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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF LOS ANGELES**

DORICK MAHEIA, an individual, on behalf of  
himself and on behalf of all persons similarly  
situated,

Plaintiff,

v.

CLEAN EARTH ENVIRONMENTAL  
SOLUTIONS, INC., a Delaware corporation;  
HARSCO CORPORATION, a Delaware  
corporation; and DOES 1-50, Inclusive,

Defendants.

Case No.: 22STCV24279

**FOURTH SUPPLEMENTAL  
DECLARATION OF SHANI O. ZAKAY,  
ESQ. IN SUPPORT OF MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
AND PAGA SETTLEMENT**

Hearing Date: May 1, 2024

Hearing Time: 10:30 a.m.

Judge: Hon. Stuart M. Rice

Department: 1

1 I, Shani O. Zakay, Esq., declare as follows:

2 1. I am the managing partner of the law firm of Zakay Law Group, APLC, co-lead counsel  
3 of record for Plaintiffs Dorick Maheia and Darrell White (“Plaintiffs”) in this matter. As such, I am  
4 fully familiar with the facts, pleadings and history of the matter. The following facts are within my  
5 own personal knowledge, and if called as a witness, I could testify competently to the matters stated  
6 herein.

7 2. This supplemental declaration is being submitted in support of Plaintiff’s Motion for  
8 Preliminary Approval of Class Action and PAGA Settlement. In its April 30, 2024 tentative ruling, this  
9 Court outlined issues to be addressed or corrected by the Parties. Each point raised by the Court is  
10 addressed below, in the order in which it was raised.

11 a. Issue raised by the Court re Moving Papers; Class Certification: **“Adequacy: Counsel**  
12 **represent that Plaintiff Maheia and White’s individual settlement agreements are**  
13 **confidential, but they will be submitting their individual settlement agreements to the**  
14 **Court with this motion for the Court’s in-camera review. Neither appear to be attached**  
15 **to Counsel’s papers. Provide the Court with copies of these individual settlement**  
16 **agreements, as represented, for in-camera review.”**

17 i. Pursuant to the Court’s May 1, 2024 Minute Order, these individual settlement  
18 agreements were submitted to and reviewed in camera by the Court.

19 b. Issue raised by the Court re Moving Papers; Miscellaneous: **“According to the Settlement**  
20 **Agreement at ¶9, Defendants will provide a declaration under penalty of perjury**  
21 **confirming the number of applicable Class Members and Workweeks they worked**  
22 **during the applicable Class Period one week prior to Plaintiffs’ deadline to file their**  
23 **Motion for Preliminary Approval of the Settlement. Please provide such declaration, as**  
24 **it does not yet appear to be filed.”**

25 i. Defendants confirmed their intention to submit this declaration to the Court on May  
26 29, 2024.

1 c. Issue raised by the Court re Moving Papers; Miscellaneous: **“The proposed Enhancement**  
2 **Payments for the five Plaintiffs totaling \$55,000 (\$10,000 x 4 and \$15,000 x 1) are quite**  
3 **high. Please be aware that the Court commonly awards an enhancement award of no**  
4 **more than \$5,000 to \$7,500 at final approval, absent substantial justification. The Court**  
5 **will decide the issue of the enhancement awards at the time of final approval.”**

6 i. Plaintiff acknowledges the issue raised by the Court. The Settlement Agreement  
7 requests an amount “not to exceed” \$10,000 for four of the Plaintiffs and an amount  
8 “not to exceed” \$15,000 for one of the Plaintiffs. Class Counsel on behalf of Plaintiffs  
9 will file a formal motion for the negotiated Enhancement Payments at the time of  
10 final approval, and this motion will be accompanied by a declaration from each  
11 Plaintiff that describes the services they performed to prosecute these actions (as this  
12 Settlement encompasses three separate actions). The motion will include an estimate  
13 of time incurred by each in performing these services, the risks each assumed or  
14 benefits received in prosecuting this action, and identify any adverse consequences  
15 suffered in prosecuting this action. Plaintiff requests that the Court exercise its  
16 discretion in granting or reducing the requested Enhancement Awards at the time of  
17 Final Approval, once Plaintiffs have filed their formal motion related to their  
18 Enhancement Awards and accompanying declarations.

19 d. Issue raised by the Court re Settlement Agreement; Release of Claims: **“See release of**  
20 **claims at Settlement Agreement ¶6. The first sentence states that the release will occur**  
21 **when Defendants fully fund the settlement. However, the first sentence of paragraphs**  
22 **¶6.2 and ¶6.3 state that the release will occur “Upon entry of Final Judgment” which**  
23 **conflicts with the above. Please resolve or remove the conflicting language.”**

24 i. The Parties have resolved this issue and removed the conflicting language, see  
25 paragraph ¶¶6, 6.2 and 6.3 in the amended Settlement Agreement, attached hereto as  
26 Exhibit 1.

e. Issue raised by the Court re Settlement Agreement; Miscellaneous: **“File a fully executed Settlement Agreement otherwise the court cannot yet consider preliminary approval of the settlement. The Settlement is missing the signatures of Plaintiff Hernandez, Plaintiff Rainey, and all the named Defendants and their Counsel.”**

i. A true and correct copy of the Parties’ fully executed amended Settlement Agreement is attached hereto as Exhibit 1.

f. Issue raised by the Court re Exhibits to the Motion: **“File the Second Amended Complaint.”**

i. Plaintiffs’ Second Amended Complaint has been filed with the Court on May 1, 2024.

g. Issue raised by the Court re Exhibits to the Motion: **“Add all monetary terms to the proposed order (Gross Settlement Amount less all proposed deductions and Net Settlement Amount--- (estimate of amount available for distribution to class).”**

i. A revised Proposed Order that lists the Gross Settlement Amount and Net Settlement Amount, and date of the Final Approval hearing has been filed with the Court on May 29, 2024.

h. Issue raised by the Court re Exhibits to the Motion: **“Provide proof of submission of the proposed settlement agreement to the LWDA. (Lab. Code, § 2699, subd. (l)(2).) This also applies to any further revised, and/or fully-executed versions of the settlement agreement.”**

i. Proof of submission of the amended Settlement Agreement to the LWDA is attached hereto as Exhibit 2.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 29th day of May 2024, at San Diego, California.

**ZAKAY LAW GROUP, APLC**

By:   
Shani O. Zakay, Esq.  
Attorney for Plaintiff

# **EXHIBIT 1**

## CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Amended Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiffs Dorick Maheia (“Plaintiff Maheia”), Darrell White (“Plaintiff White”), Omar Hernandez (“Plaintiff Hernandez”), Tyana Rainey (“Plaintiff Rainey”), and Arturo Montano (“Plaintiff Montano”) (collectively, “Plaintiffs”) and defendants Clean Earth Environmental Solutions Inc., (“Defendant Clean Earth Environmental Solutions”), Clean Earth Inc., (“Defendant Clean Earth”), Enviri Corporation (“Defendant Enviri”) and Harsco Corporation (“Defendant Harsco”) (collectively, “Defendants”). The Agreement refers to Plaintiffs and Defendants collectively as “Parties,” or individually as “Party.”

