

1 JEAN-CLAUDE LAPUYADE, Esq. (SBN 248676)
2 **JCL LAW FIRM, APC**
3 3990 OLD TOWN AVENUE, SUITE C204
4 SAN DIEGO, CA 92110
5 TEL: 619-599-8292
6 FAX: 619-599-8291

7 SHANI O. ZAKAY, Esq. (SBN 277924)
8 **ZAKAY LAW GROUP, APLC**
9 5850 OBERLIN DRIVE SUITE 230A
10 SAN DIEGO, CA 92121
11 TEL: 619-255-9047
12 FAX: 858-404-9203

13 ATTORNEYS FOR PLAINTIFF DIONYSIOS SHALLAN

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

DIONYSIOS YURI SHALLAN, an
individual, on behalf of themselves, and on
behalf of all persons similarly situated

PLAINTIFFS,

vs.

SCOTT'S SACRAMENTO RIVER, INC., a
California corporation and Does 1 through 50,
Inclusive,

Case No. 34-2020-00288630

[Action Filed 11/16/2020]

**STIPULATION OF SETTLEMENT OF
CLASS ACTION AND PRIVATE
ATTORNEYS GENERAL ACT CLAIMS
AND RELEASE OF CLAIMS**

Judge: Hon.
Dept.:

STIPULATION OF SETTLEMENT OF CLASS ACTION AND RELEASE OF CLAIMS

1 This Stipulation of Class and Representative Action Settlement and Release of Claims is
2 entered into by and between named Plaintiff DIONYSIOS SHALLAN (hereinafter "Plaintiff"),
3 individually and on behalf of the Settlement Class, and Defendant SCOTT'S SACRAMENTO
4 RIVER, INC. a California corporation (hereinafter "Defendant"). Plaintiff and Defendant will be
5 referred to collectively herein as the "Parties."

6 **DEFINITIONS**

7 A. "Action" shall mean *Shallan, v. Scott's Sacramento River, Inc.*, currently pending in
8 the Superior Court for the County of Sacramento, Case No. 34-2020-00288630 filed November 16,
9 2020.

10 B. "Aggrieved Employees" means all current and former non-exempt banquet
11 employees who worked for Defendant in the State of California between the period of March 24,
12 2016 through September 29, 2020.

13 C. "Agreement" or "Settlement Agreement" means this Stipulation of Settlement of
14 Class Action and Release of Claims.

15 D. "Class Counsel" shall mean Jean-Claude Lapuyade, Esq. of JCL LAW FIRM, APC,
16 and Shani O. Zakay, Esq. of the ZAKAY LAW GROUP, APLC

17 E. "Class Counsel Award" means the award of fees and expenses that the Court
18 authorizes to be paid to Class Counsel for the services they have rendered to Plaintiff and the
19 Settlement Class Members, consisting of attorneys' fees currently not to exceed one-third of the
20 Total Settlement Amount currently estimated to be \$34,166.66 (33.33%) out of \$102,500.00 plus
21 costs and expenses not to exceed \$10,000.

22 F. "Class Data" means information regarding Settlement Class Members that
23 Defendant will in good faith compile from its records and provide as confidential for settlement
24 purposes only to the Settlement Administrator. It shall be formatted as a Microsoft Excel
25 spreadsheet and shall include: each Settlement Class Member's full name; last known address;
26 Social Security Number; start dates and end dates of employment, and number of Workweeks as a
27 Settlement Class Member during the Class Period and PAGA Period and email address, if known.

28 G. "Class Period" means the period from March 24, 2016 to September 29, 2020.

1 H. "Class Representative Service Award" means the amount that the Parties agree that
2 named Plaintiff may request an award of up to seven thousand five hundred dollars (\$7,500), to be
3 paid from the Net Settlement Amount, subject to approval by the Court, for his services as the
4 representative of the Class, which will be reported on IRS Form 1099. Plaintiff assumes sole
5 responsibility for tax reporting and payment on his Class Representative Service Award. To the
6 extent that the Court awards an Service Award that is less than the allocation set forth herein, the
7 amount that is not awarded will be included in the Net Settlement Amount for distribution to the
8 Settlement Class Members. Defendant will not oppose a request for a Class Representative Service
9 Award that is made in accordance with this section.

10 I. "Class Representative" means Plaintiff DIONYSIOS SHALLAN.

11 J. "Court" means the Superior Court for the State of California, County of
12 Sacramento.

13 K. "Defendant" shall mean SCOTT'S SACRAMENTO RIVER, INC., a California
14 corporation.

15 L. "Effective Date" means the earliest date, following entry by the Court of an order
16 and judgment finally approving this Settlement, upon which one of the following have occurred: (i)
17 if no objectors appear at the hearing for final approval, ten (10) calendar days following the Court's
18 entry of the order granting final approval, (ii) the expiration of all potential appeal periods without
19 a filing of a notice of appeal of the final approval order or judgment; (iii) final affirmance of the
20 final approval order and judgment by an appellate court as a result of any appeal(s), or (iv) final
21 dismissal or denial of all such appeals (including any petition for review, rehearing, certiorari, etc.)
22 such that the final approval order and judgment is no longer subject to further judicial review.

23 M. "Funding Date" shall mean thirty (30) calendar days after the Effective Date and is
24 the date Defendant transfers the Total Settlement Amount into the QSF in accord with the terms of
25 this Agreement.

26 N. "Individual Settlement Payment" means the amount payable from the Net
27 Settlement Amount to each Settlement Class Member and excludes any amounts distributed to
28 Settlement Class Members pursuant to PAGA.

O. "Net Settlement Amount" or "NSA" means the Total Settlement Amount, less Class Counsel Award, Class Representative Service Award, PAGA Settlement, and Settlement Administration Costs.

P. "Notice Packet" means the Class Notice to be provided to the Settlement Class Members by the Settlement Administrator in the form set forth as Exhibit A to this Agreement (other than formatting changes to facilitate printing by the Settlement Administrator).

Q. "PAGA" means the California Labor Code Private Attorneys General Act of 2004, Labor Code § 2698 *et seq.*

R. "PAGA Payment" means the twenty-five percent (25%) from the PAGA Settlement for distribution to the Aggrieved Employees.

