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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13
14 **FOR THE COUNTY OF SANTA CRUZ**

15 ANGEL LUNA, individually, and on behalf of
16 all other "aggrieved employees",

17 Plaintiff,

18 v.

19 DAVEY TREE SURGERY COMPANY, a
20 Delaware Corporation; and DOES 1 through 50,
21 inclusive,

22 Defendants.

Case No. 23CV00040

**SETTLEMENT AGREEMENT AND
RELEASE OF PAGA CLAIMS**

Hon. T. Volkmann
Place: Courtroom 9D

1 This Settlement Agreement and Release of PAGA Claims (the “**Settlement Agreement**”
2 or “**Settlement**” or “**Agreement**”) is entered into by and between plaintiffs Angel Luna and Ernesto
3 Daniel Contreras (“**Plaintiffs**” or “**PAGA Representatives**”), individually and as proxys/agents
4 for the State of California and the California Labor and Workforce Development Agency
5 (“**LWDA**”) to the maximum extent permitted by law, on the one hand, and defendant Davey Tree
6 Surgery Company (“**Defendant**” or “**Davey**”), on the other hand (collectively, the “**Parties**”),
7 subject to the terms and conditions of this Agreement and the Court’s approval. This Settlement
8 Agreement supersedes any and all prior understandings and is intended by the Parties to fully,
9 finally and forever, resolve, discharge and settle the Released Claims (as defined below), subject
10 to the terms and conditions hereof.

11 NOW, THEREFORE, IT IS HEREBY AGREED, BY AND BETWEEN the undersigned,
12 that the Action (as defined below) shall be settled, subject to the approval of the Court, pursuant
13 to the following terms and conditions:

14 **1. DEFINITIONS**

15 As used herein, for the purpose of this Settlement Agreement only, the following terms
16 shall be defined as follows:

17 1.1 “**Luna Action**” or “**Luna Lawsuit**” means the lawsuit filed by plaintiff Angel Luna
18 against Davey captioned *Angel Luna, individually and on behalf of all others similarly situated v.*
19 *Davey Tree Surgery Company, et al.*, initiated on January 6, 2023, and pending in the Superior
20 Court of the State of California for the County of Santa Cruz, Case No. 23CV00040.

21 1.2 “**Approval Date**” means the date on which the Court enters the Approval Order.

22 1.3 “**Approval Order**” means the Court order granting Approval of this PAGA
23 Settlement.

24 1.4 “**Contreras Action**” means the lawsuit filed by plaintiff Ernesto Daniel Contreras
25 against Davey captioned *Ernesto Daniel Contreras, individually and on behalf of all others*
26 *similarly situated v. Davey Tree Surgery Company, et al.*, initiated on February 8, 2023, and
27 pending in the Superior Court of the State of California for the County of Alameda, Case No.
28 23CV027491.

1 1.5 **“Court”** means the Superior Court of California, County of Santa Cruz.

2 1.6 **“Defense Counsel”** shall mean and refer to Ruth Zadikany, Charles E. Harris, II,
3 and C. Mitchell Hendy of Mayer Brown LLP.

4 1.7 **“Effective Date”** of the Settlement means the date on which the Court’s Approval
5 Order becomes final. Such Approval Order becomes final on the date the Court enters a Judgment
6 in this Action if no parties seek to intervene in the case. If there are intervenors (or proposed
7 intervenors) on that date, the “Effective Date” means (a) the day after the last day by which a
8 notice of appeal of the Approval Order may be timely filed with an appellate court, and none is
9 filed; (b) if an appeal is filed and is finally disposed of by ruling, dismissal, denial or otherwise,
10 the day after the last date for filing a request for further review of the appellate court’s decision
11 passes and no further review is requested; (c) if an appeal is filed and there is a final disposition
12 by ruling, dismissal, denial or otherwise by the appellate court, and further review of the appellate
13 court’s decision is requested, the day after the request for review is denied with prejudice and/or
14 no further review of the order can be requested; or (d) if review is accepted, the day the appellate
15 court affirms the Settlement.

16 1.8 **“Employee PAGA Payment”** means 25% of the Net Settlement Amount.

17 1.9 **“Gross Settlement Amount”** means the non-reversionary gross sum of One
18 Million, Seven-Hundred and Thirty-Two Thousand, Five-Hundred Dollars (\$1,732,500.00), which
19 shall be the total sum paid by Davey to settle this Action pursuant to this Settlement Agreement
20 (prior to any escalator clause) inclusive of (a) the Individual PAGA Payments to be paid to PAGA
21 Group Members; (b) the LWDA PAGA Payment to be paid to the LWDA; (c) Plaintiffs’ Counsel’s
22 attorneys’ fees and costs approved by the Court; and (d) Settlement Administration costs approved
23 by the Court. In no event shall the total amount payable by Davey pursuant to this Settlement be
24 greater than or less than \$1,732,500.00, except as set forth in the Escalator Clause (Section 3.4).

25 1.10 **“Individual PAGA Payment”** means the PAGA Group Member’s pro rata share
26 of the Employee PAGA Payment calculated according to the number pay periods such PAGA
27 Group Member worked during the PAGA Period.
28

1 1.11 “**LWDA PAGA Payment**” means 75% of the amount of the Net Settlement
2 Amount.

3 1.12 “**Net Settlement Amount**” means the Gross Settlement Amount, less the following
4 payments in the amounts approved by the Court: (a) Plaintiffs’ Counsel’s attorneys’ fees and costs,
5 and (b) Settlement Administration expenses.

6 1.13 “**Operative Contreras Complaint**” means the First Amended Class Action
7 Complaint filed in the *Contreras* Action by plaintiff Contreras on May 9, 2023, as amended by the
8 Court’s July 7, 2024 Order Granting Dismissal of Contreras’ Individual and Class Claims Without
9 Prejudice pursuant to Plaintiff’s Request for Dismissal of Individual and Class Action Claims
10 without Prejudice, which is the operative complaint in the *Contreras* Action.

11 1.14 “**Operative Luna Complaint**” means the complaint filed in the Action by Plaintiff
12 on January 6, 2023, as amended by the February 28, 2023 Order of the United States District Court
13 for the Northern District (discussed below) dismissing Plaintiff’s first through seventh causes of
14 action to the extent they were brought on an individual basis and on behalf of a putative class,
15 which is the operative complaint in the *Luna* Action.

16 1.15 “**PAGA**” means Private Attorneys General Act of 2004, Labor Code §§ 2698, *et*
17 *seq.*

18 1.16 “**PAGA Group Members**” means all non-exempt employees who were employed
19 by Davey in the State of California at any time during the PAGA Period.

20 1.17 “**PAGA Group Member List**” means a list setting forth PAGA Group Member
21 identifying information in Davey’s possession, specifically each PAGA Group Member’s name,
22 last-known mailing address, Social Security number, and number of pay periods worked during
23 the PAGA Period.

24 1.18 “**PAGA Period**” means the period from October 31, 2021 through the Approval
25 Date, unless, if the escalator clause is triggered, pursuant to Section 3.4, Defendant chooses to end
26 the PAGA Period as of the date the Qualifying Threshold is reached.

27 1.19 “**Plaintiffs’ Counsel**” refers to the attorneys of record for Plaintiff Luna, Brian D.
28 Chase and Ian M. Silvers of Bisnar Chase LLP and Richard C. Alpers of Alpers Law Group, Inc.

1 (“**Luna’s Counsel**”) and attorneys of record for plaintiff Contreras, Samuel A. Wong, Kashif
2 Haque, Jessica L. Campbell and Ali S. Carlsen of Aegis Law Firm, PC (“**Contreras’ Counsel**”).