### 1. DEFINITIONS.

- 1.1. “Action(s)” means the Plaintiffs’ related lawsuits alleging wage and hour violations against Defendants captioned *Maheia v. Clean Earth Environmental Solutions, Inc., et al.*, Case Number 22STCV24279, initiated on July 27, 2022 (“*Maheia Action*”); *Montano v. Clean Earth Environmental Solutions Inc., et al.*, Case Number 22STCV32349, initiated on October 3, 2022 (“*Montano Action*”); and *Hernandez v. Harsco Corporation, et al.*, Case Number 22PSCV01331, initiated on October 17, 2022 (“*Hernandez Action*”) (collectively, “Clean Earth PAGA and Class Litigation”) and pending in the Superior Court of the State of California, County of Los Angeles.
- 1.2. “Administrator” means Apex Class Action LLC, located at 18 Technology Drive, Suite 164, Irvine, CA 92618; Tel: (800) 355-0700, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Aggrieved Employee” means all individuals who worked for Defendants in California as non-exempt employees during the PAGA Period.
- 1.5. “Attorneys’ Fees and Litigation Costs” means the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and litigation costs, respectively, incurred to prosecute the Action(s), including their pre-filing investigation, their filing of the Action(s), all related litigation activities, all Settlement work, all post-Settlement compliance procedures in an amount of up to one-third (1/3) of the Gross Settlement Amount. The Attorneys’ Fees Payment shall be divided between Class Counsel as follows: 30% to JCL Law Firm, APC, and 30% to Zakay Law Group, APLC, 25% to Lawyers for Justice, PC, and 15% to Azadian Law Group, PC.
- 1.6. “Class” means all individuals who worked for Defendants in California as non-exempt employees during the Class Period.

- 1.7. “Class Counsel” means Shani O. Zakay, Esq., of Zakay Law Group APLC; Jean-Claude Lapuyade, Esq., of JCL Law Firm APC; George S. Azadian Esq. and Ani Azadian, Esq., of Azadian Law Group, PC; and Edwin Aiwazian, Esq., Arby Aiwazian, Esq., and Joanna Ghosh, Esq. of Lawyers for Justice, PC.
- 1.8. “Class Data” means Class Member identifying information in Defendants’ possession including the Class Member’s name, last-known mailing address, Social Security number, last-known telephone number, and number of Class Period Workweeks and PAGA Pay Periods.
- 1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).
- 1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.
- 1.11. “Class Notice” means the Court-approved Notice of Class Action Settlement in a form substantively similar to **Exhibit A**, to be mailed to Class Members in English and Spanish, to the extent necessary, informing them of the Settlement, including key terms of the Settlement, class definition, each Class Member’s Workweeks and estimated payments, period dates, how to opt-out or object, deadlines for exclusions or objections, claims being released, updated court social distancing rules, and where to find more information. The Class Notice, court hearing dates, locations, and final judgment will be posted on the Claims Administrator’s website.
- 1.12. “Class Period” means the period from November 28, 2020, to February 9, 2024.
- 1.13. “Class Representative” means the named Plaintiffs in the operative complaint in the Action seeking Court approval to serve as Class Representatives.
- 1.14. “Class Representative Service Payment” means the payment to the Class Representatives for initiating the Action and providing services in support of the Action.
- 1.15. “Court” means the Superior Court of California, County of Los Angeles.
- 1.16. “Defendants” means named defendants Clean Earth Environmental Solutions Inc., Clean Earth Inc., Enviri Corporation, and Harsco Corporation.
- 1.17. “Defendants’ Counsel” means Robert H. Pepple, Esq., and Alejandro Castro, Esq. of Nixon Peabody LLP.

- 1.18. “Date of Finality” (also referred to as the “Effective Date”) means the date by when the following has occurred: (a) the Court enters a Final Judgment on an order granting Final Approval. The Final Judgment becomes “final” as of the latest of the following occurrences: (1) the date the Court’s order granting Final Approval is signed if no objections are filed to the Settlement; (2) if objections are filed and overruled, and no appeal is taken of the order granting Final Approval, sixty-five (65) days after the order granting Final Approval; or (3) if an appeal or other judicial review is taken from the Court’s overruling of objections to the settlement, ten (10) days after the appeal is withdrawn or after an appellate decision affirming the order granting Final Approval becomes final.
- 1.19. “Final Approval” means the Court’s order granting final approval of the Settlement.
- 1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.21. “Final Judgment” means the judgment Entered by the Court upon granting Final Approval of the Settlement.
- 1.22. “Gross Settlement Amount” means One Million, Three Hundred and Fifty Thousand Dollars and Zero Cents (\$1,350,000.00), which is the total amount Defendants agree to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA Payment, Class Counsel fees, Class Counsel expenses, Class Representative Service Payments, and the Administrator’s Expenses.
- 1.23. “Individual Class Payment” means a Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period. Any Class Member who submits a timely and valid Request for Exclusion pursuant to the procedures set forth herein, is not eligible to receive an Individual Class Payment.
- 1.24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the PAGA Period.
- 1.25. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.26. “LWDA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.27. “Motion for Preliminary Approval” means the motion that Plaintiffs will file with the Court requesting Preliminary Approval of the Settlement.
- 1.28. “Motion for Final Approval” means the motion that Plaintiffs will file with the Court requesting Final Approval of the Settlement.

- 1.29. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA Payment, Class Representative Service Payments, Attorneys’ Fees and Litigation Costs, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.30. “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.31. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendants for at least one day during the PAGA Period.
- 1.32. “PAGA Period” means the period from June 9, 2021, to February 9, 2024.
- 1.33. “PAGA” means the Private Attorneys General Act (Labor Code § 2698, *et seq.*).
- 1.34. “PAGA Notices” means Plaintiff Maheia’s June 9, 2022 letter to Defendant Clean Earth Environmental Solutions, Defendant Harsco, and the LWDA, Plaintiff Hernandez’s August 12, 2022 letter to Defendant Clean Earth Environmental Solutions, Defendant Harsco, Defendant Clean Earth, and the LWDA, Plaintiff Montano’s October 3, 2022 letter to Defendant Clean Earth Environmental Solutions, Defendant Harsco, and the LWDA, and Plaintiff Maheia and Plaintiff White’s January 6, 2023 letter to Defendant Clean Earth Environmental Solutions and Defendant Harsco, providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.35. “PAGA Penalties” means Eighty Thousand Dollars and Zero Cents (\$80,000.00) which is the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$20,000.00) and the 75% to LWDA (\$60,000.00) in settlement of PAGA claims.
- 1.36. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.37. “Plaintiffs” means Dorick Maheia, Darrell White, Omar Hernandez, Tyana Rainey, and Arturo Montano, the named plaintiffs in the Actions.
- 1.38. “Preliminary Approval” means the Court’s order granting the Motion for Preliminary Approval.
- 1.39. “Released Class Claims” means any and all claims, liabilities, demands, obligations, penalties (except for PAGA penalties), costs, expenses, attorney’s fees, damages, action or causes of action that are alleged, or that reasonably could have been alleged based on the facts alleged in the Actions, including claims for: (a) failure to pay regular and minimum wages; (b) failure to pay overtime wages; (c) failure to provide accurate itemized wage statements; (d) failure to pay final wages upon separation of employment; (e) failure to