S. "PAGA Period" means the period between March 24, 2019 and September 29, 2020.

T. "PAGA Settlement" shall mean Five Thousand Dollars (\$5,000.00) to be allocated from the Total Settlement Amount.

U. "Parties" means Plaintiff and Defendant, collectively, and "Party" shall mean either Plaintiff or Defendant, individually.

V. "Payment Ratio" means the respective Workweeks for each Settlement Class Member divided by the sum total Workweeks for all Settlement Class Members.

W. "Plaintiff" shall mean DIONYSIOS SHALLAN.

X. "QSF" means the Qualified Settlement Fund established, designated and maintained by the Settlement Administrator to fund the Total Settlement Amount.

Y. "Released Claims" means upon the Effective Date, Plaintiff and the Settlement Class Members, fully release and discharge Defendant and the Released Parties, as defined herein, from any and all claims, actions, demands, causes of action, suits, debts, obligations, guarantees, costs, expenses, attorneys' fees, damages, restitution, injunctive relief, penalties, rights or liabilities, of any nature and description whatsoever, arising during the Class Period or PAGA Class Period, that are alleged in the operative complaint in the Action or that could have been alleged in the Action based on the facts and theories alleged in the operative complaint in the

1 Action, including but not limited to, failure to pay minimum wage, straight time wages, and
2 overtime wages, unpaid premium pay for violations of California's meal period and rest break law,
3 waiting time penalties, penalties for non-compliant wage statements and failure to keep accurate
4 payroll records, and failure to reimburse employees for reasonably incurred business expenses, and
5 failure to pay gratuities and claims pursuant to Labor Code sections 201, 202, 203, 204, 206.5,
6 210, 225.5, 226, 226.3, 226.7, 350, 351, 510, 511, 512, 515, 558, 1174, 1175, 1194, 1194.2, 1197,
7 1197.1, 1198, and 1199, and 2802, and claims under Business and Professions Code section 17200,
8 *et seq.*

9 Z. "Released PAGA Claims" means upon the Effective Date, Plaintiff and the
10 Settlement Class Members, fully release and discharge Defendant and the Released Parties, as
11 defined herein, from any and all claims, actions, demands, causes of action, suits, debts,
12 obligations, guarantees, costs, expenses, attorneys' fees, damages, restitution, injunctive relief,
13 penalties, rights or liabilities, of any nature and description whatsoever, alleged or that could have
14 been alleged based on the facts and theories alleged in the operative complaint in the Action arising
15 during the Class Period or PAGA Class Period, arising out of the facts and claims asserted in the
16 Action for civil penalties under the Private Attorney General Act of 2004 Cal. Labor Code § 2698
17 *et seq.* based upon the facts alleged in the operative complaint in the Action, including but not
18 limited to, failure to pay minimum wage, straight time wages, and overtime wages, unpaid
19 premium pay for violations of California's meal period and rest break law, waiting time penalties,
20 penalties for non-compliant wage statements and failure to keep accurate payroll records, and
21 failure to reimburse employees for reasonably incurred business expenses, and failure to pay
22 gratuities.

23 AA. "Released Parties" means Defendant and its respective present and former parent
24 companies, subsidiaries, divisions, related or affiliated companies and joint ventures, shareholders,
25 officers, directors, management level employees, agents, attorneys, insurers, reinsurers, successors
26 and assigns.

BB. "Response Deadline" means the date forty-five (45) days after the Settlement Administrator mails Notice Packets to Settlement Class Members and the last date on which Settlement Class Members may submit requests for exclusion or objections to the Settlement.

CC. "Settlement" means the disposition of the Action pursuant to this Agreement.

DD. "Settlement Administrator" means ILYM Group Inc., 14771 Plaza Drive, Ste. L, Tustin, CA 92780; Tel: 1-888-250-6810; Fax: 1-888-845-6185. The Settlement Administrator establishes, designates and maintains, as a QSF under Internal Revenue Code section 468B and Treasury Regulation section 1.468B-1, into which the amount of the Total Settlement Amount is deposited for the purpose of resolving the claims of Settlement Class Members. The Settlement Administrator shall maintain the funds until distribution in an account(s) segregated from the assets of Defendant and any person related to Defendant. ***All accrued interest shall be paid and distributed to the Settlement Class Members as part of their respective Settlement Payment.***

EE. "Settlement Class Members" or "Settlement Class" means all of Defendant's current and former non-exempt banquet employees who worked for Defendant in the State of California during the Class Period. The "Settlement Class Members" shall not include any person who submits a timely and valid request for exclusion as provided in this Agreement.

FF. "Total Settlement Amount" means One Hundred and Two Thousand Five Hundred Dollars and Zero Cents (\$102,500.00) that Defendant must pay into the QSF in connection with this Settlement, inclusive of the sum of the Individual Settlement Payments, the Class Representative Service Payment Awards, the Class Counsel Award, PAGA Settlement and the Settlement Administration Costs.

GG. "Workweeks", for purposes of calculating the distribution of the Net Settlement Amount, means the number of weeks of employment during the Class Period that each Settlement Class Member worked for Defendant. To calculate the amount each Settlement Class Member will receive based on their number of Workweeks, the Net Settlement Amount will be divided by the total number of Workweeks worked by the Settlement Class Members during the Class Period and then allocated to the Settlement Class Members on a pro rata basis. For purposes of distributing

the PAGA Settlement to the Aggrieved Employees, Workweeks means the number of weeks each Aggrieved Employee worked for Defendant during the PAGA Period.

I. RECITALS

A. Plaintiff worked for Defendant in a non-exempt hourly position from approximately 2011 through March 11, 2020 when Defendant's restaurant, Scott's Seafood on the River, was mandated closed by various State and local health ordinances and regulations related to the ongoing COVID-19 pandemic.

B. On March 24, 2020, Plaintiff filed a Notice of Violations with the Labor and Workforce Development Agency (LWDA) and served the same on Defendant. Attached as Exhibit A is a true and correct copy of the Notice of Violations that the Plaintiff filed with the LWDA.

