

Lilit Tunyan (SBN 329351)
ltunyan@tunyanlaw.com
Artur Tunyan (SBN 349174)
atunyan@tunyanlaw.com
TUNYAN LAW, APC
535 N Brand Blvd. Suite 285
Glendale, CA 91203
Telephone: (323) 410-5050

Attorneys for Plaintiff SUSANA HERNANDEZ DE MARTINEZ,
as an individual and on behalf of all employees similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

SUSANA HERNANDEZ DE MARTINEZ,
individually, and on behalf of all others
similarly situated,

Plaintiff,

vs.

FACILITY SERVICES PARTNERS, INC., a
California Corporation; and DOES 1 through
10, inclusive,

Defendants

Case No.: CVRI2304625

[Assigned for all purposes to Hon. Eric A Keen,
Dept. 6]

**SUPPLEMENTAL DECLARATION OF
LILIT TUNYAN IN SUPPORT OF
PLAINTIFF'S MOTION FOR AN ORDER
APPROVING SETTLEMENT OF CLAIMS
BROUGHT PURSUANT TO THE PRIVATE
ATTORNEY GENERAL'S ACT OF 2004**

Reservation N: 353152327678

Date: June 25, 2024

Time: 8:30a.m.

Courtroom: Dept. 6

Judge: Hon. Eric A Keen

Action Filed: September 5, 2023

Trial Date: Not Set

I, LILIT TUNYAN, declare as follows:

2. This Supplemental Declaration is submitted in support of Plaintiff’s MOTION FOR AN ORDER APPROVING SETTLEMENT OF CLAIMS BROUGHT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004 (“PAGA”).

3. Following receipt of the Court’s Tentative Ruling that set forth items requiring correction or further briefing and discussion of the Court’s Tentative Ruling during June 25, 2024 approval hearing, the Parties prepared a revised settlement document, the PRIVATE ATTORNEYS GENERAL ACT AMENDED SETTLEMENT AGREEMENT AND RELEASE (“Settlement Agreement”). The corrections or supplemental briefing required by the Court during June 25, 2024 hearing are as follows:

- a) To limit the scope of PAGA release to the named Plaintiff and the State of California but to state that final judgment will bind also other aggrieved employees per *Arias v. Superior Court* (2009) 46 Cal.4th 986.
- b) To add a paragraph in the Proposed Order granting approval of the Settlement Agreement setting a date for Final Approval Accounting (Nonappearance) Hearing on March 25, 2025 and a deadline for the filing of a report concerning the amount of money distributed and/or uncashed on March 10, 2025.
- c) The Court ordered Plaintiff's counsel to file a supplemental declaration with the modified

Settlement, Amended Proposed Order and Amended Proposed Judgment by July 5, 2024.

- d) The Court also instructed that the effective date of the Settlement Agreement will be the date the Court signs the Amended Proposed Order and Judgment granting approval of the Settlement Agreement filed by Plaintiff's counsel.

4. In response, the following changes have been made and supplemental materials have been submitted:

a) The Settlement Agreement was revised in Paragraphs 2 and 3 and the relevant portion in the notice to aggrieved employees to limit PAGA release to Plaintiff and the State of California and to state that final judgment will bind also other aggrieved employees per *Arias v. Superior Court* (2009) 46 Cal.4th 986.

b) Proposed Order and Judgment were revised to incorporate the modified PAGA release language and to add a paragraph setting a date for Final Approval Accounting (Nonappearance) Hearing on March 25, 2025 and a deadline for the filing of a report concerning the amount of money distributed and/or uncashed by March 10, 2025.

EXHIBITS

5. A true and correct copy of the PRIVATE ATTORNEYS GENERAL ACT AMENDED SETTLEMENT AGREEMENT AND RELEASE is attached hereto as **Exhibit "1."**

6. A true and correct copy of a **redlined version** of the PRIVATE ATTORNEYS GENERAL ACT AMENDED SETTLEMENT AGREEMENT AND RELEASE is attached hereto as **Exhibit "2"**.

7. Attached hereto as **Exhibit "3"** is a true and correct copy of the submission of the PRIVATE ATTORNEYS GENERAL ACT AMENDED SETTLEMENT AGREEMENT AND RELEASE to the Department of Industrial Relations, through its online submission portal.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed this 26th day of June 2024, at Glendale, California.



LILIT TUNYAN, "Declarant"

Exhibit “1”

PRIVATE ATTORNEYS GENERAL ACT
AMENDED SETTLEMENT AGREEMENT AND RELEASE

This Private Attorneys General Act Amended Settlement Agreement and Release (this “Agreement” or “Settlement”) is made by and between Plaintiff SUSANA HERNANDEZ DE MARTINEZ (“Plaintiff”), individually and on behalf of all other allegedly aggrieved employees (the “Aggrieved Employees” or “PAGA Group” as discussed and defined below), and as a private attorney general on behalf of the State of California pursuant to Labor Code section 2699, *et seq.*, the California Private Attorneys General Act (“PAGA”) on the one hand, and Defendant FACILITY SERVICES PARTNERS, INC. (“Defendant”), on the other hand. Plaintiff and Defendant are collectively referred to herein as “the Parties.”

This Agreement, and the settlement embodied herein, shall be binding on Plaintiff, the Aggrieved Employees, and Defendant, subject to the approval of the Court.

WHEREAS, Plaintiff is a former employee of Defendant. Plaintiff was employed by Defendant from approximately September 2021 to May 2023.

WHEREAS, on June 26, 2023, Plaintiff timely sent notice letter to the California Labor and Workforce Development Agency (“LWDA”) of her intent to pursue representative actions pursuant to the Private Attorneys General Act of 2004, California Labor Code Section 2698, *et seq.* (“PAGA”), on behalf of herself, other aggrieved employees, and the State of California (the notice by Plaintiff to the LWDA is referred to as the “PAGA Notice” herein) for alleged violations of California Labor Code sections 201, 202, 203, 204, 226, 226.7, 227.3, 510, 512, 174.5, 1197, 1198, and 2802, and the applicable Industrial Welfare Commission Wage Orders. The applicable PAGA Notice related to the Lawsuit is attached hereto as **Exhibit A** (all of the foregoing is collectively referred to herein as Plaintiff’s “PAGA Claims”).

WHEREAS, on September 5, 2023, Plaintiff filed a complaint asserting a single cause of action for civil penalties under the Private Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq.* (“PAGA”) in the Superior Court of California, Riverside County entitled *De Martinez v. Facility Services Partners, Inc.*, Case No. CVRI2304625 pending in Riverside County Superior Court (the “Lawsuit”).

WHEREAS, during the pendency of the Lawsuit, the Parties conducted significant investigation of the facts and law and engaged in an informal discovery exchange prior to mediation. In response to Plaintiff’s Counsel’s informal discovery requests, Defendant provided Plaintiff’s Counsel with information and documents pertaining to Plaintiff and the Aggrieved Employees, and the claims in the Lawsuit, including time punch and payroll data, to provide Plaintiff the opportunity to investigate Plaintiff’s allegations and the PAGA Claims.

WHEREAS, on April 6, 2024, the Parties attended a full day mediation with experienced wage-and-hour mediator Lynn S. Frank, Esq. As a result, the Parties agreed to settle Plaintiff’s PAGA Claims, taking into account all known facts and circumstances including the difficulty of proving some of Plaintiff’s claims, potential defenses asserted by Defendant, the uncertainty associated with litigation, the risks of significant delay, and numerous potential appellate issues.

WHEREAS, for purposes of this Settlement, the Aggrieved Employees are defined as: “All non-

exempt employees who are or were employed by Defendant in California from July 2, 2022, through the date of entry of order for PAGA settlement approval or 60 days from April 6, 2024, whichever is earlier.”

WHEREAS, for purposes of this Settlement, the PAGA Period is defined as the period from July 2, 2022 through the date of entry of order for PAGA settlement approval or 60 days from April 6, 2024, whichever is earlier (“PAGA Period”).

WHEREAS, the Parties understand, acknowledge, and agree that this PAGA settlement constitutes a compromise of Plaintiff’s PAGA Claims, and that it is the desire and intention of the Parties to effect a final and complete resolution of the representative PAGA Claims that Plaintiff and the Aggrieved Employees have or may have against Defendant and the Released Parties, as defined below. The Parties further acknowledge that this Agreement is a compromise of disputed claims and that nothing in this Agreement shall be construed as an admission by Defendant or the Released Parties of any wrongdoing or liability. Specifically, Defendant and the Released Parties deny any liability or wrongdoing of any kind associated with the claims alleged in the Lawsuit and the PAGA Notice. Defendant and the Released Parties, among other things, contend that they have complied at all times with the California Labor Code and all applicable California laws.

WHEREAS, California Labor Code § 2699(l)(2) requires Court review and approval of any settlement of a civil action filed pursuant to PAGA.

WHEREAS, Counsel for Plaintiff and the Aggrieved Employees, Tunyan Law, APC, has investigated the facts relevant to this settlement and this Agreement, and all matters pertaining thereto, and believes that this Settlement is in the best interests of the Aggrieved Employees and that this Settlement for each Aggrieved Employee is fair, reasonable, and adequate, given the inherent risk of litigation.

WHEREAS, the Parties have arrived at this Settlement through extensive, arms-length negotiations, taking into account all relevant factors, present and potential.