provide timely, duty-free meal periods and/or pay required meal period premiums; (f) failure to provide compliant rest periods and/or pay rest required period premiums; (g) failure to reimburse necessary expenditures in discharge of duties; (h) failure to maintain required records; (i) failure to pay wages timely during employment; (j) failure to pay vacation or paid time off wages; (k) failure to pay prevailing wages; and (l) any right or claim for damages, unpaid wages, statutory penalties, or civil penalties arising under the California Labor Code or Wage Orders based on the alleged failures set forth above (a)-(k) and which were alleged, or that reasonably could have been alleged based on the facts alleged in the Action; and which were alleged, or that reasonably could have been alleged based on the facts alleged in the Action; (l) any violation of the California Labor Code arising from or related to the conduct alleged in in (a)-(k) and which were alleged, or that reasonably could have been alleged based on the facts alleged in the Action, including violations of California Labor Code sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 516, 551, 552, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 1720 *et seq.*, 2800, 2802, 2804 and IWC Wage Orders; and (m) all claims for unfair business practices under California Business & Professions Code Section 17200, *et seq.*, that could have been premised on the claims, causes of action or legal theories of relief described above in (a)-(k) and which were alleged, or that reasonably could have been alleged based on the facts alleged in the Action; and expressly excluding all other claims, including claims for unemployment insurance, disability, social security, and workers' compensation, and claims outside of the Class Period.

- 1.40. "Released PAGA Claims" means any and all claims for civil penalties under PAGA based on the labor code violations of 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 516, 551, 552, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 1720 *et seq.*, 2800, 2802, 2804 and IWC Wage Orders which were alleged in the PAGA Notices and subsequently pled in the operative and/or any amended complaints Plaintiffs will file pursuant to this Settlement, as well as all facts, theories, or claims for civil penalties that would be considered administratively exhausted under applicable law by the PAGA Notices Plaintiffs sent to the LWDA.
- 1.41. "Released Parties" means Defendants and all of their respective current and former parents, subsidiaries and affiliated companies and entities, franchisors and franchisees, and its current, former, and future owners, officers, shareholders, directors, members, managers, operators, exempt-employees, consultants, vendors, partners, affiliates, subsidiaries, shareholders, attorneys, insurers, payroll providers, joint venturers, and agents, and any successors, assigns, or legal representatives, both individually and in their business capacities, and any individual or entity who or which could be jointly liable with Defendants as joint employers or otherwise, all persons or entities acting by, through under or in concert with any of them. .
- 1.42. "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.43. "Response Deadline" means forty-five (45) days after the Administrator mails Notice to Class Members and Aggrieved Employees and shall be the last date on which Class

Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her objection to the Settlement. Class Members to whom notice packets are resent after having been returned undeliverable to the Administrator shall have an additional fourteen (14) days beyond the Response Deadline has expired.

- 1.44. “Settlement” means the disposition of the Actions effected by this Agreement and the Final Judgment.
- 1.45. “Workweek” means any week during which a Class Member worked for Defendants for at least one day, during the Class Period.

## **2. RECITALS.**

- 2.1. On June 9, 2022, Plaintiff Maheia filed a Notice of Violations with the LWDA and served the same on Defendant Clean Earth Environmental Solutions, and Defendant Harsco.
- 2.2. On July 7, 2022, Plaintiff Maheia filed the *Maheia* Action against Defendant Clean Earth Environmental Solutions, Defendant Harsco, and DOES 1 through 50, alleging eight (8) causes of action for “(1) Unfair Competition in Violation of Bus. & Prof. Code section 17200, *et seq.*; (2) Failure to Pay Minimum Wages in Violation of California Labor Code sections 1194, 1197 and 1197.1; (3) Failure to Pay Overtime Wages in Violation of California Labor Code section 510, *et seq.*; (4) Failure to provide Required Meal Periods in Violation of California Labor Code sections 226.7 and 512 and the applicable IWC Wage Order; (5) Failure to Provide Required Rest Periods in Violation of California Labor Code sections 226.7 and 512 and the applicable IWC Wage Order; (6) Failure to Provide Accurate Itemized Wage Statements in Violation of California Labor Code section 226; (7) Failure to Provide Wages When Due in Violation of California Labor Code sections 201, 202 and 203; and (8) Failure to Reimburse Employees For Required Expenses in Violation of California Labor Code section 2802.” Defendant Clean Earth Environmental Solutions, and Defendant Harsco deny the allegations in the Complaint, deny any failure to comply with the laws identified in the Complaint and deny any and all liability for the causes of action alleged.
- 2.3. On August 12, 2022, Plaintiff Hernandez filed a Notice of Violations with the LWDA and served the same on Defendant Harsco, Defendant Clean Earth Environmental Solutions, and Defendant Clean Earth.
- 2.4. On October 3, 2022, Plaintiff Montano filed the *Montano* Action against Defendant Clean Earth Environmental Solutions, Defendant Harsco, and DOES 1 through 10, alleging nine (9) causes of action for “(1) Violations of Labor Code § 204, 226.2, 1194, 1197, and wage order (wages); (2) Violations of Labor Code §§ 226.2, 510, 1194, 1198, and wage order (overtime wages); (3) Violations of Labor Code §§ 226.7 and 512 and wage order (meal periods); (4) Violation of Labor Code §§ 226.2, 226.7, 516, 558, and wage order (rest periods); (5) Violations of Labor Code § 2802 (failure to reimburse); (6) Violations of Labor Code § 226(A) (non-compliant wage statements); (7) Violations of Labor Code §§ 201-203

(failure to pay all wages owed upon termination); (8) Violations of Labor Code § 227.3 (failure to pay vacation/PTO wages); and (9) Violations of Business and Professions Code § 17200.” Defendant Clean Earth Environmental Solutions, and Defendant Harsco deny the allegations in the complaint, deny any failure to comply with the laws identified in the complaint, and deny any and all liability for the causes of action alleged.

- 2.5. On October 14, 2022, Plaintiff Maheia filed a first amended complaint in the *Maheia* Action to add a ninth (9<sup>th</sup>) cause of action for Violations of PAGA.
- 2.6. On October 17, 2022, Plaintiff Hernandez filed the *Hernandez* Class Action against Defendant Harsco, Defendant Clean Earth Environmental Solutions, and DOES 1 through 100, alleging ten (10) causes of action for “(1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3) Violation of California Labor Code § 226.7 (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); (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses); and (10) Violation of California Business & Professions Code §§ 17200, *et seq.*”
- 2.7. On October 17, 2022, Plaintiff Hernandez filed the *Hernandez* Representative Action against Defendant Harsco, Defendant Clean Earth Environmental Solutions, and DOES 1 through 100, alleging one (1) cause of action for Violation of PAGA.
- 2.8. On December 16, 2022, Plaintiff Montano filed a first amended complaint in the *Montano* Action to add a tenth (10<sup>th</sup>) cause of action for Violations of PAGA.
- 2.9. On January 6, 2023, Plaintiff Maheia and Plaintiff White filed an amended Notice of Violations with the LWDA and served the same on Defendant Clean Earth Environmental Solutions and Defendant Harsco to add Plaintiff White as a named Plaintiff in the *Maheia* Action.
- 2.10. On January 9, 2023, the Court found that the *Maheia* Action, the *Montano* Action, the *Hernandez* Class Action, and the *Hernandez* Representative Action are related within the meaning of California Rules of Court, rule 3.300(a), and that the *Maheia* Action is the lead case.
- 2.11. On March 25, 2024, the Parties stipulated to the filing of a second amended complaint in the *Maheia* Action for purposes of adding all Plaintiffs to the Action. The Second Amended Complaint will also include causes of action for Failure to Keep Requisite Payroll Records in Violation of Cal. Lab. Code § 1174(d), Failure to Pay Vacation/PTO Wages in Violation of Cal. Lab. Code § 227.3, and Failure to Pay Prevailing Wages in