C. On July 28, 2020, after agreeing to attend mediation, the Parties entered into a Statute of Limitations Tolling Agreement, preserving the statute of limitations applicable to Plaintiff's claims until after the mediation is complete.

D. On September 29, 2020, the Parties participated in mediation presided over by the Honorable Judge Steven R. Denton (Ret.), a respected jurist and mediator. Following the mediation, each side, represented by its respective counsel, were able to agree to settle the Action that was memorialized in the form of a Memorandum of Understanding ("MOU").

E. On November 16, 2020, pursuant to the Parties' MOU and with the intent of seeking approval of the Settlement, Plaintiff filed this Action against Defendant in the Superior Court of the State of California, County of Sacramento. In the Complaint, Plaintiff asserts claims that Defendant:

1. Violated California Business and Professions Code § 17200 *et seq.*;
2. Failed to pay minimum wages in violation of California Labor Code §§ 1194, 1197, and 1197.1;
3. Failed to pay overtime wages in violation of California Labor Code §§ 510, *et seq.*;
4. Failed to provide required meal breaks in violation of California Labor Code §§ 226.7 and 512 and the applicable IWC Wage Order;

5. Failed to provide required rest breaks in violation of California Labor Code §§ 226.7 and 512 and the applicable IWC Wage Order;
6. Failed to provide accurate itemized wage statements in violation of California Labor Code § 226;
7. Failed to provide wages when due in violation of California Labor Code §§ 201, 202 and 203;
8. Failed to provide gratuities in violation of California Labor Code §351;; and,
9. Violated the Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”).

Attached as Exhibit B is a true and correct copy of Plaintiff’s operative class and representative complaint against Defendant.

F. This Agreement replaces and supersedes the MOU and any other agreements, understandings, or representations between the Parties. To the extent there is a conflict between the MOU and this Settlement Agreement, the terms and conditions of this Agreement shall prevail. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant that the claims in the Action of Plaintiff or the Class have merit or that Defendant bears any liability to Plaintiff or the Class on those claims or any other claims, or as an admission by Plaintiff that Defendant’s defenses in the Action have merit. The Parties agree to certification of the Class for purposes of this Settlement only. If for any reason the settlement does not become effective, Defendant reserves the right to contest certification of any class for any reason and reserves all available defenses to the claims in the Action.

Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

II. TERMS OF AGREEMENT

A. Settlement Consideration and Settlement Payments by Defendant.

1. Settlement Monetary Consideration. In full and complete settlement of the Action, and in exchange for the releases set forth below, Defendant will pay the sum of the Individual Settlement Payments, the Class Representative Service Award, the Class

1 Counsel Award, PAGA Settlement, and the Settlement Administration Costs, as specified
2 in this Agreement, equal to the Total Settlement Amount of One Hundred Two Thousand
3 Five Hundred Dollars and Zero Cents (\$102,500.00). The Parties agree that this is a non-
4 reversionary Settlement and that no portion of the Total Settlement Amount shall revert to
5 Defendant. Other than the Defendant's share of employer payroll taxes, or as otherwise
6 specified in the Agreement, Defendant shall not be required to pay more or less than the
7 Total Settlement Amount.

8 2. Non-Monetary Consideration. Within thirty (30) days after final approval
9 from the Court, Defendant will revise its policy and practice relating to Catering/Banquet
10 Contract Service Charges to either (1) clearly and unambiguously state that the Service
11 Charge is not a gratuity and not shared with the banquet staff or (2) clearly state what
12 amount of the Service Charge is intended to be used as a gratuity and share that amount
13 with the banquet staff.

14 3. Class Size Modification. Defendant has represented that 66 Settlement Class
15 Members collectively worked approximately 3,332 workweeks during the Class Period. In
16 regard hereto, Defendant will provide a declaration under penalty of perjury confirming the
17 number of Class Members and Workweeks they worked during the Class Period and PAGA
18 Class Period prior to the filing of the motion for preliminary approval. The Total Settlement
19 Amount will increase proportionally with added workweeks if the number is more than
20 7.5% of the estimate stated herein on an estimated 66 Settlement Class Members and 3,332
21 Workweeks.

22 4. Settlement Payment. Defendant shall pay, via wire transfer, or other secured
23 means of directly remitting the Total Settlement Amount to the Settlement Administrator on
24 the Funding Date.

25 5. Defendant's Share of Payroll Taxes. The Defendant's share of employer side
26 payroll taxes is in addition to the Total Settlement Amount and shall be paid by Defendant
27 upon request by the Settlement Administrator.

1 B. Release by Settlement Class Members. As of the Funding Date, in exchange for the
2 consideration set forth in this Agreement, Plaintiff and the Settlement Class Members release the
3 Released Parties from the Released Claims for the Class Period.

4 C. Release by the Aggrieved Employees. As of the Funding Date, in exchange for the
5 consideration set forth in this Agreement, the Aggrieved Employees release the Released Parties
6 from the PAGA Released Claims for the PAGA Period.

7 D. General Release by Plaintiff. Plaintiff will execute, concurrently with the execution
8 of this Agreement, a separate, confidential, settlement agreement that includes a broad general
9 release of all his individual potential claims pertaining to his former employment with said general
10 release agreement to include a non-disparagement and confidentiality provision by Plaintiff in
11 favor of the Released Parties, and a Section 1542 waiver. The individual settlement agreement and
12 the amount of the Individual Settlement Payment will be maintained as confidential and will not be
13 submitted to the Court for approval, except that Plaintiff shall be permitted to disclose his
14 individual settlement to the Court if required to obtain Court Final Court Approval. In that event,
15 the parties will cooperate to protect the confidentiality of these settlement agreement to the greatest
16 extent the Court will allow, such as by submitting them for review in camera only, filing it under
17 seal, or other procedure which the Court may permit.