WHEREAS, the Parties recognize that in accordance with Labor Code section 2699(l), Court approval is required in the event of a settlement of a PAGA action on a representative basis. However, as explained in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009), the Parties are not obligated to follow the class action procedural rules in PAGA cases and therefore need not obtain approval of the PAGA settlement through a motion for preliminary or final approval. *See also Mendoza v. Nordstrom, Inc.*, 2 Cal. 5th 1074 (2017) (“PAGA authorizes a representative action without the need for class certification”); *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1123 (9th Cir. 2014) (“a PAGA suit is fundamentally different than a class action” in that PAGA has no notice requirements for unnamed aggrieved employees, nor may such employees opt out of a PAGA action); *Williams v. Sup. Ct.*, 3 Cal. 5th 531, 546-47 (2017) (“PAGA does not make other potentially aggrieved employees parties or clients of plaintiff’s counsel, does not impose on a plaintiff or counsel any express fiduciary obligations, and does not subject a plaintiff or counsel to scrutiny with respect to the ability to represent a large class”).

Therefore, in consideration of the promises and agreements contained herein, and to avoid the uncertainty, risks, costs, and delays associated with further litigation, the Parties agree and covenant as follows:

1. Effective Date. The effective date (“Effective Date”) of this Settlement shall mean the date after the following has occurred: (1) the date the Court enters an order approving this Settlement; or (2) the date such court order becomes final in the event of an appeal, whichever occurs later.

2. Release of Claims by Plaintiff, the Aggrieved Employees, and the State of California. Upon the Effective Date and full funding of the Gross Settlement Amount (as that term is defined below) and General Release Payment to Plaintiff, and except as to the rights and obligations created by this Settlement, Plaintiff, individually and on behalf of her descendants, marital community, dependents, heirs, executors, administrators, representatives, attorneys, successors and assigns, and the State of California, on behalf of itself and its administrators, representatives, and assigns, will knowingly and voluntarily release and forever discharge Defendant, including Defendant’s parent corporation, affiliates, subsidiaries, divisions, predecessors, insurers, successors and assigns, and their current and former employees, attorneys, insurers, shareholders, partners, members, officers, directors and agents thereof, both individually and in their business capacities (collectively, the “Released Parties”), to the full extent permitted by law, of and from the Lawsuit and from any and all claims asserted or that could have been asserted, arising during the period from July 2, 2022, through the date of entry of order for PAGA settlement approval or 60 days from April 6, 2024, whichever is earlier, for civil penalties under California Labor Code section 2698, *et seq.* (“PAGA”) as well as any interest, fees, and costs available under PAGA, based on the factual allegations in the Complaint and in PAGA Notice, including but not limited to, for failure to pay minimum, regular, and overtime wages, failure to provide compliant meal periods and associated premiums, failure to provide compliant rest periods and associated premiums, failure to timely pay wages at termination, failure to furnish accurate itemized wage statements, failure to reimburse necessary business expenses, and failure to maintain accurate records, and for violations of California Labor Code sections 201, 202, 203, 204, 226, 226.7, 227.3, 510, 512, 174.5, 1197, 1198, and 2802, and the applicable Industrial Welfare Commission Wage Orders, whether known or unknown, suspected or unsuspected, concealed or hidden, that were alleged in the Action and/or the PAGA Notice, or that could have been alleged in the Action and/or PAGA Notice based on the factual allegations contained therein, which Plaintiff and any Aggrieved Employee have or had at any time through and including the PAGA Period, against any of the Released Parties (the “Released PAGA Claims”). The final judgment entered pursuant to this settlement shall bind the Aggrieved Employees who shall be bound by the judgment in any action brought by the LWDA with respect to the Released PAGA claims against the Released Parties. See *Arias v. Superior Court* (2009) 46 Cal.4th 986. With the exception of Plaintiff, who will execute a separate individual settlement and release agreement that includes a general release of all claims, this settlement shall not impact aggrieved employees’ ability to assert claims (claims for wages and other damages) other than the Released PAGA Claims. Defendant agrees to enter into a separate individual settlement and release agreement with Plaintiff for general release of her claims in lieu of litigating Plaintiff’s individual non-PAGA claims and for representing the Aggrieved Employees in consideration for general release payment (“General Release Payment”). The Gross Settlement Amount does not include the General Release Payment to Plaintiff in the amount of Ten Thousand Dollars and Zero Cents (\$10,000.00), which Defendant agrees to pay in addition to the Gross Settlement Amount.

3. Effect of Judgment. Upon the Effective Date and full funding of the Gross Settlement Amount, Plaintiff and the LWDA shall be forever barred and enjoined from instituting or prosecuting, either directly or indirectly, individually, collectively, and/or representatively, any Released PAGA Claims. The final judgment entered pursuant to this settlement shall bind the Aggrieved Employees who shall be bound by the judgment in any action brought by the LWDA with respect to the Released PAGA claims against the Released Parties. See *Arias v. Superior Court* (2009) 46 Cal.4th 986. This Agreement may be pleaded by any Released Party as a full and complete defense to and may be used as the basis for an injunction against, any action, suit or other proceeding that has been or may be instituted, prosecuted or attempted, asserting any Released PAGA Claims.

4. Notice to LWDA. Pursuant to California Labor Code § 2699(l)(2), Plaintiff shall submit to the LWDA a copy of this Agreement at the same time that Plaintiff submits it to the Court for approval.

5. No Right to Opt Out. The Parties agree that there is no statutory right for any of the Aggrieved Employees to object, opt out or otherwise exclude themselves from this Settlement.

6. Gross Settlement Amount. Defendant agrees to pay, in accordance with the terms set forth herein, the total sum of One Hundred Sixty-Five Thousand Dollars and Zero Cents (\$165,000.00) as the non-reversionary gross settlement amount (the "Gross Settlement Amount") in full settlement of the Lawsuit. The Gross Settlement Amount, which represents the total amount payable under this Settlement by Defendant (subject to the Escalator Clause described below), will be allocated as follows:

- a. PAGA Counsel's attorneys' fees and costs request of up to 33 1/3% of the Gross Settlement Amount or Fifty-Five Thousand Dollars and Zero Cents (\$55,000.00) ("PAGA Counsel's Fees") and PAGA Counsel's separate request for reasonable litigation costs incurred in this matter ("PAGA Counsel's Costs") not to exceed Sixteen Thousand Dollars and Zero Cents (\$16,000.00). Defendant will not oppose these requests. To the extent that the Court approves less than the amount of attorney's fees and costs that PAGA Counsel requests, any reduced amount shall revert to the PAGA Fund.
- b. Administration costs are estimated not to exceed Eight Thousand Dollars and Zero Cents (\$8,000.00) to be paid to the Settlement Administrator ("Administration Costs"), which is a good faith estimate. If the Parties' estimated administration fees are too little, it can be adjusted and shall be paid from the Gross Settlement. If the actual administration fee is less than the Parties' estimated administration fees, the difference between the actual and estimated administration fees will revert to the PAGA Fund; and
- c. The remainder of the Gross Settlement Amount (the "PAGA Fund") after deducting items (a) and (b) shall be designated as PAGA Penalties to be allocated between the LWDA and the Aggrieved Employees pursuant to Labor Code section 2699(i), with 75% paid to the LWDA (the "LWDA PAGA Portion") and 25% paid to the Aggrieved Employees (the

“Aggrieved Employees’ PAGA Portion”) on a pro-rata basis as set forth in Paragraph 7 below.

7. Allocation Adjustment. The Parties agree that, in the event the Court denies approval of the Gross Settlement Amount and/or the PAGA Fund, they shall renegotiate the allocation of the funds in good faith in an effort to obtain approval of this Settlement. The specific amounts of the attorneys’ fees and costs awards shall be subject to Court approval, and the award of any amounts less than that requested by Plaintiff and/or Plaintiff’s counsel will not be grounds for Plaintiff or her counsel terminating this Settlement but may be subject to appeal. In the event of such an appeal, final funding and administration of the portion of the attorneys’ fees, costs award and/or General Release Payment in dispute will be segregated and stayed pending the exhaustion of appellate review. If, after the exhaustion of any such appellate review, additional amounts are distributable to the Aggrieved Employees, then the cost of administration of the additional payments to them will be paid out of such additional amounts and not by Defendant. Any amount not awarded in attorneys’ fees, costs and/or general release payment shall be added to the PAGA Fund for distribution to the LWDA and the Aggrieved Employees.

8. Allocation and Calculation of the PAGA Penalties. Each Aggrieved Employee shall receive a portion of his or her PAGA Portion on a pro-rata basis. Based on the Settlement Data provided by Defendant to the Settlement Administrator as defined in Paragraph 13.a. below, the Settlement Administrator will calculate: (i) the total number of pay periods worked by each Aggrieved Employee during the PAGA Period; and (ii) the total number of pay periods worked by all Aggrieved Employees during the PAGA Period. To determine each Aggrieved Employee’s payment from the Aggrieved Employees’ PAGA Portion, the Settlement Administrator will use the following formula: $\text{Settlement Payment} = \text{Aggrieved Employees’ PAGA Portion} \times [\text{Pay Periods Worked by Individual Aggrieved Employee during the PAGA Period} \div \text{Total Pay Periods Worked by All Aggrieved Employees during the PAGA Period}]$.

9. Escalator Clause: As of April 6, 2024, Defendant estimates the PAGA Group, including Plaintiff, performed work for Defendant during approximately 3,020 pay periods at the time of mediation and this estimate serves as the basis for Plaintiff’s accepting the Settlement. If the number of actual pay periods during the PAGA Period exceeds 10% of the estimated pay periods (i.e., exceeds 3,322 pay periods), Defendant shall increase the Gross Settlement by a pro-rata dollar value equal to the number of pay periods in excess of 3,322 pay periods. For example, if there is a 1% increase over 10% then the Gross Settlement increases by 1%. Aside from the terms set forth in this paragraph, under no circumstances will Defendant be required to pay any additional monies in order to receive the release of claims as set forth herein.