Violation of Cal. Lab. Code §§ 1720-*et seq.*

- 2.12. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiffs gave timely written notice to Defendants and the LWDA by sending the PAGA Notices.
- 2.13. On October 12, 2023, the Parties participated in an all-day mediation presided over by Tripper Ortman, Esq., a wage and hour class and representative actions mediator, which led to this Agreement to settle the Actions.
- 2.14. Prior to mediation, Plaintiffs obtained, through informal discovery, timekeeping records, and payroll records for the Class Members. Plaintiffs' investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").
- 2.15. The Parties, Class Counsel and Defendants' Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

### **3. MONETARY TERMS.**

- 3.1. Gross Settlement Amount. Defendants promise to pay One Million Three Hundred Fifty Thousand Dollars and Zero Cents (\$1,350,000.00), and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendants have no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants.
- 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:
- 3.2.1. To Plaintiffs: Class Representative Service Payments to Plaintiffs Darrell White, Omar Hernandez, Tyana Rainey, and Arturo Montano in an amount not to exceed Ten Thousand Dollars and Zero Cents (\$10,000.00) each Class Representative Service Payment to Plaintiff Dorick Maheia in an amount not to exceed Fifteen Thousand Dollars and Zero Cents (\$15,000.00) (for a total of Fifty-Five Thousand Dollars and Zero Cents (\$55,000.00)) ("*Class Representative Service Payment*"). Defendants will not oppose Plaintiffs' request for a Class Representative Service Payment that does not exceed this amount for each Plaintiff. As part of the motion for Attorneys' Fees and Litigation Costs, Plaintiffs will seek Court approval for any Class Representative Service Payments no later than sixteen (16) court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net

Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099-MISC. Plaintiffs assume full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

3.2.2. To Class Counsel: Attorneys' Fees of not more than one-third of the Gross Settlement Amount, which is currently estimated to be Four Hundred Fifty Thousand Dollars and Zero Cents (\$450,000.00) and Litigation Costs of not more than \$50,000.00 Defendants will not oppose requests for these payments provided that do not exceed these amounts. Plaintiffs and/or Class Counsel will file a motion for Class Counsel fees and litigation costs no later than sixteen (16) court days prior to the Final Approval Hearing. If the Court approves a payment for Class Counsel fees and/or litigation costs less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Class Counsel arising from any claim to any portion any Class Counsel fees and/or litigation costs. The Administrator will pay the Class Counsel fees and litigation costs using one or more IRS Form 1099-MISC. Class Counsel assumes full responsibility and liability for taxes owed on the Attorneys' Fees and Litigation Costs and holds Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any division or sharing of any of these payments.

3.2.3. To the Administrator: An "Administrator Expenses Payment" not to exceed Thirteen Thousand Five Hundred Dollars and Zero Cents (\$13,500.00) except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$13,500.00, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks worked during the Class Period.

3.2.4.1. Tax Allocation of Individual Class Payments. Twenty percent (20%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. Eighty percent (80%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on an IRS Form 1099-MISC. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their

Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis. However, Non-Participating Class Members who are Aggrieved Employees will still receive payment with respect to the settlement of PAGA claims and be bound to the Released PAGA Claims.

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$80,000.00 to be paid from the Gross Settlement Amount, with 75% (\$60,000.00) allocated to the LWDA Payment and 25% (\$20,000.00) allocated to the Individual PAGA Payments.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$20,000.00) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

#### **4. SETTLEMENT FUNDING AND PAYMENTS.**

4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendants estimate there are 680 Class Members who collectively worked a total of 42,500 Workweeks, and 460 Aggrieved Employees who worked a total of 18,603 PAGA Pay Periods.

4.2. Class Data. Not later than fifteen (15) days after the Court grants Preliminary Approval of the Settlement, Defendants will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendants have a continuing duty to immediately notify Class Counsel if they discover that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendants must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.3. Funding of Gross Settlement Amount. After all of the requirements set to meet the Date of Finality are met, Defendants shall fully fund the Gross Settlement Amount, and also

fund the amounts necessary to fully pay Defendants' share of payroll taxes by transmitting the funds to the Administrator no later than thirty (30) days after the Date of Finality.

- 4.4. Payments from the Gross Settlement Amount. Within fourteen (14) days after Defendants fund the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA Payment, the Administration Expenses Payment, Attorneys' Fees and Litigation Costs, and the Class Representative Service Payment. Disbursement of Attorneys' Fees and Litigation Costs and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.

4.4.1. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than one hundred eighty (180) days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address database.

4.4.2. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without United States Postal Service ("USPS") forwarding address. Within seven (7) days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

4.4.3. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendants to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those

specified in this Agreement.

5. [INTENTIONALLY OMITTED]

6. **RELEASES OF CLAIMS.** Effective upon entry of Final Judgment, Plaintiffs, Class Members, and Class Counsel will release claims against all Released Parties as follows:

6.1 Plaintiffs' Release. Plaintiffs Hernandez, Rainey, and Montano, and their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the operative complaint(s) and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the operative complaint(s) and Plaintiffs' PAGA Notices, Plaintiffs' Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiffs acknowledge that Plaintiffs may discover facts or law different from, or in addition to, the facts or law that Plaintiffs now know or believe to be true but agree, nonetheless, that Plaintiffs' Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiffs' discovery of them.

6.1.1 Plaintiffs' Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiffs' Release, Plaintiffs expressly waive and relinquish the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

**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.**

6.2 Release by Participating Class Members. Upon entry of Final Judgment, all Participating Class Members are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from the Released Class Claims.

6.3 Release by Aggrieved Employees. Upon entry of Final Judgment, all Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from the Released PAGA Claims.