3 1.20 “**Released Claims**” means PAGA penalties for any and all causes of action, claims,
4 rights, demands, debts, obligations, guarantees, liabilities, costs, expenses, attorneys’ fees and
5 costs, expert fees and costs, damages and actions of every nature and description, whether known
6 or unknown, actual or potential, that were alleged in or could have been alleged based on the
7 factual allegations contained in the *Luna* and *Contreras* Operative Complaints and/or the Luna and
8 Contreras PAGA Notices (as defined below), arising during the PAGA Period, for civil penalties
9 pursuant to PAGA, including claims for unpaid, miscalculated or untimely payment of wages due
10 (including, without limitation, minimum, regular, overtime and double time wages), off-the-clock
11 work, rounding, failure to provide legally-compliant meal periods and/or to properly pay
12 associated premium pay, failure to authorize and permit legally complaint rest periods and/or to
13 properly pay associated premium pay, failure to pay all wages timely at the time of termination,
14 failure to pay all wages timely during employment, failure to provide compliant wage statements,
15 failure to keep requisite payroll and other records, failure to indemnify/reimburse for necessary
16 business expenses, failure to provide clean drinking water and restrooms to employees, in violation
17 of California Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 551, 558,
18 1174, 1194, 1194.2, 1197, 1197.1, 1198, 2441, 2802, California Code of Regulations sections
19 1524, 3363, 3395 and 8397.4 and any applicable Industrial Welfare Commission Orders. The
20 Released Claims do not include the underlying wage and hour claims or any other claims other
21 than penalties under PAGA.

22 1.21 “**Released Parties**” means Defendant and its past, present and future parent
23 companies, subsidiaries, predecessors, successors, affiliates, divisions, joint employers, co-
24 employers and related companies and joint venturers, and all of their respective present or former
25 officers, directors, employees, agents, registered representatives, attorneys, insurers, successors
26 and assigns.

27 1.22 “**Releasing Parties**” means Plaintiffs individually and as a proxy and agent of the
28 LWDA on behalf of the PAGA Group Members and all PAGA Group Members, along with all

1 persons purported to act on their behalf or purporting to assert a claim under or through them,
2 including, but not limited to, their spouses, dependents, attorneys, heirs and assigns, beneficiaries,
3 devisees, legatees, executors, estates, administrators, transferees, trustees, conservators, guardians,
4 personal representatives, legal, equitable, direct or indirect, or any other type or in any other
5 capacity.

6 1.23 “**Settlement Administrator**” means CPT Group, the entity agreed to by the Parties,
7 subject to the Court’s approval, that will perform all duties required to administer the Settlement.

8 1.24 Additional defined terms appear where needed below.

9 **2. DESCRIPTION OF THE LITIGATION**

10 **2.1 Procedural History**

11 (a) On October 31, 2022, plaintiff Angel Luna sent a letter to the LWDA
12 notifying it of his intent to bring a claim against Davey for civil penalties under PAGA on behalf
13 of himself and all other aggrieved employees (the “**Luna PAGA Notice**”).

14 (b) On January 6, 2023, Luna initiated the *Luna* Action by filing a class action
15 complaint in the Superior Court of the State of California, Santa Cruz County, Case No.
16 23CV00040, on behalf of himself and others similarly situated, alleging: (1) failure to pay wages
17 for all hours worked in violation of Labor Code §§ 204, 218, 1194 and 1194.2, (2) failure to pay
18 overtime wages in violation of Labor Code §§ 218, 510, and 1194; (3) failure to provide meal and
19 rest breaks in violation of Labor Code §§ 226.7 and 512, (4) failure to reimburse necessary business
20 expenses in violation of Labor Code § 2802, (5) failure to provide accurate wage statements in
21 violation of Labor Code §§ 226 and 1174; (6) waiting time penalties pursuant to Labor Code §§
22 201-203, (7) unfair business practices in violation of Business & Professions Code §§ 17200 *et*
23 *seq.*, and (8) violation of the PAGA. Davey was served with the complaint on January 24, 2023.
24 On February 24, 2023, Davey removed this Action to the United States District Court for the
25 Northern District of California, where the case was assigned case number 5:23-cv-00822.

26 (c) On February 28, 2023, the parties filed a stipulation with the Court in which
27 they agreed that Plaintiff would dismiss his individual claims and putative class claims (i.e., the
28 first through seventh causes of action asserted in his complaint) because Luna had signed an

1 arbitration agreement covering the first through seventh causes of action. The court entered an
2 Order granting the parties' stipulation and thereby dismissing Plaintiff's first through seventh
3 causes of action on February 28, 2023 (*Luna v. Davey Tree Surgery Company*, N.D. Cal. Case No.
4 23-cv-00822 [Dkt. No. 9]). As a result of the dismissal of the individual and class claims, on
5 March 1, 2023, the District Court issued a notice remanding the case back to this Court.

6 (d) Following the dismissal of Luna's individual and class claims, the *Luna*
7 Operative Complaint alleges a single cause of action for civil penalties under PAGA predicated on
8 the following violations of the California Labor Code: (1) failure to pay wages for all hours worked
9 in violation of California Labor Code §§ 204, 210, 558, 558.1, 1194, 1194.2, 1197 and 1197.1; (2)
10 failure to pay all overtime wages in violation of California Labor Code § 510; (3) failure to provide
11 all required meal periods and rest breaks or to pay premium wages in lieu thereof in violation of
12 California Labor Code §§ 226.7 and 512; (4) failure to reimburse for business expenses in violation
13 of California Labor Code § 2802; (5) failure to provide accurate wage statements in violation of
14 California Labor Code §§ 226, 226.3 and 1174; (6) waiting time penalties under California Labor
15 Code §§ 201-203; (7) failure comply with standard conditions of labor and the Industrial Wage
16 Orders, including concerning recordkeeping requirements in violation of Labor Code §§ 1174 and
17 1198 and the Industrial Wage Order; and (8) failure to provide clean drinking water and bathrooms.

18 (e) Defendant contends that Luna's arbitration agreement requires his
19 individual PAGA claim to be resolved through arbitration and the non-individual (representative)
20 PAGA claims he seeks to bring to be dismissed pursuant to the United States Supreme Court's
21 decision in *Viking River Cruises, Inc. v. Moriana* (2022) 142 S.Ct. 1906. Luna, on the other hand,
22 contends that in *Adolph v. Uber Technologies* (2023) 14 Cal.5th 1104 the California Supreme
23 Court rejected the claimed dismissal basis in *Viking River* and properly found that a plaintiff still
24 has standing to proceed on the representative PAGA claims and the matter is not subject to
25 dismissal. Accordingly, on January 18, 2024, Davey filed a motion to compel arbitration of Luna's
26 individual PAGA claim and to dismiss or stay Luna's non-individual PAGA claim. After agreeing
27 to resolve this matter, the parties filed a Joint Case Management Conference Statement on March
28 6, 2023 requesting that this motion be taken off calendar. In addition, Defendant denies any

1 liability or wrongdoing of any kind associated with the claims alleged in the *Luna* Action, disputes
2 the penalties claimed by Luna, and further denies that a representative action is appropriate.
3 Defendant contends, among other things, that at all times, it has complied with all applicable laws
4 and regulations relating to Luna's and the PAGA Group Members' employment, including,
5 without limitation, the California Labor Code, the California Business and Professions Code, the
6 California Code of Regulations and the applicable Wage Orders.

7 (f) Luna believes that the *Luna* Action is meritorious and that representative
8 action treatment is appropriate.

9 (g) In August 2023, the parties to the *Luna* Action agreed to participate in a
10 private mediation. In advance of the mediation, the parties conducted an investigation into the facts
11 relating to the claims alleged in the *Luna* Action and studied the legal principles applicable to the
12 claims asserted against Defendant and Defendant's defenses thereto. This included, *inter alia*,
13 reviewing information obtained from Defendant through informal discovery. Defendant
14 informally produced relevant employment policies, and time and payroll records for a sample of
15 PAGA Group Members.

