND PAGA SETTLEMENT AGREEMENT**

2 This Class Action and Private Attorneys General Act (“PAGA”) Settlement Agreement
3 of the case entitled *Mendez v. Dave Wilson Nursery, Inc.*, Stanislaus Superior Court Case No.
4 CV-23-001238 is entered into by and between Plaintiff Reynaldo Marcial Mendez (“Plaintiff” or
5 “Class Representative”), individually, on behalf of all others similarly situated, and as the PAGA
6 representative of the State of California, and Defendant Dave Wilson Nursery, Inc., subject to the
7 terms and conditions herein and the Court’s approval.

8 **A. Definitions**

9 1. “Action” or “Lawsuit” refers to the case entitled *Mendez v. Dave Wilson Nursery,*
10 *Inc.*, Case No. CV-23-001238, filed in Stanislaus Superior Court.

11 2. “Agreement,” “Settlement Agreement,” “Settlement,” or “Stipulation” shall mean
12 this Class Action and PAGA Settlement Agreement, including any attached Exhibits.

13 3. “Class Claims” or “Released Class Claims” will include all claims that were
14 asserted or could have been asserted based on the facts alleged in Plaintiff’s Complaint, or that
15 arise from, are attributable to, or are related to the facts asserted therein, except the claim under
16 the PAGA, including, but not limited to, claims arising out of any alleged failure to pay all
17 minimum and overtime wages and at the appropriate legal rate, failure to provide meal periods
18 and premium payments in lieu thereof at the appropriate legal rate, failure to provide rest periods
19 and premium payments in lieu thereof at the appropriate legal rate, failure to provide pay sick
20 leave and/or pay paid sick leave at the appropriate legal rate, failure to reimburse business
21 expenses, failure to maintain accurate payroll and employment records, failure to provide accurate
22 itemized wage statements (based on both direct and derivative theories of liability), failure to
23 timely pay all wages due during employment and upon separation, violation of Business &
24 Professions Code § 17200 *et seq.*, and any and all related claims and penalties that arose during
25 the Class Period.

26 4. “Class Counsel” refers to Mehrdad Bokhour of Bokhour Law Group, P.C. and
27 Michelle Eshaghian of Eshaghian Law, P.C.

28 5. “Class Data” means a complete list that Defendant will diligently and in good faith

1 compile from its records and provide to the Settlement Administrator on one Confidential
2 spreadsheet and shall include the Settlement Class Members' full names, last known addresses,
3 Social Security Numbers, and dates of employment during the Class Period and PAGA Period
4 and/or number of Work Weeks Worked or Pay Periods Worked as non-exempt or hourly
5 employees of Defendant during the Class Period and the PAGA Period, respectively for each
6 Settlement Class Member.

7 6. "Class Member" refers to individual members of the Class.

8 7. "Class" and "Class Members" refer to all persons who are or were previously
9 employed by Defendant in California and classified as non-exempt employees during the Class
10 Period.

11 8. "Class Period" shall mean March 10, 2019, through March 15, 2024, or the date
12 on which the number of workweeks covered by this Agreement amounts to 18,600 plus 10%, as
13 determined in Defendant's sole and absolute discretion.

14 9. "Class Representative" or "Plaintiff" refers to Reynaldo Marcial Mendez.

15 10. "Complaint" refers to Plaintiff's operative Complaint filed in the Stanislaus
16 County Superior Court action entitled *Mendez v. Dave Wilson Nursery, Inc.*, Case No. CV-23-
17 001238.

18 11. "Court" means the California Superior Court, County of Stanislaus.

19 12. "Defendant" refers to Dave Wilson Nursery, Inc.

20 13. "Defendant's Counsel" or "Defense Counsel" refers to Stacy L. Henderson of
21 Henderson Hatfield, A Professional Corporation.

22 14. "Effective Date" or "Effective" means the date by which both of the following
23 have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the
24 Settlement, and (b) the Judgment is final. The Judgment is final as of the latest of the following
25 occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court
26 enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the
27 day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from
28 the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

1 15. “Final Approval” or “Final Approval Order” refers to the court's order granting
2 final approval of this Settlement Agreement and entering a judgment approving this Settlement.

3 16. “Final Settlement Class” means all Participating Class Members and PAGA
4 Employees.

5 17. “Gross Settlement Amount” is the maximum amount that Defendant will pay as a
6 result of this Settlement, which is Three Hundred Thousand Dollars and Zero Cents
7 (\$300,000.00), which includes the Individual Settlement Amounts, attorneys’ fees of Class
8 Counsel, costs and expenses, the Service Award to Plaintiff, all Settlement Administration Costs,
9 employee-side payroll taxes and withholdings for the wage component of the Individual
10 Settlement Amount payments to Participating Class Members, and the PAGA Award, including
11 all payments to PAGA Employees and the Labor Workforce Development Agency (LWDA), and
12 the employer-side payroll taxes and withholdings for the wage component of the Individual
13 Settlement Amount payments to Participating Class Members.

14 18. “Individual Settlement Amount” or “Individual Settlement Payment” means the
15 amount payable from the Net Settlement Amount (defined below) that the Settlement
16 Administrator will pay to each Participating Class Member and/or PAGA Employee, as calculated
17 pursuant to Paragraph 53(d) below.

18 19. “Net Settlement Amount” or “Net Distribution Fund” is the Gross Settlement
19 Amount minus the amounts allotted to (1) Class Counsel’s fees (up to \$100,000.00), (2) Class
20 Counsel’s litigation costs (up to \$30,000.00); (3) the Service Award for Plaintiff (up to
21 \$10,000.00), (4) the 75% of the PAGA Award to be paid to the LWDA (\$3,750.00); (5) the 25%
22 of the PAGA Award to be paid to PAGA Employees (\$1,250.00); (6) Settlement Administration
23 Costs (up to \$5,000.00); (7) employee-side payroll taxes and withholdings for the wage
24 component of the Individual Settlement Amount payments to Participating Class Members; and
25 (8) employer-side payroll taxes and withholdings for the wage component of the Individual
26 Settlement Amount payments to Participating Class Members.

27 20. “Notice” means the Notice of Class Action and PAGA Settlement that will be sent
28 to the Class Members consistent with the terms of this Settlement and substantially the same as

the Proposed Notice attached to this Settlement as Exhibit “A” (or as may be modified by subsequent agreement of the Parties or order of the Court).

21. “Notice Response Deadline” is sixty (60) calendar days from when the Notice is mailed to the Class Members.

22. “Objecting Class Member” means a Class Member, other than Plaintiff, who submits a valid and timely objection to the terms of this Agreement with respect to the Class Claims pursuant to Paragraph 74(c) below.

23. “PAGA” shall refer to the Private Attorneys General Act, Labor Code § 2698 *et seq.*

24. “PAGA Award” is the \$5,000.00 of the Gross Settlement Amount that is allocated to PAGA penalties in this Settlement, 75% of which (\$3,750.00) will be remitted to the LWDA and 25% of which (\$1,250.00) will go into a PAGA Distribution Fund and be distributed on a prorated basis to all PAGA Employees based on their number of pay periods worked during the PAGA Period as specified below

25. “PAGA Claims” or “Released PAGA Claims” shall include any and all claims for civil penalties pursuant to PAGA that were alleged or that could have been alleged based on the facts and underlying Labor Code violations alleged in Plaintiff’s March 9, 2023 Labor and Workforce Development (“LWDA”) notice letter, including, but not limited to, for underlying claims based on alleged failure to pay all minimum and/or overtime wages and at the appropriate legal rate, failure to provide meal periods or premium payments in lieu thereof at the appropriate legal rate, failure to provide rest periods or premium payments in lieu thereof at the appropriate legal rate, failure to pay sick pay at the appropriate legal rate, failure to provide accurate itemized wage statements (based on both direct and derivative theories of liability), failure to maintain accurate payroll and employment records, failure to timely pay all wages due during employment and at separation, failure to reimburse incurred business expenses, and violation of Business & Professions Code §17200 *et seq.* and any and all related claims and penalties. Plaintiff and the State of California (acting through Plaintiff as its authorized PAGA representative) release the Released Parties from the PAGA claims.

