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Attorneys for Defendants
NEW WAY LANDSCAPE & TREE SERVICES;
NEW WAY TREE SERVICES, INC.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

CARLOS BAHENA individually and on behalf)
of others similarly situated,)

Plaintiff,)

vs.)

NEW WAY LANDSCAPE & TREE)
SERVICES, a California corporation; NEW)
WAY TREE SERVICES, INC., a California)
Corporation; and DOES 1 through 50, inclusive,)

Defendants.)

CASE NO. 37-2020-00030533-CU-OE-CTL

STIPULATION OF SETTLEMENT

Dept.: C-64

Judge: Hon. John S. Meyer

Complaint Filed: August 31, 2020

JOAQUIN GOMEZ, an individual)

Plaintiff,)

vs.)

NEW WAY TREE SERVICES, INC., a)
California Corporation; KATHRYN M.)
DEJONG, an individual, RANDY NEWHARD,)
an individual, and DOES 1 to 10, inclusive,)

Defendants.)

CASE NO. 37-2020-00032057-CU-OE-CTL

Dept.: C-75

Judge: Hon. Richard E. L. Strauss

Complaint Filed: September 14, 2020

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This Stipulation of Settlement, including Exhibits A, and B hereto (“Settlement,” “Settlement Agreement” or “Agreement”), is made and entered into by, between, and among Plaintiffs CARLOS BAHENA and JOAQUIN GOMEZ (“Plaintiffs”) on behalf of themselves, the Settlement Class Members, on the one hand, and Defendants NEW WAY LANDSCAPE & TREE SERVICES and NEW WAY TREE SERVICES (collectively “Defendants” or collectively “NEW WAY”) on the other hand. Plaintiffs and Defendants (collectively, the “Parties”) enter into this Agreement to effect a full and final settlement and preclusive judgment resolving all claims brought or that could have been brought against NEW WAY based on the factual allegations alleged in the cases entitled *Carols Bahena v. New Way Landscape & Tree Services. et al.*, Case No. 37-2020-00030533-CU-OE-CTL (“Bahena Action”) and *Joaquin Gomez v. New Way Tree Services*, Case No. 37-2020-0032057-CU-OE-CTL (“Gomez Action”) (referred to collectively as the “Action”). This Agreement is intended to fully and finally compromise, resolve, discharge, and settle the Released Claims, as defined and on the terms set forth below, and to the full extent reflected herein, subject to the approval of the Court.

1. RECITALS

This Agreement is made in consideration of the following facts:

1.1 WHEREAS, on August 31, 2020, Plaintiff Bahena commenced the *Bahena* Action by filing a Class Action Complaint for Damages (“*Bahena* Complaint”) asserting causes of action for: (1) Failure to Pay Overtime; (2) Failure to Pay Minimum Wage; (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Periods; (5) Failure to Provide Accurate Wage Statements; (6) Failure to Pay Final Wages; (7) Failure to Reimburse Business Expenses; and (8) Violation of California Business & Professions Code §§ 17200, *et seq.*;

1.2 WHEREAS, on July 20, 2020, Plaintiff Bahena submitted notice to the Labor and Workforce Development Agency (“LWDA”) seeking authority to pursue civil penalties under the Private Attorneys General Act (“PAGA”) for violations of California law.

1.3 WHEREAS, on September 24, 2020, Plaintiff Bahena filed a First Amended Complaint adding a ninth cause of action for Civil Penalties Pursuant to Labor Code Section 2699.

1.4 WHEREAS, on July 1, 2020, Plaintiff Gomez submitted notice to the Labor and Workforce Development Agency (“LWDA”) seeking authority to pursue civil penalties under the Private Attorneys General Act (“PAGA”) for violations of California law.

1.5 WHEREAS, on September 14, 2020 Plaintiff Gomez commenced the Gomez Action by filing a Class Action Complaint for Damages (“Gomez Complaint”) asserting causes of action for: (1) Failure to Pay Overtime; (2) Failure to Pay Minimum Wages; (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Periods; (5) Failure to Provide Accurate Wage Statements; (6) Failure to Pay All Wages Owed Timely and Upon Separation of Employment; (7) Violation of Business and Professions Code Section 17200, et seq.; and (8) Civil Penalties Pursuant to Labor Code Section 2699.

1.6 WHEREAS, the Parties engaged in extensive informal discovery, exchanging information, documents and reviewing and analyzing extensive data made available by NEW WAY which enabled the Parties to thoroughly evaluate Plaintiffs’ claims, the claims of the PAGA Group Members, the claims of the putative Class, NEW WAY’s defenses, and the likely outcomes, risks and expense of pursuing litigation;

1.7 WHEREAS, the Parties attended a mediation session with professional mediator, Hon. Leo Papas, Ret., and continued settlement negotiations in the months following the mediation, and ultimately reached the terms of this arm’s-length Settlement;

1.8 WHEREAS, a *bona fide* dispute exists as to whether any amount of wages or penalties are due from NEW WAY to any putative Class Member (as defined below), to the LWDA and/or to any allegedly aggrieved employees;

1.9 WHEREAS, the Parties desire to compromise and settle all issues and claims that have been or could have been brought against NEW WAY based on the factual allegations alleged in the Action, including all claims brought on a putative class and representative basis in the Action;

1.10 WHEREAS, the Parties further agree that this Agreement, the fact of this Settlement, any of the terms of this Agreement, and any documents filed in connection with the Settlement shall not constitute, or be offered, received, claimed, construed, or deemed as an

admission, finding, or evidence of: (i) any wrongdoing by any Released Parties, (ii) any violation of any statute or law by Released Parties, (iii) any liability on the claims or allegations in the Action on the part of any Released Parties, (iv) any waiver of NEW WAY's right to arbitration or the enforceability of any arbitration agreement, or (v) the propriety of certifying a class or pursuing representative relief under the PAGA in the Action or any other civil or administrative proceeding; and this Agreement shall not be used by any Person for any purpose whatsoever in any administrative or legal proceeding, including but not limited to arbitrations, other than a proceeding to enforce the terms of the Agreement;

1.11 NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO, AND AGREED, by Plaintiffs for themselves and on behalf of the Settlement Class Members and by NEW WAY, that, subject to the approval of the Court, the Action shall be settled and compromised, and the Released Claims shall be finally and fully compromised and settled as to the Released Parties, in the manner and upon the terms and conditions hereafter set forth in this Agreement.

2. DEFINITIONS

Unless otherwise defined herein, capitalized terms used in this Agreement shall have the meanings set forth below:

2.1 "Released Claims" means all claims actually alleged or that could have been alleged in the Action by Plaintiffs, on behalf of themselves and the Class Members, based on the facts alleged in the *Bahena* Complaint and the *Gomez* Complaint, including but not limited to: (1) Violation of California Labor Code §§ 510, 1194 and 1198, and IWC Wage Order 4-2001, § 3 (Unpaid Overtime); (2) Violation of California Labor Code §§ 226.7, 510, 512, 1194, 1197, IWC Wage Order 5-2001, § 11, and IWC Wage Order 16-2001, § 10 (Failure to Provide Meal Periods and Unpaid Meal Period Premiums); (3) Violation of California Labor Code §§ 226.7, 512, IWC Wage Order 5-2001, § 12, and IWC Wage Order 16-2001, § 16 (Failure to Provide Rest Periods and Unpaid Rest Period Premiums); (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1, IWC Wage Order 5-2001, § 4, and IWC Wage Order 16, § 4 (Unpaid Minimum Wages); (5) Violation of California Labor Code §§ 201, 202, and 203 (Final

Wages Not Timely Paid); (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment); (7) Violation of California Labor Code § 226(a), IWC Wage Order 5-2001, § 7, and IWC Wage Order 16-2001, § 6 (Non-Compliant Wage Statements); (8) Violation of California Labor Code §§ 226, 1174, IWC Order 5-2001, § 7, and IWC Wage Order 16-2001, § 6 (Failure To Keep Requisite Payroll Records); (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses); (10) Violation of California Business & Professions Code §§ 17200, *et seq.*; (10) PAGA Claims; and (11) attorneys' fees and costs of litigation associated with this Action.

2.2 "Class Members" means all non-exempt employees who worked for Defendants in the state of California at any time during the Class Period.

2.3 "Settlement Class Members" means all Class Members who do not opt out of this Settlement.

2.4 "Class Period" means August 31, 2016 through the date of Preliminary Approval, or the date on which the Workweeks reach 44,413, whichever comes first.

2.5 "Class Counsel" means Heather Davis, Amir Nayebdadash, and S. Emi Minne of Protection Law Group, LLP and Douglas Geyman of the Law Office of Douglas Geyman.

2.6 "Class Counsel Award" means the attorneys' fees and reimbursement of litigation costs and expenses awarded by the Court to Class Counsel to fully satisfy all claims for attorneys' fees and costs incurred by Plaintiffs to litigate and settle this Action. The attorneys' fees may not exceed thirty-five percent (33%) of the Total Settlement Amount, or \$257,400. In addition, Class Counsel shall be entitled to recover from the Total Settlement Amount all litigation costs and expenses incurred subject to proof not to exceed \$30,000.

2.7 "Class Information" means information regarding the Class Members that NEW WAY will in good faith compile from its records and provide to the Settlement Administrator. Class Information shall be provided in a Microsoft Excel spreadsheet and shall include, if possible, each Class Member's full name, last known address, Social Security number, number of Pay Periods and Workweeks during the Class Period and PAGA Period, and employment dates as a non-exempt employee during the Class Period. Additionally, NEW WAY will

1 provide the telephone number of any Class Member upon request of the Settlement
2 Administrator. Because Class Members' private information is included in the Class
3 Information, the Settlement Administrator shall maintain the Class Information in confidence,
4 shall limit access to the information to only those employees of the Settlement Administrator
5 with a need to use the Class Information as part of the administration of the Settlement, and shall
6 use and disclose Class Information only for purposes of this Settlement and for no other purpose.
7 This release shall apply to claims arising during the Class Period.