16 (h) On November 10, 2023, Luna and Defendant participated in a private
17 mediation session before mediator Tripper Ortman, a mediator with significant experience
18 mediating wage-and-hour and PAGA actions. During the mediation, the parties discussed Luna's
19 claims and Defendant's defenses thereto. The parties also analyzed the potential exposure of
20 Defendant with respect to Luna's claims, as well as potential risks that the parties would face in
21 litigating the *Luna* Action through trial and potential appeal(s). The mediation lasted the entire day
22 and allowed the parties to better understand each other's respective positions as to the claims,
23 defenses, Defendant's exposure and discounts to such exposure/liability. While it did not resolve
24 that day, the parties continued to discuss settlement (through Mr. Ortman) in the months following
25 the mediation and, on February 12, 2024, ultimately accepted a mediator's proposal pursuant to
26 which they agreed to resolve the *Luna* Action based on the terms set forth herein for the amount
27 of One Million, Seven-Hundred and Thirty-Two Thousand, Five-Hundred Dollars
28

1 (\$1,732,500.00), for an overall and comprehensive settlement inclusive of attorneys' fees and
2 costs, settlement administration costs, and PAGA civil penalties.

3 (i) Defense Counsel explained to Luna's Counsel that Davey believes (i)
4 Defendant has substantial factual and legal defenses to the claims asserted in the Action, which
5 render the outcome of the *Luna* Action substantially uncertain for Luna, (ii) Luna will be unable
6 to represent the broad scope of employees he seeks to represent, (iii) Defendant will prevail on
7 summary judgment or at trial, and (iv) and that even if Defendant does not fully prevail, given the
8 weakness of the claims, the Court would not award significant PAGA penalties. Luna's Counsel
9 has explained to Defense Counsel that Luna believes (i) he will be able to represent all of Davey's
10 non-exempt employees in California, and that (ii) he will prevail on summary judgment or at trial;
11 (iii) the outcome is not uncertain; and (iv) significant penalties will be awarded based on the
12 strength of the claims. The proposed Settlement provides expeditious relief and benefits to the
13 PAGA Group Members and the LWDA, and it does so much sooner than would be possible than
14 if the parties' disputed positions were litigated in continued and ongoing litigation through trial and
15 appeal.

16 (j) Luna's Counsel has diligently investigated the claims alleged in the *Luna*
17 Action. Based upon Luna's Counsel's discovery, independent investigation, and legal evaluation,
18 and taking into account the sharply contested legal and factual issues, assessment of the
19 uncertainties of complex litigation, and the relative benefits conferred upon the PAGA Group
20 Members under this Settlement Agreement, Plaintiffs' Counsel has concluded that that the terms
21 of the settlement set forth herein are fair, just, reasonable, adequate and equitable to the PAGA
22 Group, and are in the best interests of Plaintiff and the PAGA Group Members.

23 (k) On February 8, 2023, plaintiff Ernesto Daniel Contreras sent a letter to the
24 LWDA notifying it of his intent to bring a claim against Defendant for civil penalties under PAGA
25 on behalf of himself and all other aggrieved employees (the "**Contreras PAGA Notice**"). On
26 February 8, 2023, Contreras filed the *Contreras* Action. Defendant filed a Notice of Related Case
27 in both the *Luna* and *Contreras* Actions. The claims in the *Contreras* Action will be extinguished
28 by this Settlement upon approval by the Court.

1 2.2 **Settlement of Disputed Claims**

2 (a) This settlement is a compromise of disputed claims and nothing contained
3 in this Settlement or documents referred to herein, and no action taken to carry out this Settlement,
4 shall be construed or used as an admission by or against Defendant as to the merits of the claims
5 asserted in the *Luna* and *Contreras* Actions. Although Defendant denies liability, Defendant agrees
6 to this Settlement solely to avoid the cost of further litigation upon the terms set forth in this
7 Settlement Agreement. The Parties specifically agree that Defendant's agreement to settle this
8 matter is not and shall not be construed as an admission of any wrongdoing whatsoever.

9 (b) The Parties further stipulate and agree that the terms of the settlement set
10 forth in this Settlement Agreement are the product of good faith, arms' length negotiations between
11 the Parties and their counsel of record, are consistent with public policy, and fully comply with
12 applicable law.

13 **3. TERMS OF SETTLEMENT**

14 3.1 **Cooperation.** The Parties will cooperate in obtaining an order from the Court
15 approving the Settlement. The Parties agree to use their best efforts to expedite the preparation and
16 submission of the Settlement and related documents. The Parties further agree to fully cooperate
17 in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared
18 or filed, shall take all steps that may be requested by the Court or that are otherwise necessary to
19 the approval and implementation of this Settlement, and shall otherwise use their respective best
20 efforts to obtain Court approval of this Settlement. If this Settlement is terminated or canceled
21 pursuant to its terms, the Parties shall be released from all remaining obligations under the terms
22 of the Settlement. In such an event, Plaintiffs' Counsel agree to share all costs incurred from
23 carrying out the terms of the Settlement prior to its termination or cancellation, including but not
24 limited to, any Settlement Administration costs on a 50/50 basis.

25 3.2 **Gross Settlement Amount.** Subject to Court approval, and in consideration for the
26 release of claims described in this Settlement Agreement, the Parties agree to settle this Action
27 pursuant to the financial terms set forth below. Defendant agrees to pay a non-reversionary gross
28 Settlement Amount of One Million, Seven-Hundred and Thirty-Two Thousand, Five-Hundred

1 Dollars (\$1,732,500.00), allocated as follows: (a) attorneys' fees to Plaintiffs' Counsel in an
2 amount approved by the Court, but not to exceed one-third of the Gross Settlement Amount (i.e.,
3 Five Hundred and Seventy-Seven Thousand Five-Hundred Dollars (\$577,500.00) prior to any
4 escalator clause); (b) Plaintiffs' Counsel's costs and expenses in an amount approved by the Court,
5 but not to exceed Thirty Thousand Dollars (\$30,000.00); (c) deductions for settlement
6 administration expenses of up to Fifteen Thousand Dollars (\$15,000.00); (d) 75% of the balance
7 to be allocated to the LWDA PAGA Payment; and (e) 25% of the balance to be allocated to the
8 Employee PAGA Payment and paid to the PAGA Group Members *pro rata* based on the number
9 of pay periods they were employed during the PAGA Period. Subject to the provisions set forth
10 herein, the Gross Settlement Amount is the maximum settlement amount to be paid by Defendant,
11 and under no circumstances shall Defendant be obligated to pay any additional amount to
12 Plaintiffs, Plaintiffs' Counsel, third-party settlement administrators, the PAGA Group Members,
13 or the LWDA, except as set forth in the Escalator Clause (Section 3.4). The Settlement
14 Administrator will disburse the entire Gross Settlement Amount without asking or requiring
15 PAGA Group Members to submit any claim as a condition of payment.

16 **3.3 Distribution of the Net Settlement Amount.**

17 (a) Seventy-five percent (75%) of the Net Settlement Amount, referred to as
18 the "LWDA PAGA Payment," shall be paid to the LWDA.

19 (b) Twenty-five percent (25%) of the Net Settlement Amount, referred to as the
20 "Employee PAGA Payment," shall be distributed to the PAGA Group Members via Individual
21 PAGA Payments, calculated as set forth below.

22 (c) PAGA Group Members will be paid on a *pro rata* basis from the Employee
23 PAGA Payment based on the number of pay periods each PAGA Group Member was employed
24 by Defendant in California during the PAGA Period, divided by the aggregate number of pay
25 periods all PAGA Group Members were employed by Defendant in California during the PAGA
26 Period. The Settlement Administrator will be responsible for determining the amount of the
27 Individual PAGA Payments to be paid to the PAGA Group Members based on data provided to
28 the Settlement Administrator by Defendant. The Parties agree that this formula for allocating the

1 Employee PAGA Payment is reasonable and that the Individual PAGA Payments provided for
2 herein are designed to provide a fair settlement to the PAGA Group Members.

