

## JOINT STIPULATION AND SETTLEMENT AGREEMENT

This Joint Stipulation and Settlement Agreement is made and entered between defendants Hort Tech LLC, Hort Tech, Inc. (collectively referred to here as “Hort Tech”) and Monarch Landscape Holdings, LLC (“Monarch”) (all defendants collectively referred to herein as “Defendant”) and Plaintiff Arsenia Rodriguez (“Plaintiff” or “Class Representative”), on her own behalf and on behalf of a putative class and each of its Class Members (as defined herein) in *Rodriguez v. Hort Tech, LLC, et al.*, Riverside County Superior Court Case No. RIC1816212 (“the Litigation”) with the assistance of counsel. Plaintiff and Defendant collectively are referred to in this Agreement as the “Parties.” The Parties agree that the Litigation and the Released Claims (as defined herein) shall be fully and finally compromised, settled and released, and dismissed with prejudice and/or final judgment entered upon the terms and conditions as set forth herein.

### I. DEFINITIONS

In addition to the other terms defined in this Agreement, the terms below have the following meaning:

1. **Administration Costs**: The costs incurred by the Settlement Administrator (as defined in Section I.34 below) to administer this Settlement. All Administration Costs shall be paid from the Qualified Settlement Fund (as defined in Section I.28).
2. **Agreement, Settlement Agreement, or Settlement**: The settlement agreement reflected in this document, titled “Joint Stipulation and Settlement Agreement.”
3. **Attorneys’ Fee Award**: The attorneys’ fees, in an amount not to exceed Two Hundred Sixty Six Thousand Six Hundred Sixty Six Dollars and Sixty Seven

Cents (\$266,666.67), sought by Class Counsel (as defined in Section I.5) and approved by the Court (as defined in Section I.12) for Class Counsel's litigation and resolution of the Litigation, including but not limited to fees incurred associated with litigating the Litigation, negotiating the settlement, documenting the terms of the settlement, providing notices as part of the Settlement, complying with Court orders regarding the Settlement, securing the Court's preliminary and final approval of the Settlement, administering the Settlement, obtaining entry of a judgment terminating the Litigation, and responding to objections or appeals arising out of the Settlement or the Litigation. If the Court awards less than the amounts requested, any amounts not awarded will be part of the Net Settlement Amount (as defined in Section I.20).

4. **Class or Class Member(s)**: All persons who are, or have been employed, by either defendant Hort Tech LLC or defendant Hort Tech, Inc. in California in a non-exempt position at any time during the Class Period (as defined in Section I.8).

5. **Class Counsel**: Andranik Tsarukyan and Armen Zenjiryan of Remedy Law Group LLP.

6. **Class Data**: The information Defendant will provide to the Settlement Administrator as defined in Section III.9.b.

7. **Class Notice or Notice**: The Notice of Class Action Settlement, substantially similar to the form attached hereto as **Exhibit A**, subject to Court approval.

8. **Class Period**: The period from August 7, 2014 to the Preliminary Approval Date.

9. **Class Representative Enhancement Payment**: The amount the Court awards to Plaintiff Arsenia Rodriguez for her effort and work in prosecuting the

Litigation on behalf of all Class Members and paid by Defendant in exchange for the Class Representative's general release of claims, which shall not exceed Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00). This payment shall be paid from the Qualified Settlement Fund. Defendant will not oppose Plaintiff's request for a Class Representative Enhancement Payment in an amount not to exceed Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00). The Class Representative Enhancement Payment is subject to approval of the Court. If the Court awards less than the amount requested, any amounts not awarded will be part of the Net Settlement Amount (as defined in Section I.20).

**10. Cost Award:** The amount that the Court orders to be paid to Class Counsel for payment of recoverable litigation costs, which shall not exceed Ten Thousand Dollars and Zero Cents (\$10,000.00). The Cost Award will be paid from the Qualified Settlement Fund and Defendant will not oppose Class Counsel's Cost Award request for costs in an amount equal to or less than Ten Thousand Dollars and Zero Cents (\$10,000.00). The Cost Award is subject to Court approval. If the Court awards less than the amount requested, any amounts not awarded will be part of the Net Settlement Amount.

**11. Counsel for Defendant:** Attorneys Michael E. DeLarco and Tao Y. Leung of Hogan Lovells US LLP.

**12. Court:** The State of California, Riverside County Superior Court, acting in Case No. RIC1816212.

**13. Employer's Payroll Taxes:** The employer's share of California Unemployment Insurance tax, California Employment Training Tax, the federal Old Age,

Survivors, and Disability Insurance tax, the federal Medicare hospital insurance tax, and the Federal Unemployment Tax Act tax owed by Hort Tech LLC on the wage portion of each Individual Settlement Share (as defined in Section I.18) paid to each Participating Class Member (as defined in Section I.26).