10. Tax Treatment of Settlement Amounts. Because this is a settlement of PAGA Claims for civil penalties only, no portion of this settlement is allocated to unpaid wages. With regard to settlement payments to the Aggrieved Employees and the LWDA, IRS Form 1099s will be issued by the Settlement Administrator, if applicable. IRS Form 1099s are used for payments of miscellaneous income that is not considered wages, such as the penalty payments at issue in this Settlement. Plaintiff and the Aggrieved Employees shall pay any federal or state taxes that may be required to be paid with respect to this Agreement and agree to indemnify and hold Defendant and all of the Released Parties harmless for any of their tax liability whatsoever related to the monetary consideration provided herein. Nothing in this Settlement is intended to constitute legal

advice regarding federal, state, and/or local tax obligations. Defendant, its counsel and Plaintiff's and the Aggrieved Employees' counsel are not responsible for any employee tax obligations regarding the allocation of the settlement payments. Payment of the portion allocated to PAGA Counsel's fees and costs will be reflected in a Form 1099 to PAGA Counsel, who shall assume full responsibility and liability for the payment of taxes due on such payments.

11. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS OR ITS OWN, INDEPENDENT LEGAL AND TAX ADVISERS FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISOR'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

12. Settlement Administrator. The Settlement Administrator shall be responsible for sending notices, calculating settlement payments, preparing all checks and mailings, and complying with all requirements set forth herein. The Settlement Administrator will be required to sign and provide to Defendant any Certification Re Confidential Discovery Materials and be bound by any Stipulated Protective Order as may be entered by the Court. As noted above, the costs of the Settlement Administrator shall be paid out of the Gross Settlement Amount, and the Parties agree to use ILYM Group, Inc. as the Settlement Administrator.

13. PAGA Settlement Payment Procedures.

a. Within fifteen (15) calendar days of the Effective Date, Defendant shall deposit the Gross Settlement Amount with the Settlement Administrator. Within fifteen (15) calendar days of the Effective Date, Defendant shall also provide the Settlement Administrator with a list of the Aggrieved Employees with each listed employee's full name, last known mailing address, last known telephone number, social security number, and the actual number of compensable pay periods worked by them during the PAGA Period (the "Settlement Data"). The Settlement Data will not be provided to Plaintiff's Counsel. The Settlement Data shall be used only by the

Settlement Administrator and only for purposes of administering this Settlement. The Settlement Administrator shall run all the addresses of the Aggrieved Employees through the United States Postal Service NCOA database to obtain current address information and shall skip trace and re-mail all returned, undelivered mail within ten (10) calendar days of receiving notice that a notice and check was undeliverable.

b. Within fifteen (15) calendar days from the date Defendant submits the Settlement Data and the Gross Settlement Amount has been deposited with the Settlement Administrator, the Settlement Administrator shall:

- i. Distribute a total of Twenty-Five percent (25%) of the PAGA Fund to the Aggrieved Employees, along with the Notice of PAGA Representative Action Settlement (attached hereto as **Exhibit B**). Aggrieved Employees shall not be required to make claims to receive their share of the PAGA settlement. The payment checks shall be sent to each Aggrieved Employee by U.S. First Class mail to the Aggrieved Employee's last known mailing address with directions to the Postmaster to forward the payment checks and return all undeliverable payment checks to the Settlement Administrator. It will be conclusively presumed that an Aggrieved Employee's individual settlement payment check was received if the payment check has not been returned within thirty (30) calendar days of the original mailing or re-mailing.
- ii. Distribute a total of Seventy-Five percent (75%) of the PAGA Fund to the LWDA.
- iii. Distribute PAGA Counsel's Fees and PAGA Counsel's Costs, as approved by the Court.
- iv. Distribute payment to itself for services as the Settlement Administrator, as approved by the Court.

c. Settlement Checks issued to the Aggrieved Employees pursuant to this Agreement will expire one hundred and eighty (180) calendar days from the date they are mailed by the Settlement Administrator. For any Aggrieved Employee whose individual PAGA payment check is uncashed and cancelled after the void date, the Settlement Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.

d. The Parties and their counsel shall not bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.

14. Duties of the Parties Related to Approval. Promptly upon execution of this Agreement, Plaintiff shall file her motion for approval of this Settlement and for the entry of an order approving this Settlement as required by Labor Code section 2699(l). The approval motion will request Court approval of the following: (1) the terms of this Agreement; (2) PAGA Counsel's Fees and PAGA Counsel's Costs; (3) payments to the Aggrieved Employees and the LWDA; (4) payment to the

Settlement Administrator; and (5) Final Judgment. In conjunction with the approval motion, Plaintiff shall submit a proposed Final Judgment to the Court. Not later than seven (7) calendar days prior to the submission of the motion to the Court for approval of this Settlement, Plaintiff's counsel will submit a final draft thereof (including all supporting papers and proposed order) to counsel for Defendant for their review and comment.

15. Interim Stay of Proceedings. The Parties agree to refrain from further litigation of the Lawsuit, except such proceedings necessary to implement and obtain the Final Judgment.

16. Invalid without Court Approval. In the event this Agreement is not approved by the Court, it shall be deemed null and void, of no force and effect, and of no probative or evidentiary value, and the Parties represent, warrant, and covenant that it will not be used or referred to for any purpose whatsoever. In the event that this Agreement does not become final for any reason, this Agreement shall be null and void and any order entered by the Court in furtherance thereof shall be treated as void ab initio. In such a case, the Parties shall return to the status quo as if they had not entered into this Agreement. The Settlement Administrator will be paid by the Parties on an equal basis for its costs through the date it is notified that this Settlement will not be approved.

17. Non-Admission of Wrongdoing. The Parties agree that this Agreement does not constitute an admission by Defendant or any Released Party, of any of the matters alleged in the Lawsuit or of any violation by any of them of any federal, state or local law, ordinance or regulation, or of any violation of any policy or procedure, or of any liability or wrongdoing whatsoever. Neither this Agreement nor anything in this Agreement shall be construed to be or shall be admissible in any proceeding as evidence of liability or wrongdoing by Plaintiff, Defendant or the Released Parties.

18. Waiver and Amendment. The Parties may not waive, amend, or modify any provision of this Agreement except by a written agreement signed by the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Agreement will not constitute a waiver of any other provision.

19. No Transfer/Assignment of Claims. Plaintiff warrants and represents that Plaintiff has not assigned or transferred or purported to assign or transfer to any person or entity all or any part of or any interest in any claim, right, liability, demand, obligation, expense, action, or causes, or portion thereof, or interest therein, which is or may be subject to this Settlement, including any claim released under this Settlement Agreement. Plaintiff is solely responsible for the satisfaction of any assignment or lien to any lien holder and will indemnify and hold the Released Parties or any of the Released Parties harmless against any liens, damages, penalties, fines, fees, assessments, taxes or attorneys' fees that may be imposed against or incurred by any of the Released Parties as a result of the Lawsuit of any lien holder or any lien claimant or any court in relation to any interest which any third party may have in any claim which Plaintiff is releasing under this Settlement Agreement or any interest in any of the proceeds paid to Plaintiff or Plaintiff's Counsel under this Settlement Agreement. Plaintiff shall defend, indemnify and hold harmless the Released Parties or any of the Released Parties from and against any claim (including the payment of attorneys' fees and costs actually incurred whether or not litigation is commenced) based on or in connection with or arising out of any such assignment or transfer made, purported or claimed.

20. Liens and Attorneys' Fees/Indemnification.

Plaintiff solely is responsible for any liens made in connection with any services performed on Plaintiff's behalf by any attorney, consultants, or expert witnesses. Each Party solely is responsible for any fees and costs he, she or it has incurred including, but not limited to, fees for attorneys, consultants and expert witnesses. Plaintiff acknowledges that none of the Released Parties are responsible for the payment of any fees incurred on behalf of Plaintiff in connection with the prosecution of the Lawsuit, except to the extent this Agreement provides for payment of PAGA Counsel's Fees and PAGA Counsel's Costs.

21. Covenants and Representations. Plaintiff acknowledges that she has read this Agreement, fully understands her rights, privileges, and duties under this Settlement, and enters into this Settlement freely and voluntarily, and without duress. Plaintiff further acknowledges that she had the opportunity to consult with her attorneys to explain the terms of this Settlement and the consequences of signing this Agreement.

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

23. Enforcement. The Parties agree that, following entry of the Final Judgment, this Agreement shall be enforceable by the Court, and the Court shall retain exclusive and continuing jurisdiction of the Lawsuit over the Parties and the Aggrieved Employees to interpret and enforce the terms, conditions, and obligations of this Agreement pursuant to California Code of Civil Procedure section 664.6. In the event that one or more of the Parties to this Settlement institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful Party or Parties shall be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

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

25. Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts and writings prior to the date hereof relating to the subject matters hereof. Any representation, promise or agreement not specifically included in this Agreement shall not be binding upon or enforceable against either Party. This is a fully integrated agreement. No other promises or agreements shall be binding or shall modify this Agreement unless in writing and signed by the Parties.

26. Severability. If any provision of this Agreement or the application thereof is held invalid, the invalidity shall not affect other provisions or applications of the Agreement that can be given effect without the invalid provisions or application, and to this end, the provisions of this Agreement are declared to be severable. Notwithstanding the foregoing, no portion of any release contained herein may be deemed severed or deleted from this Agreement, except upon waiver in writing by the applicable Released Party.