3 (d) Each PAGA Group Member will receive his/her respective Individual
4 PAGA Payment without the need to complete or submit any claim forms. Individual PAGA
5 Payments shall be distributed to PAGA Group Members only after entry of the Approval Order
6 by the Court and the Effective Date of this Settlement, by regular First-Class U.S. Mail to each
7 PAGA Group Member's last known mailing address within the time periods set forth in Section
8 5. The mailing to PAGA Group Members shall include a Notice of Settlement ("Notice") in the
9 form attached hereto as **Exhibit "A"**. The Individual PAGA Payments are penalties and are
10 therefore nonwage payments. Accordingly, the Settlement Administrator will not undertake any
11 tax withholding with respect to the Individual PAGA Payments and will issue an IRS Form 1099
12 to each of the PAGA Group Members in connection with the Individual PAGA Payments.

13 3.4 **Escalator Clause.** As of February 12, 2024, Defendant estimated that the PAGA
14 Group Members worked for Defendant in the State of California for approximately 94,032 pay
15 periods during the period from October 31, 2021 through February 12, 2024 (the date the
16 mediator's proposal was accepted). If as of the Approval Date, the number of pay periods of the
17 PAGA Group increase by more than 7% (i.e., there are more than 100,614 pay periods) (the
18 "**Qualifying Threshold**"), Defendant will have the option of either (a) proportionally increasing
19 the Gross Settlement Amount on a *pro rata* basis based on the increased number of pay periods in
20 excess of the Qualifying Threshold; or (b) ending the PAGA Period as of the date the pay period
21 count reached the Qualifying Threshold. The actual total number of PAGA Group Members and
22 pay periods are to be determined based on the PAGA Group Member List.

23 3.5 **Plaintiffs' Counsel's Attorneys' Fees and Costs**

24 (a) As part of the Motion for Approval of the PAGA Settlement, Plaintiffs'
25 Counsel will request for the Court to approve an award of attorneys' fees in an amount up to one-
26 third of the Gross Settlement Amount (i.e., Five Hundred and Seventy-Seven Thousand Five-
27 Hundred Dollars (\$577,700.00) prior to any escalator clause) and reimbursement of litigation costs
28 and expenses actually incurred by Plaintiffs' Counsel in prosecuting this Action in an amount not

1 to exceed Thirty Thousand Dollars (\$30,000.00), both of which will be paid from the Gross
2 Settlement Amount. In the event the Court awards Plaintiffs' Counsel less than one-third in fees
3 and/or less than \$30,000.00 for reimbursement for costs and expenses, Plaintiffs and Plaintiffs'
4 Counsel will not have the right to revoke the Settlement and it will remain binding. However,
5 Plaintiffs' Counsel retains the right to appeal any reduction in fees and costs. The Court-approved
6 attorneys' fees and costs shall be payable to Plaintiffs' Counsel after the Effective Date of this
7 Settlement, within the time periods set forth in Section 5. Plaintiff's Counsel shall be solely and
8 legally responsible to pay all applicable taxes on the payment of attorneys' fees and costs made
9 pursuant to this Paragraph. The Settlement Administrator will issue an IRS Form 1099 to
10 Plaintiffs' Counsel for the attorneys' fees award. This Settlement is not contingent upon the Court
11 awarding Plaintiffs' Counsel any particular amount in attorneys' fees and costs. Any amount
12 requested by Plaintiffs' Counsel for attorneys' fees and costs and not granted by the Court will be
13 included in the Net Settlement Amount.

14 (b) Except as provided in this Settlement Agreement, Defendant will not be
15 required to pay any other expenses, costs, or fees incurred by Plaintiffs or any PAGA Group
16 Member, or by any of their attorneys, experts, advisors, agents or representatives with respect to
17 the Released Claims. Any award of attorneys' fees, costs, expenses and damages payable
18 hereunder to Plaintiffs' Counsel shall be in complete satisfaction of any and all claims for such
19 attorneys' fees, costs, expenses, and damages under state or federal law, which Plaintiffs,
20 Plaintiffs' Counsel, or any other counsel have or may have against Defendant arising in connection
21 with the *Luna* and *Contreras* Actions and its settlement, including, but not limited to, any claims
22 for attorneys' fees, costs and expenses involved in litigating attorneys' fees, costs and expenses
23 incurred through and after the final disposition and termination of the *Luna* and *Contreras* Actions.

24 (c) Defendant contends that the substance of Plaintiffs' Counsel's application
25 for attorneys' fees and costs is not part of this Settlement Agreement and is to be considered
26 separately from the Court's consideration of the Settlement. Plaintiffs view this as being part of
27 the Court's decision on whether to approve the settlement. The outcome of any proceeding related
28 to Plaintiffs' Counsel's request for attorneys' fees and costs shall not terminate this Settlement

1 Agreement or otherwise affect the Court's ruling on the PAGA Approval Motion except as
2 addressed herein regarding appeal.

3 **3.6 Settlement Administration Costs.** The Parties have jointly selected the Settlement
4 Administrator to administer the Settlement after receiving an acceptable estimate for such services
5 as agreed by the Parties. The Court-approved costs of settlement administration, currently
6 estimated at no more than \$15,000.00, will be paid from the Gross Settlement Amount. The fees
7 and other charges of the Settlement Administrator to administer the settlement will be paid from
8 the Gross Settlement Amount after the Effective Date of this Settlement, within the time periods
9 set forth in Section 5. The difference between actual and Court approved settlement administration
10 costs, if any, will revert to the Net Settlement Amount.

11 **3.7 Taxes and Withholdings**

12 (a) With respect to the Individual PAGA Payments paid to the PAGA Group
13 Members, because the recovery potentially available under PAGA is limited to civil penalties, the
14 Parties agree that such payments are not properly classified as wages subject to payroll taxes.

15 (b) PAGA Group Members shall be solely responsible for the reporting and
16 payment of their share of any federal, state and/or municipal income or other taxes on payments
17 made pursuant to this Settlement. No party has made any representation to any of the other Parties
18 as to the taxability of any payments pursuant to this Settlement, including the payments to PAGA
19 Group Members, the payments to Plaintiffs' Counsel, the allocation of Settlement proceeds to non-
20 wage income, or otherwise as to the tax implications of any provision of this Settlement.

21 **3.8 Effect of Appeal.** If an appeal is taken from the award of Plaintiffs' Counsel's
22 attorneys' fees, costs and expenses, the appeal shall not affect the finality of the judgment as to the
23 remainder of the terms of the Settlement.

24 **4. DISMISSAL OF *CONTRERAS* ACTION**

25 4.1 The Parties agree that upon receiving confirmation that Davey has delivered
26 payment of the Gross Settlement Amount to the Settlement Administrator, Contreras will file a
27 request to dismiss the *Contreras* Action with prejudice. The Parties further agree that Contreras'
28 counsel shall not be entitled to payment of any Court-approved attorneys' fees and costs, unless

1 and until Contreras files such request for dismissal and the Court dismisses the *Contreras* Action,
2 and the Settlement Administrator shall not distribute such amounts to Contreras' Counsel until
3 receiving confirmation of such dismissal. Contreras and Contreras' Counsel agree to cooperate
4 with Davey in taking any steps that may reasonably be required or that Davey may reasonably
5 deem necessary to carry out the implementation or enforcement of this Agreement. "Cooperate"
6 includes, but is not limited to, providing Davey with any and all signed documents or other
7 materials reasonably needed to carry out the purposes of this Agreement.