7. **MOTION FOR PRELIMINARY APPROVAL.** Class Counsel will prepare and file a Motion for Preliminary Approval that complies with the Court's current checklist for

## Preliminary Approvals.

- 7.1 Defendants' Declaration in Support of Preliminary Approval. Defendants will provide a declaration under penalty of perjury confirming the number of Class Members and workweeks they worked during the applicable Class Period one week prior to Plaintiffs' deadline to file their Motion for Preliminary Approval of the Settlement. In their declarations, Defendants and Defendants' Counsel shall disclose all facts relevant to any actual or potential conflicts of interest with the Administrator. In their declarations, Defendants' Counsel and Defendants shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.
- 7.2 Plaintiffs' Responsibilities. Class Counsel will prepare and deliver to Defendants' Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed order granting Preliminary Approval; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiffs, Class Counsel or Defendants' Counsel; (v) a signed declaration from Plaintiffs confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members and the Administrator; (vi) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (PAGA Notices (Labor Code section 2699.3, subd. (a)), operative complaint(s) (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (vi) a redlined version of the parties' Agreement showing all modifications made to the model agreement ready for filing with the Court; and (vii) all facts relevant to any actual or potential conflict of interest with Class Members and the Administrator. In their Declarations, Plaintiffs and Class Counsel Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.
- 7.3 Responsibilities of Counsel. Class Counsel is responsible for finalizing and filing the Motion for Preliminary Approval no later than seventy-five (75) days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.
- 7.4 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defendants' Counsel will diligently work together on behalf of the Parties by meeting in

person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defendants' Counsel will diligently work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

## **8. SETTLEMENT ADMINISTRATION.**

- 8.1 Selection of Administrator. The Parties have jointly selected Apex Class Action LLC to serve as the Administrator and verified that, as a condition of appointment, Apex Class Action LLC agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 8.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.
- 8.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.
- 8.4 Notice to Class Members.
- 8.4.1 No later than three (3) days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.
- 8.4.2 Using best efforts to perform as soon as possible, and in no event later than fourteen (14) days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via First-Class USPS mail, the Class Notice with Spanish translation, if applicable, substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.
- 8.4.3 Not later than three (3) days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice

to Class Members whose Class Notice is returned by the USPS a second time.

8.4.4 The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional fourteen (14) days beyond the forty-five (45) days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

8.4.5 If the Administrator, Defendants or Class Counsel are contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than fourteen (14) days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever are later.

## 8.5 Requests for Exclusion (Opt-Outs).

8.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than forty-five (45) days after the Administrator mails the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline. Allegedly Aggrieved Employees are not permitted to object or opt out of the PAGA portion of this Agreement.

8.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

8.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraph 6.2, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the

Settlement.

8.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Final Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph of this Agreement and are eligible for an Individual PAGA Payment.

8.5.5 Any funds allocated to Class Members who opted out of the Class Settlement will be added to the Net Settlement Amount for distribution to the Participating Class Members.

8.6 Challenges to Calculation of Workweeks. Each Class Member shall have forty-five (45) days after the Administrator mails the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defendants' Counsel and Class Counsel and the Administrator's determination the challenges.

8.7 Objections to Settlement.

8.7.1 Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for Attorneys' Fees and Litigation Costs and/or Class Representative Service Payment.

8.7.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than forty-five (45) days after the Administrator's mailing of the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice was re-mailed).

8.7.3 Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

8.8 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8.8.1 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the motion for Class Counsel fees payment, Class Counsel litigation expenses payment, Class Representative Service Payment, the Final Approval, and the Final Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes, and emails.

8.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than five (5) days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defendants' Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion ("Exclusion List"); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).

8.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defendants' Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed; Class Notices returned undelivered; Requests for Exclusion (whether valid or invalid) received; objections received; challenges to Workweeks and/or Pay Periods received and/or resolved; and checks mailed for Individual Class Payments and Individual PAGA Payments ("Weekly Report"). The Weekly Reports must include the Administrator's assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

8.8.4 Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator's decision shall be final and not appealable or otherwise susceptible to challenge.

8.8.5 Administrator's Declaration. Not later than fourteen (14) days before the date by which Plaintiffs are required to file the Motion for Final Approval, the Administrator will provide to Class Counsel and Defendants' Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of

Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections, and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

8.8.6 Final Report by Settlement Administrator. Within ten (10) days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defendants' Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least fifteen (15) days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defendants' Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

**9. CLASS SIZE ESTIMATES AND ESCALATOR CLAUSE.** Based on its records, Defendants estimate that, as of the date of this Settlement Agreement, (1) there are 680 Class Members and 42,500 total Workweeks during the Class Period and (2) there were 460 Aggrieved Employees who worked 18,603 Pay Periods during the PAGA Period. In the event that the actual total number of Workweeks exceeds 42,500 by more than 10%, *i.e.*,  $(42,500 \times 0.1)$ , by the end of the Class Period and/or PAGA Period, the Gross Settlement Amount shall be increased on a pro rata basis at a value of Thirty-Two Dollars and Fifty Cents (\$32.50) per Workweek. For example, if the total number of workweeks is  $(42,500 \times 0.1) + 1$ , Defendants would be required to increase the Gross Settlement Amount by \$32.50 for a total of \$1,350,032.50. Defendants will provide a declaration under penalty of perjury confirming the number of applicable Class Members and Workweeks they worked during the applicable Class Period one week prior to Plaintiffs' deadline to file their Motion for Preliminary Approval of the Settlement.

**10. MOTION FOR FINAL APPROVAL.** Not later than sixteen (16) court days before the calendared Final Approval Hearing, Plaintiffs will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a proposed order granting Final Approval and a proposed Final Judgment. Plaintiffs shall provide drafts of these documents to Defendants' Counsel not later than seven (7) days prior to filing the Motion for Final Approval. Class Counsel and Defendants' Counsel will diligently meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

10.1 Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

10.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope

of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel fees payment, Class Counsel litigation expenses payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this Paragraph.

10.3 Continuing Jurisdiction of the Court. The Parties agree that the Court shall retain continuing jurisdiction over this case under Code of Civil Procedure section 664.6 to ensure the continuing implementation of the provisions of this settlement or if not entered the date this agreement shall no longer be of any force or effect.

10.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Attorneys' Fees and Litigation Costs reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this Paragraph, as long as the Gross Settlement Amount remains unchanged.

## **11. ADDITIONAL PROVISIONS.**

11.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendants that any of the allegations in the operative complaint have merit or that Defendants have any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiffs that Defendants' defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason, the Court does not grant Preliminary Approval, Final Approval, or

enter Judgment, Defendants reserve the right to contest certification of any class for any reasons, and Defendants reserve all available defenses to the claims in the Action, and Plaintiffs reserve the right to move for class certification on any grounds available and to contest Defendants' defenses. The Settlement, this Agreement, and the Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

- 11.2 No Publicity. Neither Plaintiffs' counsel nor Defendants' Counsel shall publicize the Settlement on their website or in advertising/marketing materials, other than filing documents with the Court. The Parties and their respective counsel agree that they will not issue any press releases or initiate any contact with the media about the fact, amount, or terms of the settlement. If Plaintiffs or their counsel or Defendants or their counsel receive an inquiry about the Settlement from the media, they may respond only after the Motion for Preliminary Approval has been filed and only by confirming the accurate terms of the Settlement. Nothing in this provision shall prevent Defendants or Plaintiffs from making any required disclosure. Nothing shall prevent Plaintiffs' counsel from referring to this case in a declaration establishing qualification as class counsel in future cases.
- 11.3 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this Paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 11.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 11.5 Attorney Authorization. Class Counsel and Defendants' Counsel separately warrant and represent that they are authorized by Plaintiffs and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 11.6 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Agreement, submitting supplemental evidence, and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator for resolution. In the event the Parties cannot reach a resolution through a mediator, the Parties may then seek the assistance of the Court.

- 11.7 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 11.8 No Tax Advice. Neither Plaintiffs, Class Counsel, Defendants nor Defendants' Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 11.9 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 11.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 11.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 11.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 11.13 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 11.14 Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendants in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than ninety (90) days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiffs shall destroy all paper and electronic versions of Class Data received from Defendants unless, prior to the Court's discharge of the Administrator's obligation, Defendants makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.
- 11.15 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 11.16 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall refer to calendar days.