27. Confidentiality. Plaintiff and Plaintiff's counsel agree that they have not and will not disclose or discuss to any third parties and have not and will not publish the Settlement or any of its terms before filing a motion for approval of the Settlement. In response to any inquiries, Plaintiff will state that "the case was resolved, and it was resolved confidentially." Plaintiff and Plaintiff's counsel shall not report the Settlement in any medium or in any publication, shall not post or report anything regarding the claims of Plaintiff or the PAGA Group or the Settlement on its website, and shall not contact, discuss with, or respond to any reporters or media regarding the Settlement. This shall not apply to or limit the public filing of motions or other case materials in the Action related to seeking and obtaining Court approval of the proposed settlement and the related awards of attorneys' fees and costs, or to communications between Plaintiff's counsel and Plaintiff or the Aggrieved Employees in the Action, including through the posting of Court-filed documents on Plaintiff's counsels' website. After filing a motion for approval of the Settlement and uploading the Settlement approval motion documents with LWDA website prior to filing the Settlement approval motion with court, the Settlement terms become public.

28. No Construction Against the Drafter. Each Party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any Party on the basis that the Party was the drafter.

29. Choice of Law. This Agreement shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the Parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of California without regard to principles of conflict of laws.

30. Counterparts. This Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

31. Cooperation. Each Party, on behalf of themselves, and their respective business entities, heirs, executors, and assigns, agrees that they will abide by this Agreement and will do all such acts, and prepare, execute, and deliver all such documents, as may be reasonably required to carry out the stated objectives of this Agreement.

32. Electronic Signatures. Each Party specifically agrees that an electronic signature shall have the same force and effect as a signed original of the Agreement, and that the Parties may use DocuSign or Adobe Sign, an electronic signature technology, to expedite the execution of this Agreement pursuant to California Civil Code Section 1633.7.

Dated: 6/25/2024 | 12:39 PM PDT

DocuSigned by:
Susana Hernandez De Martinez
Plaintiff SUSANA HERNANDEZ DE MARTINEZ

Dated:

Defendant FACILITY SERVICES PARTNERS, INC.
By: _____
Its: _____

Dated: 6/25/2024 | 12:44 PM PDT TUNYAN LAW, APC

DocuSigned by:
Lilit Tunyan
By: _____
Lilit Tunyan
Artur Tunyan

Attorneys for Plaintiff SUSANA HERNANDEZ DE MARTINEZ, and Aggrieved Employees

APPROVED AS TO FORM:

Dated:

**SWERDLOW FLORENCE SANCHEZ SWERDLOW
& WIMMER, A Law Corporation**

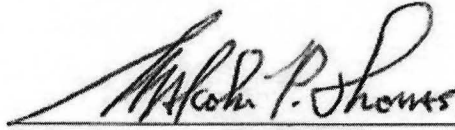
By: _____
Lori Yankelevits
Millicent Sanchez

Attorneys for Defendant FACILITY SERVICES PARTNERS, INC.

Dated:

Plaintiff SUSANA HERNANDEZ DE
MARTINEZ

Dated: June 26, 2024


Defendant FACILITY SERVICES
PARTNERS, INC.
By: Malcolm P. Thomas
Its: President

Dated:

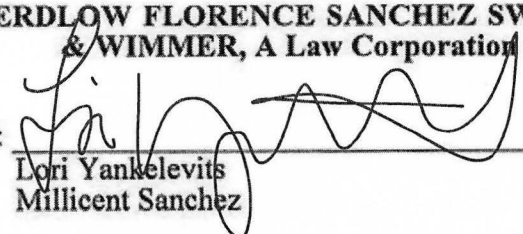
TUNYAN LAW, APC

By: _____
Lilit Tunyan
Artur Tunyan

Attorneys for Plaintiff SUSANA HERNANDEZ DE
MARTINEZ, and Aggrieved Employees

APPROVED AS TO FORM:

Dated: June 25, 2024

SWERDLOW FLORENCE SANCHEZ SWERDLOW
& WIMMER, A Law Corporation
By: 
Lori Yankelevits
Millicent Sanchez

Attorneys for Defendant FACILITY SERVICES
PARTNERS, INC.

Exhibit “A”



TUNYAN LAW

Lilit Tunyan, Esq.
1336 Rossmoyne Avenue,
Glendale, CA 91207
Tel: (323) 410-5050
ltunyan@tunyanlaw.com

March 15, 2023

VIA ONLINE SUBMISSION

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGAFilings@dir.ca.gov

VIA CERTIFIED MAIL

Return Receipt Requested

Agent for Service of Process for
Facility Services Partners, Inc.
LegalZoom.Com, Inc.
101 N Brand Boulevard, 11th Floor
Glendale, CA 91203

VIA CERTIFIED MAIL

Return Receipt Requested

Facility Services Partners, Inc.
1 University Drive
Aliso Viejo, CA 92656

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION § 2698 ET SEQ.**

Re: *Susana Hernandez De Martinez v. Facility Services Partners, Inc.*

To Whom It May Concern:

Please be advised that my office has been retained by Susana Hernandez De Martinez ("Plaintiff") to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against his former employer Facility Services Partners, Inc. ("Defendant"). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which she alleges Defendant engaged in with respect to Plaintiff and all of Defendant's aggrieved employees.

Plaintiff wishes to pursue a PAGA representative action on behalf of herself as an aggrieved employee, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendant in California as an hourly paid, non-exempt employee at any time within the applicable statutory period (hereafter, the “Aggrieved Employees”).

Plaintiff and the Aggrieved Employees of Defendant suffered the Labor Code violations described below.

Factual Background Regarding Plaintiff's Employment with Defendant

Defendant owns and operates an industry, business, and establishment within the State of California, including Riverside County. As such, Defendant is subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission (“IWC”).

Plaintiff worked for Defendant as a cleaner from approximately June 2021 to May 23, 2023, primarily in Riverside County. Defendant classified Plaintiff as non-exempt from overtime. During the time period that Plaintiff was employed by Defendant, Plaintiff typically worked 5 days per week, and between 8 to 12 hours each workday.

Throughout Plaintiff's employment, Defendant committed numerous labor code violations under state law. As discussed below, Plaintiff's experience working for Defendant was typical and illustrative.

Failure to Pay for All Hours Worked, Including Overtime

Under California law, an employer must pay for all hours worked by an employee. “Hours worked” is the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

Throughout the time period involved in this case, Defendant maintained a policy and practice of failing to pay Plaintiff and the Aggrieved Employees for all hours worked including straight time wages and overtime wages. Throughout the statutory period, Defendant regularly used a system

of time rounding in a manner that resulted, over a period of time, in failing to compensate Plaintiff and the Aggrieved Employees properly for all the time they have actually worked, even though the realities of Defendant's operations are such that it is possible, practical, and feasible to count and pay for work time to the minute. Accordingly, Defendant frequently paid Plaintiff and the Aggrieved Employees less than all their work time. Some of this unpaid work also should have been paid at the overtime rate. Throughout the statutory period, Defendant maintained a policy and practice of requiring Plaintiff and the Aggrieved Employees to perform work "off-the-clock". Plaintiff and the Aggrieved employees were required to arrive earlier than their scheduled start time to perform some additional work but were only required to clock in to work ten minutes prior to the scheduled start of the shift not to create overtime. Plaintiff and the Aggrieved Employees were not compensated for all the time worked prior to clocking in to work. Defendant also regularly required Plaintiff and the Aggrieved Employees to clock out at the end of their shifts but continue working to complete additional tasks for about twenty minutes again not to create overtime. Defendant also required Plaintiff and the Aggrieved Employees to work through their meal periods requiring them to clock out but continue working. Plaintiff and the Aggrieved Employees were also required to use their personal cellular telephones for work purposes at home after their scheduled work time to communicate with Defendant's supervisors regarding work schedules and assignments. Plaintiff and the Aggrieved Employees would also spend time after the scheduled shift hours to wash the uniforms provided by Defendant but Defendant failed to compensate for that time. In maintaining a practice of not paying all wages owed, Defendant failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked. In doing so, Defendant also failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including overtime.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendant wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that

were not provided by the end of the fifth hour of work or tenth hour of work. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendant did not have adequate written policies or practices providing meal periods for Plaintiff and the Aggrieved Employees. Plaintiff and the Aggrieved Employees would often times miss their meal periods, have interrupted, late or short meal periods. Defendant required Plaintiff and the Aggrieved Employees to work through their meal periods requiring them to clock out but continue working. Additionally, Plaintiff's and the Aggrieved Employees' meal periods were cut short since they were required to walk to the meal break area located on another floor. Plaintiff and the Aggrieved Employees had never been authorized or taken their second meal periods when their shifts exceeded 10 hours. Accordingly, Defendant's policy and practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit periods of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest periods. Each failure to authorize rest periods as so required is itself a violation of California's rest period laws.

Defendant, however, wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover, Defendant did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and the Aggrieved Employees. Plaintiff and the Aggrieved Employees would mostly miss their first, second and third rest periods or have interrupted or short rest periods. Defendant required Plaintiff and the Aggrieved Employees to interrupt their

rest periods and continue working to finish the assignments. Accordingly, Defendant's policy and practice was for Plaintiff and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

Plaintiff seeks penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendant, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiff and the Aggrieved Employees.

Defendant's failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods.

Failure to Reimburse and Indemnify Expenses

California Labor Code § 2802 requires employers to reimburse employees for their necessary expenditures and losses incurred in direct consequence of the discharge of their duties or of their obedience to directions of the employer.