8 **5. PROCEDURES FOR ADMINISTRATION OF SETTLEMENT**

9 **5.1 Engagement of Settlement Administrator.**

10 (a) The Parties have agreed to appoint CPT Group to perform the duties of
11 Settlement Administrator. If the Court does not approve the appointment of CPT Group, the Parties
12 will meet and confer to select an alternative Settlement Administrator.

13 (b) The Settlement Administrator shall perform the following administration
14 functions: (i) take appropriate steps to trace and locate any PAGA Group Members whose address
15 or contact information as provided to the Settlement Administrator is inaccurate or outdated; (ii)
16 establish the necessary bank accounts and obtain the necessary tax identification number to
17 administer the settlement; (iii) administer the Settlement, including determining each PAGA
18 Group Member's Individual Settlement Payment; (iv) distribute payment of the Individual
19 Settlement Payments to PAGA Group Members (with the Notice), payment of the LWDA PAGA
20 Payment to the LWDA, payment of the Settlement Administration costs to the Settlement
21 Administrator, and payment of the Court-approved attorneys' fees and costs to Plaintiffs'
22 Counsel; (v) file and issue any necessary tax forms; and (vi) deposit any uncashed checks with
23 the State of California Controller's Office of Unclaimed Funds as provided for below.

24 **5.2 Application for Approval of Settlement.** Promptly and in no event more than
25 thirty (30) days after this Settlement Agreement is fully executed by the Parties, Luna will file with
26 the Court a Motion for Approval of this PAGA Settlement ("**PAGA Approval Motion**"), and shall
27 appear for a hearing if the Court so orders. Luna will submit this Settlement Agreement and any
28 supporting papers to the Court, which shall set forth the terms of this Settlement. Luna's Counsel

1 will only file the PAGA Approval Motion following review and proposed changes by Defense
2 Counsel, after providing Defense Counsel with at least five (5) business days in advance of the
3 filing and any deadline (including the time period set forth in this Paragraph) to review said Motion
4 and the accompanying documents. Any proposed changes or revisions shall be incorporated by
5 Luna's Counsel to the extent Luna's Counsel deems them reasonable. However, if Luna's Counsel
6 chooses not to incorporate Defendant's requested changes or revisions, Defendant reserves the
7 right to file and objection and/or opposition to Luna's Motion for Approval of the Parties'
8 Settlement.

9 **5.3 Notice to LWDA.** Prior to or concurrently with Luna's filing of the PAGA
10 Approval Motion, Luna shall submit to the LWDA a copy of this Settlement Agreement pursuant
11 to the requirements set forth in Labor Code section 2699(1)(2).

12 **5.4 PAGA Group Member List.**

13 (a) No later than twenty-one (21) days after entry of a PAGA Approval Order
14 by the Court, Defendant shall transmit to the Settlement Administrator the PAGA Group Member
15 List. To protect PAGA Group Member privacy rights, the Settlement Administrator must maintain
16 the PAGA Group Member List in confidence, use the PAGA Group Member List only for purposes
17 of this Settlement and not for other purposes, and restrict access to the PAGA Group Member List
18 to Administrator employees who need access to it to effect and perform this Agreement. In
19 addition, neither Defendant nor the Settlement Administrator will provide the PAGA Group
20 Member List or the name, contact information and/or any financial information of PAGA Group
21 Members to Plaintiffs, Plaintiffs' Counsel, any other PAGA Group Member, or to any other person
22 or entity.

23 (b) The PAGA Group Member List and any other data provided by Defendant
24 to the Settlement Administrator and/or Plaintiffs' Counsel pursuant to this Settlement Agreement,
25 shall be presumed to be accurate. If Defendant and the Settlement Administrator determine, based
26 upon further review of available data, that a person previously identified as being a PAGA Group
27 Member should not be so included, or if they identify a person who should have been included as
28 a PAGA Group Member but was not so included, Defendant and the Settlement Administrator

1 shall promptly delete or add such person as appropriate and immediately notify Plaintiffs' Counsel
2 prior to such deletions or additions (and the reasons therefore). Upon its receipt of the PAGA
3 Group Member List, the Settlement Administrator will access the National Change of Address
4 ("NCOA") Database and any other databases used by the Settlement Administrator, update the
5 addresses provided by Defendant, and advise Defendant of the updated address. All Settlement
6 Administrator costs of mailing, whether foreseen or not, shall be paid from the Gross Settlement
7 Amount, including the cost of searching for PAGA Group Member's addresses.

8 (c) Other than the obligations set forth in this Settlement Agreement, Plaintiffs,
9 Plaintiffs' Counsel, Defendant, and the Settlement Administrator shall have no additional
10 obligation to identify or locate any PAGA Group Member or have any liability in connection with
11 the provision of information to the Settlement Administrator or otherwise.

12 (d) The time periods and methodologies set forth herein reflect the Parties' best
13 current belief as to their ability to make such identification, and it is understood that Defendant, in
14 undertaking the tasks set forth herein, shall use reasonable efforts to identify all PAGA Group
15 Members and to collect the information required to be included in the PAGA Group Members List.

16 **5.5 No Encouragement of Objections or Appeals.** At no time shall any of the Parties
17 or their counsel seek to solicit or otherwise encourage PAGA Group Members to submit written
18 objections to the settlement or appeal from the Approval Order and Final Judgment, to the extent
19 such conduct by PAGA Group Members is permissible under applicable law.

20 **5.6 Submission of Final Order to LWDA.** Within ten (10) days of the Court entering
21 Judgment in the *Luna* Action, Plaintiff shall submit to the LWDA a copy of the Approval Order
22 and judgment pursuant to the requirements set forth in Labor Code section 2699(1)(3).

23 **5.7 Resolution of Disputes Concerning Administration of Settlement.** Any disputes
24 among the Parties or with PAGA Group Members concerning the administration of the Settlement
25 (including those concerning the Individual Settlement Amounts) will initially be resolved by the
26 Settlement Administrator. If the Settlement Administrator's decision is not accepted by one of the
27 Parties, the dissatisfied Party may request the Court to make a final decision. Prior to any such
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1 involvement of the Court, counsel for the Parties will confer in good faith to resolve the dispute(s)
2 without the necessity of involving the Court.

3 **6. FUNDING OF SETTLEMENT.**

4 6.1 Within fourteen (14) days after the Effective Date, Defendant shall deliver the
5 Gross Settlement Amount to the Settlement Administrator. Within fourteen (14) calendar days of
6 the receipt of the Gross Settlement Amount, the Settlement Administrator will make the payments
7 specified in this Settlement Agreement, including payment of Court-approved attorneys' fees and
8 costs to Plaintiffs' Counsel (provided, with respect to Contreras' Counsel, that the Settlement
9 Administrator receives confirmation from Defense Counsel that the *Contreras* Action has been
10 dismissed), payment of the LWDA PAGA Payment to the LWDA, payment of the Individual
11 Settlement Payments to each PAGA Group Member (with the Notice), and payment of the
12 Settlement Administration Costs to the Settlement Administrator. Contreras' Counsel's Court-
13 approved attorneys' fees and costs shall not be distributed to Contreras' Counsel until the
14 Settlement Administrator receives confirmation from Defense Counsel that dismissal of the
15 *Contreras* Action was entered by the Court. Upon receiving confirmation of such dismissal,
16 Contreras' Counsel's Court-approved attorneys' fees and costs shall be distributed within fourteen
17 (14) days of receipt of such confirmation.