18 E. Conditions Precedent: This Settlement will become final and effective only upon
19 the occurrence of all of the following events:

- 20 1. The Court enters an order granting preliminary approval of the Settlement;
- 21 2. The Court enters an order granting final approval of the Settlement and a
22 Final Judgment;
- 23 3. If an objector appears at the final approval hearing, the time for appeal of the
24 Final Judgment and Order Granting Final Approval of Class Action
25 Settlement expires; or, if an appeal is timely filed, there is a final resolution
26 of any appeal from the Judgment and Order Granting Final Approval of
27 Class Action Settlement; and
- 28 4. Defendant fully funds the Total Settlement Amount.

1 F. Nullification of Settlement Agreement. In the event that this Settlement Agreement
2 is not preliminarily or finally approved by the Court, fails to become effective, or is reversed,
3 withdrawn or modified by the Court, or in any way prevents or prohibits Defendant from obtaining
4 a complete resolution of the Released Claims:

- 5 1. This Settlement Agreement shall be void *ab initio* and of no force or effect,
6 and shall not be admissible in any judicial, administrative or arbitral
7 proceeding for any purpose or with respect to any issue, substantive or
8 procedural;
- 9 2. The conditional class certification (obtained for any purpose) shall be void
10 *ab initio* and of no force or effect, and shall not be admissible in any judicial,
11 administrative or arbitral proceeding for any purpose or with respect to any
12 issue, substantive or procedural; and
- 13 3. None of the Parties to this Settlement will be deemed to have waived any
14 claims, objections, defenses or arguments in the Action, including with
15 respect to the issue of class certification.

16 G. Certification of the Settlement Class. The Parties stipulate to conditional class
17 certification of the Settlement Class for the Class Period for purposes of settlement only. In the
18 event that this Settlement is not approved by the Court, fails to become effective, or is reversed,
19 withdrawn or modified by the Court, or in any way prevents or prohibits Defendant from obtaining
20 a complete resolution of the Released Claims, the conditional class certification (obtained for any
21 purpose) shall be void *ab initio* and of no force or effect, and shall not be admissible in any
22 judicial, administrative or arbitral proceeding for any purpose or with respect to any issue,
23 substantive or procedural.

24 H. Tax Liability. The Parties make no representations as to the tax treatment or legal
25 effect of the payments called for, and Settlement Class Members are not relying on any statement
26 or representation by the Parties in this regard. Settlement Class Members understand and agree
27 that they will be responsible for the payment of any taxes and penalties assessed on the Individual
28

Settlement Payments described and will be solely responsible for any penalties or other obligations resulting from their personal tax reporting of Individual Settlement Payments.

I. 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, her or its own, independent legal and tax counsel 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 adviser to any other party to avoid any tax penalty that may be imposed on the acknowledging party, and (3) no attorney or adviser to any other Party has imposed any limitation that protects the confidentiality of any such attorney’s or adviser’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.

J. Preliminary Approval Motion. At the earliest practicable time, Plaintiff shall file with the Court a Motion for Order Granting Preliminary Approval and supporting papers, which shall include this Settlement Agreement. Defendant shall not oppose Plaintiff’s Motion for Order Granting Preliminary Approval provided that it is consistent with the terms and conditions of the Parties’ Agreement as set forth herein. Class Counsel will provide Defendant’s Counsel an opportunity to review the Motion for Order Granting Preliminary Approval and provide appropriate suggested revisions, if any.

K. Settlement Administrator. The Settlement Administrator shall be responsible for: establishing and administering the QSF; calculating, processing and mailing payments to the Class Representatives, Class Counsel, LWDA and Settlement Class Members; printing, mailing and

1 emailing the Notice Packets to the Settlement Class Members as directed by the Court; establishing
2 and maintaining the a landing page hosted on its website to containing information about the
3 Settlement; receiving and reporting the objections and requests for exclusion; calculating,
4 deducting and remitting all legally required taxes from Individual Settlement Payments and
5 distributing tax forms for the Wage Portion and Non-Wage Portion of the Individual Settlement
6 Payments; processing and mailing tax payments to the appropriate state and federal taxing
7 authorities; providing declaration(s) as necessary in support of preliminary and/or final approval of
8 this Settlement; posting notice of entry of judgment on its website; and other tasks as the Parties
9 mutually agree or the Court orders the Settlement Administrator to perform. The Settlement
10 Administrator shall keep the Parties timely apprised of the performance of all Settlement
11 Administrator responsibilities by among other things, sending a weekly status report to the Parties'
12 counsel stating the date of the mailing, the of number of Elections Not to Participate in Settlement
13 it receives (including the numbers of valid and deficient), and number of objections received.

14 L. Notice Procedure.

15 1. Class Data. No later than fourteen (14) calendar days after the Preliminary
16 Approval Date, Defendant shall provide the Settlement Administrator with
17 the Class Data for purposes of preparing and mailing Notice Packets to
18 Settlement Class Members. Defendant shall verify the total number of
19 Workweeks at the time Class Data is provided to the Settlement Administer.

20 2. Notice Packets.

21 a) The Notice Packet shall contain the Notice of Class Action Settlement in a
22 form substantially similar to the form attached as Exhibit 3. The Notice of Class Action
23 Settlement shall inform Settlement Class Members that they need not do anything in order
24 to receive an Individual Settlement Payment and to keep the Settlement Administrator
25 apprised of their current mailing address, to which the Individual Settlement Payments will
26 be mailed following the Funding Date.

27 b) The Notice of Class Action Settlement shall set forth the release to be given
28 by all members of the Settlement Class who do not request to be excluded from the

1 Settlement Class in exchange for an Individual Settlement Payment, the number of
2 Workweeks worked by each Settlement Class Member during the Class Period, and the
3 estimated amount of their Individual Settlement Payment if they do not request to be
4 excluded from the Settlement. The Settlement Administrator shall use the Class Data to
5 determine Class Members' Workweeks. Settlement Class Members' dispute over
6 Workweeks will be addressed as provided in Section L(2)(5).

7 c) The Notice Packet's mailing envelope shall include the following language:
8 "IMPORTANT LEGAL DOCUMENT- YOU MAY BE ENTITLED TO PARTICIPATE
9 IN A CLASS ACTION SETTLEMENT; A PROMPT REPLY TO CORRECT YOUR
10 ADDRESS IS REQUIRED AS EXPLAINED IN THE ENCLOSED NOTICE."