8 2.8 "Class Notice" means the Notice of Class Action Settlement to be provided to
9 Class Members, substantially in the form attached hereto as "**Exhibit A.**"

10 2.9 "Complete and General Release" means an irrevocable and unconditional release
11 given only by Plaintiffs releasing the Released Parties from any and all charges, complaints,
12 claims, causes of action, debts, sums of money, controversies, agreements, promises, damages
13 and liabilities of any kind or nature whatsoever, both at law and equity, known or unknown,
14 suspected or unsuspected, arising from conduct occurring on or before the date Plaintiffs sign
15 this Settlement Agreement, including but not limited to a release of any and all rights Plaintiffs
16 have to sue or bring any type of claim under (a) California state law, (b) the Fair Labor Standards
17 Act; (c) Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et. seq., (d)
18 the Employment Act of 1967, (e) the Civil Rights Act of 1991, (f) the Civil Rights Act of 1866
19 and 1870, (g) 42 U.S.C. § 1981, as amended, (h) Executive Order 11246, (i) the Americans with
20 Disabilities Act 42 U.S.C. § 12101, et. seq, as amended, (j) the Family and Medical Leave Act,
21 as amended, (k) the Equal Pay Act of 1963, as amended, (l) the Immigration and Reform Control
22 Act, as amended, (m) the Occupational Safety and Health Act, as amended, (n) the Sarbanes-
23 Oxley Act of 2002, as amended, (o) the Employment Retirement Income Security Act of 1974,
24 as amended (except vested benefits), (p) the Worker Adjustment and Benefit Protection Act of
25 1990, as amended, (q) the Worker Adjustment and Retraining Notification Act, as amended, (r)
26 any federal, state or common law claim or cause of action based on any alleged failure to pay
27 wages, breach of contract, wrongful discharge, constructive discharge, retaliation, defamation,
28 slander, libel, intentional or negligent infliction of emotional distress, misrepresentation, fraud,

promissory estoppel, (s) any other tort or negligence claim or obligations arising out of any of NEW WAY's employment policies or practices, employee handbooks, and/or any statements by any employee or agent of NEW WAY whether oral or written; and (t) for reinstatement, back pay, bonus, attorneys' fees, compensatory damages, costs, front pay, any form of equitable or declaratory relief, liquidated damages, emotional distress, personal injury, punitive damages, pain and suffering, medical expenses, damage to reputation, damage for personal, emotional or economic injury or damage of any kind. This provision is intended by the Parties to act as a full and total release of any claim, whether specifically enumerated herein or not, that Plaintiff might have or have had, that exists or ever has existed on or prior to the date this Settlement Agreement is signed against the Released Parties. The Parties understand and agree that the word "claims" includes all actions, group actions (including any pending or future collective, class, private attorney general or representative actions for which Plaintiffs may otherwise qualify as a putative class member or represented party), complaints and grievances that could potentially be brought by Plaintiffs against the Released Parties, excluding only claims that, by law, may not be privately released. Plaintiffs hereby expressly waive and relinquish any and all claims, rights or benefits that either or both may have under California Civil Code § 1542, which provides as follows:

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

2.10 Plaintiffs may hereafter discover claims or facts in addition to, or different from, those which they now know or believe to exist, but they expressly agree to fully, finally, and forever settle and release any and all claims against the Released Parties, known or unknown, suspected or unsuspected, which exist or may exist, at the time of execution of this Agreement, including, but not limited to, any and all claims relating to or arising from Plaintiffs' employment with Defendants. The Parties further acknowledge, understand, and agree that this representation and commitment is essential to the Agreement and that this Agreement would not have been entered into were it not for this representation and commitment. This release

specifically excludes claims for unemployment insurance, disability, social security, and workers compensation (with the exception of claims arising pursuant to California Labor Code Sections 132(a) and 4553)

2.11 “Court” means the San Diego County Superior Court.

2.12 “Effective Date” means the date by which this Settlement is finally approved as provided herein and the Court’s Final Approval Order becomes binding. For purposes of this Settlement Agreement, the Final Approval Order becomes binding upon the later of: (1) the day after the last day by which a notice of appeal of the Final Approval Order and/or of an order rejecting any motion to intervene may be timely filed, and none is filed; (2) if such an appeal is filed, and the Final Approval Order is affirmed, the day after the last date for filing a request for further review of the decision passes and no further review is requested; (3) if an appeal is filed and further review of the decision affirming the Final Approval Order is requested, the day after the request for review is denied with prejudice and/or no further review of the decision can be requested, or (4) if review is accepted, the day after the United States or California Supreme Court affirms the Settlement. The Effective Date cannot occur, and NEW WAY will not be obligated to fund this Settlement, until and unless there is no timely possibility of an appeal or further appeal that could potentially prevent this Settlement Agreement from becoming final and binding. The Parties further agree there is no right or opportunity for any PAGA Group Member to appeal the approval of the Settlement by the Court.

2.13 “Final Approval Date” means the date of the Court’s order finally approving this Settlement.

2.14 “Final Approval Order” means the Court’s order finally approving this Settlement.

2.15 “Final Approval Hearing” means the hearing at or after which the Court will make a final decision as to whether the Settlement is fair, reasonable, and adequate, and therefore, is finally approved by the Court.

2.16 “Individual Settlement Share” means the *pro rata* share of the Net Distribution Fund to each Settlement Class Member.

2.17 “Judgment” means the judgment to be entered in the Action upon final approval of the Settlement.

2.18 “Mailed Notice Date” means the date of the initial mailing of the Class Notice to Class Members.

2.19 “Net Distribution Fund” means the Total Settlement Amount, less the amount that the Court awards for: the Service Awards; the Class Counsel Award; the Settlement Administrator Expenses; and the PAGA Payment.

2.20 “PAGA Claims” means claims for civil penalties for violations of law that were asserted in the Action or that could have been asserted in the action and include, but are not limited to: (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); (2) Violation of California Labor Code §§ 226.7 and 512(a) (Failure to Provide Meal Periods and Unpaid Meal Period Premiums); (3) Violation of California Labor Code § 226.7 (Failure to Provide Rest Periods and Unpaid Rest Period Premiums); (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages); (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid); (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment); (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements); (8) Violation of California Labor Code § 1174(d) (Failure To Keep Requisite Payroll Records); and (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses).

2.21 “PAGA Payment” means a total payment of \$50,000 to settle all claims under PAGA. From this amount, 75% will be paid to the LWDA and 25% will be distributed to PAGA Group Members on a *pro rata* basis based on the number of Workweeks worked during the PAGA Period. The PAGA Payment shall be payable from the Total Settlement Amount.

2.22 “PAGA Period” means July 1, 2019 through the date of Preliminary Approval, or the date on which the Workweeks are equal to or do not exceed 44,413, whichever comes first.

2.23 “PAGA Group Members” means all Class Members who worked for NEW WAY any time during the PAGA Period regardless of whether they are Settlement Class Members.

2.24 “Pay Periods” means the number of pay periods during which a Class Member worked for NEW WAY in the State of California.

2.25 “Plaintiffs” means Carlos Bahena and Joaquin Gomez.

2.26 “Preliminary Approval” means entry of the Preliminary Approval Order.

2.27 “Preliminary Approval Order” means the order granting preliminary approval of this Settlement Agreement.

2.28 “Released Parties” means (i) New Way Landscape & Tree Services, New Way Tree Services, Inc., Kathryn DeJong, and Randy Newhard and their past, present, and future parents, subsidiaries, affiliates, divisions, joint ventures, licensees, franchisees, and any other legal entities, whether foreign or domestic, and (ii) the past, present, and future shareholders, officers, directors, members, investors, agents, employees, consultants, representatives, fiduciaries, insurers, attorneys, legal representatives, predecessors, successors, and assigns of the entities listed in (i).

2.29 “Response Deadline” means the date by which a Class Member may (i) request to be excluded from the Settlement, (ii) object to the Settlement, and/or (iii) dispute the number of Workweeks credited to him or her. The Response Deadline shall be sixty (60) calendar days after the Mailed Notice Date, and shall be specifically identified and set forth in the Preliminary Approval Order and the Class Notice.

2.30 “Service Awards” means the amounts approved by the Court to be paid to Plaintiffs, in addition to their respective Individual Settlement Payments. The Service Award payable to Plaintiffs shall not exceed \$15,000, allocated as \$7,500 to each Plaintiff, and shall be payable from the Total Settlement Amount.

2.31 “Settlement,” “Settlement Agreement” and “Agreement” mean the settlement of this Action between and among Plaintiffs and NEW WAY, as set forth in this document.

2.32 “Settlement Administrator” means ILYM GROUP, Inc.

2.33 “Settlement Administrator Expenses” means the maximum amount to be paid to the Settlement Administrator, which shall not exceed \$20,000.00. All Settlement Administrator Expenses are to be paid exclusively from the Total Settlement Amount.

2.34 “Total Settlement Amount” means Seven Hundred Eighty Thousand Dollars (\$780,000), which is the maximum amount that NEW WAY is obligated to pay under this Settlement Agreement, except for the employer’s share of payroll taxes with respect to the wage portion of Individual Settlement Shares, in order to resolve and settle this Action, subject to Court approval. The \$780,000 plus the employer’s share of payroll taxes is the maximum amount NEW WAY is obligated to pay under this Settlement Agreement. The Total Settlement Amount includes the Class Counsel Award, the Service Awards, the Settlement Administrator Expenses, the PAGA Payment (which includes Individual PAGA Payments to PAGA Group Members and payment to the LWDA), the Individual Settlement Shares, all related interest, and all employee-side payroll and employment taxes on the wage portion of Individual Settlement Shares. The Total Settlement Amount does not include the employer-side payroll and employment taxes on the wage portion of Individual Settlement Shares, which NEW WAY agrees to pay separately.

2.35 “Void Date” means the date by which any checks issued to Settlement Class Members shall become void, i.e. on the 181st day after mailing.

2.36 “1542 Waiver” means a waiver of the rights conferred by California Civil Code Section 1542, which provides:

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

2.37 “Workweek” means any calendar week (i.e., a week beginning on a Sunday and ending on Saturday) in which a Class Member worked at least 1 day for NEW WAY. Upon request from Plaintiff’s counsel (and no later than 3 days prior to the filing of the Motion for preliminary approval), Defendant shall provide Plaintiff’s with the updated total workweeks for the Class and PAGA Members

3. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY

3.1 Certification Of Class: Solely for the purposes of this Settlement, the Parties stipulate and agree that the Court may certify the Class.

1 3.2 Appointment Of Class Representative. Solely for the purposes of this Settlement,
2 the Parties stipulate and agree Plaintiffs shall be appointed as representatives of the Class.

3 3.3 Appointment Of Class Counsel. Solely for the purposes of this Settlement, the
4 Parties stipulate and agree that Class Counsel shall be approved as counsel for Class Members.