**14. Effective Final Settlement Date:** The date by which all of the following have occurred: the Court has granted Final Judgment or Approval (as defined in Section I.16) to the settlement on the terms set forth in this Joint Stipulation and Settlement Agreement and the Court's Final Judgment or Approval is binding. For purposes of this Settlement, the Final Judgment or Approval shall become binding upon the later of: (i) in the event of a timely appeal filed by a Class Member who has moved to set aside the approval or judgment, the date of final affirmance of the approval or judgment on appeal; (ii) in the event of a timely appeal filed by a Class Member who has moved to set aside the approval or judgment, the date of final dismissal of the appeal or other proceeding on certiorari to review the approval or judgment, with the approval or judgment remaining in force; (iii) in the event a timely Notice of Objection (as defined in Section III.9(c)) is served and filed or submitted by a Class Member, five days after the expiration date of the time for the filing or noticing of any appeal from the approval or judgment if no such appeal is filed or noticed; or (iv) if no Class Member has moved to set aside the approval or judgment, or submitted a timely Notice of Objection, the date of entry of the approval or judgment. For purposes of clarity, the Effective Final Settlement Date cannot occur, and Defendant will not be obligated to fund this settlement or pay the Gross Settlement Amount, until and unless there is no possibility of an appeal or further proceeding that could potentially prevent this settlement from becoming effective, final and binding.

**15. Exclusion Form:** A valid and timely opt-out statement by a Class Member submitted to the Settlement Administrator asking to be excluded from the Settlement, as described further in Section III.9(d).

**16. Final Judgment or Final Approval:** The final order entered by the Court finally approving this Joint Stipulation and Settlement Agreement and entering judgment.

**17. Gross Settlement Amount or GSA:** The total value of the Settlement is a non-reversionary Eight Hundred Thousand Dollars and Zero Cents (\$800,000.00) plus the Employer's Payroll Taxes with respect to the Net Settlement Amount. This is the gross amount Defendant can be required to pay under this Joint Stipulation and Settlement Agreement, which includes without limitation: (1) the Net Settlement Amount to be paid to Participating Class Members and Employer's Payroll Taxes; (2) the Attorneys' Fee Award and Cost Award to Class Counsel; (3) the Class Representative Enhancement Payment; (4) Administration Costs; and (5) the PAGA Payment (as defined in Section I.23), and all other payments, fees, disbursements, costs, taxes, or expenses of any kind awarded to the Class or Class Members or Class Counsel, or otherwise associated with the Settlement. For clarity, the Gross Settlement Amount shall include the employees' share of payroll taxes, but not the Employer's Payroll Taxes. No portion of the Gross Settlement Amount will revert to Defendant for any reason.

**18. Individual Settlement Share(s):** The amount payable to each Participating Class Member under the terms of this Joint Stipulation and Settlement Agreement. Class Members are not required to submit a claim form to receive their Individual Settlement Shares pursuant to this Joint Stipulation and Settlement Agreement.

**19. LWDA:** The California Labor and Workforce Development Agency.

**20. Net Settlement Amount or NSA:** The total amount of money available for payout to Participating Class Members, which is the GSA less the Attorneys' Fee Award, Cost Award, Class Representative Enhancement, the PAGA Payment, and Administration Costs, each as approved and awarded by the Court. For avoidance of doubt, the NSA does not include the Employer's Payroll Taxes.

**21. PAGA Employees:** All persons who are, or have been employed, by either defendant Hort Tech LLC or defendant Hort Tech, Inc. in California in a non-exempt position at any time during the PAGA Period (as defined in Section I.24).

**22. PAGA Fund:** The twenty-five percent (25%) of the PAGA Payment to be distributed to PAGA Employees.

**23. PAGA Payment:** The parties agree that, subject to Court approval, Ten Thousand Dollars and Zero Cents (\$10,000.00) of the Gross Settlement Amount will be allocated to satisfy the California Labor Code Private Attorneys General Act of 2004 (Cal. Labor Code §§ 2698 *et seq.*) ("PAGA") penalties claim as alleged in the Litigation, with seventy-five percent (75%) of the amount (\$7,500.00) paid to the LWDA in compliance with PAGA, and twenty-five percent of the amount (\$2,500.00) shall be distributed to PAGA Employees.