1 26. “PAGA Distribution Fund” is the 25% of the PAGA Award (i.e., \$1,250) allocated
2 for distribution on a prorated basis to all PAGA Employees based on their number of pay periods
3 worked during the PAGA Period as specified below.

4 27. “PAGA Employees” include all persons who are or were previously employed by
5 Defendant in California and classified as non-exempt or hourly employees at any time during the
6 PAGA Period.

7 28. “PAGA Notice” or “LWDA notice letter” shall refer to the notice sent by Plaintiff,
8 by and through counsel, on or about March 9, 2023, to the LWDA and Defendant, alleging that
9 Defendant engaged in violations of the California Labor Code and California Wage Order(s) as
10 well as any subsequent notices sent to the LWDA and Defendant by Plaintiff, by and through
11 counsel.

12 29. “PAGA Period” shall mean March 9, 2022, through March 15, 2024 or the date
13 on which the number of workweeks covered by this Agreement amounts to 18,600 plus 10%, as
14 determined in Defendant’s sole and absolute discretion.

15 30. “Participating Class Member” means all Class Members who are deemed to
16 participate and receive an Individual Settlement Amount for the Class Claims and who do not opt
17 out of the settlement of the Class Claims by submitting timely and valid Requests for Exclusion.

18 31. “Parties” or “Settling Parties” mean Plaintiff, Participating Class Members, PAGA
19 Employees, and Defendant.

20 32. “Pay Periods Worked” for each PAGA Employee means the number of pay
21 periods during the PAGA Period in which the PAGA Employee was employed by Defendant as
22 a non-exempt employee in California and worked at least one shift during the pay period for
23 Defendant. Pay Periods Worked will be calculated based on Defendant’s business records.

24 33. “Work Weeks Worked” for each Class Member means the number of work weeks
25 during the Class Period in which the Class Member was employed by Defendant as a non-exempt
26 employee in California and worked at least one shift during the week for Defendant. Work Weeks
27 Worked will be calculated based on Defendant’s business records.

28 34. “Preliminary Approval Date” means the date the Court preliminarily approves the

Settlement Agreement and the exhibits thereto and enters the Preliminary Approval Order.

35. “Preliminary Approval Order” means the judicial Order to be entered by the Court, upon the application or motion of Plaintiff, preliminarily approving this Settlement and providing for the issuance of the Notice of Class Action and PAGA Settlement, an opportunity to opt out of settlement of the Class Claims, an opportunity to submit timely objections to the terms of this Settlement related to the Class Claims, and setting a final approval hearing to address the fairness of the terms of Settlement, including approval of Class Counsel’s fees and costs.

36. “QSF” means the Qualified Settlement Fund set up by the Settlement Administrator to benefit the Final Settlement Class and from which the settlement payments shall be made.

37. “Release,” “Released Class Claims,” and “Released PAGA Claims” shall all mean the release and discharge of the Class Claims by Plaintiff and all of the Participating Class Members and the release and discharge of the PAGA Claims by Plaintiff and all of the PAGA Employees.

38. “Released Parties” shall refer to Defendant Dave Wilson Nursery, Inc., together with its current, former and future subsidiaries, dbas, parents, divisions, related entities, joint venturers, as well as each of their respective owners, co-employers, joint employers, agents officers, directors, stockholders, shareholders, investors, members, principles, subsidiaries, affiliates, partners, predecessors, successors, assigns, insurers, reinsurers, employees, attorneys, agents, heirs, estates, executors, spouses, associates, representatives, administrators, fiduciaries, trustees, accountants, auditors, company-sponsored employee benefit plans of any nature, and all other legal entities affiliated with the foregoing, expressly including, but not limited to, Erica Woolley.

39. “Response Deadline” shall refer to the date by which Settlement Class Members must opt out of or object to the settlement.

40. “Request for Exclusion” means a timely written request by a Class Member to exclude herself/himself from the Settlement, which must be completed and mailed in the manner set forth in this Settlement Agreement and the Notice of Settlement as further detailed in

Paragraph 74(a) below.

41. “Service Payment” or “Service Award” means the amount approved by the Court to be paid to the Class Representative (*i.e.*, Plaintiff) in addition to his Individual Settlement Amount as a Participating Class Member in an amount up to \$10,000. The Service Payment is subject to approval from the Court and will be paid from the Gross Settlement Amount. Any Service Award not awarded by the Court will be added to the Net Distribution Fund and distributed to Class Members who do not opt out of this Settlement.

42. “Settlement Administration Costs” means the costs payable from the Gross Settlement Amount to the Settlement Administrator for administering this Settlement, including, but not limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, due diligence, reporting and remittance obligations, distributing the Settlement Amount, and providing necessary reports and declarations, as requested by the Parties. The Settlement Administration Costs shall be paid from the Gross Settlement Amount.

43. “Settlement Administrator” means and refers to ILYM Group, Inc., which will provide the Notice to the Class Members and distribute the settlement amounts as described in this Agreement.

B. General Terms

44. On or about March 10, 2023, Plaintiff filed a class action complaint in this Court against Defendant, including allegations of: (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) meal period violations, (d) rest period violations, (e) failure to maintain accurate records, (f) failure to pay wages timely during employment, (g) waiting time penalties, (h) failure to reimburse necessary business expenses, (i) wage statement violations (j) unfair competition, and (k) PAGA penalties. Before filing his lawsuit, Plaintiff submitted a notice letter to the LWDA on March 9, 2023.

45. Defendant denies all of Plaintiff’s claims and allegations and contends that the Action is not suitable for class certification and/or representative treatment outside of the context of this Settlement.

46. The Class Representative believes he can proceed with his class, and the Class

Representative claims that the Action is meritorious and that class certification is appropriate.

47. The Parties have thoroughly investigated the facts of the Action. This includes conducting an extensive exchange of informal discovery, including the relevant written policies at issue, the production of a 25% random sample of payroll and timekeeping records for Class Members and PAGA Employees, a complete class list, and relevant data, including the average hourly pay rate and pay period information for Class Members and PAGA Employees. Defendant's productions included a hundred pages of documents and data.

48. Based on the foregoing data and their own independent investigation and evaluation, Class Counsel is of the opinion that the settlement with Defendant for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the Class Members and PAGA Employees in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation, various defenses asserted by Defendant, and numerous potential appellate issues.

49. Defendant agrees that the Settlement represents a good faith compromise of the claims, which is fair, adequate, and reasonable.

50. On November 14, 2023, the Parties participated in mediation before Steve Serratore, Esq., a highly experienced class action mediator. The Parties reached a settlement after a full-day mediation, subsequent negotiations, and issuance of a mediator's proposal.

51. No Admission of Liability. The Parties enter into this Agreement to resolve the dispute between them and avoid the burden, expense, and risk of continued litigation. In entering into this Agreement, Defendant does not admit, and specifically denies, that it has violated any federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or any other applicable laws, regulations, or legal requirements; breached any contract; violated or breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to its employees or any other person or entity. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, or proceedings, payouts or other events associated with it, shall be construed as an admission or concession by Defendant of any such violation(s) or failure(s) to comply with any applicable law

by Defendant or any Released Parties. Except as necessary in a proceeding to approve, interpret, or enforce the terms of this Agreement, this Agreement and its terms and provisions shall not be offered or received as evidence in any action or proceeding to establish any liability or admission on the part of the Released Parties or to establish the existence of any condition constituting a violation of, or noncompliance with, federal, state, local, or other applicable law.