5 3.4 Appointment Of Settlement Administrator. Solely for the purposes of this
6 Settlement, the Parties stipulate and agree that ILYM GROUP, Inc. shall be appointed to serve
7 as Settlement Administrator. The Settlement Administrator shall be responsible for establishing:
8 a toll-free telephone number through which Class Members may make inquiries about the
9 Settlement; a Post Office Box for receipt of Class Members' communications; preparing,
10 translating, printing and mailing the Class Notice in both English and Spanish; receiving and
11 reviewing requests for exclusion, objections and/or disputes, if any, submitted by Class
12 Members; calculating Individual Settlement Shares and Individual PAGA Payments; calculating
13 and paying any and all payroll tax or other required withholdings from the wage portion of the
14 Individual Settlement Shares as required under this Settlement Agreement and applicable law;
15 providing weekly status reports to NEW WAY's Counsel and Class Counsel; providing a due
16 diligence declaration for the Court prior to the Final Approval Hearing; mailing Individual
17 Settlement Payments, the Service Awards, the Class Counsel Award and 75% of the PAGA
18 Payment to the LWDA; printing and providing Plaintiffs, Class Counsel, and Settlement Class
19 Members with IRS Forms W-2 and/or 1099 as required under this Settlement Agreement and
20 applicable law; posting notice of entry of the Judgment and Final Approval Order on its website;
21 providing a due diligence declaration for submission to the Court upon the completion of the
22 Settlement; and for such other tasks as the Parties mutually agree. The Parties agree to cooperate
23 in the settlement administration process and to make all reasonable efforts to control and
24 minimize Settlement Administrator Expenses. The Parties each represent they do not have any
25 financial interest in the Settlement Administrator or otherwise have a relationship with the
26 Settlement Administrator that could create a conflict of interest.

27 3.5 Conditional Nature Of Stipulation For Certification. Solely for the purposes of
28 this Settlement, the Parties stipulate and agree to the certification of the Class. Should for

1 whatever reason the Settlement not become effective, the fact that the Parties were willing to
2 stipulate to certification as part of the Settlement shall have no bearing on, and shall not be
3 admissible in connection with, the issue of whether the Class should be certified in a non-
4 Settlement context in this Action or in any other lawsuit. NEW WAY expressly reserves its right
5 to oppose any claim or class certification in this or any other action should this Settlement not
6 become effective.

7 3.6 The Parties agree to stay all proceedings in the Action, except such proceedings
8 necessary to implement and complete the Settlement, pending the Final Approval Hearing to be
9 conducted by the Court.

10 **4. SETTLEMENT CONSIDERATION**

11 4.1 NEW WAY's total monetary obligation under this Settlement is the Total
12 Settlement Amount (\$780,000). This is an "all in" number that includes, without limitation, all
13 monetary benefits and payments for Settlement Class Members, Service Awards, Class Counsel
14 Award, the Settlement Administrator Expenses, and the PAGA Payment, and all other claims
15 for interest, fees, and costs. Under no circumstances shall NEW WAY be required to pay
16 anything more than the Total Settlement Amount, except that NEW WAY will separately pay
17 the employer payroll and employment taxes due for the wages portion of Individual Settlement
18 Shares made under this Agreement. In no event shall NEW WAY be liable for making any
19 payments under this Settlement, or for providing any relief to the Settlement Class Members
20 before the Effective Date of this Agreement.

21 4.2 Plaintiff and all Settlement Class Members who receive a payment of any kind
22 from the Total Settlement Amount (including, in the case of the Plaintiffs, Service Awards)
23 expressly agree to hold Plaintiffs, Class Counsel, Defendants, Defense Counsel and the
24 Settlement Administrator harmless from any claim or liability for taxes, penalties, or interest
25 arising as a result of the payments under this Settlement, with the exception of the payroll
26 withholdings required to be made and remitted by Defendants under the terms of this Settlement.

27 4.3 NEW WAY agrees not to oppose Plaintiffs' application for Service Awards in the
28 amount up to \$7,500 to each of them, for a combined amount of \$15,000. Any Service Award

1 awarded by the Court shall be paid from the Total Settlement Amount. If the Court awards less
2 than the full Service Award, then the unawarded funds shall become part of the Net Distribution
3 Fund.

4 4.4 Plaintiffs shall seek a Class Counsel Award from the Court, consisting of
5 attorneys' fees in the amount of up to thirty-three percent (33%) of the Total Settlement Amount,
6 or \$257,400, and all litigation costs and expenses incurred subject to proof not to exceed
7 \$30,000.00. NEW WAY agrees not to oppose a request for these amounts. Any Class Counsel
8 Award awarded by the Court shall be paid from the Total Settlement Amount. Any portion of
9 the Class Counsel Award that is not approved by the Court and awarded to Class Counsel shall
10 become part of the Net Distribution Fund.

11 4.5 The Parties agree to allocate Fifty Thousand Dollars (\$50,000) for the PAGA
12 Payment, of which 75%, or \$37,500 shall be paid to the LWDA and the remaining 25%, or
13 \$12,500 shall be paid to PAGA Group Members on *pro rata* basis based on the total Workweeks
14 worked during the PAGA Period. The PAGA Payment shall be paid from the Total Settlement
15 Amount. Any portion of the PAGA Payment that is not approved by the Court shall become
16 part of the Net Distribution Fund.

17 4.6 The Settlement Administrator Expenses are estimated not exceed to exceed
18 Twenty-Thousand Dollars (\$20,000). The Settlement Administrator Expenses shall be paid
19 from the Total Settlement Amount. Any portion of the Settlement Administrator Expenses not
20 actually incurred by the Settlement Administrator shall become part of the Net Distribution
21 Fund.

22 4.7 The Settlement Administrator shall calculate the Individual Settlement Shares
23 based on the Class Information provided to the Settlement Administrator by NEW WAY.
24 Payment of Individual Settlement Shares to Settlement Class Members will be made from the
25 Net Distribution Fund on a *pro-rata* basis, based on Workweeks during the Class Period.
26 Specifically, the Net Distribution Fund shall be divided by the total of all Workweeks of
27 Settlement Class Members during the Class Period in order to establish the value of each
28 Workweek. The Individual Settlement Share to each Settlement Class Member shall be

1 calculated by multiplying the value of a Workweek by the number of Workweeks worked by
2 the Settlement Class Member during the Class Period.

3 4.8 PAGA Group Members will receive a *pro-rata* share of 25% of the PAGA
4 Payment (“Individual PAGA Payment”) based on Workweeks during the PAGA Period.
5 Specifically, 25% of the PAGA Payment shall be divided by the total of all Workweeks worked
6 by PAGA Group Members during the PAGA Period in order to establish the value of each
7 Workweek worked. The Individual PAGA Payment to be made to each PAGA Group Member
8 shall be calculated by multiplying the value of a Workweek by the number of Workweeks
9 worked by the PAGA Group Member during the PAGA Period.

10 4.9 Settlement Class Members may dispute the number of Workweeks with which
11 they have been credited, as reflected in their respective Class Notices. In order to dispute
12 Workweeks, Settlement Class Members must submit a written letter to the Settlement
13 Administrator that: (a) contains the case name and number of the Action, (b) is signed by the
14 Settlement Class Member, (c) contains the full name, address, telephone number, and the last
15 four digits of the Social Security Number of the disputing Settlement Class Member, (d) clearly
16 states that the Settlement Class Member disputes the number of Workweeks credited to him or
17 her and what he or she contends is the correct number to be credited to him or her, (e) includes
18 information and/or attaches documentation demonstrating that the number of Workweeks that
19 he or she contends should be credited to him or her are correct, and (f) is returned to the
20 Settlement Administrator by mail at the specified address, postmarked on or before the Response
21 Deadline. The date of the postmark on the submission will be the exclusive means to determine
22 whether a dispute has been timely submitted. Absent evidence rebutting the accuracy of NEW
23 WAY’s records and data as they pertain to the number of Workweeks to be credited to a disputing
24 Settlement Class Member, NEW WAY’s records will be presumed correct and determinative of
25 the dispute. However, if a Class Member produces information and/or documents to the
26 contrary, the Settlement Administrator will evaluate the materials submitted by the Class
27 Member and the Settlement Administrator will resolve and determine the number of eligible
28 Workweeks that the disputing Settlement Class Member should be credited with under the

Settlement. The Settlement Administrator's decision on such disputes will be final and non-appealable.

4.10 The Settlement Administrator shall allocate twenty percent (20%) of each Individual Settlement Share to wages (to be reported on IRS Form W-2), ten percent (10%) of each Individual Settlement Share to expense reimbursement, and seventy percent (70%) of each Individual Settlement Share to interest, penalties, and other non-wage damages (to be reported on IRS Form 1099, if applicable). Individual PAGA Payments will be allocated as one hundred percent (100%) penalties (to be reported on IRS Form 1099). The net payment of each Settlement Class Member's Individual Settlement Share (after reduction for the employee's share of taxes on the wage portion) and Individual PAGA Payment (if applicable) is referred to as "Individual Settlement Payment." Settlement Class Members (except Plaintiffs with respect to their Service Awards) are not eligible to receive any compensation other than the Individual Settlement Payments discussed above.

4.11 Amounts paid to Plaintiffs and Settlement Class Members pursuant to this Settlement Agreement do not count as earnings or compensation for purposes of any benefits (*e.g.*, 401(k) plans or retirement plans) sponsored by NEW WAY or the Released Parties.

4.12 In exchange for the consideration provided by NEW WAY, Plaintiffs, individually and on behalf of their heirs, estates, trustees, executors, administrators, representatives, agents, successors, and assigns, and anyone claiming through them or acting or purporting to act on their behalf, agree to provide a Complete and General Release to the Released Parties. Plaintiffs' Complete and General Release is subject to a 1542 Waiver.

4.13 In exchange for the consideration provided by NEW WAY, Settlement Class Members, individually and on behalf of their heirs, estates, trustees, executors, administrators, representatives, agents, successors, and assigns, and anyone claiming through them or acting or purporting to act on their behalf, agree to forever release, discharge, hold harmless, and covenant not to sue each and all of the Released Parties for the Released Claims which includes a release of the PAGA Claims.