Throughout the statutory period, Defendant wrongfully required Plaintiff and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendant without reimbursement. Defendant required Plaintiff and the Aggrieved Employees to purchase some materials necessary for performing their work such as doorstoppers, special towers, keys but failed to reimburse them for those expenses. Further, Plaintiff and the Aggrieved Employees were required to use their cellular telephones for work purposes to communicate with supervisors regarding the work schedules and assignments, but they were not reimbursed for cell phone usage. Plaintiff and the Aggrieved Employees were also required to wash and maintain the uniforms provided by Defendant but were not reimbursed for that. Plaintiff and the Aggrieved Employees incurred these substantial expenses as a direct result of performing their job duties for Defendant, and Defendant has failed to indemnify Plaintiff and the Aggrieved Employees for these employment-related expenses.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendant failed, and continues to fail to pay Plaintiff and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employ. These unpaid wages include wages for unpaid work time (including minimum and straight time wages), missed meal periods, and missed rest periods.

Defendant's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendant their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. Lab. Code § 226(e)(2)(B)(iii).

The statute further provides: “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.” Lab. Code § 226(e)(1).

Defendant intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly list gross wages earned, the failure to list the true net wages earned, wages for meal and rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked. Additionally, Defendant included vacation and sick pay in the total hours worked.

As a result of Defendant violating Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights.

Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendant the greater of their actual damages caused by Defendant’s failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Failure to Pay All Earned Wages Twice Per Month

Based on its failure to pay Plaintiff and the Aggrieved Employees for all wages as discussed above, Defendant also violated Labor Code § 204.

Labor Code § 204 requires employers to pay employees all earned wages two times per month on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. Lab. Code § 204(a). The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period. Lab. Code § 204(d).

Throughout the statute of limitations period applicable to this cause of action, employees were also entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for hours worked. However, during all such times, Defendant systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendant, all wages for all rest periods not authorized and permitted by Defendant, and all wages for all hours worked. Additionally, Defendant included vacation and sick pay in the total hours worked. As a result, Defendant owes employees the legally required wages for unpaid wages, and Plaintiff and the Aggrieved Employees suffered damages in those amounts.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendant violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;
2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;

3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
5. Labor Code § 2802 by failing to reimburse and indemnify employees for expenses and losses in the direct consequence and discharge of their duties;
6. Labor Code § 227.3 by failing to pay all vacation wages at termination;
7. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
8. Labor Code § 226 by failing to provide accurate itemized wage statements; and
9. Labor Code § 204 by failing to pay all earned wages two times per month.

Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, 2802, and 2699(f)(2).

Plaintiff has placed Defendant on notice by mailing a certified copy of this correspondence to its corporate address and address of the agent for service, as indicated on the first page.

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Plaintiff becomes aware of additional compensation owed or losses incurred by Plaintiff or by any other aggrieved employee of Defendant or any additional facts, Plaintiff expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,



Lilit Tunyan, Esq.
Partner
TUNYAN LAW, APC

Exhibit “B”

NOTICE OF PAGA ACTION SETTLEMENT

*De Martinez v. Facility Services Partners, Inc., Riverside County Superior Court
Case No. CVRI2304625*

This is not a solicitation by a lawyer. You are not being sued.

IF YOU ARE OR WERE EMPLOYED AS A NON-EXEMPT EMPLOYEE BY DEFENDANT FACILITY SERVICES PARTNERS, INC. (“DEFENDANT”) DURING THE PAGA PERIOD (JULY 2, 2022 through -----), THIS PAGA SETTLEMENT AFFECTS YOUR RIGHTS.

A settlement (the “Settlement”) has been reached in the lawsuit entitled *De Martinez v. Facility Services Partners, Inc.*, Case No. CVRI2304625 (the “Action”), asserting claims under the Labor Code Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.* (“PAGA”). The purpose of this Notice is to advise you as to why you have received a portion of the Settlement proceeds. The Settlement fully and finally resolves the Action.

Who is affected by this proposed Settlement?

The Court has designated, for settlement purposes only, the following persons as “Aggrieved Employees” or “PAGA Group Members”:

All non-exempt employees employed by Defendant in California at any time during the PAGA Period (the “PAGA Period” refers to the period of July 2, 2022 to -----).

According to Defendant’s records, you are one of the Aggrieved Employees or PAGA Group Members.

What is this case about?

In the Action, Plaintiff Susana Hernandez De Martinez asserted claims that Defendant violated certain provisions of the Labor Code relating to, among other things, non-payment of wages, non-compliance with meal and rest period requirements, reimbursement of business expenses, and non-compliant wage statements. Plaintiff sought only civil penalties on behalf of the California Labor and Workforce Development Agency (“LWDA”) and the other allegedly Aggrieved Employees under the Labor Code Private Attorneys General Act of 2004 (“PAGA”) [Lab. Code § 2699, *et seq.*].

Defendant denied all liability and was confident that it had strong legal and factual defenses to these claims. The Settlement represents a compromise and settlement of highly disputed claims. Nothing in the Settlement is intended or will be construed as an admission by Defendant that the claims in the Action have merit or that Defendant has any liability to Plaintiff or PAGA Group Members. The Parties acknowledge the risks and uncertainties of continued litigation. Plaintiff’s counsel believes the Settlement is fair, reasonable, and adequate, and is in the best interests PAGA Group Members.

The Court has made no determination about Plaintiff’s allegations asserted in the Action. The Court has determined that there is sufficient evidence to suggest that the proposed Settlement might be fair, adequate, and reasonable, and approved the Settlement. This Notice is not to be understood as an expression of any opinion by the Court as to the merits of the claim.

What is the Settlement Formula and My Estimated Settlement Share?

According to Defendant’s records from July 2, 2022 to ----- (i.e., the PAGA Period), your estimated number of pay periods worked is [] pay periods.

Under the terms of the Settlement, your Individual PAGA Payment is estimated to be \$_____.

Each individual PAGA payment was calculated on a pro rata basis (i.e., proportional) based on the number of pay periods worked by each Aggrieved Employee in the PAGA Covered Period divided by the total number of pay periods worked by all Aggrieved Employees during the PAGA Covered Period.

The Settlement Payments to Aggrieved Employees will be allocated as 100% penalties, which will be reported on IRS Form 1099-MISC, if required¹. Your share was calculated based on the number of pay periods you worked for Defendant during the PAGA Period.

¹ One hundred percent (100%) of your Individual PAGA Payment under this Settlement will be considered penalties, and may be subject to local, state, or federal tax withholdings and will be reported to the IRS and state tax authorities. You should rely on your own tax advisors as to the tax consequences, if any, of your Individual PAGA payment. Neither Plaintiff nor Defendant have made any representations or

Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the checks will be transmitted to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.

Release By LWDA and Aggrieved Employees

The Court has approved the Parties' Settlement and General Release Agreement (the "Agreement").

Plaintiff, on behalf of herself, the LWDA, and all Aggrieved Employees, acknowledges full and complete satisfaction of and releases and discharges and covenants not to sue Defendant and any Releasee from and with respect to Plaintiff's Released PAGA Claims.

"Released PAGA Claims" means any and all claims asserted or that could have been asserted, arising during the period from July 2, 2022, through [REDACTED] for civil penalties under PAGA as well as any interest, fees, and costs available under PAGA, based on the factual allegations in the Complaint and in PAGA Notice, including but not limited to, for failure to pay minimum, regular, and overtime wages, failure to provide compliant meal periods and associated premiums, failure to provide compliant rest periods and associated premiums, failure to timely pay wages at termination, failure to furnish accurate itemized wage statements, failure to reimburse necessary business expenses, and failure to maintain accurate records, and for violations of California Labor Code sections 201, 202, 203, 204, 226, 226.7, 227.3, 510, 512, 174.5, 1197, 1198, and 2802, and the applicable Industrial Welfare Commission Wage Orders, whether known or unknown, suspected or unsuspected, concealed or hidden, that were alleged in the Action and/or the PAGA Notice, or that could have been alleged in the Action and/or PAGA Notice based on the factual allegations contained therein, which Plaintiff and any Aggrieved Employee have or had at any time through and including the PAGA Period, against any of the Released Parties.

"Released Parties" means Defendant, including Defendant's parent corporation, affiliates, subsidiaries, divisions, predecessors, insurers, successors and assigns, and their current and former employees, attorneys, insurers, shareholders, partners, members, officers, directors and agents thereof, both individually and in their business capacities.

The Agreement is intended to be effective as a bar to all Released PAGA Claims. Upon the Effective Date and full funding of the Gross Settlement Amount, Plaintiff and the LWDA shall be forever barred and enjoined from instituting or prosecuting, either directly or indirectly, individually, collectively, and/or representatively, any Released PAGA Claims. The final judgment entered pursuant to this settlement shall bind the Aggrieved Employees who shall be bound by the judgment in any action brought by the LWDA with respect to the Released PAGA claims against the Released Parties. See *Arias v. Superior Court* (2009) 46 Cal.4th 986. This Agreement may be pleaded by any Released Party as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding that has been or may be instituted, prosecuted or attempted, asserting any Released PAGA Claims that arose during the PAGA Covered Period.

There is no statutory right for PAGA Group Members to object, opt out or otherwise exclude themselves from this Settlement.

PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THIS SETTLEMENT.

You may call Settlement Administrator at [REDACTED] with any questions. If your check is lost or misplaced, you should contact Settlement Administrator immediately to request a replacement.

warranties regarding the taxation of your Individual PAGA payment. Nothing within this notice or any other communication shall constitute or be construed or relied upon as tax advice within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended).