52. Stipulation for Class Certification and Representative Treatment for Settlement Purposes. For settlement purposes only, Defendant will stipulate that the Class Members described herein who do not submit a Request for Exclusion from the Class may be conditionally certified as a settlement class and that the PAGA Employees are appropriate for representative treatment for purposes of settlement. This stipulation to certification and representative treatment for settlement purposes is in no way an admission that class action certification and/or representative treatment is proper in a non-settlement context and shall not be admissible in this or in any other action except for the sole purpose of enforcing this Agreement. Should, for whatever reason, the Court not grant Final Approval consistent with the terms of this Settlement or if the Settlement does not become Effective, the Parties' stipulation to class certification and representative treatment as part of the Settlement shall become null and void *ab initio* and shall have no bearing on and shall not be admissible in connection with the issue of whether or not class certification and/or representative treatment would be appropriate in a non-settlement context. Defendant expressly reserves its right to and declare that it will continue to oppose class certification, representative treatment, and the substantive merits of the case should the Court not grant Final Approval. Plaintiff expressly reserves his rights and declares that she will continue to pursue class certification and representative treatment and a trial should the Court not grant Final Approval.

C. Terms of Settlement

53. The financial terms of the Settlement are as follows:

(a) Gross Settlement Amount: The Parties agree to settle this Action for the total maximum amount of Three Hundred Thousand Dollars and Zero Cents (\$300,000.00) ("the Settlement Amount" or "Gross Settlement Amount"). The Gross Settlement Amount is the

1 maximum amount that Defendant will pay for any reason in connection with this Settlement. The
2 Gross Settlement Amount will be used to pay (1) Individual Settlement Payments to Participating
3 Class Members; (2) the PAGA Award, with 75% of the PAGA Award going to the LWDA and
4 25% being distributed on a prorated basis based on pay periods worked to PAGA Employees as
5 further described below; (3) Plaintiff's Counsel's attorneys' fees; (4) Plaintiff's Counsel's costs;
6 (5) Settlement Administration Costs; (6) the Service Award to Plaintiff (as specified in the Service
7 Award paragraphs below); (7) employee-side payroll taxes and withholdings for the wage
8 component of Individual Settlement Payments to Class Members; and (8) employer-side payroll
9 taxes and withholdings for the wage component of the Individual Settlement Amount payments
10 to Participating Class Members.

11 (b) The Settlement is based on the Defendant's representation that there are
12 approximately 146 individuals who worked approximately 18,600 pay periods during the PAGA
13 Period. If the actual number of pay periods worked by all Class Members during the Class Period
14 increases by 10% or more (i.e., 1,860 or more), then Defendant will have the option to either a)
15 increase the Gross Settlement Amount in the amount of \$16.13 per workweek above 20,460, or
16 b) shorten the release period covered by the Class Period and PAGA Period so that there is no
17 increase in the Gross Settlement Amount.

18 (c) Net Settlement Amount: The "Net Settlement Amount" or "Net Distribution
19 Fund" is the Gross Settlement Amount minus the amounts allotted to (1) Class Counsel's fees (up
20 to \$100,000.00), (2) Class Counsel's litigation costs (up to \$30,000.00); (3) the Service Award
21 for Plaintiff (up to \$10,000.00), (4) the 75% of the PAGA Award to be paid to the LWDA
22 (\$3,750.00); (5) the 25% of the PAGA Award to be paid to PAGA Employees (\$1,250.00), (6)
23 Settlement Administration Costs (up to \$5,000.00); (7) employee-side payroll taxes and
24 withholdings for the wage component of Individual Settlement Payments to Class Members; and
25 (8) employer-side payroll taxes and withholdings for the wage component of the Individual
26 Settlement Amount payments to Participating Class Members. If the Court reduces the attorneys'
27 fees and litigation costs or Service Award or either increases or decreases the amount allocated
28 to the PAGA Award or Settlement Administration Costs, the Net Settlement Amount shall be

increased or decreased accordingly. If the Court approves amounts for attorneys' fees and costs, the Service Award, the PAGA Award, or Settlement Administration Costs that are different than the amounts requested, the maximum Gross Settlement Amount that Defendant must pay in accordance with the terms of this Settlement will remain the same as this is a non-reversionary settlement.

(d) Individual Settlement Amounts for the Settlement Class and PAGA Employees:

The Settlement Administrator will use the Class Data provided by Defendant to calculate each Participating Class Member's and PAGA Employee's Individual Settlement Amounts. Individual Settlement Payments will be distributed to Participating Class Members and/or PAGA Employees based on the following formulas:

(1). Payments to Participating Class Members: The Settlement Administrator will calculate the total number of workweeks that all Class Members who do not opt-out (*i.e.*, "Participating Class Members") worked during the Class Period ("Total Class Pay Periods"). The Settlement Administrator shall determine the value of each Work Week Worked by dividing the Net Distribution Fund by the total number of Work Week Worked by Participating Class Members during the Class Period ("Class Work Week Value"). To determine each Participating Class Member's settlement payment, the Settlement Administrator will multiply the individual's Total Class Pay Periods Worked by the Class Pay Period Value (if the Class Member is a Participating Class Member). These payments will be subject to any legally required employee-side and employer-side payroll taxes and withholdings or deductions calculated by the Settlement Administrator, which are part of the Gross Settlement Amount.

(2). PAGA Employee Calculations: For PAGA Employees, the Settlement Administrator will calculate the total number of pay periods that each PAGA Employee worked during the PAGA Period ("Total PAGA Pay Periods"). The Settlement Administrator shall determine the value of each PAGA Pay Period by

dividing the 25% of the PAGA Award allocated for PAGA Employees (*i.e.*, \$1,250.00) by the Total PAGA Pay Periods for all PAGA Employees (“PAGA Pay Period Value”). To determine each PAGA Employee’s payment for their prorated portion of the PAGA Distribution Fund (*i.e.*, \$1,250.00), the Settlement Administrator will multiply the PAGA Employee’s Total PAGA Pay Periods by the PAGA Pay Period Value. A Class Member who is also a PAGA Employee will receive a payment under this section for their prorated portion of the PAGA Award even if they opt out of the Class settlement and will be bound by the release of the PAGA Released Claims obtained through this Settlement.

(e) Allocation of Individual Settlement Amounts: The Individual Settlement Amounts to Participating Class Members will be allocated for tax purposes based on the allegations in the Action as follows: ten percent (10%) will be allocated to allegedly unpaid wages subject to withholding of all applicable local, state, and federal taxes; and ninety (90%) will be allocated to interest and alleged civil penalties (pursuant to, e.g., Labor Code §§ 203, 226) from which no taxes will be withheld. All required withholdings shall be paid entirely from the Gross Settlement Amount. The Settlement Administrator will issue each Participating Class Member an Internal Revenue Service Form W-2 and comparable state forms concerning the wage allocation and a Form 1099 concerning the civil penalties and interest allocations.

(f) Service Payment to Class Representative: The amount awarded to the Class Representative as a Service Payment will be set by the Court at its discretion and will not exceed \$10,000.00. Defendant agrees not to oppose this request. The Service Payment to the Class Representative will be paid entirely from the Gross Settlement Amount. Class Representative will be issued IRS Form 1099 in connection with this payment. Plaintiff shall be solely and legally responsible for paying any and all applicable taxes on this payment. The Parties agree that any amount awarded by the Court as the Service Payment to Plaintiff less than the requested amount shall not be a basis for Plaintiff or Class Counsel to void this Stipulation. Should the Court approve a lesser amount for the Service Payment, the difference shall be added to the Net Settlement Amount to be distributed to the Participating Class Members. In the event of any

1 appeal of the amount of the service award (if any) approved by the Court, if, after the exhaustion
2 of any such appellate review, additional amounts not awarded to the Class Representative shall
3 be added to the Net Settlement Amount to be distributed to the Participating Class Members.