5. PROCEDURE FOR REQUESTING PRELIMINARY APPROVAL OF THE

SETTLEMENT

5.1 After execution of this Settlement Agreement, Plaintiffs shall promptly submit a motion for preliminary approval of the Settlement to the Court, along with the Settlement Agreement. Plaintiffs' motion for preliminary approval shall request that the Court enter a Preliminary Approval Order in form and substance similar to that set forth in **Exhibit B**. Plaintiffs shall provide the proposed Preliminary Approval Order to NEW WAY's Counsel of Record no later than three (3) calendar days prior to filing their motion for preliminary approval, however Plaintiffs shall have discretion as to whether incorporate any changes requested by NEW WAY. NEW WAY agrees that it will not oppose Plaintiffs' motions for preliminary approval of the Settlement.

5.2 The Preliminary Approval Order shall:

- Conditionally certify the Class for settlement purposes;
- Preliminarily appoint Plaintiffs as representatives of the proposed Settlement Class;
- Preliminarily approve Class Counsel to represent the Class;
- Appoint ILYM Group, Inc. as the settlement administrator, and order the Settlement Administrator to provide notice of the Settlement as outlined below; and
- Stay all litigation of the Action pending the Final Approval Hearing, except as necessary to implement and effectuate the Settlement; and
- Order that the preliminary approval of the Settlement, conditional certification of the Class, and all actions associated with them, are undertaken on the condition that they shall be vacated if the Settlement Agreement is terminated or disapproved in whole or in part by the Court, or any appellate court and/or other court of review in which event the Settlement Agreement and the fact that it was entered into shall not be offered, received, or construed as an admission or as evidence for any purpose, including but not limited to an admission by any Party

of liability or non-liability or of the certifiability of a litigation class or the appropriateness of maintaining a representative action.

5.3 The motion for preliminary approval shall request: that the Final Approval Hearing and any determination on the request for a Class Counsel Award and Service Awards be set no earlier than sixty (60) calendar days after the Response Deadline; and that Plaintiffs be permitted to file their motion for final approval of the Settlement no later than sixteen (16) court days before the Final Approval Hearing.

5.4 In order to facilitate global resolution of the Action, the Parties shall file a stipulation to consolidate the *Bahena* Action and the *Gomez* Action before the Honorable John S. Meyer in Department 64 of the San Diego Superior Court. The *Bahena* Action shall be designated as the lead case. The stipulation to consolidate shall be filed in conjunction with Plaintiffs' motion for preliminary approval.

5.5 At the same time that Plaintiffs file their motion for preliminary approval, Class Counsel will submit the Settlement Agreement to the LWDA.

6. PROCEDURE FOR PROVIDING NOTICE OF SETTLEMENT

6.1 No more than fifteen (14) calendar days after Preliminary Approval, NEW WAY shall provide the Settlement Administrator with the Class Information for purposes of sending the Class Notice to Class Members. This is a material term of the Settlement, and if NEW WAY fails to comply, Plaintiffs shall have the right to void the Settlement.

6.2 No more than seven (7) calendar days after receiving the Class Information from NEW WAY (i.e., the Mailed Notice Date), the Settlement Administrator shall send the Class Notice to Class Members via first class U.S. Mail.

6.3 The Class Notice will inform Class Members that, unless they submit a request to be excluded from the Settlement, they will become Settlement Class Members; they will receive Individual Settlement Payments under the Agreement; and they will be bound by the release of Released Claims.

6.4 The Class Notice will inform Class Members of their right to request exclusion from the Settlement, or to object to the Settlement, dispute the number of Workweeks credited

1 to each of them, and of the procedure for doing so. The Class Notice will also inform Class
2 Members that if they request exclusion from the Class they may not also object to the Settlement
3 or dispute the number of Workweeks credited to them, and will inform PAGA Group Members
4 that all claims to PAGA penalties are settled by operation of law and that they are not able to
5 exclude themselves from the Release of PAGA claims and will receive a PAGA payment
6 whether or not they request exclusion from the Action and the Settlement.

7 6.5 The Class Notice shall include a statement as to the number of Workweeks
8 attributable to each Class Member, where applicable, as well as an explanation for how the
9 Workweeks will be used to calculate the Individual Settlement Shares and Individual PAGA
10 Payments (if applicable).

11 6.6 If any Class Notice mailed to any Class Member is returned, the Settlement
12 Administrator shall make a good-faith attempt to obtain the most-current names and postal mail
13 addresses for those individuals, including cross-checking the names and/or postal mail addresses
14 it received from NEW WAY with other appropriate databases (e.g., the National Change of
15 Address Database) and performing further reasonable searches (e.g., through Lexis/Nexis and
16 skip tracing) for more-current names and/or postal mail addresses for those individuals. All
17 Class Members' names and postal mail addresses obtained through these sources shall be
18 protected as confidential and not used for purposes other than the notice and administration of
19 this Settlement. The address determined by the Settlement Administrator as the current mailing
20 address shall be presumed to be the best mailing address for each Class Members. The
21 Settlement Administrator shall promptly re-mail the Class Notice to any Class Member whose
22 original notice was returned because of a wrong address.

23 6.7 If any Class Notice to a Class Member is returned to the Settlement Administrator
24 with a forwarding address, the Settlement Administrator shall forward the postal mailing to that
25 address. Class Members whose Class Notices are re-mailed shall have an additional 10 days
26 from the original Response Deadline to submit a response.

27 6.8 In the event that any Class Notice is returned as undeliverable a second time, no
28 further postal mailing shall be required. The Settlement Administrator shall maintain a log

1 detailing the instances Class Notices are returned as undeliverable, re-mailed, and when
2 applicable, returned again.

3 6.9 The Parties agree that the procedures set forth in this Section comply with all due
4 process requirements, constitute reasonable and the best practicable notice under the
5 circumstances, and constitute an appropriate and sufficient effort to locate current addresses for
6 Class Members such that no additional efforts to do so shall be required. Any Class Members
7 who fail to receive the Class Notice after these procedures have been followed will nonetheless
8 be bound by this Settlement.

9 6.10 No more than fifteen (15) calendar days after the Response Deadline, the
10 Settlement Administrator shall provide a declaration of due diligence confirming: its
11 dissemination of the Class Notice in accordance with the notice procedures of this Agreement;
12 all attempts by the Settlement Administrator to locate Class Members; the number of delivered
13 and undeliverable Class Notices; the number of objections received (and copies of same); the
14 number of requests for exclusion received (but not copies of same) and, upon request of the
15 Court, the names of any Class Members who submitted timely and valid requests for exclusion;
16 and the number of Workweek disputes received. Class Counsel shall be responsible for filing
17 the due diligence declaration with the Court.

18 **7. PROCEDURE FOR REQUESTING EXCLUSION**

19 7.1 Class Members who wish to exclude themselves from (or “opt out” of) the
20 Settlement must submit timely, written requests for exclusion from the Settlement to the
21 Settlement Administrator. To be effective, the request for exclusion from the Settlement must
22 include: the Class Member’s name, address, telephone number, and last four digits of his or her
23 Social Security number; the name and case number of the Action; a clear and unequivocal
24 statement that the individual wishes to be excluded from the Settlement; and the Class Member’s
25 signature.

26 7.2 The request for exclusion must be mailed to the Settlement Administrator at the
27 address provided in the Class Notice and must be postmarked no later than the Response
28 Deadline. The date of the postmark on the envelope containing the request for exclusion shall

1 be the exclusive means used to determine whether a request for exclusion has been timely
2 submitted. Requests for exclusion must be exercised and submitted individually by a Class
3 Member. Attempted collective group, class, or subclass requests for exclusions shall be
4 ineffective and disregarded by the Settlement Administrator.

5 7.3 The Settlement Administrator shall immediately notify Class Counsel and counsel
6 for NEW WAY by email and phone if and when the number of timely-submitted requests for
7 exclusion reaches ten percent (10%) of all Class Members. If more than ten percent (10%) of
8 Class Members opt out of the Settlement, NEW WAY at its sole and absolute discretion may
9 elect to rescind and revoke the entire Settlement Agreement by sending written notice to Class
10 Counsel that it revokes the Settlement within thirty (30) calendar days after the Response
11 Deadline. However, counsel for NEW WAY shall meet and confer with Plaintiff's counsel prior
12 to withdrawing from the Settlement pursuant to this provision.

13 7.4 All Class Members who do not opt out of the Settlement shall be bound by this
14 Agreement, and all of their claims shall be released as provided for herein, even if they never
15 received the Class Notice or other actual notice of this Settlement.

16 7.5 Plaintiffs agree not to request exclusion from the Settlement.

17 7.6 The Parties agree there is no statutory or other right for any PAGA Group Member
18 to opt out or otherwise exclude himself or herself from settlement and release of the PAGA
19 Claims.

20 **8. PROCEDURE FOR OBJECTING**

21 8.1 Any Class Member who has not opted out of the Settlement (i.e., Settlement Class
22 Member) and who wishes to object to the fairness, reasonableness, or adequacy of this
23 Agreement must provide to the Settlement Administrator (who shall immediately forward it to
24 Class Counsel and counsel for NEW WAY), a timely statement of the objection.

25 8.2 All written objections and supporting papers must be filed or postmarked no later
26 than the Response Deadline. The filing date or the date of the postmark on the envelope
27 containing the objection shall be the exclusive means used to determine whether the written
28 objection has been timely submitted.

8.3 The objection must contain at least the following: (i) the objector's full name, address, telephone number, last four digits of his or her Social Security number, and signature; (ii) the name and case number of the Action; (iii) a statement of the specific legal and factual basis for each objection argument; and (iv) a statement whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel and, if through counsel, a statement identifying that counsel by name, bar number, address, and telephone number.

8.4 Class Members who object to the Settlement shall remain Settlement Class Members and shall be deemed to have voluntarily waived their right to pursue an independent remedy against NEW WAY and the Released Parties if the Court grants final approval of the Settlement. To the extent any Settlement Class Member objects to the Settlement, and such objection is overruled in whole or in part, those Settlement Class Members will be forever bound by the Final Approval Order and Judgment if the Court grants final approval of the Settlement.

8.5 The Parties agree there is no statutory or other right for any PAGA Group Member to object, to the settlement and release of the PAGA Claims.

9. PROCEDURE FOR REQUESTING FINAL APPROVAL OF THE SETTLEMENT

9.1 Promptly after the Response Deadline, Plaintiffs shall file a motion requesting final approval of the Settlement, along with a proposed Final Approval Order. Drafts of the motion for final approval of the Settlement and proposed Final Approval Order shall be provided to NEW WAY's counsel at least three (3) calendar days before the documents are filed, however Plaintiffs shall have discretion as to whether incorporate any changes requested by NEW WAY. NEW WAY agrees that it will not oppose Plaintiffs' motions for final approval of the Settlement provided the motion conforms to the terms of the Settlement Agreement and makes no incorrect representations regarding Defendants' position.