Exhibit “2”

PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT AGREEMENT AND RELEASE

This Private Attorneys General Act Settlement Agreement and Release (this “Agreement” or “Settlement”) is made by and between Plaintiff SUSANA HERNANDEZ DE MARTINEZ (“Plaintiff”), individually and on behalf of all other allegedly aggrieved employees (the “Aggrieved Employees” or “PAGA Group” as discussed and defined below), and as a private attorney general on behalf of the State of California pursuant to Labor Code section 2699, *et seq.*, the California Private Attorneys General Act (“PAGA”) on the one hand, and Defendant FACILITY SERVICES PARTNERS, INC. (“Defendant”), on the other hand. Plaintiff and Defendant are collectively referred to herein as “the Parties.”

This Agreement, and the settlement embodied herein, shall be binding on Plaintiff, the Aggrieved Employees, and Defendant, subject to the approval of the Court.

WHEREAS, Plaintiff is a former employee of Defendant. Plaintiff was employed by Defendant from approximately September 2021 to May 2023.

WHEREAS, on June 26, 2023, Plaintiff timely sent notice letter to the California Labor and Workforce Development Agency (“LWDA”) of her intent to pursue representative actions pursuant to the Private Attorneys General Act of 2004, California Labor Code Section 2698, *et seq.* (“PAGA”), on behalf of herself, other aggrieved employees, and the State of California (the notice by Plaintiff to the LWDA is referred to as the “PAGA Notice” herein) for alleged violations of California Labor Code sections 201, 202, 203, 204, 226, 226.7, 227.3, 510, 512, 174.5, 1197, 1198, and 2802, and the applicable Industrial Welfare Commission Wage Orders. The applicable PAGA Notice related to the Lawsuit is attached hereto as **Exhibit A** (all of the foregoing is collectively referred to herein as Plaintiff’s “PAGA Claims”).

WHEREAS, on September 5, 2023, Plaintiff filed a complaint asserting a single cause of action for civil penalties under the Private Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq.* (“PAGA”) in the Superior Court of California, Riverside County entitled *De Martinez v. Facility Services Partners, Inc.*, Case No. CVRI2304625 pending in Riverside County Superior Court (the “Lawsuit”).

WHEREAS, during the pendency of the Lawsuit, the Parties conducted significant investigation of the facts and law and engaged in an informal discovery exchange prior to mediation. In response to Plaintiff’s Counsel’s informal discovery requests, Defendant provided Plaintiff’s Counsel with information and documents pertaining to Plaintiff and the Aggrieved Employees, and the claims in the Lawsuit, including time punch and payroll data, to provide Plaintiff the opportunity to investigate Plaintiff’s allegations and the PAGA Claims.

WHEREAS, on April 6, 2024, the Parties attended a full day mediation with experienced wage-and-hour mediator Lynn S. Frank, Esq. As a result, the Parties agreed to settle Plaintiff’s PAGA Claims, taking into account all known facts and circumstances including the difficulty of proving some of Plaintiff’s claims, potential defenses asserted by Defendant, the uncertainty associated with litigation, the risks of significant delay, and numerous potential appellate issues.

WHEREAS, for purposes of this Settlement, the Aggrieved Employees are defined as: “All non-

exempt employees who are or were employed by Defendant in California from July 2, 2022, through the date of entry of order for PAGA settlement approval or 60 days from April 6, 2024, whichever is earlier.”

WHEREAS, for purposes of this Settlement, the PAGA Period is defined as the period from July 2, 2022 through the date of entry of order for PAGA settlement approval or 60 days from April 6, 2024, whichever is earlier (“PAGA Period”).

WHEREAS, the Parties understand, acknowledge, and agree that this PAGA settlement constitutes a compromise of Plaintiff’s PAGA Claims, and that it is the desire and intention of the Parties to effect a final and complete resolution of the representative PAGA Claims that Plaintiff and the Aggrieved Employees have or may have against Defendant and the Released Parties, as defined below. The Parties further acknowledge that this Agreement is a compromise of disputed claims and that nothing in this Agreement shall be construed as an admission by Defendant or the Released Parties of any wrongdoing or liability. Specifically, Defendant and the Released Parties deny any liability or wrongdoing of any kind associated with the claims alleged in the Lawsuit and the PAGA Notice. Defendant and the Released Parties, among other things, contend that they have complied at all times with the California Labor Code and all applicable California laws.

WHEREAS, California Labor Code § 2699(l)(2) requires Court review and approval of any settlement of a civil action filed pursuant to PAGA.

WHEREAS, Counsel for Plaintiff and the Aggrieved Employees, Tunyan Law, APC, has investigated the facts relevant to this settlement and this Agreement, and all matters pertaining thereto, and believes that this Settlement is in the best interests of the Aggrieved Employees and that this Settlement for each Aggrieved Employee is fair, reasonable, and adequate, given the inherent risk of litigation.

WHEREAS, the Parties have arrived at this Settlement through extensive, arms-length negotiations, taking into account all relevant factors, present and potential.

WHEREAS, the Parties recognize that in accordance with Labor Code section 2699(l), Court approval is required in the event of a settlement of a PAGA action on a representative basis. However, as explained in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009), the Parties are not obligated to follow the class action procedural rules in PAGA cases and therefore need not obtain approval of the PAGA settlement through a motion for preliminary or final approval. *See also Mendoza v. Nordstrom, Inc.*, 2 Cal. 5th 1074 (2017) (“PAGA authorizes a representative action without the need for class certification”); *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1123 (9th Cir. 2014) (“a PAGA suit is fundamentally different than a class action” in that PAGA has no notice requirements for unnamed aggrieved employees, nor may such employees opt out of a PAGA action); *Williams v. Sup. Ct.*, 3 Cal. 5th 531, 546-47 (2017) (“PAGA does not make other potentially aggrieved employees parties or clients of plaintiff’s counsel, does not impose on a plaintiff or counsel any express fiduciary obligations, and does not subject a plaintiff or counsel to scrutiny with respect to the ability to represent a large class”).

Therefore, in consideration of the promises and agreements contained herein, and to avoid the uncertainty, risks, costs, and delays associated with further litigation, the Parties agree and covenant as follows:

1. Effective Date. The effective date (“Effective Date”) of this Settlement shall mean the date after the following has occurred: (1) the date the Court enters an order approving this Settlement; or (2) the date such court order becomes final in the event of an appeal, whichever occurs later.

2. Release of Claims by Plaintiff, the Aggrieved Employees, and the State of California. Upon the Effective Date and full funding of the Gross Settlement Amount (as that term is defined below) and General Release Payment to Plaintiff, and except as to the rights and obligations created by this Settlement, Plaintiff ~~and the Aggrieved Employees~~, individually and on behalf of ~~her~~their descendants, marital community, dependents, heirs, executors, administrators, representatives, attorneys, successors and assigns, and the State of California, on behalf of itself and its administrators, representatives, and assigns, will ~~be deemed to have~~ knowingly and voluntarily released and forever discharged Defendant, including Defendant’s parent corporation, affiliates, subsidiaries, divisions, predecessors, insurers, successors and assigns, and their current and former employees, attorneys, insurers, shareholders, partners, members, officers, directors and agents thereof, both individually and in their business capacities (collectively, the “Released Parties”), to the full extent permitted by law, of and from the Lawsuit and from any and all claims asserted or that could have been asserted, arising during the period from July 2, 2022, through the date of entry of order for PAGA settlement approval or 60 days from April 6, 2024, whichever is earlier, for civil penalties under California Labor Code section 2698, *et seq.* (“PAGA”) as well as any interest, fees, and costs available under PAGA, based on the factual allegations in the Complaint and in PAGA Notice, including but not limited to, for failure to pay minimum, regular, and overtime wages, failure to provide compliant meal periods and associated premiums, failure to provide compliant rest periods and associated premiums, failure to timely pay wages at termination, failure to furnish accurate itemized wage statements, failure to reimburse necessary business expenses, and failure to maintain accurate records, and for violations of California Labor Code sections 201, 202, 203, 204, 226, 226.7, 227.3, 510, 512, 174.5, 1197, 1198, and 2802, and the applicable Industrial Welfare Commission Wage Orders, whether known or unknown, suspected or unsuspected, concealed or hidden, that were alleged in the Action and/or the PAGA Notice, or that could have been alleged in the Action and/or PAGA Notice based on the factual allegations contained therein, which Plaintiff and any Aggrieved Employee have or had at any time through and including the PAGA Period, against any of the Released Parties (the “Released PAGA Claims”). The final judgment entered pursuant to this settlement shall bind the Aggrieved Employees who shall be bound by the judgment in any action brought by the LWDA with respect to the Released PAGA claims against the Released Parties. See *Arias v. Superior Court* (2009) 46 Cal.4th 986. With the exception of Plaintiff, who will execute a separate individual settlement and release agreement that includes a general release of all claims, this settlement shall not impact aggrieved employees’ ability to assert claims (claims for wages and other damages) other than the Released PAGA Claims. Defendant agrees to enter into a separate individual settlement and release agreement with Plaintiff for general release of her claims in lieu of litigating Plaintiff’s individual non-PAGA claims and for representing the Aggrieved Employees in consideration for general release payment (“General Release Payment”). The Gross Settlement Amount does not include the General Release Payment to Plaintiff in the amount of Ten Thousand Dollars and Zero Cents (\$10,000.00), which Defendant agrees to pay in addition to the Gross Settlement Amount.