4 (g) Attorneys' Fees and Costs: Defendant agrees not to oppose a request by Class
5 Counsel to the Court for an award of attorneys' fees of one-third (33.33%) of the Gross Settlement
6 Amount (*i.e.*, up to \$100,000.00), plus reasonable litigation costs not to exceed \$30,000.00
7 ("Attorneys' Fees and Cost Award"). The Attorneys' Fees and Cost Award shall be paid entirely
8 from the Gross Settlement Amount. Should the Court approve a lesser amount than what is sought
9 by Class Counsel, the difference shall be added to the Net Settlement Amount to be distributed to
10 the Participating Class Members. Any Court order awarding less than the amount sought by Class
11 Counsel shall not be grounds to rescind the Settlement Agreement or otherwise void the
12 Settlement. The Settlement Administrator shall issue to Class Counsel an IRS Form 1099
13 reflecting the amount of attorneys' fees and costs awarded by the Court. Class Counsel agrees
14 that any allocation of fees between or among Class Counsel and any other attorney representing
15 or claiming to represent the Class Members shall be the sole responsibility of Class Counsel.

16 (h) Settlement Administration Costs: The fees and other charges of the Settlement
17 Administrator will be paid entirely from the Gross Settlement Amount, not to exceed \$5,000.00,
18 subject to Court approval, unless approved by all Parties and the Court. Any Settlement
19 Administration Costs not incurred by the Settlement Administrator or awarded by the Court will
20 be added to the Net Distribution Fund and distributed to Participating Class Members.

21 (i) PAGA Penalties: The Parties agree that \$5,000.00 is allocated to alleged PAGA
22 Penalties and will be paid entirely from the Gross Settlement Amount, subject to Court approval.
23 Of this amount, \$3,750.00 (75%) shall be paid to the LWDA in satisfaction of Plaintiff's claims
24 for civil penalties under the PAGA, and \$1,250.00 (25%) will be included in the Individual
25 Settlement Amounts, payable to the PAGA Employees as outlined in Paragraph 53(d)(2).

26 (j) Tax Liability: Class Counsel, Defendant, and Defendant's Counsel make no
27 representations as to the tax treatment or legal effect of Individual Settlement Amounts called for
28 hereunder, and Plaintiff and the Class Members and PAGA Employees are not relying on any

statement or representation by Class Counsel, Defendant, or Defendant's Counsel in this regard. Plaintiff and Participating Class Members will be solely responsible for paying any taxes and penalties assessed on their respective Individual Settlement Amounts described herein. Income tax withholding will also be made pursuant to applicable federal, state, and/or local withholding codes or regulations as determined by the Settlement Administrator. Forms W-2 and/or Forms 1099 will be distributed at times and in the manner required by the Internal Revenue Code of 1986 (the "Code") and consistent with this Agreement. If the Code, the regulations promulgated thereunder, or other applicable tax law are changed after the date of this Agreement, the processes outlined in this Section may be modified to bring Defendant into compliance with any such changes.

54. "Non-Reversionary" Settlement. This is a "non-reversionary" settlement. No portion of the Gross Settlement Amount will revert to Defendant once the Settlement is funded, provided that Final Approval is granted and the Settlement becomes final and effective in accordance with the terms of this Settlement. Participating Class Members will not have to make a claim to receive an Individual Settlement Amount. Distributions, in the form of Individual Settlement Amounts, will be made directly to each Participating Class Member. The Settlement Administrator shall be responsible for accurately and timely reporting any remittance obligations with respect to unclaimed funds as a result of Plaintiff, Participating Class Members, or PAGA Employees not cashing an Individual Settlement Amount by the check cashing deadline, as set forth herein.

55. Class Counsel and Plaintiff believe that the Settlement is fair, reasonable, and adequate and will represent the same to the Court.

D. Release by Participating Class Members and PAGA Employees

56. Upon the Effective Date of this Settlement and the entry of judgment and full funding of the Settlement, Plaintiff and each Participating Class Member, for themselves and for their respective spouses, domestic partners, marital community, children, estates, trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, assigns, and representatives, will forever completely release and

1 discharge the Released Parties from the Released Class Claims during the Class Period. Each
2 Participating Class Member will be deemed to have made the foregoing Release as if by manually
3 signing it.

4 57. Upon the Effective Date of this Settlement, Plaintiff, the LWDA and State of
5 California (acting through Plaintiff as its deputized representative), for themselves and for their
6 respective spouses, domestic partners, marital community, children, estates, trusts, attorneys,
7 heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees,
8 conservators, guardians, assigns, and representatives, will forever completely release and
9 discharge the Released Parties from the Released PAGA Claims during the PAGA Period.

10 58. The LWDA will be deemed to have made the foregoing Release as if by manually
11 signing it.

12 59. Plaintiff and Defendant intend that the Settlement described in this Agreement will
13 release and preclude any further claim, whether by lawsuit, administrative claim or action,
14 arbitration, demand, or other action of any kind, by each and all of the Participating Class
15 Members to obtain any recovery based on, arising out of, and/or related to any and all of the
16 Released Class Claims. The Class Members shall be notified in the Notice. This Paragraph is a
17 statement of the Parties' intent in agreeing to this Settlement that it will be given *res judicata*
18 effect with respect to the Released Class Claims.

19 60. Plaintiff and Defendant intend that the Settlement described in this Agreement will
20 release and preclude any further claim, whether by lawsuit, administrative claim or action,
21 arbitration, demand, or other action of any kind, by each and all of the PAGA Employees and the
22 LWDA to obtain any recovery based on, arising out of, and/or related to any and all of the
23 Released PAGA Claims. The PAGA Employees and the LWDA shall be notified in the Notice
24 and via submitting a copy of this Settlement, which Class Counsel will provide to the LWDA
25 concurrently with the filing of Plaintiff's motion requesting preliminary approval of this
26 Settlement, respectively. This Paragraph is a statement of the Parties' intent in agreeing to this
27 Settlement that it will be given *res judicata* effect with respect to the Released PAGA Claims.

28 61. The Class Representative, on behalf of himself and the Participating Class

Members, acknowledges and agrees that the claims for unpaid wages and all other amounts sought through this Action are disputed and that the payments set forth herein constitute payment of all sums allegedly due to them. The Class Representative, on behalf of himself and the Participating Class Members, acknowledges and agrees that Labor Code § 206.5 does not apply to the Parties hereto. Section 206.5 provides in pertinent part as follows: “An employer shall not require the execution of any release of any claim or right on account of wages due, or to become due, or made as an advance on wages to be earned unless payment of those wages has been made.”

E. General Release by Plaintiff

62. Plaintiff does hereby, for himself and for his spouse, domestic partner, marital community, children, estates, trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, assigns, agents and representatives, forever completely release and discharge the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, contracts, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, sums of money and expenses (including, but not limited to, for alleged back and future wages, statutory penalties, civil penalties, liquidated damages, exemplary damages, interest, attorneys’ fees and costs) of every and any nature, kind and character whatsoever, from the beginning of time through the execution of this Settlement and in the future as described in paragraph 64, whether known or unknown, suspected or unsuspected, concealed or hidden, including but not limited to all claims arising out of, based upon, or relating to Plaintiff’s employment with Defendant or the remuneration for or separation from such employment (collectively, the “Class Representative’s Claims”).