9.2 The Final Approval Order shall adjudge that, among other things:

- The Settlement Administrator has fulfilled its initial notice and reporting duties under the Settlement and that the Class Notice (i) constituted the best practicable notice; (ii) constituted notice that was reasonably calculated, under the

1 circumstances, to apprise Class Members of the pendency of the Action, and their
2 right to exclude themselves from or object to the proposed settlement and to
3 appear at the Final Approval Hearing; (iii) was reasonable and constituted due,
4 adequate, and sufficient notice to all persons entitled to receive notice; and (iv)
5 met all applicable requirements of due process, and any other applicable rules or
6 law;

- 7 • The Settlement as fair, reasonable, and adequate;
- 8 • Plaintiffs and Class Counsel may adequately represent the Class for the purpose
9 of entering into and implementing the Agreement;
- 10 • The Settlement Administrator is to execute the distribution of proceeds pursuant
11 to the terms of this Agreement;
- 12 • The Final Approval Order and Judgment shall be final and entered forthwith;
- 13 • Without affecting the finality of the Final Approval Order and Judgment, the Court
14 retains continuing jurisdiction over Plaintiffs, NEW WAY, and Settlement Class
15 Members, as to all matters concerning the administration, consummation, and
16 enforcement of this Settlement Agreement;
- 17 • As of the Effective Date, Plaintiffs and Settlement Class Members, and, regardless
18 of whether they have received actual notice of the proposed Settlement, have
19 conclusively compromised, settled, discharged, and provided the release of
20 Released Claims against NEW WAY and the Released Parties, and are bound by
21 the provisions of this Settlement Agreement;
- 22 • This Settlement Agreement and the Final Approval Order and Judgment to be
23 binding on, and have *res judicata* and preclusive effect in, all pending and future
24 lawsuits or other proceedings that encompass Plaintiffs' and Settlement Class
25 Members' claims released herein, and that are maintained by or on behalf of
26 Plaintiffs and Settlement Class Members;

27 9.3 At the Final Approval Hearing, Class Counsel shall request entry of an Order
28 approving the Class Counsel Award and the Service Awards to Plaintiffs. Any such Class

Counsel Award or Service Award shall be paid exclusively from the Total Settlement Amount. The disposition of Class Counsel's application for a Class Counsel Award, and for Service Awards, is within the sound discretion of the Court and is not a material term of this Settlement Agreement, and it is not a condition of this Settlement Agreement that such application be granted. Any disapproval or modification of such application by the Court shall not (i) affect the enforceability of the Settlement Agreement, (ii) provide any of the Parties with the right to terminate the Settlement Agreement, or (iii) increase the consideration any Released Party pays in connection with the Settlement. Released Parties shall have no liability to Plaintiffs or Class Counsel arising from any claim regarding the division of any attorneys' fee/litigation cost award between and among Class Counsel.

10. PROCEDURE FOR EXECUTING THE SETTLEMENT IF/WHEN IT BECOMES EFFECTIVE

10.1 NEW WAY shall provide payment to the Settlement Administrator as provided in Section 4.1

10.2 NEW WAY shall fund the Total Settlement Amount in two installments as follows:

10.2.1 Defendants shall pay three hundred ninety thousand dollars (\$390,000) within 10 calendar days of the Effective Date (which cannot occur prior to 60 days after the Approval Order as outlined in Section 22 above); and

10.2.2 Defendants shall pay three hundred ninety thousand dollars (\$390,000) within 70 calendar days of the Effective Date (which cannot occur prior to 60 days after the Approval Order as outlined in Section 22 above).

10.3 Within fifteen (15) calendar days of receipt of the each of the two installments of the Total Settlement Amount, the Settlement Administrator shall distribute payments in the following order of priority to the extent possible, as follows: (a) full payment to Plaintiffs for their Court-approved Service Awards; (b) full payment to the LWDA for its 75% portion of the PAGA Payment; (c) full payment of the Court-approved Settlement Administrator Expenses; and (d) full payment of the Court-approved litigation costs and expenses; (e) full payment of the

1 Individual Settlement Payments to Settlement Class Members; (f) full payment to the PAGA
2 Group Members of their 25% portion of the PAGA Payment; and (g) the Court-approved Class
3 Counsel Award to Class Counsel.

4 10.4 The Settlement Administrator shall prepare all tax forms related to any and all
5 employer taxes incurred by NEW WAY as a result of this Settlement, shall inform NEW WAY
6 and its Counsel of the amounts owed, shall collect the necessary funds from New Way and remit
7 them to the requisite taxing authorities.

8 10.5 If any Individual Settlement Payments are not cashed, deposited, or negotiated on
9 or before the Void Date, then within thirty (30) calendar days of the Void Date, the Settlement
10 Administrator shall void the uncashed checks and shall transmit such funds to the California
11 State Controller's Office's Unclaimed Property Fund division in the name of the Settlement
12 Class Member who did not negotiate his or her check.

13 10.6 Upon completion of administration of the Settlement, the Settlement
14 Administrator will provide a written declaration under oath to certify such completion to the
15 Court and counsel for all Parties. Class Counsel shall file the declaration with the Court to
16 confirm full satisfaction of the Settlement.

17 10.7 The Individual Settlement Payments cashed shall be reported by the Settlement
18 Administrator to the applicable governmental authorities on IRS Forms W-4 and/or 1099s (if
19 required). The portions allocated to Service Awards shall likewise be reported on IRS Form
20 1099s by the Settlement Administrator. The Settlement Administrator shall be responsible for
21 issuing copies of all IRS Forms for the Plaintiffs and Settlement Class Members.

22 10.8 The Parties make no representation as to the tax treatment or legal effect of the
23 payments called for hereunder, and Plaintiffs and the Settlement Class Members are not relying
24 on any statement, representation, or calculation by any of the Parties or by the Settlement
25 Administrator in this regard. Plaintiffs and Settlement Class Members understand and agree
26 that they will be solely responsible for payment of any taxes and penalties assessed on the
27 payments described herein and will hold Plaintiffs, Class Counsel, NEW WAY, NEW WAY's
28 counsel and the Released Parties free and harmless from and against any claims resulting from

1 the tax treatment of payments under this Agreement, with the sole exception of the employer's
2 portion of the payroll withholdings described in paragraph 10.3, above. Plaintiffs and the
3 Settlement Class Members acknowledge and agree that no provision of this Settlement, and no
4 written communication or disclosure between or among the Parties or their attorneys and other
5 advisers, is or was intended to be, nor will any such communication or disclosure constitute or
6 be construed or be relied upon as, tax advice within the meaning of United States Treasury
7 Department Circular 230 (31 C.F.R. Part 10, as amended).

8 10.9 Payments and tax reporting by the Settlement Administrator in the manner
9 described above shall be deemed conclusive of compliance with this Settlement Agreement as
10 to all Settlement Class Members. No Settlement Class Members shall have any claim against
11 the Plaintiffs, Class Counsel, NEW WAY, NEW WAY's counsel or the Settlement
12 Administrator for distributions made substantially in accordance with this Settlement
13 Agreement and/or orders of the Court. No Settlement Class Members shall have any claim
14 against NEW WAY, the Released Parties or NEW WAY's counsel relating to distributions made
15 under this Settlement.

16 **11. EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION OF**
17 **SETTLEMENT AGREEMENT**

18 11.1 If the Court does not approve the Settlement as set forth in this Settlement
19 Agreement, or if the Court enters the Judgment and appellate review is sought, and on such
20 review, the entry of Judgment is vacated, modified in any way, or reversed, or if the Final
21 Approval Order does not otherwise become Final, then this Settlement Agreement shall be
22 cancelled and terminated, unless all Parties, in their sole discretion within thirty (30) days from
23 the date such ruling becomes final, provide written notice to all other Parties hereto of their
24 intent to proceed with the Settlement under the terms of the Judgment as it may be modified by
25 the Court or any appellate court.

26 11.2 In the event that: (i) the Settlement is not approved, is overturned, or is materially
27 modified by the Court or on appeal, (ii) the Judgment does not become Final, or (iii) this
28 Settlement Agreement is terminated, cancelled, or fails to become effective for any reason, then:

(a) the Parties stipulate and agree that the Settlement, the Class Information, and all documents exchanged and filed in connection with the Settlement shall be treated as inadmissible mediation communications under Cal. Evid. Code §§ 1115 *et seq.*, (b) the Settlement shall be without force and effect upon the rights of the Parties hereto, and none of its terms shall be effective or enforceable, with the exception of this Paragraph, which shall remain effective and enforceable; (c) the Parties shall be deemed to have reverted to their respective status prior to execution of this Agreement; (d) all Orders entered in connection with the Settlement, including the certification of the Class, shall be vacated without prejudice to any Party's position on the issue of class certification, the issue of amending the complaint, or any other issue, in this Action or any other action, and the Parties shall be restored to their litigation positions existing on the date of execution of this Agreement; and (e) the Parties shall proceed in all respects as if the Settlement Agreement and related documentation and orders had not been executed, and without prejudice in any way from the negotiation or fact of the Settlement or the terms of the Settlement Agreement. The Settlement, all documents, orders, and evidence relating to the Settlement, the fact of their existence, any of their terms, any statement or report concerning the Settlement Agreement, its existence, or their terms, any negotiations, proceedings, acts performed, or documents executed pursuant to or in furtherance of the Settlement Agreement shall not be admissible in any proceeding, and shall not be offered, received, or construed as evidence of a presumption, concession, or an admission of liability, of unenforceability of any arbitration agreement, of the certifiability of a litigation class, or otherwise used by any Person for any purpose whatsoever, in any trial of this Action or any other action or proceedings.

11.3 Notwithstanding the foregoing provisions, the Parties agree to cooperate to promote participation in the Settlement, and in seeking court approval of the Settlement. The Parties and their counsel agree not to take any action to encourage any Class Members to opt out of and/or object to the Settlement. NEW WAY agrees not to obtain any settlement agreement waivers, Pick Up Stix agreements or arbitration agreements from any Class Member for the Workweeks, Released Claims, and PAGA Claims being released by Class Members and PAGA Group Members in this Settlement. The Parties agree to work in good faith to reach an agreement

1 approved by the Court. The Parties agree that if the Settlement is not approved for any reason,
2 the Parties shall attend private mediation again in an effort to reach a settlement that may
3 ultimately be approved by the Court.