11 3. Notice by First Class U.S. Mail and Email. Upon receipt of the Class Data,
12 the Settlement Administrator will perform a search based on the National Change of
13 Address Database to update and correct any known or identifiable address changes. No
14 later than fourteen (14) calendar days after receiving the Class Data from Defendant, the
15 Settlement Administrator shall mail and email copies of the Notice Packet to all Settlement
16 Class Members via regular First-Class U.S. Mail and electronic mail. The Settlement
17 Administrator shall exercise its best judgment to determine the current mailing address for
18 each Settlement Class Member. The address identified by the Settlement Administrator as
19 the current mailing address shall be presumed to be the best mailing address for each
20 Settlement Class Member.

21 4. Undeliverable Notices. Any Notice Packets returned to the Settlement
22 Administrator as non-delivered on or before the Response Deadline shall be re-mailed to
23 any forwarding address provided. If no forwarding address is provided, the Settlement
24 Administrator shall promptly attempt to determine a correct address by lawful use of skip-
25 tracing, or other search using the name, address and/or Social Security number of the
26 Settlement Class Member involved, and shall then perform a re-mailing, if another mailing
27 address is identified by the Settlement Administrator. In addition, if any Notice Packets,
28 which are addressed to Settlement Class Members who are currently employed by

1 Defendant, are returned to the Settlement Administrator as non-delivered and no forwarding
2 address is provided, the Settlement Administrator shall notify Defendant. Defendant will
3 request that the currently employed Settlement Class Member provide a corrected address
4 and transmit to the Administrator any corrected address provided by the Settlement Class
5 Member. Settlement Class Members who received a re-mailed Notice Packet shall have
6 their Response Deadline extended fifteen (15) days from the original Response Deadline.

7 5. Disputes Regarding Individual Settlement Payments. The Class Notice will
8 provide that a Class Member may dispute the number of Workweeks credited to him or her
9 based on Defendant's records, which will be listed on his or her Class Notice, by mailing a
10 written dispute to the Settlement Administrator ("Workweeks Dispute") that contains: (1)
11 the Class Member's full name, address, telephone number, signature, and last four digits of
12 his or her Social Security Number; (2) the case name and number of the Lawsuit; (3) a clear
13 statement indicating that the Class Member wishes to dispute the Workweeks credited to
14 him or her and indicating the number of Workweeks the Class Member believes should be
15 credited to him or her, and (4) any documentation in support of the Class Member's
16 contention. The Settlement Administrator will confer with Defendant's Counsel to
17 determine whether or not the Workweeks credited to a disputing Class Member should be
18 modified, and the Settlement Administrator will make a final determination regarding all
19 such disputes. Defendant will make additional information available to the Settlement
20 Administrator as necessary to facilitate the Settlement Administrator's consideration and
21 determination of Workweeks Disputes.

22 6. Disputes Regarding Administration of Settlement. Any disputes not
23 resolved by the Settlement Administrator concerning the administration of the Settlement
24 will be resolved by the Court under the laws of the State of California. Before any such
25 involvement of the Court, counsel for the Parties will confer in good faith to resolve the
26 disputes without the necessity of involving the Court.

27 7. Exclusions. The Notice of Class Action Settlement contained in the Notice
28 Packet shall state that Settlement Class Members who wish to exclude themselves from the

1 Settlement must submit a written request for exclusion by the Response Deadline. The
2 written request for exclusion must state that the Settlement Class Member wishes to
3 exclude himself or herself from the Settlement and (1) must contain the name, address, and
4 the last four digits of the Social Security number of the person requesting exclusion; (2)
5 must be signed by the Settlement Class Member; (3) must be postmarked or fax stamped by
6 the Response Deadline and returned to the Settlement Administrator at the specified address
7 or fax telephone number; and (4) contain a typewritten or handwritten notice stating in
8 substance: "I wish to opt out of the settlement of the class action lawsuit entitled *Shallan v.*
9 *Scott's Sacramento River, Inc.*, Superior Court of California, County of Sacramento
10 Number 34-2020-00288630. I understand that by requesting to be excluded from the
11 settlement, I will receive no money from the Settlement described in this Notice." The
12 request for exclusion will not be valid if it is not timely submitted, if it is not signed by the
13 Settlement Class Member, or if it does not contain the name and address and last four digits
14 of the Social Security number of the Settlement Class Member. The date of the postmark
15 on the mailing envelope or fax stamp on the request for exclusion shall be the exclusive
16 means used to determine whether the request for exclusion was timely submitted. Any
17 Settlement Class Member who requests to be excluded from the Settlement Class will not
18 be entitled to an Individual Settlement Payment and will not be otherwise bound by the
19 terms of the Settlement or have any right to object, appeal or comment thereon. However,
20 any Settlement Class Member that submits a timely request for exclusion that is also a
21 member of the Aggrieved Employees will still receive their pro rata share of the PAGA
22 Settlement, as specified below, and in consideration, will be bound by the PAGA Release
23 by the Aggrieved Employees as set forth herein. Settlement Class Members who fail to
24 submit a valid and timely written request for exclusion on or before the Response Deadline
25 shall be bound by all terms of the Settlement and any final judgment entered in this Action
26 if the Settlement is approved by the Court. No later than fourteen (14) calendar days after
27 the Response Deadline, the Settlement Administrator shall provide counsel for the Parties
28 with a final list of the Settlement Class Members who have timely submitted written

1 requests for exclusion. At no time shall any of the Parties or their counsel seek to solicit or
2 otherwise encourage members of the Settlement Class to submit requests for exclusion from
3 the Settlement. If more than 10% of the Class Members exclude themselves from this
4 Settlement, then Defendant shall reserve the right to rescind this Agreement.