63. Without limiting the generality of the foregoing, the term Class Representative’s Claims includes, and Plaintiff expressly releases, all past, present and future claims or rights against Released Parties for any and all charges, complaints, claims, causes of action, debts, sums of money, controversies, agreements, promises, damages, obligations, contracts, actions, suits, rights, demands, costs, losses, debts, expenses and liabilities of any kind or nature whatsoever, both at law and equity, known or unknown, suspected or unsuspected, arising from or related to

1 Plaintiff's employment with and separation from employment with Defendant, and all conduct,
2 statements, action or inaction, including without limitation all actions, claims and grievances,
3 whether actual or potential, known or unknown, related, incidental to or arising out of any act or
4 omission committed or omitted by Defendant or the Released Parties including, but not limited
5 to, a release of all claims under (a) the California Civil Code, (b) the California Fair Employment
6 and Housing Act, (c) Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e
7 et. seq., (d) the Age Discrimination in Employment Act of 1967, as amended by the Older
8 Workers' Benefit Protection Act of 1990, 29 U.S.C. §§ 621, *et seq.*, (e) the Civil Rights Act of
9 1991, (f) the Civil Rights Act of 1866 and 1870, (g) 42 U.S.C. §§ 1981 through 1988, as amended,
10 (h) Executive Order 11246, (i) the Americans with Disabilities Act 42 U.S.C. § 12101, et. seq.,
11 as amended, (j) the Family and Medical Leave Act, as amended, (k) the Equal Pay Act of 1963,
12 as amended, (l) the Immigration and Reform Control Act, as amended, (m) any other state,
13 federal, and local law, regulation and ordinance dealing with, prohibiting or otherwise relating to
14 discrimination, harassment or abusive conduct on the basis of race (including traits historically
15 associated with race such as hair texture and hairstyle), color, religion (all aspects of religious
16 beliefs, observance or practice including religious dress or grooming practices), sex, sexual
17 orientation, gender (including gender identity, gender expression and transgender status), marital
18 status, registered domestic partner status, pregnancy (including childbirth, breastfeeding or
19 related medical condition), reproductive health decision-making, alienage, national origin
20 (including language use restrictions and possession of a driver's license issued under Vehicle
21 Code §12801.9), ancestry, physical or mental disability, medical condition (including cancer and
22 genetic characteristics), age, off-duty use of cannabis, citizenship or immigration status, military
23 or veteran status, genetic information, political affiliation, position in a labor dispute, request for
24 or use of protected leave, domestic violence victim status, or any other basis protected by
25 applicable Federal, State or local law, or retaliation for opposing any such discrimination,
26 harassment or abusive conduct, (n) the Occupational Safety and Health Act, as amended, (o) the
27 Sarbanes-Oxley Act of 2002, as amended, (p) the Employment Retirement Income Security Act
28 of 1974, as amended (except vested benefits), (q) the Worker Adjustment and Benefit Protection

1 Act of 1990, as amended, (r) the California and Federal Worker Adjustment and Retraining
2 Notification Act, as amended, (s) any federal, state or common law claim or cause of action for
3 breach of contract (whether oral or written, express or implied); breach of the implied covenant
4 of good faith and fair dealing; causes of action for wrongful termination, constructive discharge,
5 retaliation, defamation, slander, libel, intentional or negligent infliction of emotional distress,
6 fraudulent misrepresentation, negligent misrepresentation, fraud, promissory estoppel, any claim
7 under contract, tort or negligence laws, or obligations arising out of any of Defendant's
8 employment policies or practices, employee handbooks, and/or any statements by any employee
9 or agent of Defendant whether oral or written, (t) the California Labor Code, (u) any applicable
10 California Industrial Welfare Commission Wage Orders, (v) the Government Code §12940 *et*
11 *seq.*, (w) the Federal or any State Constitution, (x) the Fair Labor Standards Act, (y) the
12 Consolidated Omnibus Budget Reconciliation Act of 1985, (z) California Family Rights Act
13 (Gov. Code §12945.2 *et seq.*), (aa) the California Private Attorney General Act ("PAGA"), (bb)
14 the California Unruh Civil Rights Act (Civ. Code §51, *et seq.*), (cc) the California Whistleblower
15 Protection Act (Lab. Code §1102.5), (dd) the California Occupational Safety and Health Act
16 (Labor Code §6300, *et seq.*), (ee) California Business and Professions Code §§17200 *et seq.*, (ff)
17 any claim under Labor Code §§132a, (gg) any claim for serious and/or willful misconduct, (hh)
18 invasion of privacy, (ii) false imprisonment, (jj) interference with business advantage,
19 interference with prospective economic advantage and/or interference with contractual
20 relationship, (kk) failure to provide suitable seating, and (ll) any other federal, state or common
21 law claim or cause of action, including, but not limited to, any claim related to civil rights, wage-
22 hour, pension or labor laws rules or regulations, public policy, for reinstatement, back pay, bonus,
23 attorneys' fees or costs, compensatory damages, consequential damages, front pay, any form of
24 equitable or declaratory relief, liquidated damages, emotional distress, personal injury, punitive
25 damages, pain and suffering, medical expenses, damage to reputation and damage for personal,
26 emotional or economic injury or damage of any kind. This provision is intended by the Parties to
27 be all-encompassing and to act as a full and total release of any claims, whether specifically
28 enumerated herein or not, that Plaintiff might have or have had, that exists or ever has existed, on

1 or before the Effective Date.

2 64. Plaintiff further agrees as follows:

3 a. Plaintiff expressly waives and relinquishes all rights and benefits afforded by §
4 1542 of the Civil Code of the State of California and does so, understanding and acknowledging
5 the significance of the waiver of § 1542. Section 1542 of the Civil Code of the State of California
6 states:

7 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
8 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
9 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
10 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
11 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
12 DEBTOR OR RELEASED PARTY.

12 Notwithstanding the provisions of § 1542, and for the purpose of implementing a full and
13 complete release and discharge of all parties, Plaintiff and Class Counsel expressly acknowledge
14 that this Settlement Agreement is intended to include in its effect, without limitation, all claims
15 that Plaintiff knew of, as well as all claims that he did not know or suspect to exist in her favor
16 against the Released Parties, or any of them, for the time period from the beginning of time to the
17 execution of this Settlement Agreement, and that this Settlement Agreement contemplates the
18 extinguishment of any such Plaintiff's claims to the maximum extent permitted by law.

19 b. Plaintiff represents and warrants that he is not aware of any liens and/or
20 third-party Claims of any type related in any way to this Action, Plaintiff's employment with
21 Defendant, Plaintiff's separation from employment with Defendant, Class Representative's
22 Claims, or any of the Released Class Claims or Released PAGA Claims. Plaintiff shall be solely
23 responsible for any such liens that exist and shall defend, indemnify and hold Released Parties
24 harmless for any liability and costs, including any attorneys' fees and expert witness fees, related
25 to any such liens that exist.

26 **F. Interim Stay of Proceedings**

27 65. Pending completion of all prerequisites necessary to effectuate this Settlement,
28 including amending the Complaint, the Parties agree, subject to Court approval, to stay all

proceedings in the Action except those necessary to effectuate the Settlement.

G. Notice Process

66. Appointment of Settlement Administrator. The Parties have agreed to the appointment of the Settlement Administrator to perform the duties of a settlement administrator, including mailing the Notice, using standard methods to obtain forwarding addresses, addressing questions from Class Members and PAGA Employees, independently reviewing and verifying documentation associated with any objections or opt-out requests, as needed, resolving any disputes regarding the calculation or application of the formula for determining the Individual Settlement Amounts, drafting and mailing the settlement checks to Participating Class Members and PAGA Employees, issuing Forms W-2 and 1099, handling all required tax payment reporting and filings related to the Settlement, disbursing payments in accordance with the Settlement and the Court's orders, and performing such other tasks as set forth herein or as the Parties mutually agree or that the Court orders.