18 6.2 All checks issued shall indicate on their face that, consistent with standard bank
19 procedures, they are void if not negotiated within one hundred eighty (180) days of their issuance.
20 The date of mailing of the Individual Settlement Payment checks to the PAGA Group Members
21 shall be conclusively determined according to the records of the Settlement Administrator. Any
22 PAGA Group Member who fails to cash the settlement check within the one hundred eighty (180)
23 day period provided herein shall nonetheless remain a PAGA Group Member and shall be bound
24 by the terms and conditions of this Settlement Agreement. The Settlement Administrator shall
25 provide Plaintiff's Counsel and Defendants' Counsel with a de-identified list of all PAGA Group
26 Members who did not cash their settlement checks within fourteen (14) calendar days after the
27 expiration of the one-hundred and eighty (180) days provided for in this paragraph.

1 6.3 After one hundred eighty (180) days of issuance, uncashed checks will be deposited
2 with the State of California Controller's Unclaimed Property Funds in the name of the individual
3 to whom the check had been addressed. Plaintiffs' Counsel will file a declaration from the
4 Settlement Administrator confirming the outcome of any uncashed checks. The failure by any
5 PAGA Group Member to claim or deposit any check issued by the Settlement Administrator shall
6 have no effect on that PAGA Group Member's release of all Released Claims.

7 6.4 No person shall have any claim against the Settlement Administrator, Defendant or
8 any of the Released Parties, the Plaintiffs, any PAGA Group Member, or Plaintiffs' Counsel based
9 on payments made substantially in accordance with this Settlement, or further orders of the Court.

10 **7. RELEASE OF CLAIMS**

11 7.1 **Release of Claims.** As of the Effective Date and full funding of the Gross
12 Settlement Amount, the Releasing Parties release the Released Parties from all Released Claims
13 to the maximum extent permitted by applicable law. Plaintiffs individually and as a proxy and
14 agent for the LWDA on behalf of the PAGA Group Members and the PAGA Group Members,
15 shall be deemed to have, by operation of the Approval Order and Judgment approved by the Court,
16 fully, finally, and forever settled and released all of the Released Claims.

17 7.2 **Release of Fees and Costs for Settled Matters.** Plaintiffs' Counsel and Plaintiffs,
18 as proxies and agents of the LWDA on behalf of the PAGA Group Members and each individual
19 PAGA Group Member, hereby irrevocably and unconditionally release, acquit and forever
20 discharge any claim that they may have against Defendant for attorneys' fees or costs associated
21 with Plaintiffs' Counsel's representation of Plaintiffs, the LWDA and PAGA Group Members in
22 the Action other than as provided for in this Agreement. Plaintiffs' Counsel further understand and
23 agree that any award of attorneys' fees and costs approved by the Court will be the full, final and
24 complete payment of all attorneys' fees and costs associated with Plaintiffs' Counsel's
25 representation in the *Luna* and *Contreras* Actions (except as to enforcement of the Agreement as
26 addressed herein). Except as otherwise provided in this Settlement Agreement, the Parties hereto
27 will bear responsibility for their own attorneys' fees and costs, taxable or otherwise, incurred by
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1 them or arising out of this Action and will not seek reimbursement thereof from any Party to this
2 Settlement Agreement.

3 **7.3 No Other Liability.** The Settlement Agreement shall be in full settlement,
4 compromise, release and discharge of the Released Claims and each of them, and the Released
5 Parties shall have no further or other liability or obligation to any PAGA Group Members or any
6 other Releasing Party with respect to the Released Claims, except as expressly provided herein.

7 **7.4 No Assignment of Rights.** Plaintiffs warrant and represent that they have not
8 assigned, transferred, or hypothecated, or purported to assign, transfer, or hypothecate to any
9 person or entity any of the Released Claims or any rights, claims, or causes of action arising out
10 of the Released Claims. This warranty and representation of non-assignment shall survive the
11 execution of this Settlement Agreement and the dismissal of the *Luna* Action and the *Contreras*
12 Action. No Individual PAGA Payment shall be paid to any person or entity with respect to whom
13 the Plaintiffs and/or any PAGA Group Members (even if requested by them from the Settlement
14 Administrator) have assigned, transferred, or hypothecated, or purported to assign, transfer, or
15 hypothecate any of the Released Claims or any rights, claims, or causes of action arising out of,
16 in connection with or related to the Released Claims.

17 **8. ADDITIONAL TERMS OF SETTLEMENT**

18 **8.1 Enforcement and Continuing Jurisdiction of the Court.** To the maximum extent
19 permitted by applicable law, this Settlement Agreement shall be enforceable by this Court pursuant
20 to California Code of Civil Procedure section 664.6 and California Rule of Court 3.769(h). After
21 entry of the Approval Order and Judgment, this Court shall have and retain continuing jurisdiction
22 over this Action and over all Parties and PAGA Group Members to the fullest extent necessary or
23 convenient to (1) enforce and effectuate the terms and intent of this Settlement Agreement and all
24 matters provided for herein, and to interpret it; (b) address settlement administration matters; and
25 (3) address such post-Judgment matters as are permitted by law. If Plaintiffs are required to seek
26 enforcement of the Agreement because Defendant does not pay the Gross Settlement Amount, the
27 prevailing party shall be entitled to reasonable attorneys' fees and costs.

1 **8.2 Material Terms and Voiding the Settlement.** The release and waiver provisions
2 of this Settlement Agreement are materials terms. A failure of the Court to approve any material
3 term of this Settlement Agreement shall render the entire Settlement Agreement voidable and
4 unenforceable as to all Parties herein at the option of either Party. Additionally, if the Judgment is
5 reversed or modified as to any material term or declared or rendered void as to any material term,
6 then (1) at the option of either Party, this Settlement Agreement shall be considered null and void
7 and (2) neither this Settlement Agreement nor any of the released negotiations or proceedings will
8 be of any force or effect. The Parties agree that Sections 3.3, 3.5 and 3.6 of this Settlement
9 Agreement are severable from the remainder of the Settlement Agreement only in the sense that
10 any reduction in amount by the Court of Plaintiffs' Counsel's attorneys' fees and costs, or the
11 Settlement Administration expenses, or a change by the Court with respect to the tax treatment of
12 the Individual PAGA Payments shall in no way affect the validity and effect of the remainder of
13 this Settlement Agreement, as addressed above.

14 **8.3 No Effect on Employee Benefits.** Amounts paid to Plaintiffs or PAGA Group
15 Members pursuant to this Agreement shall not be deemed pensionable earnings and shall not have
16 any effect on the eligibility for, or calculation of, any of the employee benefits of Plaintiffs or
17 PAGA Group Members.

18 **8.4 No Admission by Defendant.** Defendant denies any and all claims alleged in the
19 Lawsuit and denies all wrongdoing whatsoever. Nothing contained in this Settlement Agreement,
20 nor the consummation thereof, shall constitute, be construed or deemed an admission by or on
21 behalf of Defendant, or any of the other Released Parties, of any form of liability, culpability,
22 negligence or wrongdoing, or of the accuracy of any allegation made by Plaintiffs or Plaintiffs'
23 Counsel. Each of the Parties hereto has entered into this Settlement Agreement with the intention
24 of avoiding further disputes and litigation with the attendant inconvenience and expense. This
25 Settlement Agreement is a settlement document and shall, pursuant to California Evidence Code
26 sections 1152 and 1154 and/or Rule 408 of the Federal Rules of Evidence, be inadmissible in
27 evidence in any proceeding, except an action or proceeding to approve the Settlement Agreement,
28 enforce the Settlement Agreement and/or interpret this Settlement Agreement. Defendant

specifically does not admit that the *Luna* Action or the *Contreras* Action could or should proceed on a representative basis.

8.5 Use of Defendants' Information. Plaintiffs' Counsel represent that they received what Defendant contends is its confidential information during the course of informal discovery in the *Luna* Action and *Contreras* Action. Plaintiffs and Plaintiffs' Counsel agree not to disclose or use any information received from Defendant related to the *Luna* and *Contreras* Actions for any purpose other than the settlement of this Action, including any information learned during the *Luna* and *Contreras* Actions, the documents provided to Plaintiffs' Counsel by Defendant, and/or any information in those documents or responses, except for use of such information to enforce this Settlement Agreement or any of its terms or provisions.