5 8. Objections. The Notice of Class Action Settlement contained in the Notice
6 Packet shall state that Settlement Class Members who wish to object to the Settlement must
7 mail to the Settlement Administrator a written statement of objection (“Notice of
8 Objection”) by the Response Deadline. The postmark date of mailing shall be deemed the
9 exclusive means for determining that a Notice of Objection was served timely. The Notice
10 of Objection must be signed by the Settlement Class Member and state: (1) the case name
11 and number; (2) the name of the Settlement Class Member; (3) the address of the
12 Settlement Class Member; (4) the last four digits of the Settlement Class Member’s Social
13 Security number; (4) the basis for the objection; and (5) if the Settlement Class Member
14 intends to appear at the Final Approval/Settlement Fairness Hearing. Settlement Class
15 Members who fail to make objections in the manner specified above shall be deemed to
16 have waived any objections and shall be foreclosed from making any objections (whether
17 by appeal or otherwise) to the Settlement. Settlement Class Members who submit a timely
18 Notice of Objection will have a right to appear at the Final Approval/Settlement Fairness
19 Hearing in order to have their objections heard by the Court. At no time shall any of the
20 Parties or their counsel seek to solicit or otherwise encourage Settlement Class Members to
21 file or serve written objections to the Settlement or appeal from the Order and Final
22 Judgment. Settlement Class Members who submit a written request for exclusion may not
23 object to the Settlement. If more than 10% of the Class Members opt out of this Settlement,
24 then Defendant shall reserve the right to rescind this Agreement.

25 M. Funding and Allocation of the Total Settlement Amount. Defendant is required to
26 pay the Total Settlement Amount on or before the Funding Date, plus any employer’s share of
27 payroll taxes as mandated by law within the time specified herein.

1 1. Individual Settlement Payments. Individual Settlement Payments shall be
2 paid from the Net Settlement Amount and shall be paid pursuant to the formula set forth
3 below.

4 a) Calculation of Individual Settlement Payments. Class Members who do not
5 timely and validly request exclusion from the Settlement, *i.e.*, Settlement Class Members,
6 will automatically be entitled to a *pro rata* share of the Net Settlement Amount (Individual
7 Settlement Share) without need to submit a claim form. Using the Class Data, the
8 Settlement Administrator shall add up the total number of Workweeks for all Settlement
9 Class Members. The respective Workweeks for each Settlement Class Member will be
10 divided by the total Workweeks for all Settlement Class Members, resulting in the Payment
11 Ratio for each Settlement Class Member. Each Settlement Class Member's Payment Ratio
12 will then be multiplied by the Net Settlement Amount to calculate each Settlement Class
13 Member's estimated Individual Settlement Payments. Each Individual Settlement Payment
14 will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll
15 taxes, etc.). Individual Settlement Payments for Class Members who submit valid and
16 timely requests for exclusion will be redistributed to Settlement Class Members who do not
17 submit valid and timely requests for exclusion on a pro rata basis based on their respective
18 Payment Ratios.

19 b) Calculation of Individual Payments to the Aggrieved Employees. Using the
20 PAGA Payment, the Settlement Administrator shall determine the Individual Payments the
21 Aggrieved Employees in proportion to the number of Workweeks each Aggrieved
22 Employee worked during the PAGA Period and allocate the PAGA Payment on a pro rata
23 basis.

24 c) Allocation of Individual Settlement Payments. For tax purposes, Individual
25 Settlement Payments shall be allocated and treated as follows: 25% as wages ("Wage
26 Portion"); 75% as penalties and interest ("Non-Wage Portion"). The Wage Portion is
27 subject to wage withholdings and shall be reported on IRS Form W-2. The Non-Wage
28 Portion shall not be subject to wage withholdings and shall be reported on IRS Form 1099.

Each Individual Settlement Share will be reduced for employee's share of taxes and withholding with respect to the Wage Portion and the net payment of the Individual Settlement Share is the "Individual Settlement Payment." Defendant will pay its employer's share of payroll taxes and contributions with respect to the Wage Portion separately from and in addition to the Maximum Settlement Amount.

d) Allocation of Aggrieved Employee Payments. For tax purposes, Aggrieved Employee Settlement Payments shall be allocated and treated as 100% penalties and shall be reported on IRS Form 1099.

e) Mailing. Individual Settlement Payments and Aggrieved Employee Payments shall be mailed by regular First-Class U.S. Mail to Settlement Class Members' last known mailing address no later than fifteen (15) calendar days after the Funding Date.

f) Expiration. Any checks issued to Settlement Class Members shall remain valid and negotiable for one hundred and eighty (180) days from the date of their issuance. If a Settlement Class Member does not cash his or her settlement check within 90 days, the Settlement Administrator will send a letter to such persons, advising that the check will expire after the 180th day, and invite that Settlement Class Member to request reissuance in the event the check was destroyed, lost or misplaced. In the event an Individual Settlement Payment check has not been cashed within one hundred and eighty (180) days, all funds represented by such uncashed checks, plus any interest accrued thereon, shall be distributed consistent with California Code of Civil Procedure Section 384 as follows: to The Children's Advocacy Institute (CAI), founded at the nonprofit University of San Diego School of Law in 1989. Neither Class Counsel nor Defendant's counsel has any interest, pecuniary or otherwise, in CAI.

2. Class Representative Service Award. In addition to the Individual Settlement Payment to be paid to Plaintiff, Plaintiff will apply to the Court for an award of not more than \$7,500 as the Class Representative Service Award. Defendant will not oppose a Class Representative Service Award of no more than \$7,500 for Plaintiff provided that it is consistent with the terms and conditions herein. The Settlement Administrator

1 shall pay the Class Representative Service Award, either in the amount stated herein if
2 approved by the Court or some other amount as approved by the Court, to Plaintiff from the
3 Total Settlement Amount no later than ten (10) calendar days after the Funding Date. Any
4 portion of the requested Class Representative Service Award that is not awarded to the
5 Class Representatives shall be part of the Net Settlement Amount and shall be distributed to
6 Settlement Class Members as provided in this Agreement. The Settlement Administrator
7 shall issue an IRS Form 1099 to Plaintiff for his Class Representative Service Award.
8 Plaintiffs shall be solely and legally responsible to pay any and all applicable taxes on their
9 Class Representative Service Awards and shall hold harmless the Defendant and Released
10 Parties from any claim or liability for taxes, penalties, or interest arising as a result of the
11 Class Representative Service Awards. The Class Representative Service Awards shall be in
12 addition to Plaintiff's Individual Settlement Payment as a Settlement Class Member.
13 Approval of this Settlement shall not be conditioned on Court approval of the requested
14 amount of the Class Representative Service Award. In the event that the Court reduces or
15 does not approve the requested Class Representative Service Awards, Plaintiffs shall not
16 have the right to revoke the Settlement, and it will remain binding.