67. Disputes Regarding Settlement Administration. Any and all disputes relating to the administration of the Settlement by the Settlement Administrator (except for disputes regarding Class Data) shall be referred to the Court, if necessary. The Court will have continuing jurisdiction over the terms and conditions of this Settlement Agreement until Plaintiff and Defendant notify the Court that all payments and obligations contemplated by this Settlement Agreement have been fully carried out. Before presenting any issue to the Court, counsel for the Parties will confer in good faith to resolve the dispute without Court intervention. The Settlement Administrator shall also be responsible for issuing to Plaintiff, Participating Class Members, PAGA Employees, and Class Counsel any Forms W-2, Forms 1099, or other tax forms as may be required by law for all amounts paid pursuant to this Agreement. The Settlement Administrator shall also be responsible for setting up all necessary tax accounts and forwarding all payroll taxes and penalties to the appropriate government authorities on behalf of the Class and Defendant.

68. Class Data. Within fourteen (14) days after the Preliminary Approval Order entry, Defendant shall provide the Class Data to the Settlement Administrator. The Settlement Administrator will check the Class Members' addresses against those on file with the U.S. Postal

1 Service's National Change of Address List. The Class Data provided to the Settlement
2 Administrator must be safeguarded and will not be provided to Class Counsel unless specific
3 disclosure is required to effectuate Class Counsel's duties as specified in this Agreement and
4 pursuant to the express written permission of Defendant's counsel or order of the Court. The
5 Class Data will remain confidential, it shall be used solely to administer the Settlement, and it
6 will not be used or disclosed to anyone, except as required by applicable tax authorities, pursuant
7 to Defendant's express written consent, or by order of the Court.

8 69. Notice. As approved by the Court, the Settlement Administrator shall send the
9 Notice to the Class Members by first-class mail, in English, within ten (10) calendar days
10 following the Settlement Administrator's receipt of the Class Data. If any envelopes with the
11 Notice are returned, the Settlement Administrator shall use standard methods, including a skip
12 trace, to obtain forwarding addresses of Class Members.

13 70. Returned Notices. The Settlement Administrator will take steps to ensure that the
14 Notice is received by all Class Members, including utilization of the National Change of Address
15 Database maintained by the United States Postal Service to review the accuracy of and, if
16 possible, update a mailing address. Notices will be re-mailed to any Class Member for whom an
17 updated address is located within ten (10) calendar days following both the Settlement
18 Administrator's learning of the failed mailing and its receipt of the updated address. The Notice
19 shall be identical to the original Notice, except it shall notify the Class Member that the exclusion
20 (opt-out) request or objection must be returned later than the Response Deadline or fifteen (15)
21 days after remailing the Notice, whichever is later.

22 71. Presumption Regarding Receipt of Notice. It will be conclusively presumed that
23 the Class Member receives the Notice if an envelope is not returned within thirty (30) days of the
24 mailing.

25 72. Disputes Regarding Class Data. Class Members are deemed to participate in the
26 Settlement unless they opt-out. The Notice will inform Class Members of their estimated
27 Individual Settlement Amount and the number of Workweeks Worked during the Class Period
28 and Pay Periods during the PAGA Period. Class Members may dispute their Pay Periods Worked

1 if they believe they were employed more Workweeks in the Class Period or Pay Periods during
2 the PAGA Period in California than Defendant's records show by timely submitting evidence to
3 the Settlement Administrator. Defendant's records will be presumed determinative absent reliable
4 evidence to rebut Defendant's records, but the Settlement Administrator will evaluate the
5 evidence submitted by the Class Member and provide the evidence submitted to Class Counsel
6 and Defendant's Counsel, who agree to meet and confer in good faith about the evidence to
7 determine the Class Member's actual number of Workweeks and Pay Periods Worked and
8 estimated Individual Settlement Amount. If Class Counsel and Defendant's Counsel cannot agree,
9 they will defer to the Settlement Administrator to render a final decision. Class Members will
10 have until the Notice Response Deadline to dispute Pay Periods Worked, object, or optout, unless
11 the Court extends. The Response Deadline shall be sixty (60) days after the original mailing date
12 of the Notice by the Settlement Administrator. If the Settlement Administrator increases the
13 number of Work Weeks and/or Pay Periods Worked for any Class Member, then the Settlement
14 Administrator will recalculate the Participating Class Members' Individual Settlement Amounts;
15 accordingly, in no event will Defendant be required to increase the Gross Settlement Amount.

16 73. Declaration of Due Diligence. The Settlement Administrator shall provide counsel
17 for the Parties, at least twenty-five (25) days prior to the final approval hearing, a declaration of
18 due diligence and proof of mailing with regard to the mailing of the Notice.

19 74. Class Members' Rights. Each Class Member will be fully advised of the
20 Settlement, the ability to object to the provisions in the Settlement related to the Class Claims,
21 and the ability to opt-out or request exclusion from the Class Claims provisions of the Settlement.
22 The Notice will inform the Class Members of the Court-established deadlines for submitting
23 objections or requesting exclusion from the Class Claims provisions of the Settlement in
24 accordance with the following guidelines:

25 (a) Requests for Exclusion from Class Members. Any Class Member, other
26 than Plaintiff, may request to be excluded from the Class by submitting a "Request for Exclusion"
27 to the Settlement Administrator, postmarked on or before the Notice Response Deadline. The
28 Request for Exclusion should state in words substantially to this effect:

1 “I WISH TO BE EXCLUDED FROM THE CLASS IN THE *DAVE*
2 *WILSON NURSERY, INC.* SETTLEMENT. I UNDERSTAND THAT IF I
3 ASK TO BE EXCLUDED FROM THE CLASS, I WILL NOT RECEIVE
4 ANY MONEY FROM THE SETTLEMENT OF THE CLASS CLAIMS
5 IN THIS LAWSUIT.

6 Any Request for Exclusion must include the full name, address, telephone number,
7 employee number or last four digits of the social security number or date of birth, and the
8 signature of the Class Member requesting exclusion. The Request for Exclusion must be returned
9 by mail to the Settlement Administrator at the specified address for the Settlement Administrator
10 in the Notice. Any such Request must be made in accordance with the terms set forth in the Notice.
11 A Request for Exclusion will be timely if postmarked by the Notice Response Deadline unless
12 the Parties otherwise agree in writing. Any Class Member who timely requests exclusion in
13 compliance with these requirements: (i) will not have any rights under this Agreement with
14 respect to the Class Claims, including the right to object, appeal, or comment on the Settlement;
15 (ii) will not be entitled to receive any payments under this Agreement with respect to Class
16 Claims; and (iii) will not be bound by this Agreement, or the Judgment, with respect to the
17 Released Class Claims.

18 (b) Binding Effect on Participating Class Members. Except for those Class
19 Members who exclude themselves in compliance with the procedures set forth above, all Class
20 Members will: (1) be deemed to be Participating Class Members for all purposes under this
21 Agreement; (2) will be bound by the terms and conditions of this Agreement, the Judgment, and
22 the Releases set forth herein; and (3) except as otherwise provided herein, will be deemed to have
23 waived all objections to the fairness, reasonableness, and adequacy of the Settlement.

24 (c) Objections to Settlement of Class Claims. Provided they do not opt-out,
25 any Class Member, other than Plaintiff, may object to the terms of this Agreement with respect
26 to the Class Claims and may appear at the Final Approval Hearing and object whether or not they
27 have submitted a written objection as outlined herein (“Objecting Class Member”). To object, a
28 Class Member can inform the Settlement Administrator, in writing, of his/her/their objection,
29 which must be postmarked by the Notice Response Deadline at the address set forth in the Notice.