8.6 Mutual Full Cooperation. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, execution of such documents and such other actions as may be reasonably necessary to implement the terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may be necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. The Parties shall take all necessary steps to secure the Court's final approval of this Settlement Agreement.

8.7 Representations. The Parties represent and agree that they have been advised to discuss this Settlement Agreement with an attorney of their choosing, that they have carefully read and fully understand all provisions of this Settlement Agreement, that they are voluntarily entering into it and that they have the capacity to enter into this Settlement Agreement. Further, the Parties represent and acknowledge that, in executing this Settlement Agreement, they do not rely and have not relied upon any representation or statement not set forth herein made by any of the Parties or any of the Parties' agents, representatives or attorneys with regard to the subject matter, basis or effect of this Settlement Agreement or otherwise.

8.8 Interim Stay of Proceedings. The parties agree to stay all proceedings in the *Luna* and *Contreras* Actions, except such proceedings necessary to implement and complete the

1 Settlement, pending the hearing on the PAGA Approval Motion to be conducted by the Court.
2 Within fourteen (14) days of executing this Agreement, Contreras and Defendant shall file a joint
3 stipulation with the court notifying the court of this settlement and requesting a stay pending
4 approval of this Settlement by the court in the *Luna* Action. If necessary, the parties will also file
5 a stipulation seeking a stay or extension of deadlines in the appeal currently pending in the
6 *Contreras* Action.

7 **8.9 Parties' Authority.** The signatories hereto warrant and represent that they are fully
8 authorized to enter into this Settlement Agreement and to bind the Parties hereto to the terms and
9 conditions hereof. Plaintiffs' Counsel and Defense Counsel warrant and represent that they are
10 authorized to take all appropriate action required or permitted to be taken by the Parties pursuant
11 to this Settlement Agreement to effectuate its terms, and to execute any other documents required
12 to effectuate the terms of this Settlement Agreement, except for any documents, including but not
13 limited to this Settlement Agreement, that are required to be executed by the Parties.

14 **8.10 Entire Agreement.** This Settlement Agreement constitutes the entire agreement
15 between the Parties relating to the settlement of this Action, and no representations, warranties or
16 inducements have been made to any party concerning this Settlement Agreement other than the
17 representatives, warranties and covenants contained and memorialized in this Settlement
18 Agreement.

19 **8.11 Modification Only in Writing.** This Settlement Agreement may be amended or
20 modified only by written instrument signed by all Parties (or their successors in interest).

21 **8.12 Binding on Successors.** This Settlement Agreement shall be binding upon, and
22 shall inure to the benefit of, the Parties hereto and their respective heirs, trustees, executors,
23 administrators, successors and assigns.

24 **8.13 No Prior Assignments.** The Parties hereto represent, covenant, and warrant that
25 they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
26 transfer, or encumber to or in favor of any person or entity any portion of any liability, claim,
27 demand, cause of action or rights herein released or discharged except as set forth herein.
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1 **8.14 Governing Law.** All terms of this Settlement Agreement shall be governed by and
2 interpreted according to the laws of the State of California, without giving effect to conflicts of
3 laws principles.

4 **8.15 No Right to Exclusion or Objections by PAGA Group Members.** Because this
5 settlement resolves claims and actions brought pursuant to PAGA by Plaintiffs acting as proxies
6 and as private attorneys general of and for the State of California and the LWDA, the Parties agree
7 and contend that no PAGA Group Member has the right to exclude him or herself from the
8 Settlement. PAGA Group Members will be bound by the terms of the Settlement Agreement upon
9 approval by the Court regardless of whether he or she cashes any payment received as a result of
10 the Settlement. The Parties also agree and contend that no PAGA Group Member has the right to
11 object to the terms of the Settlement Agreement.

12 **8.16 Press Releases and Publicity.** The Parties and their respective counsel shall not
13 engage in publicity or issue any press release or media release or have any communication with
14 the press or media regarding this Settlement Agreement, including the fact of the Settlement, its
15 terms or contents, and the negotiations underlying the Settlement, in any manner or form, directly
16 or indirectly, to any person or entity, except as mutually agreed upon or as required by law or for
17 accounting or legal purposes. This provision shall not apply to press or media releases related to
18 securities filings and notices. In addition, this provision will not prohibit Plaintiff's Counsel from
19 responding to inquiries from PAGA Group Members regarding the Settlement. Also, for the
20 limited purpose of allowing Plaintiff's Counsel to prove adequacy as class/PAGA counsel in other
21 actions, Plaintiff's Counsel may disclose the name of the Parties in the Action and the venues and
22 case number of the Action for such purposes. Plaintiffs' Counsel may list the settlement on its
23 websites, as long as the disclosure does not identify Defendant by name or by industry and does
24 not link to the settlement agreement or publicly available records which would identify Defendant
25 by name. Nothing herein will restrict Plaintiffs' Counsel from including publicly available
26 information regarding the *Luna* and *Contreras* Actions and Settlement in future judicial
27 submissions regarding Plaintiffs' Counsel's qualifications and experience including in support of
28 a motion for appointment as class counsel/PAGA representative counsel or motion for attorneys'

1 fees in another action. Furthermore, Plaintiffs and Plaintiffs' Counsel will make any and all
2 disclosures required to be made to the LWDA in conformity with PAGA. Nothing herein shall be
3 interpreted as preventing any good-faith communications by any counsel and/or any Parties with
4 the Court, the PAGA Group, or the Settlement Administrator.

5 **8.17 Headings for Convenience Only.** The headings of any paragraphs or sections of
6 this Settlement Agreement are inserted for convenience of reference only and shall not be
7 considered in interpreting this Settlement Agreement.

8 **8.18 Construction of This Settlement Agreement.** The Parties hereto agree that the
9 terms and conditions of this Settlement Agreement are the result of lengthy, intensive, arms-length
10 negotiations between the Parties and that this Agreement shall not be construed in favor of or
11 against any Party by reason of the extent to which any Party or his, her or its counsel participated
12 in the drafting of this Settlement Agreement.

13 **8.19 Deadlines.** Unless required by the Court to obtain Court approval, the Parties
14 hereto may agree in writing to reasonable extensions of time to carry out any of the provisions of
15 the Settlement without further order of the Court. In addition, to the extent that any deadline set
16 forth in this Settlement Agreement falls on a Saturday, Sunday, or legal holiday, that deadline shall
17 be continued until the following business day.

18 **8.20 Effect of Settlement.** It is the intent of the Parties that Plaintiffs, the State of
19 California and LWDA and the PAGA Group Members shall be bound by the terms and conditions
20 of this Settlement Agreement (including the release and waiver provisions herein), including all
21 orders issued pursuant thereto and that the Judgment shall result in res judicata of the Released
22 Claims.

23 **8.21 Nullification of Settlement Agreement.** In the event (a) the Court makes a final
24 decision denying approval of the Settlement; (b) the Court refuses to enter the contemplated
25 Approval Order and Judgment as provided herein without making changes to material terms that
26 the Parties do not agree to; or (c) the Settlement does not become final for any other reason, this
27 Settlement Agreement shall be null and void. If one or more of such events occur causing the
28 Settlement Agreement to become null and void, the Parties shall proceed in all respects as if this

1 Agreement had not been executed, except that any fees already incurred by the Settlement
2 Administrator shall be paid by the Party terminating the Settlement. In the event an appeal is filed
3 from the Court's Approval Order and/or Judgment or any other appellate review is sought (to the
4 extent the law even allows either), administration of the Settlement shall be stayed pending final
5 resolution of the appeal or other appellate review, but any fees incurred by the Settlement
6 Administrator prior to it being notified of the filing of an appeal from the Court's Approval Order
7 and/or Judgment, or any other appellate review, shall be split equally by Defendant and Plaintiffs
8 and paid to the Settlement Administrator by each party within thirty (30) calendar days of said
9 notification.