3. Effect of Judgment. Upon the Effective Date and full funding of the Gross Settlement Amount, Plaintiff and the LWDA, and the Aggrieved Employees shall be forever barred and enjoined from instituting or prosecuting, either directly or indirectly, individually, collectively, and/or representatively, any Released PAGA Claims. The final judgment entered pursuant to this settlement shall bind the Aggrieved Employees who shall be bound by the judgment in any action brought by the LWDA with respect to the Released PAGA claims against the Released Parties. See *Arias v. Superior Court* (2009) 46 Cal.4th 986. This Agreement may be pleaded by any Released Party as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding that has been or may be instituted, prosecuted or attempted, asserting any Released PAGA Claims.

4. Notice to LWDA. Pursuant to California Labor Code § 2699(l)(2), Plaintiff shall submit to the LWDA a copy of this Agreement at the same time that Plaintiff submits it to the Court for approval.

5. No Right to Opt Out. The Parties agree that there is no statutory right for any of the Aggrieved Employees to object, opt out or otherwise exclude themselves from this Settlement.

6. Gross Settlement Amount. Defendant agrees to pay, in accordance with the terms set forth herein, the total sum of One Hundred Sixty-Five Thousand Dollars and Zero Cents (\$165,000.00) as the non-reversionary gross settlement amount (the “Gross Settlement Amount”) in full settlement of the Lawsuit. The Gross Settlement Amount, which represents the total amount payable under this Settlement by Defendant (subject to the Escalator Clause described below), will be allocated as follows:

- a. PAGA Counsel’s attorneys’ fees and costs request of up to 33 1/3% of the Gross Settlement Amount or Fifty-Five Thousand Dollars and Zero Cents (\$55,000.00) (“PAGA Counsel’s Fees”) and PAGA Counsel’s separate request for reasonable litigation costs incurred in this matter (“PAGA Counsel’s Costs”) not to exceed Sixteen Thousand Dollars and Zero Cents (\$16,000.00). Defendant will not oppose these requests. To the extent that the Court approves less than the amount of attorney’s fees and costs that PAGA Counsel requests, any reduced amount shall revert to the PAGA Fund.
- b. Administration costs are estimated not to exceed Eight Thousand Dollars and Zero Cents (\$8,000.00) to be paid to the Settlement Administrator (“Administration Costs”), which is a good faith estimate. If the Parties’ estimated administration fees are too little, it can be adjusted and shall be paid from the Gross Settlement. If the actual administration fee is less than the Parties’ estimated administration fees, the difference between the actual and estimated administration fees will revert to the PAGA Fund; and
- c. The remainder of the Gross Settlement Amount (the “PAGA Fund”) after deducting items (a) and (b) shall be designated as PAGA Penalties to be allocated between the LWDA and the Aggrieved Employees pursuant to Labor Code section 2699(i), with 75% paid to the LWDA (the “LWDA PAGA Portion”) and 25% paid to the Aggrieved Employees (the

“Aggrieved Employees’ PAGA Portion”) on a pro-rata basis as set forth in Paragraph 7 below.

7. Allocation Adjustment. The Parties agree that, in the event the Court denies approval of the Gross Settlement Amount and/or the PAGA Fund, they shall renegotiate the allocation of the funds in good faith in an effort to obtain approval of this Settlement. The specific amounts of the attorneys’ fees and costs awards shall be subject to Court approval, and the award of any amounts less than that requested by Plaintiff and/or Plaintiff’s counsel will not be grounds for Plaintiff or her counsel terminating this Settlement but may be subject to appeal. In the event of such an appeal, final funding and administration of the portion of the attorneys’ fees, costs award and/or General Release Payment in dispute will be segregated and stayed pending the exhaustion of appellate review. If, after the exhaustion of any such appellate review, additional amounts are distributable to the Aggrieved Employees, then the cost of administration of the additional payments to them will be paid out of such additional amounts and not by Defendant. Any amount not awarded in attorneys’ fees, costs and/or general release payment shall be added to the PAGA Fund for distribution to the LWDA and the Aggrieved Employees.

8. Allocation and Calculation of the PAGA Penalties. Each Aggrieved Employee shall receive a portion of his or her PAGA Portion on a pro-rata basis. Based on the Settlement Data provided by Defendant to the Settlement Administrator as defined in Paragraph 13.a. below, the Settlement Administrator will calculate: (i) the total number of pay periods worked by each Aggrieved Employee during the PAGA Period; and (ii) the total number of pay periods worked by all Aggrieved Employees during the PAGA Period. To determine each Aggrieved Employee’s payment from the Aggrieved Employees’ PAGA Portion, the Settlement Administrator will use the following formula: Settlement Payment = Aggrieved Employees’ PAGA Portion × [Pay Periods Worked by Individual Aggrieved Employee during the PAGA Period ÷ Total Pay Periods Worked by All Aggrieved Employees during the PAGA Period].

9. Escalator Clause: As of April 6, 2024, Defendant estimates the PAGA Group, including Plaintiff, performed work for Defendant during approximately 3,020 pay periods at the time of mediation and this estimate serves as the basis for Plaintiff’s accepting the Settlement. If the number of actual pay periods during the PAGA Period exceeds 10% of the estimated pay periods (i.e., exceeds 3,322 pay periods), Defendant shall increase the Gross Settlement by a pro-rata dollar value equal to the number of pay periods in excess of 3,322 pay periods. For example, if there is a 1% increase over 10% then the Gross Settlement increases by 1%. Aside from the terms set forth in this paragraph, under no circumstances will Defendant be required to pay any additional monies in order to receive the release of claims as set forth herein.

10. Tax Treatment of Settlement Amounts. Because this is a settlement of PAGA Claims for civil penalties only, no portion of this settlement is allocated to unpaid wages. With regard to settlement payments to the Aggrieved Employees and the LWDA, IRS Form 1099s will be issued by the Settlement Administrator, if applicable. IRS Form 1099s are used for payments of miscellaneous income that is not considered wages, such as the penalty payments at issue in this Settlement. Plaintiff and the Aggrieved Employees shall pay any federal or state taxes that may be required to be paid with respect to this Agreement and agree to indemnify and hold Defendant and all of the Released Parties harmless for any of their tax liability whatsoever related to the monetary consideration provided herein. Nothing in this Settlement is intended to constitute legal

advice regarding federal, state, and/or local tax obligations. Defendant, its counsel and Plaintiff's and the Aggrieved Employees' counsel are not responsible for any employee tax obligations regarding the allocation of the settlement payments. Payment of the portion allocated to PAGA Counsel's fees and costs will be reflected in a Form 1099 to PAGA Counsel, who shall assume full responsibility and liability for the payment of taxes due on such payments.

11. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS OR ITS OWN, INDEPENDENT LEGAL AND TAX ADVISERS FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISOR'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

12. Settlement Administrator. The Settlement Administrator shall be responsible for sending notices, calculating settlement payments, preparing all checks and mailings, and complying with all requirements set forth herein. The Settlement Administrator will be required to sign and provide to Defendant any Certification Re Confidential Discovery Materials and be bound by any Stipulated Protective Order as may be entered by the Court. As noted above, the costs of the Settlement Administrator shall be paid out of the Gross Settlement Amount, and the Parties agree to use ILYM Group, Inc. as the Settlement Administrator.

13. PAGA Settlement Payment Procedures.

a. Within fifteen (15) calendar days of the Effective Date, Defendant shall deposit the Gross Settlement Amount with the Settlement Administrator. Within fifteen (15) calendar days of the Effective Date, Defendant shall also provide the Settlement Administrator with a list of the Aggrieved Employees with each listed employee's full name, last known mailing address, last known telephone number, social security number, and the actual number of compensable pay periods worked by them during the PAGA Period (the "Settlement Data"). The Settlement Data will not be provided to Plaintiff's Counsel. The Settlement Data shall be used only by the

Settlement Administrator and only for purposes of administering this Settlement. The Settlement Administrator shall run all the addresses of the Aggrieved Employees through the United States Postal Service NCOA database to obtain current address information and shall skip trace and re-mail all returned, undelivered mail within ten (10) calendar days of receiving notice that a notice and check was undeliverable.

b. Within fifteen (15) calendar days from the date Defendant submits the Settlement Data and the Gross Settlement Amount has been deposited with the Settlement Administrator, the Settlement Administrator shall:

- i. Distribute a total of Twenty-Five percent (25%) of the PAGA Fund to the Aggrieved Employees, along with the Notice of PAGA Representative Action Settlement (attached hereto as **Exhibit B**). Aggrieved Employees shall not be required to make claims to receive their share of the PAGA settlement. The payment checks shall be sent to each Aggrieved Employee by U.S. First Class mail to the Aggrieved Employee's last known mailing address with directions to the Postmaster to forward the payment checks and return all undeliverable payment checks to the Settlement Administrator. It will be conclusively presumed that an Aggrieved Employee's individual settlement payment check was received if the payment check has not been returned within thirty (30) calendar days of the original mailing or re-mailing.
- ii. Distribute a total of Seventy-Five percent (75%) of the PAGA Fund to the LWDA.
- iii. Distribute PAGA Counsel's Fees and PAGA Counsel's Costs, as approved by the Court.
- iv. Distribute payment to itself for services as the Settlement Administrator, as approved by the Court.

c. Settlement Checks issued to the Aggrieved Employees pursuant to this Agreement will expire one hundred and eighty (180) calendar days from the date they are mailed by the Settlement Administrator. For any Aggrieved Employee whose individual PAGA payment check is uncashed and cancelled after the void date, the Settlement Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.

d. The Parties and their counsel shall not bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.