1 Such objection shall include the full name, address, telephone number, dates of employment with
2 Defendant of the Objecting Class Member, the case name and number, the basis for the objection,
3 including any legal support, and each specific reason in support of the objection, as well as any
4 documentation or evidence in support thereof, and, if counsel represents the Objecting Class
5 Member, the name and address of his/her/their counsel. If any Objecting Class Member wishes
6 to speak at the Final Approval Hearing with respect to the Class Claims, that Objecting Class
7 Member's written submission should include a request to be heard, and the Court will determine
8 whether Objecting Class Members will be permitted to speak. The Settlement Administrator shall
9 provide objections, if any, to Class Counsel and Defendant's Counsel within three (3) days of
10 receipt, and the Settlement Administrator shall attach the same to its declaration of due diligence
11 described in Paragraph 73. Any Class Member who files an objection must not opt-out and will
12 remain eligible to receive monetary compensation from the Settlement if it becomes final and
13 binding. Where a Class Member files and submits both a timely objection and a timely request
14 for exclusion, the request for exclusion will be deemed void, the objection will be duly noted as
15 described in this Paragraph, and the Class Member will remain eligible to receive monetary
16 compensation from the Settlement if it becomes final and binding. Plaintiff and Defendant shall
17 not be responsible for any fees, costs, or expenses incurred by any Class Member and/or
18 his/her/their counsel related to any objections to the Settlement. PAGA Employees may not
19 object to or opt out of the Settlement with respect to the PAGA Claims.

20 (d) Failure to Object. Any Class Member who desires to object with respect to
21 the Class Claims but fails to submit a timely written objection waives any right to object in writing
22 and will be foreclosed from making any written objection to this Settlement.

23 (e) Responses to Objections. Counsel for the Parties may file a response to any
24 objections submitted by Objecting Class Members at least five (5) court days before the date of
25 the Final Approval Hearing.

26 75. Class Members will have until the Notice Response Deadline to object or submit
27 a Request for Exclusion to the Settlement Administrator by U.S. Mail using the address provided
28 in the Notice. The Settlement Administrator shall disclose jointly to Class Counsel and

1 Defendant's counsel the written objections that were timely submitted and provide the number of
2 Requests for Exclusion submitted every week throughout the notice period and upon the request
3 of Class Counsel or Defendant's Counsel. Within five (5) calendar days of the Notice Response
4 Deadline, the Settlement Administrator shall provide counsel for the Parties a report containing
5 (a) the total number of Class Members to whom notices were mailed, (b) the total number of
6 notices that were returned and total notices that were remailed, (c) the date of the last notice
7 remailed, (3) the total number of exclusions requests received and whether the requests were
8 timely, and (4) the total number of objections received and whether the objections were timely.

9 76. Funding of the Settlement Amount. Defendant shall make a one-time deposit into
10 the QSF of the Gross Settlement Amount within 60 days after the Effective Date or by January
11 15, 2025, whichever is later.

12 77. Distribution of Funds. No later than seven (7) calendar days after the deposit of
13 the payment into the QSF, the Settlement Administrator will mail the Individual Settlement
14 Payments to the Participating Class Members, the payment for the attorneys' fees and costs to
15 Class Counsel, any Service Award to the Class Representative (*i.e.*, Plaintiff), the payment to the
16 LWDA for its portion of the PAGA Award, will pay itself the Settlement Administration Costs
17 and will submit the employee and employer payroll tax withholdings on behalf of the Class and
18 Defendant.

19 78. Deadline for Cashing Settlement Checks. Participating Class Members shall have
20 180 calendar days after mailing by the Settlement Administrator to cash their settlement checks.
21 If any Participating Class Member's check is not cashed within that period, the check will be
22 void, and a stop-payment will be issued. All unclaimed funds after the 180-day deadline shall be
23 sent to the *cy pres* recipient mutually selected by the Parties, and approved by the Court, in the
24 name of the class member. The release will be binding upon all Participating Class Members
25 regardless of whether or not they cash their checks within the 180-day period. In the event that
26 any settlement check is returned to the Settlement Administrator within 180 days of mailing, the
27 Settlement Administrator will, within five (5) business days of receipt of the returned settlement
28 check, perform a skip trace to attempt to locate the individual. If a new address is located by these

means or if a forwarding address is available, the Administrator will have ten (10) business days to re-issue the check. Neither Defendant, Defendant's Counsel, Class Counsel, Plaintiff, nor the Settlement Administrator will have any liability for lost or stolen settlement checks, forged signatures on settlement checks, or unauthorized negotiation of settlement checks. Without limiting the foregoing, in the event a Participating Class Member notifies the Settlement Administrator that he/she/they believe that a settlement check has been lost or stolen, the Settlement Administrator shall immediately stop payment on such check. If the check in question has not been negotiated prior to the stop payment order, the Settlement Administrator will issue a replacement check.

79. No person shall have any claim against Defendant, Defendant's Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on mailings, distributions, payments, or reports made in accordance with or pursuant to this Agreement. This provision does not, however, prevent a Party from seeking enforcement of this Agreement.

H. Duties of the Parties Prior to the Court's Approval

80. Plaintiff will move the Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval Order accomplishing the following:

(a) Scheduling the Final Approval Hearing on the issue of whether this Settlement should be finally approved as fair, reasonable, and adequate as to the Participating Class Members and a hearing on fees, costs, and the Service Award;

(b) Approving as to form and content the proposed Notice;

(c) Directing the mailing of the Notice by first class mail to the Class Members;

(d) Preliminarily approving this Settlement in accordance with this Agreement and by submitting the Proposed Preliminary Approval Order; and

(e) Preliminarily certifying the class for purposes of this Settlement.

81. Good Faith Efforts and Cooperation to Secure Approval. In the event the Court declines to approve this Agreement on its first hearing or subsequent hearings, the Parties agree to meet and confer in good faith to address the Court's concerns and to work together in good

1 faith to evaluate potential revisions and/or additional submissions of information, declarations,
2 etc., to address the Court's concerns and renew a motion for approval.

3 **I. Duties of the Parties Following Court's Final Approval**

4 82. In connection with the Final Approval Hearing provided for in this Settlement
5 Agreement, Class Counsel shall submit the proposed Final Approval Order:

6 (a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable, and
7 adequate, and directing consummation of its terms and provisions;

8 (b) Approving Class Counsel's application for an award of attorneys' fees and
9 reimbursement of litigation costs and expenses, Individual Settlement Payments, the Service
10 Award to the Class Representative, the PAGA Award, and the payment to the Settlement
11 Administrator for costs of administering the settlement; and

12 (c) Entering judgment approving the Settlement, thereby permanently barring all
13 Participating Class Members from prosecuting any Released Class Claims against any of the
14 Released Parties and permanently barring all PAGA Employees and the State of California and
15 LWDA from prosecuting any Released PAGA Claims against any of the Released Parties.

16 **J. Voiding the Agreement**

17 83. If the Court fails or refuses to issue the Final Approval Order or fails to approve
18 any material condition of this Settlement Agreement which effects a fundamental change of the
19 Settlement, the entire Settlement Agreement shall be rendered voidable and unenforceable as to
20 all Parties herein at the option of either Party.

21 84. If ten percent (10%) or more of the Class Members timely submit a Request for
22 Exclusion, Defendant shall have the option of terminating or modifying this Agreement without
23 prejudice to its pre-settlement positions and defenses in the Action. If Defendant exercises such
24 option under this Paragraph, they shall be relieved of any obligation to pay the Gross Settlement
25 Amount or any other obligations from the Settlement by giving notice to Plaintiff's Counsel and
26 the Settlement Administrator within ten (10) days after the Notice Response Deadline. If
27 Defendant exercises its option under this Paragraph, the Parties shall each be responsible for one-
28 half of the Settlement Administration Costs incurred.