10 **8.22 Invalidity of Any Provision.** Before declaring any provision of this Agreement
11 invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible
12 consistent with applicable precedents so as to define all provisions of this Agreement valid and
13 enforceable.

14 **8.23 Counterparts and Fax Signatures.** This Settlement Agreement may be executed
15 in one or more counterparts. All executed counterparts and each of them shall be deemed to be one
16 and the same instrument, provided that counsel for the Parties shall exchange original signed
17 counterparts. A fax or electronic signature on this Settlement Agreement shall be as valid as an
18 original signature.

19 **8.24 Entity Signatories.** Any person executing this Settlement Agreement or any
20 related document on behalf of a signatory that is a corporation, entity or organization hereby
21 warrants and promises for the benefit of all Parties hereto that he or she has been duly authorized
22 by such corporation, entity or organization to execute this Settlement Agreement on behalf of such
23 corporation, entity or organization.

24 IT IS SO AGREED:

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27 DATED: April 22, 2024

PLAINTIFF ANGEL LUNA



Angel Luna

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PLAINTIFF DANIEL ERNESTO CONTRERAS

DATED: 04/19/2024


Daniel Ernesto Contreras (Apr 19, 2024 14:40 PDT)
Daniel Ernesto Contreras

DAVEY TREE SURGERY COMPANY

DATED: _____

By: _____

Title: _____

DATED: April 22, 2024

BISNAR CHASE/ALPERS LAW GROUP, INC

By: Ian M. Silvers
IAN SILVERS
RICHARD C. ALPERS

Attorneys for Plaintiff Angel Luna, on behalf of himself, all others similarly situated, and the general public

DATED: April 19, 2024

AEGIS LAW FIRM, PC

By: 
KASHIF HAQUE
SAMUAL A. WONG
JESSICA L. CAMPBELL
ALI S. CARLSEN

Attorneys for Plaintiff Daniel Ernesto Contreras, on behalf of himself, all others similarly situated, and the general public

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PLAINTIFF DANIEL ERNESTO CONTRERAS

DATED: _____

Daniel Ernesto Contreras

DAVEY TREE SURGERY COMPANY

DATED: 4/15/24

Eric J. Schoenberger

By: Eric J. Schoenberger

Title: General Counsel, Secretary

DATED: _____

BISNAR CHASE/ALPERS LAW GROUP, INC

By: _____
IAN SILVERS
RICHARD C. ALPERS

Attorneys for Plaintiff Angel Luna, on behalf of
himself, all others similarly situated, and the
general public

DATED: _____

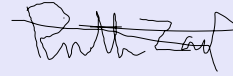
AEGIS LAW FIRM, PC

By: _____
KASHIF HAQUE
SAMUAL A. WONG
JESSICA L. CAMPBELL
ALI S. CARLSEN

Attorneys for Plaintiff Daniel Ernesto Contreras,
on behalf of himself, all others similarly
situated, and the general public

1 DATED: April 24, 2024

2 Mayer Brown LLP

3 

4 By: _____

RUTH ZADIKANY

C. MITCHELL HENDY

5 CHARLES E. HARRIS, II (*pro hac vice*
forthcoming)

6 Attorneys for Defendant

Davey Tree Surgery Company

EXHIBIT A

NOTICE OF SETTLEMENT OF PRIVATE ATTORNEYS GENERAL ACT CLAIMS (CAL. LABOR CODE §§ 2698, *ET SEQ.*)

You have been identified as an hourly, non-exempt employee who worked for Davey Tree Surgery Company (“Davey”) in California during the period from October 31, 2021 through [date of Court approval of the Settlement] (“Covered Employee”).

On January 6, 2023, Angel Luna (“Luna”) filed a lawsuit in Santa Cruz Superior Court (the “Court”) entitled *Angel Luna v. Davey Tree Surgery Company* (Case No. 23CV00040) (the “Luna Lawsuit”). The operative complaint in the *Luna Lawsuit* seeks to recover civil penalties pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.* (“PAGA”) for, among other things, the following alleged violations of the California Labor Code: failure to pay minimum and overtime wages, failure to provide meal periods and rest periods or to pay premiums in lieu thereof, failure to timely pay wages upon termination of employment, failure to provide accurate wage statements, failure to maintain records, failure to provide clean drinking water and bathrooms, and failure to reimburse business expenses.

On February 8, 2023, Daniel Ernesto Contreras (“Contreras”) filed a lawsuit in Alameda Superior Court entitled *Daniel Ernesto Contreras v. Davey Tree Surgery Company* (Case No. 23CV027491) (the “Contreras Lawsuit”). The operative complaint in the *Contreras Lawsuit* seeks to recover civil penalties pursuant to PAGA for, among other things, the following alleged violations of the California Labor Code: failure to pay minimum and overtime wages, failure to provide meal periods and rest periods or to pay premiums in lieu thereof, failure to timely pay wages during employment and upon termination, failure to provide accurate wage statements, failure to maintain records, and failure to reimburse business expenses.

Plaintiffs and Davey entered into a Settlement Agreement and Release of PAGA Claims (the “Settlement Agreement”) that resolves the claims for PAGA civil penalties alleged in the *Luna* and *Contreras* Lawsuits (the “Lawsuits”). On [insert approval date], the Court entered an order approving the settlement pursuant to the terms of the Settlement Agreement (the “Settlement”). The Settlement releases and discharges all PAGA claims for civil penalties alleged in the Lawsuits, and all PAGA claims that could have been alleged in the Lawsuits based upon the claims or facts alleged for the period from October 31, 2021 through [date of Court approval of the Settlement], including PAGA claims based on alleged violations of California Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 551, 558, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 2441, and 2802, and California Code of Regulations sections 1524, 3363, 3395 and 8397.4 with respect to Covered Employees. The claims released do not include any claim by any individual for an alleged violation of the California Labor Code that does not arise under PAGA.

Davey denies all of the allegations in the Lawsuits, denies all liability and contends that Plaintiffs’ claims do not have merit. The Court has not issued any decisions as to whether the claims have any merit and there has been no finding in either Lawsuit that Davey did anything wrong or incorrect. By agreeing to settle the potential claims asserted in the Lawsuits, Davey does not admit that it has any liability with respect to Plaintiffs’ or any Covered Employees’ claims.

A third-party settlement administrator, CPT Group, has been directed to send you the enclosed settlement payment. Pursuant to the Settlement, the amount to be distributed to the Covered Employees shall be divided by the total number of full pay periods, with partial pay periods rounded up to the next whole number, as determined by Davey's records, worked by all Covered Employees from October 31, 2021 through [date of Court approval of the Settlement]. This amount shall be known as the "Pay Period Value." Each Covered Employee shall be paid an amount equal to the number of individual pay periods he or she worked for Davey for the period from October 31, 2021 through [date of Court approval of the Settlement], multiplied by the Pay Period Value. Your Individual Settlement Payment is provided with this Notice.

Please Note: The payment under this settlement may be subject to local, state, or federal tax withholdings and will be reported to the IRS and state tax authorities. You should rely on your own tax advisors as to the tax consequences of your individual payment. Nothing within this notice or any other communication shall constitute or be construed or relied upon as tax advice within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended). Enclosed are the appropriate tax forms pertaining to your payment.

You do not need to take any action. The enclosed payment concludes your involvement in the Settlement and fully releases and resolves your above-referenced PAGA claims. If you have any questions or would like a copy of the Settlement Agreement approved by the Court, please contact the Settlement Administrator at [redacted]. Please do not contact the Court or Davey's counsel.