17 3. Class Counsel Award. Defendant understands a motion by Class Counsel
18 for attorneys' fees not to exceed one-third of the Total Settlement Amount currently
19 estimated to be \$34,166.66, plus costs and expenses supported by declaration not to exceed
20 Ten Thousand Dollars (\$10,000.00), from the Total Settlement Amount will be filed. Any
21 portion of the requested Class Counsel Award that is not awarded to Class Counsel shall be
22 part of the Net Settlement Amount and shall be distributed to Settlement Class Members as
23 provided in this Agreement. The Settlement Administrator shall allocate and pay the Class
24 Counsel Award to Class Counsel from the Total Settlement Amount no later than five (5)
25 calendar days after the Funding Date. Class Counsel shall be solely and legally responsible
26 to pay all applicable taxes on the payment made pursuant to this paragraph. The Settlement
27 Administrator shall issue an IRS Form 1099 — MISC to Class Counsel for the payments
28 made pursuant to this paragraph. In the event that the Court reduces or does not approve

1 the requested Class Counsel Award, Plaintiffs and Class Counsel shall not have the right to
2 revoke the Settlement, or to appeal such order, and the Settlement will remain binding. The
3 attorneys' fees portion of the Class Counsel Award shall be divided as follows: 50% to
4 Zakay Law Group, APC and 50% to the JCL Law Firm, APC.

5 4. PAGA Settlement. Five Thousand Dollars (\$5,000) shall be allocated from
6 the Total Settlement Amount for settlement of claims for civil penalties under the Private
7 Attorneys General Act of 2004 ("PAGA Settlement"). The Settlement Administrator shall
8 pay seventy-five percent (75%) of the PAGA Settlement (\$3,750) to the California Labor
9 and Workforce Development Agency no later than twenty-five (25) calendar days after the
10 Funding Date (hereinafter "LWDA Payment"). Twenty-five (25%) of the PAGA
11 Settlement (\$1,250) will be distributed to the Aggrieved Employees as described in this
12 Agreement (hereinafter "Aggrieved Employee Payment"). For purposes of distributing the
13 PAGA Settlement to the Aggrieved Employees, each Aggrieved Employee shall receive
14 their pro-rata share of the Aggrieved Employee Payment using the PAGA Payment Ratio as
15 defined above.

16 5. Settlement Administration Costs. The Settlement Administrator shall be
17 paid for the costs of administration of the Settlement from the Total Settlement Amount.
18 The estimate of the Settlement Administration Costs is \$4,500. The Settlement
19 Administrator shall be paid the Settlement Administration Costs no later than twenty-five
20 (25) calendar days after the Funding Date.

21 N. Final Approval Motion. Class Counsel and Plaintiffs shall use best efforts to file
22 with the Court a Motion for Order Granting Final Approval and Entering Judgment, within twenty-
23 eight (28) days following the expiration of the Response Deadline, which motion shall request final
24 approval of the Settlement and a determination of the amounts payable for the Class Representative
25 Service Award, the Class Counsel Award, the PAGA Settlement, and the Settlement
26 Administration Costs.

27 1. Declaration by Settlement Administrator. No later than fourteen (14) days
28 after the Response Deadline, the Settlement Administrator shall submit a declaration in

1 support of Plaintiffs' motion for final approval of this Settlement detailing the number of
2 Notice Packets mailed and re-mailed to Settlement Class Members, the number of
3 undeliverable Notice Packets, the number of timely requests for exclusion, the number of
4 objections received, the amount of the average Individual Settlement Payment, the
5 Settlement Administration Costs, and any other information as the Parties mutually agree or
6 the Court orders the Settlement Administrator to provide.

7 2. Final Approval Order and Judgment. Class Counsel shall present an Order
8 Granting Final Approval of Class Action Settlement to the Court for its approval, and
9 Judgment thereon, at the time Class Counsel files the Motion for Final Approval.

10 N. Defendant's Option to Revoke Settlement. Defendant has the unilateral right to
11 revoke the Settlement and Defendant shall have, in its sole discretion, the option to terminate this
12 Settlement if, after the Response Deadline, the number of Settlement Class Members who
13 submitted timely and valid written requests for exclusion from the Settlement is at least ten percent
14 (10%) of all Settlement Class Members. If Defendant exercises the option to terminate this
15 Settlement, Defendant shall: (a) provide written notice to Class Counsel within five (5) calendar
16 days after (i) providing the Class Data to the Settlement Administrator or (ii) the Settlement
17 Administrator provides information regarding opt outs (which is to occur no later than fourteen
18 (14) calendar days after the Response Deadline, and (b) pay all Settlement Administration Costs
19 incurred up to the date or as a result of the termination; and the Parties shall proceed in all respects
20 as if this Agreement had not been executed.

21 O. Review of Motions for Preliminary and Final Approval. Class Counsel will provide
22 an opportunity for Counsel for Defendant to review and propose revisions the Motions for
23 Preliminary and Final Approval, including the Order Granting Final Approval of Class Action
24 Settlement, and Judgment before filing with the Court. The Parties and their counsel will
25 cooperate with each other and use their best efforts to affect the Court's approval of the Motions
26 for Preliminary and Final Approval of the Settlement, and entry of Judgment. Defendants will not
27 oppose Plaintiff's Motions for Preliminary and Final Approval, including the Order Granting Final
28 Approval of the Class Action Settlement, and Judgment provided that Defendant's counsel has the

1 opportunity to participate in and propose revisions thereto and that the terms and conditions are
2 consistent with the Settlement Agreement as set forth herein.