4 **12. ADDITIONAL PROVISIONS**

5 12.1 The Class Notice is the approved method for communicating with Class Members
6 about the Settlement. Plaintiffs and Class Counsel will not issue any news media releases,
7 initiate any contact with the news media, respond to any news media inquiry, post any
8 information on a website (including social media), or have any other public communication
9 about the Action or the fact, amount or terms of the Settlement. Notwithstanding this provision,
10 Class Counsel shall not be prohibited from responding to inquiries by Class Members regarding
11 the Settlement.

12 12.2 NEW WAY agrees that it will adopt a neutral reporting policy regarding any
13 future employment references related to Plaintiffs. In the event that any potential or future
14 employers of Plaintiffs request a reference regarding NEW WAY's employment of Plaintiffs,
15 NEW WAY shall only provide Plaintiffs' dates of employment, job titles during employment,
16 and final rate of pay. NEW WAY shall not refer to the Action or this Settlement.

17 12.3 All of the Exhibits to this Agreement are an integral part of the Settlement and are
18 incorporated by reference as though fully set forth herein.

19 12.4 Unless otherwise noted, all references to "days" in this Agreement shall be to
20 calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend
21 or federal legal holiday, such date or deadline shall be on the first business day thereafter.

22 12.5 The Parties to the Settlement Agreement agree that the terms of the Settlement
23 were negotiated at arm's length and in good faith by the Parties, resulted from an arm's-length
24 mediation session, and reflect a settlement that was reached voluntarily based upon adequate
25 information and sufficient discovery and after consultation with experienced legal counsel.

26 12.6 Plaintiffs, Class Counsel and NEW WAY have concluded that the Settlement set
27 forth herein constitutes a fair, reasonable, and adequate resolution of the claims that Plaintiffs
28

1 asserted against NEW WAY, including the claims on behalf of the Class Members, and that it
2 promotes the best interests of the Class Members.

3 12.7 To the extent permitted by law, all agreements made and orders entered during the
4 course of the Action relating to the confidentiality of information shall survive this Settlement
5 Agreement.

6 12.8 The waiver by one Party of any breach of this Settlement Agreement by any other
7 Party shall not be deemed a waiver of any other prior or subsequent breach of this Settlement
8 Agreement.

9 12.9 The Parties may not amend or modify any provision of this Settlement Agreement
10 except by written agreement signed by counsel for the Parties and subject to any necessary Court
11 approval.

12 12.10 This Settlement Agreement, including its Exhibits, constitutes the entire
13 agreement among the Parties, and no representations, warranties, or inducements have been
14 made to any Party concerning this Settlement Agreement or its Exhibits, other than the
15 representations, warranties, and covenants contained and memorialized in this Settlement
16 Agreement and its Exhibits.

17 12.11 This Settlement Agreement may be executed in one or more counterparts. All
18 executed counterparts and each of them, including facsimile, electronic, and scanned copies of
19 the signature page, shall be deemed to be one and the same instrument.

20 12.12 The Parties hereto and their respective counsel agree that they will use their best
21 efforts to obtain all necessary approvals of the Court required by this Settlement Agreement.

22 12.13 This Settlement Agreement shall be binding upon and shall inure to the benefit of
23 the successors and assigns of the Parties hereto, including any and all Released Parties and any
24 corporation, partnership, or other entity into or with which any Party hereto may merge,
25 consolidate, or reorganize.

26 12.14 This Settlement Agreement shall not be construed more strictly against one Party
27 than another merely because of the fact that it may have been prepared by counsel for one of the
28 Parties, it being recognized that because of the arm's-length negotiations resulting in the

Settlement Agreement, all Parties hereto have contributed substantially and materially to the preparation of the Settlement Agreement.

12.15 Except where this Settlement Agreement itself provides otherwise, all terms, conditions, and Exhibits are material and necessary to this Settlement Agreement and have been relied upon by the Parties in entering into this Settlement Agreement.

12.16 This Settlement Agreement shall be governed by California law. Any action based on this Settlement Agreement, or to enforce any of its terms, shall be venued in the San Diego County Superior Court, which shall retain jurisdiction over all such disputes. All Parties to this Settlement Agreement shall be subject to the jurisdiction of said Court for all purposes related to this Settlement Agreement. This Paragraph relates solely to the law governing this Settlement Agreement and any action based thereon, and nothing in this Paragraph shall be construed as an admission or finding that California law applies to the Released Claims of any Plaintiff or Class Member who resides outside the State of California.

12.17 The Court shall retain continuing and exclusive jurisdiction over the Parties to this Settlement Agreement for the purpose of the administration and enforcement of this Settlement Agreement. In the event that any party breaches any terms of this Settlement and an action is brought to enforce the terms of the Settlement, the prevailing party in any enforcement action shall be entitled to recover their attorney fees and costs. Notwithstanding this provision, the Parties agree to meet and confer in good faith prior and, if necessary, participate in a further private mediation with a mutually-agreeable mediator, prior to bringing any enforcement action under this provision.

12.18 The headings used in this Settlement Agreement are for the convenience of the reader only, and shall not affect the meaning or interpretation of this Settlement Agreement.

12.19 In construing this Settlement Agreement, the use of the singular includes the plural (and vice-versa) and the use of the masculine includes the feminine (and vice-versa).

IT SO STIPULATED.

Date: _____, 2021

CARLOS BAHENA

Plaintiff

Date: 9/24, 2021

JOAQUIN GOMEZ

Joaquin GOMEZ

Plaintiff

Date: _____, 2021

NEW WAY LANDSCAPE & TREE
SERVICES;
NEW WAY TREE SERVICES, INC.

By: _____

Its: _____

Date: _____, 2021

PROTECTION LAW GROUP

Amir Nayebdadash
Attorneys for Plaintiff Carlos Bahena
and the putative class acting on behalf of
the State of California as Private Attorneys
General

Date: 9/27, 2021

LAW OFFICE OF DOUGLAS GEYMAN


Douglas Geyman
Attorney for Plaintiff Joaquin Gomez
and the Putative Class acting on behalf of
the State of California as Private Attorneys
General

1 Date: 9-23-2021, 2021

CARLOS BAHENA

Carlos Bahena Flor
Plaintiff

2
3
4 Date: _____, 2021

JOAQUIN GOMEZ

Plaintiff

5
6
7 Date: _____, 2021

NEW WAY LANDSCAPE & TREE
SERVICES;
NEW WAY TREE SERVICES, INC.

By: _____

Its: _____

8
9
10
11 Date: September 23, 2021

PROTECTION LAW GROUP

Amir Nayebdadash
Amir Nayebdadash
Attorneys for Plaintiff Carlos Bahena
and the putative class acting on behalf of
the State of California as Private Attorneys
General

12
13
14
15
16 Date: _____, 2021

LAW OFFICE OF DOUGLAS GEYMAN

Douglas Geyman
Attorney for Plaintiff Joaquin Gomez
and the Putative Class acting on behalf of
the State of California as Private Attorneys
General

Date: _____, 2021

CARLOS BAHENA

Plaintiff

Date: 9/24, 2021

JOAQUIN GOMEZ

Joaquin GOMEZ

Plaintiff

Date: 9/29/2021, 2021

NEW WAY LANDSCAPE & TREE
SERVICES;
NEW WAY TREE SERVICES, INC.

President

By: Kathryn DeJong

Its: Kathryn DeJong

Date: _____, 2021

PROTECTION LAW GROUP

Amir Nayebdadash

Attorneys for Plaintiff Carlos Bahena
and the putative class acting on behalf of
the State of California as Private Attorneys
General

Date: 9/27, 2021

LAW OFFICE OF DOUGLAS GEYMAN

Douglas Geyman

Douglas Geyman

Attorney for Plaintiff Joaquin Gomez
and the Putative Class acting on behalf of
the State of California as Private Attorneys
General

Gordon Rees Scully Mansukhani, LLP
101 W. Broadway, Suite 2000
San Diego, CA 92101

Date: 9/29, 2021

GORDON REES SCULLY
MANSUKAHNI, LLP



Brandon D. Saxon
Attorney for Defendants New Way
Landscape & Tree Services, New Way
Tree Services, Inc., Kathryn DeJong and
Randy Newhard

EXHIBIT A

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Bahena v. New Way Landscape & Tree Services

San Diego County Superior Court, Case No. 37-2020-00030533-CU-OE-CTL

Gomez v. New Way Tree Services, Inc.

San Diego Superior Court, Case No. 37-2020-00032057-CU-OE-CTL

THIS IS A COURT-AUTHORIZED NOTICE. IT IS NOT A SOLICITATION.

PLEASE READ THIS NOTICE CAREFULLY.

YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT OR DO NOT ACT.

To:	All current and former hourly-paid, non-exempt employees of New Way Landscape & Tree Services and/or New Way Tree Services, Inc. who were employed in the state of California at any time from August 31, 2016 to [Class Period Cutoff Date]
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BASIC INFORMATION

1. What is this settlement about?

A lawsuit was commenced by Carlos Bahena, a former employee of Defendants New Way Landscape & Tree Services and New Way Tree Services, Inc. (“Defendants”) on August 31, 2020. A lawsuit alleging substantially similar claims was later filed by Joaquin Gomez, another former employee of Defendants, on September 14, 2020. The cases are currently pending in the San Diego County Superior Court, Case Nos. 37-2020-00030533-CU-OE-CTL and 37-2020-00032057-CU-OE-CTL.

The lawsuits claim that Defendants violated sections of the California Labor Code and California Business and Professions Code. Specifically, Plaintiffs allege that Defendants failed to provide compliant meal and rest periods and associated premium pay, did not properly pay employees all wages owed for time worked, did not provide accurate wage statements, did not timely pay all wages during employment and all wages owed at termination of employment, did not reimburse employees for business expenses, and maintained unfair business practices. The lawsuits also seek to recover penalties pursuant to the California Private Attorneys General Act (“PAGA”). The lawsuits claim that the Defendants violated the California Labor Code and the California Business and Professions Code, entitling Class Members to, *inter alia*, damages, penalties and restitution.

Defendants deny all allegations, and contend that they have complied with all California wage and hour laws at all times, and believes that the claims are without merit. Defendants deny that it owes Class Members any remedies.

The Court has not made a ruling on the merits of the case.