11.17 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third (3<sup>rd</sup>) court day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiffs:

**JCL LAW FIRM, APC**

5440 Morehouse Drive, Suite 3600

San Diego, CA 92121

T: 619-599-8292

jlapuyade@jcl-lawfirm.com

**ZAKAY LAW GROUP, APLC**

5440 Morehouse Drive, Suite 3600

San Diego, CA 92121

T: 619-892-7095

F: 858-404-9203

Shani@zakaylaw.com

**AZADIAN LAW GROUP, P.C.**

707 Foothill Blvd, Ste 200,

La Canada Flt, CA 91011-3456

T: 213-229-9031

F: 626-628-1722

george@azadianlawgroup.com

**LAWYERS for JUSTICE, P.C.**

410 Arden Ave Ste 203,

Glendale, CA 91203-4007

T: 818-265-1020

F: 818-265-1021

edwin@calljustice.com

e-service@calljustice.com

ss@calljustice.com

joanna@calljustice.com

arby@calljustice.com

To Defendants:

**NIXON PEABODY, LLP**

300 South Grand Avenue

Suite 4100

Los Angeles, CA 90071-3151

T: 213-629-6000

F: 213-629-6001

rpepple@nixonpeabody.com  
acaastro@nixonpeabody.com

11.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (*i.e.*, DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

11.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

IT IS SO AGREED TO AS TO FORM AND CONTENT BY PLAINTIFFS:

Dated: \_\_\_\_\_, 2024

\_\_\_\_\_  
Plaintiff Dorick Maheia

Dated: \_\_\_\_\_, 2024

05/24/2024

Dated: \_\_\_\_\_, 2024

Electronically Signed by Plaintiff Darrell White on 2024-05-24 16:58:28 UTC - 68.105.74.47  
Nintex AssureSign®  7f65223b-bf6b-49ca-a4e1-b17ad109a73c

\_\_\_\_\_  
Plaintiff Omar Hernandez

Dated: \_\_\_\_\_, 2024

\_\_\_\_\_  
Plaintiff Tyana Rainey

Dated: \_\_\_\_\_, 2024

\_\_\_\_\_  
Plaintiff Arturo Montano

Dated: \_\_\_\_\_, 2024

\_\_\_\_\_  
Shani O. Zakay  
Zakay Law Group, APLC  
Attorney for Plaintiffs

Dated: \_\_\_\_\_, 2024

\_\_\_\_\_  
Jean-Claude Lapuyade  
JCL Law Firm, APC  
Attorney for Plaintiffs

Dated: \_\_\_\_\_, 2024

\_\_\_\_\_  
George Azadian

rpepple@nixonpeabody.com  
acastro@nixonpeabody.com

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IT IS SO AGREED TO AS TO FORM AND CONTENT BY PLAINTIFFS:

Dated: 05/22/2024, 2024

  
Dorick Maheia (May 22, 2024 12:32 PDT)

Plaintiff Dorick Maheia

Dated: 05/22/2024, 2024

  
Darrell White (May 22, 2024 12:39 PDT)

Plaintiff Darrell White

Dated: \_\_\_\_\_, 2024

Plaintiff Omar Hernandez

Dated: \_\_\_\_\_, 2024

Plaintiff Tyana Rainey

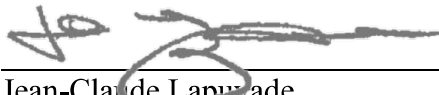
Dated: \_\_\_\_\_, 2024

Plaintiff Arturo Montano

Dated: May 22, 2024

  
Shani O. Zakay  
Zakay Law Group, APLC  
Attorney for Plaintiffs

Dated: May 22, 2024

  
Jean-Claude Lapuyade  
JCL Law Firm, APC  
Attorney for Plaintiffs

Dated: \_\_\_\_\_, 2024

George Azadian

rpepple@nixonpeabody.com  
acastro@nixonpeabody.com

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IT IS SO AGREED TO AS TO FORM AND CONTENT BY PLAINTIFFS:

Dated: \_\_\_\_\_, 2024

\_\_\_\_\_  
Plaintiff Dorick Maheia

Dated: \_\_\_\_\_, 2024

\_\_\_\_\_  
Plaintiff Darrell White

Dated: \_\_\_\_\_, 2024

\_\_\_\_\_  
Plaintiff Omar Hernandez

Dated: \_\_\_\_\_, 2024

\_\_\_\_\_  
Plaintiff Tyana Rainey

Dated: May 22, 20, 2024

  
\_\_\_\_\_  
Arturo Montano (May 22, 2024 09:55 PDT)

Plaintiff Arturo Montano

Dated: \_\_\_\_\_, 2024

\_\_\_\_\_  
Shani O. Zakay  
Zakay Law Group, APLC  
Attorney for Plaintiffs

Dated: \_\_\_\_\_, 2024

\_\_\_\_\_  
Jean-Claude Lapuyade  
JCL Law Firm, APC  
Attorney for Plaintiffs

Dated: MAY 22, 2024

  
\_\_\_\_\_  
George Azadian

rpepple@nixonpeabody.com  
acaastro@nixonpeabody.com

11.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (*i.e.*, DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

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IT IS SO AGREED TO AS TO FORM AND CONTENT BY PLAINTIFFS:

Dated: \_\_\_\_\_, 2024

\_\_\_\_\_  
Plaintiff Dorick Maheia

Dated: \_\_\_\_\_, 2024

\_\_\_\_\_  
Plaintiff Darrell White

Dated: \_\_\_\_\_, 2024

05/28/2024

Dated: \_\_\_\_\_, 2024

Electronically Signed Plaintiff Omar Hernandez 2024-05-28 17:56:41 UTC - 76.37.146.97  
\_\_\_\_\_  
[Nintex AssureSign®] 26b137c2-62ef-482a-a57a-b17ad110b9a

\_\_\_\_\_  
Plaintiff Tyana Rainey

Dated: \_\_\_\_\_, 2024

\_\_\_\_\_  
Plaintiff Arturo Montano

Dated: \_\_\_\_\_, 2024

\_\_\_\_\_  
Shani O. Zakay  
Zakay Law Group, APLC  
Attorney for Plaintiffs

Dated: \_\_\_\_\_, 2024

\_\_\_\_\_  
Jean-Claude Lapuyade  
JCL Law Firm, APC  
Attorney for Plaintiffs

Dated: \_\_\_\_\_, 2024

\_\_\_\_\_  
George Azadian

Ani Azadian  
Azadian Law Group, PC  
Attorney for Plaintiffs



Dated: May 28, 2024

\_\_\_\_\_  
Edwin Aiwazian  
Arby Aiwazian  
Joanna Ghosh  
Lawyers For Justice, PC  
Attorney for Plaintiff Hernandez and Plaintiff Rainey

IT IS SO AGREED TO AS TO FORM AND CONTENT BY DEFENDANTS:

Dated: \_\_\_\_\_, 2024

\_\_\_\_\_  
For Defendant  
CLEAN EARTH ENVIRONMENTAL SOLUTIONS

Dated: \_\_\_\_\_, 2024

\_\_\_\_\_  
For Defendant  
CLEAN EARTH, INC.