3 P. Cooperation. The Parties and their counsel will cooperate with each other and use
4 their best efforts to execute all documents, to seek the necessary court approvals, and to do all other
5 things reasonably necessary to conclude the
6 Agreement and obtain entry of Final Approval and Judgment in the lawsuit in accordance with this
7 Agreement. The Parties agree to cooperate fully to achieve final approval of the Settlement
8 substantially in accordance with the terms outlined herein.

9 Q. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action,
10 except such proceedings necessary to implement and complete the Settlement, pending the Final
11 Approval/Settlement Fairness Hearing to be conducted by the Court

12 R. Amendment or Modification. This Agreement may be amended or modified only
13 by a written instrument signed by counsel for all Parties or their successors-in-interest.

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

19 T. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant
20 and represent they are expressly authorized by the Parties whom they represent to negotiate this
21 Agreement and to take all appropriate Action required or permitted to be taken by such Parties
22 pursuant to this Agreement to effectuate its terms, and to execute any other documents required to
23 effectuate the terms of this Agreement. The persons signing this Agreement on behalf of
24 Defendant represents and warrants that he is authorized to sign this Agreement on behalf of
25 Defendant. Plaintiff represents and warrants that he is authorized to sign this Agreement and that
26 he has not assigned any claim, or part of a claim, covered by this Settlement to a third-party.
27 Parties confirm that they understand all of the terms of the Agreement and have been advised by
28 counsel regarding the terms and conditions of this Agreement.

1 U. Binding on Successors and Assigns. This Agreement shall be binding upon, and
2 inure to the benefit of, the successors or assigns of the Parties, as previously defined.

3 V. California Law Governs. All terms of this Agreement and the Exhibits and any
4 disputes shall be governed by and interpreted according to the laws of the State of California.

5 W. Counterparts. This Agreement may be executed in one or more counterparts. All
6 executed counterparts and each of them shall be deemed to be one and the same instrument
7 provided that counsel for the Parties to this Agreement shall exchange among themselves copies or
8 originals of the signed counterparts. The Parties acknowledge and agree that electronic signatures
9 shall be as binding as original signatures and necessary and appropriate given ongoing social
10 distancing and remote work means related to the COVID-19 pandemic.

11 X. Class Signatures. It is agreed that because the Settlement Class Members are
12 numerous, it is impossible or impractical to have each Settlement Class Member execute this
13 Agreement. Plaintiff executes this Agreement on behalf of the Settlement Class Members. The
14 Class Notice will advise all Class Members of the binding nature of the release of Released Claims,
15 as to the Settlement Class Members, and such will have the same force and effect as if this
16 Agreement were executed by each Settlement Class Member.

17 Y. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this
18 Settlement is a fair, adequate and reasonable settlement of this Action and have arrived at this
19 Settlement after extensive arms-length negotiations, taking into account all relevant factors, present
20 and potential.

21 Z. Jurisdiction of the Court. After approval of this Agreement, and pursuant to Code
22 of Civil Procedure § 664.6, the Parties agree that the Court shall retain jurisdiction with respect
23 to the interpretation, implementation and enforcement of the terms of this Agreement and all orders
24 and judgments entered in connection therewith, and the Parties and their counsel submit to the
25 jurisdiction of the Court for purposes of interpreting, implementing and enforcing the settlement
26 and all orders and judgments entered in connection with this Agreement. In addition, this Court
27 will have continuing jurisdiction for purposes of addressing settlement administration matters, and
28 other such matters as may be appropriate under court rules or as set forth in this Agreement.

1 AA. Invalidity of Any Provision. Before declaring any provision of this Agreement
2 invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible
3 consistent with applicable precedents so as to define all provisions of this Agreement valid and
4 enforceable. Should any provision of this Agreement be declared or determined by this Court to be
5 unenforceable, illegal, or otherwise invalid, the legality, validity, or enforceability of the remaining
6 parts, terms, or provisions shall not be affected, and the illegal, unenforceable, or invalid part, term,
7 or provision shall be deemed not part of this Agreement.

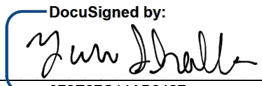
8 BB. No Unalleged Claims. Plaintiffs and Class Counsel represent that they do not
9 currently intend to pursue any claims against the Released Parties, including, but not limited to, any
10 and all claims relating to or arising from Plaintiffs' employment with Defendant, regardless of
11 whether Class Counsel is currently aware of any facts or legal theories upon which any claims or
12 causes of action could be brought against Released Parties, including those facts or legal theories
13 alleged in the operative complaint in this Action. The Parties further acknowledge, understand and
14 agree that this representation is essential to the Agreement and that this Agreement would not have
15 been entered into were it not for this representation.

16 CC. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to
17 class certification for purposes of this settlement only.

18 DD. No Admissions by the Parties. Plaintiff has claimed and continue to claim that the
19 Released Claims have merit and give rise to liability on the part of Defendant. Defendant claims
20 that the Released Claims have no merit and do not give rise to liability. This Agreement is a
21 compromise of disputed claims. Nothing contained in this Agreement and no documents referred
22 to and no action taken to carry out this Agreement may be construed or used as an admission by or
23 against the Defendant or Plaintiffs or Class Counsel as to the merits or lack thereof of the claims
24 asserted. Other than as may be specifically set forth herein, each Party shall be responsible for and
25 shall bear its/his own attorney's fees and costs.

1 IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:

2
3 DATED: 6/23/2021

DocuSigned by:

DIONYSIOS SHALLAN
072E87C11AB8427...

4
5
6 IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANT:

7
8 DATED: _____

SCOTT'S SACRAMENTO RIVER, INC.

9
10 Printed Name: _____

11
12 By: _____

13 Its: _____

1 IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:

2

3 DATED: _____

4

DIONYSIOS SHALLAN

5

6 IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANT:

7

8 DATED: _____

9

SCOTT'S SACRAMENTO RIVER, INC.

10

ALAN F.P. IRVINE

11

Printed Name:

12



13

By: President

14

Its:

15

16

17

18

19

20

21

22

23

24

25

26

27

28