2. Why is this a class action?

In a class action, one or more people called the Class Representative (in this case Plaintiffs Carlos Bahena and Joaquin Gomez), sue on behalf of people who appear to have similar claims (in this case all current and former hourly-paid, non-exempt employees of Defendants who were employed by Defendants in the state of California at any time from August 31, 2016 to [Class Period Cutoff Date]). All these people are referred to here as Class Members. In a class action one court resolves the issues for all Class Members in one lawsuit, except for those who exclude themselves from the Class. The San Diego County Superior Court is in charge of this class action.

3. Why is there a settlement?

The Court has not decided in favor of Plaintiffs or Defendant. Instead, both sides agreed to a settlement which is memorialized in the Stipulation of Settlement (“Settlement Agreement” or “Settlement”). On [DATE OF PRELIMINARY APPROVAL], the Court granted preliminary approval of the Settlement, appointed Plaintiffs Carlos Bahena and Joaquin Gomez as the Class Representative, and appointed their attorneys at Protection Law Group and Law Offices of Douglas E. Geyman as counsel for the Class (“Class Counsel”).

The Class Representatives and Class Counsel think the Settlement is best for the Class.

WHO IS IN THE SETTLEMENT?

4. How do I know if I am part of the settlement?

You are part of the Settlement, and a Class Member, if you were an hourly-paid, non-exempt employee of Defendants who was employed by Defendants in the state of California at any time from August 31, 2016 to [Class Period Cutoff Date].

THE SETTLEMENT BENEFITS—WHAT YOU GET

5. What does the settlement provide?

The Settlement provides that Defendants will pay a maximum of Seven Hundred Eighty Thousand Dollars (\$780,000.00) (“Total Settlement Amount”). This includes all costs and attorneys’ fees for Class Counsel.

The “Net Distribution Fund” is the portion of the Total Settlement Amount that will be available for distribution to Class Members who do not submit timely and valid requests for exclusion in exchange for the release of their class claims. The Net Distribution Fund is the Total Settlement Amount less the following amounts (which are subject to Court approval):

- A. **Attorneys’ Fees to Class Counsel** not to exceed 33% of the Gross Settlement Amount or Two Hundred Fifty-Seven Thousand Four Hundred Dollars (\$257,400.00);
- B. **Litigation Costs/Expenses to Class Counsel** not to exceed Thirty Thousand Dollars (\$30,000.00);
- C. **Incentive Payment to the Class Representatives** not to exceed Seven Thousand Five Hundred Dollars (\$7,500.00) each, for a total of Fifteen Thousand Dollars (\$15,000.00);
- D. **Settlement Administration Costs** not to exceed Twenty Thousand Dollars (\$20,000.00); and
- E. **PAGA Penalties** in the amount of Fifty Thousand Dollars (\$50,000.00) for the settlement of claims arising under PAGA. Seventy-Five percent (75%) of this amount (\$37,500.00) shall be paid to the Labor Workforce Development Agency (“LWDA”). The remaining twenty-five percent (25%) (\$12,500.00) will be distributed to PAGA Group Members (current and former hourly-paid, non-exempt employees of Defendant who were employed by Defendants in the state of California at any time from July 1, 2019 to [Class Period Cutoff Date]) for the release of their claims arising under PAGA.

The amount you are eligible to receive from the settlement, your “Individual Settlement Payment” will be determined on a *pro rata* basis, based on the number of weeks (“Workweeks”) you worked in California for Defendants during the period beginning on August 31, 2016 to [Class Period Cutoff Date] (“Class Period”). Your Individual Settlement Payment includes both your estimated share of the Net Settlement Amount and, if eligible, your share of the PAGA Payment.

Your Individual Settlement Payment will be apportioned as twenty percent (20%) wages, ten percent (10%) expense reimbursement, and seventy percent (70%) non-wage damages, premiums, and interest. The wage portion of the

Individual Settlement Payment will be subject to withholding for the employee taxes and will be reported on a W-2 Form. Employer-side payroll taxes shall be paid by Defendants separately from and in addition to the Total Settlement Amount. The non-wage portions of each Class Member's settlement payment will not be subject to any withholdings and will be reported on an IRS Form 1099.

You worked XXX workweeks during the Class Period. Your Individual Settlement Payment is \$XXX.XX. The amount of the payment may change depending on the number of timely and valid requests for exclusions submitted in the Settlement, if any.

This Amount was determined based on Defendants' record of your employment during the period beginning on August 31, 2016 and ending on [Class Period Cutoff Date], and is presumed correct. If you dispute the accuracy of Defendants' records as to the number of weeks worked during the Class Period, you must submit a signed, written letter to the Settlement Administrator that: (1) contains the case name and case numbers; (2) contains your full name, address, telephone numbers, and last four digits of your social security number; (3) states that you dispute the number of Workweeks credited toward you; and (4) provides documentation you have supporting such dispute. Your written dispute must be returned to the Settlement Administrator by mail and postmarked by [DATE]. All disputes regarding your workweeks will be resolved and decided by the Parties or if the Parties cannot agree, by the Settlement Administrator. The Settlement Administrator's contact information is listed below:

[Settlement Administrator]
[Address]
[Telephone No.]
[Fax No.]

HOW TO GET A PAYMENT FROM THE SETTLEMENT

6. How can I get a payment?

You do not have to do anything to qualify for a payment of your portion of the Settlement.

7. What am I giving up if I do not request to be excluded from the settlement?

Upon the funding of the Total Settlement Amount, in exchange for the consideration set forth by the Settlement, Plaintiffs and all Class Members who do not submit a timely request for exclusion shall release the "Released Parties" from the "Released Claims" for the Class Period.

The "Released Parties" include Defendant New Way Landscape & Tree Services, New Way Tree Services, Inc., Kathryn DeJong, and Randy Newhard and their past, present, and future parents, subsidiaries, affiliates, divisions, joint ventures, licensees, franchisees, and any other legal entities, whether foreign or domestic, and the past, present, and future shareholders, officers, directors, members, investors, agents, employees, consultants, representatives, fiduciaries, insurers, attorneys, legal representatives, predecessors, successors, and assigns thereof.

The "Released Claims" means all claims actually alleged or that could have been alleged in the Action by Plaintiffs, on behalf of themselves and the Class Members, based on the facts alleged in the *Bahena* Complaint and the *Gomez* Complaint, including but not limited to: (1) Violation of California Labor Code §§ 510, 1194 and 1198, and IWC Wage Order 4-2001, § 3 (Unpaid Overtime); (2) Violation of California Labor Code §§ 226.7, 510, 512, 1194, 1197, IWC Wage Order 5-2001, § 11, and IWC Wage Order 16-2001, § 10 (Failure to Provide Meal Periods and Unpaid Meal Period Premiums); (3) Violation of California Labor Code §§ 226.7, 512, IWC Wage Order 5-2001, § 12, and IWC Wage Order 160-2001, § 16 (Failure to Provide Rest Periods and Unpaid Rest Period Premiums); (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1, IWC Wage Order 5-2001, § 4, and IWC Wage Order 16, § 4 (Unpaid Minimum Wages); (5) Violation of California Labor Code §§ 201, 202, and 203 (Final Wages Not Timely Paid); (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment); (7) Violation of

California Labor Code § 226(a), IWC Wage Order 5-2001, § 7, and IWC Wage Order 16-2001, § 6 (Non-Compliant Wage Statements); (8) Violation of California Labor Code §§ 226, 1174, IWC Order 5-2001, § 7, and IWC Wage Order 16-2001, § 6 (Failure To Keep Requisite Payroll Records); (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses); (10) Violation of California Business & Professions Code §§ 17200, *et seq.*; (10) PAGA Claims; and (11) attorneys' fees and costs of litigation associated with this Action.

This release of these claims pertains to the Class Period beginning on August 31, 2016 and ending on [Class Period Cutoff Date].

All PAGA Members will be deemed to have fully, finally and forever released, settled, compromised, relinquished, and discharged any and all Released Claims arising under PAGA with respect to all of the Released Parties irrespective of whether a Class Member submits a request for exclusion.

EXCLUDING YOURSELF FROM THE RELEASE OF NON-PAGA CLAIMS

If you want to keep the right to sue or continue to sue Defendants with respect to the Released Claims (other than those which arise under the Private Attorneys General Act (California Labor Code sections 2698 *et seq.*), then you must submit a request for exclusion in conformity with the requirements set forth herein. If you exclude yourself, you will not receive payment from the Net Distribution Fund. However, if eligible, you will still receive a payment in an amount equal to your estimated *pro rata* share of the PAGA Payment because the Request for Exclusion does not apply to this claim.

8. How can I not participate in the settlement?

To exclude yourself from the release of Released Claims you must submit a written request for exclusion. You must include your name, address, telephone number, the last four digits of your social security number, and the name of the lawsuit and the case number. Your request for exclusion must also include a statement that you do not wish to be included in this action similar to the following: I wish to exclude myself from the class action settlement reached in the matter of *Bahena v. New Way Landscape & Tree Services*. I understand that by excluding myself I will not receive money from the class portion of the settlement.”

The written request for exclusion must be signed and must be mailed to the Settlement Administrator at the address listed below, post-marked by [DATE]. You cannot exclude yourself by phone.

[Settlement Administrator]

[Address]

[Telephone No.]

[Fax No.]

If you ask to be excluded, you will not receive payment of any portion of the Net Distribution Fund and you cannot object to the Settlement. You will not be legally bound by the release of Released Claims (except for Released Claims that arise under the Private Attorneys General Act (California Labor Code sections 2698 *et seq.*)).

You may be able to sue Defendants and/or the Released Parties or continue any suit you have pending against Defendants and/or the Released Parties, regarding the Released Claims (except for Released Claims that arise under the Private Attorneys General Act (California Labor Code sections 2698 *et seq.*)).

9. If I don't exclude myself, can I sue Defendant for the same thing later?

No. Unless you submit a request for exclusion, you give up the right to sue Defendants and the Released Parties for the Released Claims. If you have a pending lawsuit involving the Released Claims, speak to your lawyer in that lawsuit immediately.

10. If I exclude myself, can I get money from this settlement?

No, except if you worked during the period beginning on August 31, 2016 and ending on [Class Period Cutoff Date], in which case you will still receive the portion of your Individual Settlement Payment for Released Claims that arise under PAGA. But if you submit a timely and valid request for exclusion, you retain any right that you may have to sue, continue to sue, or be part of a different lawsuit against the Defendants and/or Released Parties for Released Claims (except for Released Claims that arise under PAGA).