Dated: \_\_\_\_\_, 2024

\_\_\_\_\_  
For Defendant  
ENVIRI CORPORATION

Dated: \_\_\_\_\_, 2024

\_\_\_\_\_  
For Defendant  
HARSCO CORPORATION

Dated: \_\_\_\_\_, 2024

\_\_\_\_\_  
Robert H. Pepple  
Alejandro J. Castro  
Nixon Peabody LLP  
Attorney for Defendants

Ani Azadian  
Azadian Law Group, PC  
Attorney for Plaintiffs

Dated: \_\_\_\_\_, 2024

\_\_\_\_\_  
Edwin Aiwazian  
Arby Aiwazian  
Joanna Ghosh  
Lawyers For Justice, PC  
Attorney for Plaintiff Hernandez and Plaintiff Rainey

IT IS SO AGREED TO AS TO FORM AND CONTENT BY DEFENDANTS:

Dated: May 28, 2024

\_\_\_\_\_  
*Sam R...*

For Defendant  
CLEAN EARTH ENVIRONMENTAL SOLUTIONS

Dated: May 28, 2024

\_\_\_\_\_  
*Sam R...*

For Defendant  
CLEAN EARTH, INC.

Dated: May 28, 2024

\_\_\_\_\_  
*Sam R...*

For Defendant  
ENVIRI CORPORATION

Dated: May 28, 2024

\_\_\_\_\_  
*Sam R...*

For Defendant  
HARSCO CORPORATION

Dated: May 28, 2024

\_\_\_\_\_  
*A...*

Robert H. Pepple  
Alejandro J. Castro  
Nixon Peabody LLP  
Attorney for Defendants

## **EXHIBIT A**

**COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING  
DATE FOR FINAL COURT APPROVAL**

*Maheia v. Clean Earth Environmental Solutions, Inc., et al., Case No. 22STCV24279*

***The Superior Court for the State of California authorized this “Notice”. Please read it carefully! This is not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

**You may be eligible to receive money** from an employee class action lawsuit (“Action”) against CLEAN EARTH ENVIRONMENTAL SOLUTIONS, INC., CLEAN EARTH INC., ENVIRI CORPORATION, and HARSCO CORPORATION (“Defendants”) for alleged wage and hour violations. The Action was filed by former employees, Dorick Maheia, Darrell White, Omar Hernandez, Tyana Rainey, and Arturo Montano (“Plaintiffs”), and seeks payment of (1) back wages and other relief for a class of all individuals who worked for Defendants in California as non-exempt employees during the Class Period (November 28, 2020, through February 9, 2024) (“Class Members”); and (2) penalties under the California Private Attorney General Act (“PAGA”) for all individuals who worked for Defendants in California during the “PAGA Period” (June 9, 2021, through February 9, 2024) (“Aggrieved Employees”).

The proposed Settlement has two main parts: (1) a class settlement (“Class Settlement”) requiring Defendants to fund individual class payments (“Individual Class Payments”), and (2) a PAGA settlement (“PAGA Settlement”) requiring Defendants to fund individual PAGA payments (“Individual PAGA Payments”) and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on Defendants’ records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$XX (less withholding) and your Individual PAGA Payment is estimated to be \$XX**. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendants’ records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.)

The above estimates are based on Defendants’ records showing that **you worked XX workweeks** during the Class Period and **you worked XX pay periods** during the PAGA Period. If you believe that you worked more workweeks or pay periods during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant Final Approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiffs and Plaintiffs’ attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Defendants to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendants.

If you worked for Defendants during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

- (1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Class Member who did not file a valid "Request for Exclusion" ("Participating Class Member"), though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against Defendants.
- (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against Defendants, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

**Defendants will not retaliate against you for any actions you take with respect to the proposed Settlement.**

#### **SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT**

|                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>You Don't Have to Do Anything to Participate in the Settlement</b>                                                                                            | If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Defendants that are covered by this Settlement (Released Claims).                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>You Can Opt-out of the Class Settlement but not the PAGA Settlement</b><br><br><b>The Opt-out Deadline is</b>                                                 | <p>If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice.</p> <p>You cannot opt-out of the PAGA portion of the proposed Settlement. Defendants must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims.</p>                    |
| <b>Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement</b><br><br><b>Written Objections Must be Submitted by</b><br>_____ | All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiffs who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiffs, but every dollar paid to Class Counsel and Plaintiffs reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiffs if you think they are unreasonable. See Section 7 of this Notice. |

|                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>You Can Participate in the _____ Final Approval Hearing</b>                                                                     | The Court’s Final Approval Hearing is scheduled to take place on _____. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.                                                                                                            |
| <b>You Can Challenge the Calculation of Your Workweeks/Pay Periods</b><br><br><b>Written Challenges Must be Submitted by _____</b> | The amount of your Individual Class Payment and LWDA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Period Workweeks and number of PAGA Period Pay Periods you worked according to Defendants records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by _____. See Section 4 of this Notice. |

## 1. WHAT IS THE ACTION ABOUT?

Plaintiffs are former employees of Defendants. The Action accuses Defendants of violating California labor laws by (a) failure to pay regular and minimum wages; (b) failure to pay overtime wages; (c) failure to provide accurate itemized wage statements; (d) failure to pay final wages upon separation of employment; (e) failure to provide timely, duty-free meal periods and/or pay required meal period premiums; (f) failure to provide compliant rest periods and/or pay rest required period premiums; (g) failure to reimburse necessary expenditures in discharge of duties; (h) failure to maintain required records; (i) failure to pay wages timely during employment; (j) failure to pay vacation wages; (k) failure to pay prevailing wages; and (l) violation of California’s Business and Professions Code, and other derivative claims. Based on the same claims, Plaintiffs have also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”). Plaintiffs are represented by attorneys in the Action: JCL Law Firm, APC, Zakay Law Group, APLC, Lawyers For Justice, PC, and Azadian Law Group, PC (“Class Counsel.”)

Defendants strongly deny violating any laws or failing to pay any wages and contend they complied with all applicable laws.

## 2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Defendants or Plaintiffs are correct on the merits. In the meantime, Plaintiffs and Defendants hired an experienced, neutral mediator in an effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiffs and Defendants have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a

compromise of disputed claims. By agreeing to settle, Defendants do not admit any violations or concede the merit of any claims.

Plaintiffs and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendants have agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

### **3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?**

1. Defendants Will Pay \$1,350,000.00 as the Gross Settlement Amount (“Gross Settlement Amount”). Defendants have agreed to deposit the Gross Settlement Amount into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement Amount to pay the Individual Class Payments, Individual PAGA Payments, “Class Representative Service Payment”, Class Counsel’s attorney’s fees and litigation costs, the Administrator’s expenses, and penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, Defendants will fund the Gross Settlement not more than thirty (30) days after the Judgment entered by the Court become final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiffs and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
  - A. Up to \$450,000.00 (One-third of the Gross Settlement Amount) to Class Counsel for attorneys’ fees and up to \$50,000.00 for their litigation costs. To date, Class Counsel have worked and incurred expenses on the Action without payment.
  - B. Up to \$10,000.00 each to Plaintiffs Darrell White, Omar Hernandez, Tyana Rainey, and Arturo Montano and up to \$15,000.00 to Plaintiff Dorick Maheia as Class Representative Service Payments for filing the Action, working with Class Counsel and representing the Class. The Class Representative Service Payments will be the only monies Plaintiffs will receive other than Plaintiffs’ Individual Class Payments and any Individual PAGA Payment.
  - C. Up to \$13,500.00 to the Administrator for services administering the Settlement.
  - D. Up to \$80,000.00 for PAGA Penalties, allocated 75% to the LWDA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period pay periods.