1 85. If the Settlement is voided or fails for any reason, Plaintiff and Defendant will
2 have no further obligations under the Settlement, including any obligation by Defendant to pay
3 the Gross Settlement Amount, or any amounts that otherwise would have been owed under this
4 Settlement. In addition, the Parties will be placed in the same position they were in before
5 reaching this Settlement with the same rights, including without limitation the right of Defendant
6 to contest the merits of Plaintiff's claims and class certification, and Plaintiff's pursuit of a
7 representative action under PAGA.

8 86. If the Settlement is voided or fails for any reason, any costs incurred by the
9 Settlement Administrator shall be borne equally by Defendant and Plaintiff unless otherwise
10 specified in this Agreement.

11 **K. Other Terms**

12 87. Full and Complete Defense. This Agreement may be pleaded by any Released
13 Party as a full and complete defense to and may be used as the basis for an injunction against, any
14 action, suit, or other proceeding that has been or may be instituted, prosecuted, or attempted,
15 asserting any Released Class Claim or Released PAGA Claim.

16 88. Waiver. The waiver by one Party of any breach of this Agreement by another Party
17 shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

18 89. Parties' Authority. The signatories hereto represent that they are fully authorized
19 to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions
20 hereof.

21 90. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
22 accomplish the terms of this Settlement Agreement, including but not limited to, execution of
23 such documents and to take such other action as may reasonably be necessary to implement the
24 terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best
25 efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that
26 may become necessary by order of the Court, or otherwise, to effectuate this Settlement
27 Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement
28 Agreement, Class Counsel shall, with the assistance and cooperation of Defendant and

Defendant's Counsel, take all necessary steps to secure the Court's preliminary and final approval of the settlement and the final entry of judgment.

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

92. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval Order, nothing contained herein, nor the consummation of this Settlement Agreement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this Settlement Agreement with the intention of avoiding further disputes and litigation with the attendant inconvenience and expenses. This Settlement Agreement is a settlement document, and it, along with all related documents such as the notices and motions for preliminary and final approval, shall, pursuant to Evidence Code § 1152 and/or Federal Rule of Evidence 408, be inadmissible in evidence in any proceeding, except an action or proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement. The stipulation for class certification as part of this Settlement Agreement is for settlement purposes only. If the settlement is not approved for any reason, the stipulation will be of no force or effect.

93. Notices. Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed:

To the Class Members and PAGA Employees:

Mehrdad Bokhour <i>mehrdad@bokhourlaw.com</i> 1901 Avenue of the Stars, Suite 450 Los Angeles, California 90067 Tel: (310) 975-1493; Fax: (310) 675-0861	Michelle Eshaghian, Esq. <i>michelle@eshlegal.com</i> 1901 Avenue of the Stars, Suite 450 Los Angeles, California 90067 Tel: (310) 531-8090; Fax: (310) 531-8070
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To Defendant:

Stacy L. Henderson
stacy@hendersonhatfiled.com
1101 15th Street
Modesto, California 95354

94. Publicity. Plaintiff and Class Counsel agree to discuss the terms of this Settlement only in declarations submitted to a court or court hearings to establish their adequacy to serve as a class representative in this case, in declarations submitted to a court in support of a motion for attorney's fees in this case, and in discussions with Class Members in the context of administering this Settlement.

95. Construction. The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or their counsel participated in the drafting of this Settlement Agreement. Plaintiff and Defendant expressly waive the common-law and statutory rule of construction that ambiguities should be construed against the drafter of an agreement and further agree, covenant, and represent that the language in all parts of this Agreement shall be in all cases construed as a whole, according to its fair meaning.

96. Captions and Interpretations. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital.

97. Modification. This Settlement Agreement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by writing signed by all of the Parties hereto.

98. Dispute Resolution. Prior to instituting legal action to enforce the provisions of this Agreement or to declare rights and/or obligations under this Agreement, a Party shall provide

1 written notice to the other Party and allow an opportunity to cure the alleged deficiencies, and
2 Plaintiff and Defendant agree to seek the help of the mediator identified in this Agreement to
3 resolve any dispute they are unable to resolve informally. During this period, the Parties shall
4 bear their own attorneys' fees and costs.

5 99. Court Retains Jurisdiction. The Parties agree that upon the entry of judgment of
6 dismissal pursuant to the terms of this Agreement, that, pursuant to Code of Civil Procedure
7 § 664.6, the Court shall retain exclusive and continuing equity jurisdiction of this Action over all
8 Parties to interpret, enforce, and effectuate the terms, conditions, intents, and obligations of this
9 Agreement.

10 100. Enforceability. Pursuant to Evidence Code § 1123(a) and (b), this Agreement is
11 intended by the Parties to be and shall be, enforceable, binding, and admissible in a court of law.

12 101. Choice of Law. This Settlement Agreement shall be governed by and construed,
13 enforced, and administered in accordance with the laws of the State of California, without regard
14 to its conflicts-of-law rules.

15 102. Integration Clause. This Settlement Agreement contains the entire agreement
16 between the Parties relating to the settlement and transaction contemplated hereby, and all prior
17 or contemporaneous agreements, understandings, representations, and statements, whether oral
18 or written and whether by a Party or such Party's legal counsel, are merged herein. No rights
19 hereunder may be waived except in writing.

20 103. Binding On Assigns. This Settlement Agreement shall be binding upon and inure
21 to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
22 successors, and assigns.

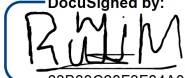
23 104. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
24 because the members of the Settlement Class are numerous, it is impossible or impractical to have
25 each Participating Class Member execute this Settlement Agreement. The Notice will advise all
26 Participating Class Members of the binding nature of the releases provided herein and such shall
27 have the same force and effect as if each Participating Class Member executed this Settlement
28 Agreement.

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

APPROVAL AND EXECUTION BY PARTIES:

Dated: 4/30/2024, 2024

PLAINTIFF AND CLASS REPRESENTATIVE:

DocuSigned by:

 63B33C28F3F84A0...

Reynaldo Marcial Mendez

Dated: 5/14/24, 2024

DEFENDANT:

DAVE WILSON NURSERY, INC.:

Signature: Erica Woolley

Printed Name: Erica Woolley

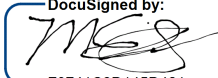
Position: Owner

APPROVED AS TO FORM:

CLASS COUNSEL:

Dated: 5/6/2024, 2024

ESHAGHIAN LAW, P.C.

DocuSigned by:

 F0741C8D145D421...

Michelle Eshaghian
 Attorneys for Plaintiff

1 Dated: 4/16/2024
2 _____, 2024

BOKHOUR LAW GROUP, P.C.

DocuSigned by:
Mehrdad Bokhour
D8D3643E271940F...

Mehrdad Bokhour
Attorneys for Plaintiff

DEFENDANT'S COUNSEL:

7 Dated: _____, 2024

HENDERSON HATFIELD
A Professional Corporation

10 Stacy Henderson
11 Attorneys for Defendant
12 Dave Wilson Nursery, Inc.

1 Dated: _____, 2024

BOKHOUR LAW GROUP, P.C.

2
3
4 Mehرداد Bokhour
Attorneys for Plaintiff

5
6 **DEFENDANT'S COUNSEL:**

7 Dated: _____, 2024

HENDERSON HATFIELD
A Professional Corporation

8
9
10 
11 Stacy Henderson
Attorneys for Defendant
Dave Wilson Nursery, Inc.