THE LAWYERS REPRESENTING YOU

11. Do I have a lawyer in this case?

The Court has approved Protection Law Group LLP and the Law Office of Douglas E. Geyman as Class Counsel. The firm's contact information is:

PROTECTION LAW GROUP LLP Heather Davis, Esq. Amir Nayebdadash, Esq. 237 California Street El Segundo, California 90245 Telephone: (424) 290-3095 Facsimile: (866) 264-7880	LAW OFFICE OF DOUGLAS E. GEYMAN Douglas E. Geyman 750 B Street, Suite 2870 San Diego, California 92101 Telephone (619) 232-3533
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Class Counsel will ask the Court for attorneys' fees of up to \$257,400.00 and reimbursement of litigation cost/expenses of up to \$30,000.00. These amounts are subject to Court approval and the Court may award less than these amounts.

OBJECTING TO THE SETTLEMENT

You can object to the Settlement or some part of it.

12. How do I tell the Court if I don't like the settlement?

If you are a Class Member, you can object to the Settlement and you can give reasons for why you think the Court should not approve it. The Court will consider your views. To object, you must mail your objection to the Settlement Administrator no later than [DATE]. Your objection must include your full name, address, telephone number, the last four digits of your social security number, the specific reason for your objection, and a statement whether you intend to appear at the Final Fairness Hearing. You may also come to the Final Approval Hearing on [DATE] and make an objection at that time, regardless of whether you submitted a written objection.

13. What is the difference between objecting and excluding?

Objecting is simply telling the Court that you do not like something about the Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to grant final approval of the Settlement ("Final Approval Hearing"). You may attend, but you do not have to attend.

14. When and where will the Court decide whether to approve the settlement?

The Court will hold the Final Approval Hearing at [REDACTED] a.m./p.m. on [REDACTED], in Department C-64 of the San Diego Superior Court, located at 330 West Broadway, San Diego, CA 92101.

At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate, and determine whether to grant final approval of the Settlement. If there are objections, the Court will consider them.

15. Do I have to come to the hearing?

No. If you agree to the Settlement you do not have to come to Court to talk about it. However, you may attend. You may also retain your own lawyer at your expense to attend on your behalf. You may attend in person, but you may also attend remotely if you wish. Please see http://www.sdcourt.ca.gov/portal/page?_pageid=55,2053814&_dad=portal&_schema=PORTAL or http://www.sdcourt.ca.gov/portal/page?_pageid=55,2070120&_dad=portal&_schema=PORTAL for more information on remote appearances.

16. How will I learn if the settlement was approved?

A notice of final judgment will be posted on the Settlement Administrator website located at [www.\[REDACTED\]](http://www.[REDACTED]).

IF YOU DO NOTHING

17. What happens if I do nothing at all?

If you do nothing, you will receive your share of the Settlement, and you will release the Released Claims. You will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendants and/or the Released Parties about the Released Claims, ever again. Your Individual Settlement Payment will be mailed to you and remain valid and negotiable for 180 days. If you do not cash your settlement check within 180 days, these funds will be transferred to the Controller of the State of California's Unclaimed Property Fund. You may then claim these funds from there.

GETTING MORE INFORMATION

18. How do I get more information?

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement by viewing the settlement located on the Settlement Administrator's website at [www.\[REDACTED\]](http://www.[REDACTED]) or by contacting the Settlement Administrator or Class Counsel.

WHAT IF MY INFORMATION CHANGES?

19. What if my contact information changes?

It is your responsibility to inform the Settlement Administrator of your updated information to ensure receipt of settlement payments or communications regarding this matter. You can change or update your contact information by contacting the Settlement Administrator.

**DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO THE
CLERK OF THE COURT OR THE JUDGE**

EXHIBIT B

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN DIEGO**
10

11 CARLOS BAHENA individually and on
12 behalf of others similarly situated,

13 Plaintiff,

14 vs.

15 NEW WAY LANDSCAPE & TREE
16 SERVICES a California corporation; NEW
17 WAY TREE SERVICES, INC, a California
18 corporation; and DOES 1 through 50,
19 inclusive,

20 Defendants.

21 JOAQUIN GOMEZ, an individual,

22 Plaintiff,

23 vs.

24 NEW WAY TREE SERVICES, INC, a
25 California corporation; KATHRUN M.
26 DEJON, an individual; RANDY
27 NEWHARD, an individual and DOES 1
28 through 10, inclusive,

Defendants.

Case Nos. 37-2020-00030533-CU-OE-CTL
37-2020-00032057-CU-OE-CTL

*Assigned for all purposes to the Hon. John S.
Meyer, Dept. C-64*

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF
CLASS ACTION AND PAGA
SETTLEMENT**

Hearing Date: October 22, 2021
Hearing Time: 10:30 a.m.
Dept: C-64

[PROPOSED] ORDER

The Motion of Plaintiffs Carlos Bahena and Joaquin Gomez (“Plaintiffs”) for Preliminary Approval of Class Action and PAGA Settlement (“Motion”) came regularly for hearing before this Court on October 22, 2021. The Court, having considered the proposed Stipulation of Settlement (“Settlement Agreement” or “Settlement”), attached as Exhibit 1 to the Declaration of Heather Davis filed concurrently with the Motion; having considered Plaintiffs’ Motion for Preliminary Approval of Class Action and PAGA Settlement, memorandum of points and authorities in support thereof, and supporting declaration filed therewith; and good cause appearing, HEREBY ORDERS THE FOLLOWING:

1. The Court GRANTS preliminary approval of the class action settlement as set forth in the Settlement Agreement and finds its terms to be within the range of reasonableness of a settlement that ultimately could be granted approval by the Court at a Final Fairness hearing. All terms used herein shall have the same meaning as defined in the Settlement Agreement. For purposes of the Settlement only, the Court finds that the proposed Class is ascertainable and that there is a sufficiently well-defined community of interest among the members of the Class in questions of law and fact. Therefore, for settlement purposes only, the Court grants conditional certification of the following settlement Class:

All current and former non-exempt employees of Defendants New Way Landscape & Tree and/or New Way Tree Services, Inc. who were employed by Defendants in the State of California at any time from August 31, 2016 through October 22, 2021 or the date on which the Workweeks reach 44,413, whichever comes first.

2. For purposes of the Settlement only, the Court designates Plaintiffs Carlos Bahena and Joaquin Gomez as the Class Representatives, and designates Protection Law Group, LLP and Law Office of Douglas E. Geyman as Class Counsel.

3. The Court designates ILYM Group, Inc. as the third-party Settlement Administrator.

4. The Parties are ordered to implement the Settlement according to the terms of the Settlement Agreement.

1 5. The Court approves, as to form and content, the Notice of Proposed Class Action
2 Settlement (“Notice”) attached as Exhibit A to the Settlement Agreement.

3 6. The Court finds that the form of notice to the Class regarding the pendency of the
4 action and of the Settlement, the dates selected for mailing and distribution, and the methods of
5 giving notice to members of the Class, satisfy the requirements of due process, constitute the best
6 notice practicable under the circumstances, and constitute valid, due, and sufficient notice to all
7 members of the Class. The form and method of giving notice complies fully with the requirements
8 of California Code of Civil Procedure § 382, California Civil Code § 1781, California Rules of
9 Court §§ 3.766 and 3.769, the California and United States Constitutions, and other applicable
10 law.

11 7. The Court further approves the procedures for Class Members to opt-out of or
12 object to the Settlement, as set forth in the Notice and the Settlement Agreement. The procedures
13 and requirements for filing objections in connection with the final fairness hearing are intended to
14 ensure the efficient administration of justice and the orderly presentation of any Class Member’s
15 objection to the Settlement, in accordance with the due process rights of all Class Members.

16 8. The Court directs the Settlement Administrator to mail the Notice to the members
17 of the Class in accordance with the terms of the Settlement.

18 9. The Notice shall provide 60 calendar days’ notice for Class Members to submit
19 disputes, opt-out of, or object to the Settlement.

20 10. The hearing on Plaintiff’s Motion for Final Approval of Settlement on the question
21 of whether the Settlement should be finally approved as fair, reasonable, and adequate is scheduled
22 in Department C-64 of this Court, located at 330 West Broadway, San Diego, California 92101,
23 on _____, at _____ a.m. / p.m. The date, time, and location of the Final
24 Approval Hearing may be changed by the Court without further notice to the Class.

25 11. At the Final Fairness hearing, the Court will consider: (a) whether the Settlement
26 should be approved as fair, reasonable, and adequate for the Class; (b) whether a judgment granting
27 final approval of the Settlement should be entered; and (c) whether Plaintiffs’ application for
28

enhancement payments, settlement administration costs, and Class Counsel's attorneys' fees and costs, should be granted.

12. Counsel for the parties shall file memoranda, declarations, or other statements and materials in support of their request for final approval of Plaintiffs' application for an enhancement payment, settlement administration costs, Class Counsel's attorneys' fees and costs, prior to the hearing on Plaintiffs' Motion for Final Approval of Settlement according to the time limits set by the Code of Civil Procedure and the California Rules of Court.

13. An implementation schedule is below:

Event	Date
Defendants to provide class contact information to Settlement Administrator no later than:	November 5, 2021 [14 days following preliminary approval]
Settlement Administrator to mail the Notice to the Class no later than:	November 12, 2021 [7 days following provision of contact information]
Deadline for Class Members to submit disputes, request exclusion from, or object to the Settlement:	January 11, 2022 [60 calendar days after mailing of the Notice]
Deadline for Plaintiff to file Motion for Final Approval of Class Action Settlement:	
Hearing on Motion for Final Approval of Settlement	

14. Pending the Final Fairness hearing, all proceedings in this action, other than proceedings necessary to carry out or enforce the terms and conditions of the Settlement and this Order, are stayed. To facilitate administration of the Settlement pending final approval, the Court hereby enjoins Plaintiff and all members of the Class from filing or prosecuting any claims, or suits regarding claims released by the Settlement, unless and until such Class Members have filed valid Requests for Exclusion with the Settlement Administrator.

1 15. Counsel for the parties are hereby authorized to utilize all reasonable procedures in
2 connection with the administration of the Settlement which are not materially inconsistent with
3 either this Order or the terms of the Settlement.

4
5 **IT IS SO ORDERED.**

6
7 DATED:

By: _____
JUDGE OF THE SUPERIOR COURT