Participating Class Members have the right to object to any of these deductions. The Court

will consider all objections.

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement Amount (the “Net Settlement”) by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.
4. Taxes Owed on Payments to Class Members. Plaintiffs and Defendants are asking the Court to approve an allocation of 20% of each Individual Class Payment to taxable wages (“Wage Portion”) and 80% to interests and penalties (“Non-Wage Portion”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendants will separately pay employer payroll taxes they owe on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiffs and Defendants have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don’t cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller’s Unclaimed Property Fund in your name.

If the monies represented by your check is sent to the Controller’s Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than **XX**, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the **XX** Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member’s name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments but will preserve their rights to personally pursue wage and hour claims against Defendants.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against based on the PAGA Period facts alleged in the Action.

7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and Defendants have agreed that, in either case, the Settlement will be void: Defendants will not pay any money and Class Members will not release any claims against Defendants.
8. Administrator. The Court has appointed a neutral company, Apex Class Action LLC (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Administrator will also decide Class Member Challenges over workweeks, mail and re- mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.
9. Participating Class Members’ Release. After the Judgment is final and Defendants have fully funded the Gross Settlement Amount, and separately paid all employer payroll taxes), Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants or related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from any and all claims, liabilities, demands, obligations, penalties, costs, expenses, attorney’s fees, damages, action or causes of action that are alleged, or that reasonably could have been alleged based on the facts alleged in the Action, including claims for: (a) failure to pay regular and minimum wages; (b) failure to pay overtime wages; (c) failure to provide accurate itemized wage statements; (d) failure to pay final wages upon separation of employment; (e) failure to provide timely, duty-free meal periods and/or pay required meal period premiums; (f) failure to provide compliant rest periods and/or pay rest required period premiums; (g) failure to reimburse necessary expenditures in discharge of duties; (h) failure to maintain required records; (i) failure to pay wages timely during employment; (j) failure to pay vacation wages; (k) failure to pay prevailing wages; (l) any right or claim for damages, unpaid wages, statutory penalties, or civil penalties arising under the California Labor Code or Wage Orders based on the alleged failures set forth above (a)-(k) and which were alleged, or that reasonably could have been alleged based on the facts alleged in the Action; and which were alleged, or that reasonably could have been alleged based on the facts alleged in the Action; (m) any violation of the California Labor Code arising from or related to the conduct alleged in in (a)-(k) and which were alleged, or that reasonably could have been alleged based on the facts alleged in the Action, including violations of California Labor Code sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 516, 551,

552, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 1720 *et seq.*, 2800, 2802, 2804 and IWC Wage Orders; and (n) all claims for unfair business practices under California Business & Professions Code Section 17200 *et seq.* that could have been premised on the claims, causes of action or legal theories of relief described above in (a)-(k) and which were alleged, or that reasonably could have been alleged based on the facts alleged in the Action; and expressly excluding all other claims, including claims for unemployment insurance, disability, social security, and workers' compensation, and claims outside of the Class Period.

10. Aggrieved Employees' PAGA Release. After the Court's judgment is final, and Defendants have paid the Gross Settlement Amount (and separately paid the employer-side payroll taxes), all Aggrieved Employees will be barred from asserting PAGA claims against Defendants, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Defendants or their related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

The Aggrieved Employees' Releases for Participating and Non-Participating Class Members are as follows:

All Participating and Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties, from any and all claims for civil penalties under PAGA based on the labor code violations of 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 516, 551, 552, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 1720 *et seq.*, 2800, 2802, 2804 and IWC Wage Orders which were alleged in the PAGA Notices and subsequently pled in the operative and/or any amended complaints Plaintiffs will file pursuant to this Settlement, as well as all facts, theories, or claims for civil penalties that would be considered administratively exhausted under applicable law by the PAGA Notices Plaintiffs sent to the LWDA.

#### **4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?**

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of workweeks worked by each individual Participating Class Member.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$20,000.00 by the total number of PAGA Period pay periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period pay periods worked by each individual Aggrieved Employee.
3. Workweek/Pay Period Challenges. The number of Class workweeks you worked during the Class Period and the number of pay periods you worked during the PAGA Period, as

recorded in Defendants' records, are stated in the first page of this Notice. You have until **MONTH XX, 202X** to challenge the number of workweeks and/or pay periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Defendants' calculation of workweeks and/or pay periods based on Defendants' records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve workweeks and/or pay periods challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Defendants' counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

## **5. HOW WILL I GET PAID?**

1. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.
2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

**Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.**

## **6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?**

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as *Maheia v. Clean Earth Environmental Solutions, Inc., et al.*, Case No. 22STCV24279, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must receive your request to be excluded by **MONTH XX, 202X**, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

## **7. HOW DO I OBJECT TO THE SETTLEMENT?**

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiffs and Defendants are asking the Court to approve. At least twenty-eight (28) days before the **MONTH XX, 202X** Final Approval

Hearing, Class Counsel and/or Plaintiffs will file in Court (1) a motion for final approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a motion for fees, litigation expenses and service award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation costs; and (ii) the amount Plaintiffs are requesting as a Class Representative Service Payment. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website <https://www.apexclassaction.com> or the Court's website at <https://www.lacourt.org/casesummary/ui/>.

A Participating Class Member who disagrees with any aspect of the Agreement, the motion for Final Approval and/or motion for fees, litigation expenses and service award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiffs are too high or too low. **The deadline for sending written objections to the Administrator is XX.** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action *Maheia v. Clean Earth Environmental Solutions, Inc., et al., Case No. 22STCV24279* and include your name, current address, telephone number, and approximate dates of employment for Defendants and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

## **8. CAN I ATTEND THE FINAL APPROVAL HEARING?**

You can, but don't have to, attend the Final Approval Hearing on XX at XX:XX am/pm in Department XX of the Los Angeles Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement Amount will be paid to Class Counsel, Plaintiffs, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defendants' Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via LACourtConnect. Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website <https://www.apexclassaction.com> beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

## **9. HOW CAN I GET MORE INFORMATION?**

The Agreement sets forth everything Defendants and Plaintiffs have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to Apex Class Action LLC's website at

<https://www.apexclassaction.com/>. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<http://www.lacourt.org/casesummary/ui/index.aspx>) and entering the Case Number for the Action, Case No. 22STCV24279. You can also make an appointment to personally review court documents in the Clerk's Office at the Los Angeles Superior Court.

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**DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION  
ABOUT THE SETTLEMENT.**

## **10. WHAT IF I LOSE MY SETTLEMENT CHECK?**

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the Unclaimed Property Fund for instructions on how to retrieve the funds.

## **11. WHAT IF I CHANGE MY ADDRESS?**

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

# **EXHIBIT 2**