14. Duties of the Parties Related to Approval. Promptly upon execution of this Agreement, Plaintiff shall file her motion for approval of this Settlement and for the entry of an order approving this Settlement as required by Labor Code section 2699(I). The approval motion will request Court approval of the following: (1) the terms of this Agreement; (2) PAGA Counsel's Fees and PAGA Counsel's Costs; (3) payments to the Aggrieved Employees and the LWDA; (4) payment to the

Settlement Administrator; and (5) Final Judgment. In conjunction with the approval motion, Plaintiff shall submit a proposed Final Judgment to the Court. Not later than seven (7) calendar days prior to the submission of the motion to the Court for approval of this Settlement, Plaintiff's counsel will submit a final draft thereof (including all supporting papers and proposed order) to counsel for Defendant for their review and comment.

15. Interim Stay of Proceedings. The Parties agree to refrain from further litigation of the Lawsuit, except such proceedings necessary to implement and obtain the Final Judgment.

16. Invalid without Court Approval. In the event this Agreement is not approved by the Court, it shall be deemed null and void, of no force and effect, and of no probative or evidentiary value, and the Parties represent, warrant, and covenant that it will not be used or referred to for any purpose whatsoever. In the event that this Agreement does not become final for any reason, this Agreement shall be null and void and any order entered by the Court in furtherance thereof shall be treated as void ab initio. In such a case, the Parties shall return to the status quo as if they had not entered into this Agreement. The Settlement Administrator will be paid by the Parties on an equal basis for its costs through the date it is notified that this Settlement will not be approved.

17. Non-Admission of Wrongdoing. The Parties agree that this Agreement does not constitute an admission by Defendant or any Released Party, of any of the matters alleged in the Lawsuit or of any violation by any of them of any federal, state or local law, ordinance or regulation, or of any violation of any policy or procedure, or of any liability or wrongdoing whatsoever. Neither this Agreement nor anything in this Agreement shall be construed to be or shall be admissible in any proceeding as evidence of liability or wrongdoing by Plaintiff, Defendant or the Released Parties.

18. Waiver and Amendment. The Parties may not waive, amend, or modify any provision of this Agreement except by a written agreement signed by the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Agreement will not constitute a waiver of any other provision.

19. No Transfer/Assignment of Claims. Plaintiff warrants and represents that Plaintiff has not assigned or transferred or purported to assign or transfer to any person or entity all or any part of or any interest in any claim, right, liability, demand, obligation, expense, action, or causes, or portion thereof, or interest therein, which is or may be subject to this Settlement, including any claim released under this Settlement Agreement. Plaintiff is solely responsible for the satisfaction of any assignment or lien to any lien holder and will indemnify and hold the Released Parties or any of the Released Parties harmless against any liens, damages, penalties, fines, fees, assessments, taxes or attorneys' fees that may be imposed against or incurred by any of the Released Parties as a result of the Lawsuit of any lien holder or any lien claimant or any court in relation to any interest which any third party may have in any claim which Plaintiff is releasing under this Settlement Agreement or any interest in any of the proceeds paid to Plaintiff or Plaintiff's Counsel under this Settlement Agreement. Plaintiff shall defend, indemnify and hold harmless the Released Parties or any of the Released Parties from and against any claim (including the payment of attorneys' fees and costs actually incurred whether or not litigation is commenced) based on or in connection with or arising out of any such assignment or transfer made, purported or claimed.

20. Liens and Attorneys' Fees/Indemnification.

Plaintiff solely is responsible for any liens made in connection with any services performed on Plaintiff's behalf by any attorney, consultants, or expert witnesses. Each Party solely is responsible for any fees and costs he, she or it has incurred including, but not limited to, fees for attorneys, consultants and expert witnesses. Plaintiff acknowledges that none of the Released Parties are responsible for the payment of any fees incurred on behalf of Plaintiff in connection with the prosecution of the Lawsuit, except to the extent this Agreement provides for payment of PAGA Counsel's Fees and PAGA Counsel's Costs.

21. Covenants and Representations. Plaintiff acknowledges that she has read this Agreement, fully understands her rights, privileges, and duties under this Settlement, and enters into this Settlement freely and voluntarily, and without duress. Plaintiff further acknowledges that she had the opportunity to consult with her attorneys to explain the terms of this Settlement and the consequences of signing this Agreement.

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

23. Enforcement. The Parties agree that, following entry of the Final Judgment, this Agreement shall be enforceable by the Court, and the Court shall retain exclusive and continuing jurisdiction of the Lawsuit over the Parties and the Aggrieved Employees to interpret and enforce the terms, conditions, and obligations of this Agreement pursuant to California Code of Civil Procedure section 664.6. In the event that one or more of the Parties to this Settlement institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful Party or Parties shall be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

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

25. Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts and writings prior to the date hereof relating to the subject matters hereof. Any representation, promise or agreement not specifically included in this Agreement shall not be binding upon or enforceable against either Party. This is a fully integrated agreement. No other promises or agreements shall be binding or shall modify this Agreement unless in writing and signed by the Parties.

26. Severability. If any provision of this Agreement or the application thereof is held invalid, the invalidity shall not affect other provisions or applications of the Agreement that can be given effect without the invalid provisions or application, and to this end, the provisions of this Agreement are declared to be severable. Notwithstanding the foregoing, no portion of any release contained herein may be deemed severed or deleted from this Agreement, except upon waiver in writing by the applicable Released Party.

27. Confidentiality. Plaintiff and Plaintiff's counsel agree that they have not and will not disclose or discuss to any third parties and have not and will not publish the Settlement or any of its terms before filing a motion for approval of the Settlement. In response to any inquiries, Plaintiff will state that "the case was resolved, and it was resolved confidentially." Plaintiff and Plaintiff's counsel shall not report the Settlement in any medium or in any publication, shall not post or report anything regarding the claims of Plaintiff or the PAGA Group or the Settlement on its website, and shall not contact, discuss with, or respond to any reporters or media regarding the Settlement. This shall not apply to or limit the public filing of motions or other case materials in the Action related to seeking and obtaining Court approval of the proposed settlement and the related awards of attorneys' fees and costs, or to communications between Plaintiff's counsel and Plaintiff or the Aggrieved Employees in the Action, including through the posting of Court-filed documents on Plaintiff's counsels' website. After filing a motion for approval of the Settlement and uploading the Settlement approval motion documents with LWDA website prior to filing the Settlement approval motion with court, the Settlement terms become public.

28. No Construction Against the Drafter. Each Party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any Party on the basis that the Party was the drafter.

29. Choice of Law. This Agreement shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the Parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of California without regard to principles of conflict of laws.

30. Counterparts. This Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

31. Cooperation. Each Party, on behalf of themselves, and their respective business entities, heirs, executors, and assigns, agrees that they will abide by this Agreement and will do all such acts, and prepare, execute, and deliver all such documents, as may be reasonably required to carry out the stated objectives of this Agreement.

32. Electronic Signatures. Each Party specifically agrees that an electronic signature shall have the same force and effect as a signed original of the Agreement, and that the Parties may use DocuSign or Adobe Sign, an electronic signature technology, to expedite the execution of this Agreement pursuant to California Civil Code Section 1633.7.

Dated:

Plaintiff SUSANA HERNANDEZ DE
MARTINEZ

Dated:

Defendant FACILITY SERVICES
PARTNERS, INC.

By: _____

Its: _____

Dated:

TUNYAN LAW, APC

By: _____

Lilit Tunyan

Artur Tunyan

Attorneys for Plaintiff SUSANA HERNANDEZ DE
MARTINEZ, and Aggrieved Employees

APPROVED AS TO FORM:

Dated:

**SWERDLOW FLORENCE SANCHEZ SWERDLOW
& WIMMER, A Law Corporation**

By: _____

Lori Yankelevits

Millicent Sanchez

Attorneys for Defendant FACILITY SERVICES
PARTNERS, INC.

Exhibit “3”

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3) ss
4 COUNTY OF LOS ANGELES)

5 I am employed in the county of Los Angeles, State of California. I am over the age of
6 18 and not a party to the within action; my business address is 535 N Brand Blvd. Suite 285,
7 Glendale, California 91203.

8 On the date indicated below, I served the document described as: **SUPPLEMENTAL**
9 **DECLARATION OF LILIT TUNYAN IN SUPPORT OF PLAINTIFF'S MOTION FOR AN**
10 **ORDER APPROVING SETTLEMENT OF CLAIMS BROUGHT PURSUANT TO THE**
11 **PRIVATE ATTORNEY GENERAL'S ACT OF 2004** on the interested parties in this action by
12 sending a true copy thereof to interested parties as follows and as stated on the attached service list:

13 Lori Yankelevits
14 lyankelevits@swerdlowlaw.com
15 Millicent Sanchez
16 msanchez@swerdlowlaw.com
17 Chehreh Golzar
18 cgolzar@swerdlowlaw.com
19 **SWERDLOW FLORENCE SANCHEZ**
20 **SWERDLOW & WIMMER**
21 A Law Corporation
22 10877 Wilshire Boulevard, Suite 1650
23 Los Angeles, CA 90024
24 Tel: (310) 288-980
25 Facsimile: (424) 281-2580

26 *Attorneys for Defendant Facility Services Partners, Inc.*

27 [✓] **BY E-MAIL:** I hereby certify that this document was served from Glendale, California,
28 by e-mail delivery on the parties listed herein at their most recent known e-mail address
or e-mail of record in this action.

[✓] **BY ELECTRONIC SERVICE:** Based on an agreement of the parties to accept electronic
service, I caused the documents to be sent to the persons at the electronic service addresses listed
above via electronic mail. I did not receive an error message.

I declare under penalty of perjury under the laws of the State of California that the
above is true and correct.

Executed on June 26, 2024 at Glendale, California.

Lilit Tunyan

Name



Signature