**24. PAGA Period:** The period of August 21, 2017, to the date Preliminary Approval is granted.

**25. PAGA Released Claims:** Plaintiff, on behalf of herself, all aggrieved employees, and as a representative of the State of California as a private attorney general, and all PAGA Employees fully release and forever discharge the Released Parties (as defined in Section I.30) from any and all claims for PAGA penalties under California

Labor Code sections 2698, et seq. during the PAGA Period. It is the desire of the Parties to fully, finally, and forever settle, compromise and discharge any and all PAGA claims that were raised, or could have been raised based on the factual allegations contained in the First Amended Complaint and Plaintiff's PAGA letter, during the PAGA Period (as defined in Section I.24). In order for the Released Parties to achieve a full and complete release, each PAGA Employee acknowledges that this Settlement is intended to include in its effect all PAGA claims of any nature. As a result of this release, the PAGA Employees will be unable to bring a claim under the California Private Attorneys General Act, California Labor Code sections 2698 et seq., for any alleged violations of the PAGA Released Claims during the Release Period. For the avoidance of doubt, the PAGA Released Claims also include any and all claims and related PAGA penalties alleged in the First Amended Complaint filed in the Litigation as well as any and all PAGA penalties that were or could have been pled based upon the factual allegations contained in the First Amended Complaint, or were or could have been pled based upon the factual allegations contained in Plaintiff's PAGA letter. The PAGA Released Claims shall extend for the entire PAGA Period.

**26. Participating Class Members:** All Class Members except those: (1) who submit a valid and timely Exclusion Form; or (2) before the date of Preliminary Approval, that released any Defendant from wage and hour claims, including but not limited to wage and hour claims included in a general release of claims, as a result of a settlement reached in any other matter.

**27. Preliminary Approval or Preliminary Approval Order:** The Court's order preliminarily approving the proposed Settlement.

**28. Qualified Settlement Fund or QSF:** A fund within the meaning of Section 468B of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder, that is established by the Settlement Administrator for the benefit of Participating Class Members, PAGA Employees, Plaintiff and Class Counsel. This amount shall be made up of the Gross Settlement Amount.

**29. Released Claims:** The claims that Plaintiff and the other Participating Class Members are releasing in exchange for the consideration provided for by this Agreement, including any and all claims under the California wage orders of the Industrial Welfare Commission (8 Cal. Code. Regs. sections 11010, *et seq.*), California Labor Code, California Business & Professions Code (including but not limited to Business & Professions Code section 17200), California Code of Civil Procedure, the Private Attorneys General Act of 2004, as well as any and all debts, rights, demands, liabilities, obligations, guarantees, penalties, costs, expenses, attorneys' fees, damages, liquidated damages, actions, or causes of action, of whatever kind or nature, whether known or unknown, contingent or accrued, from the beginning of time through the Preliminary Approval Date, and any and all claims under California, federal, or local law that arise out of or relate to the allegations asserted in the Litigation, which are asserted in the Litigation, were or could have been pled based upon the factual allegations contained in the Litigation and those based on the facts and claims asserted in the pleadings or Plaintiff's PAGA letter for (1) failure to provide meal periods; (2) failure to provide rest periods; (3) failure to pay overtime wages; (4) failure to pay minimum wages; (5) failure to maintain required records; (6) failure to provide accurate wage statements; and (7) any related claims for unfair business practices in violation of California's Business and



Professions Code, Section 17200. The release will be as to the Released Parties during the Release Period. The Released Claims include all claims described above—that is, those claims that are or reasonably could have been asserted in the First Amended Complaint—whether known or unknown. The Released Claims include any and all claims for wages, bonus pay, reporting time pay, commissions, incentive pay, overtime pay, premium pay such as meal and rest period premiums, final wages, minimum wages, off-the-clock work, business expense reimbursements, penalties such as penalties for incorrect wage statements, wages due on termination, liquidated damages or any pay, premium, or penalty provided for under the California Labor Code or other applicable wage-and-hour statute. Thus, if a Class Member participates in the Settlement, then even if the Class Member discovers facts in addition to or different from those that he or she now knows or believes to be true or otherwise fails to discover facts, with respect to the subject matter of the Released Claims, those claims will remain released and forever barred.

**30. Released Parties:** Hort Tech, One Rock Capital Partners, LLC, and their respective past, present and future officers, directors, employees, and agents.

**31. Release Period:** The time period from August 7, 2014 through the date the Court grants Preliminary Approval.

**32. Response Deadline:** Forty-five (45) calendar days from the initial mailing of the Class Notice.

**33. Settlement Administration:** The Settlement Administrator will conduct all Settlement Administration duties as described in this Joint Stipulation and Settlement Agreement and as ordered by the Court.

**34. Settlement Administrator:** The third-party administrator Phoenix Class Action Administration Solutions, or another class action settlement administrator agreed to by the Parties, as approved by the Court for the purposes of administering the Settlement. The Parties each represent that they do not have any financial interest in, or otherwise have a relationship that could create a conflict of interest with, the Settlement Administrator.

**35. Workweek:** The number of calendar weeks each Class Member worked one or more day for Defendant during the Class Period.

## **II. RECITALS**

1. The Litigation was filed by Plaintiff on August 7, 2018, in Riverside County Superior Court, Case No. RIC1816212. On August 21, 2018, Class Counsel, on behalf of Plaintiff, filed and served a Notice of Labor Code Violations Pursuant to Labor Code Section 2699.3. On January 8, 2019, Plaintiff filed a First Amended Complaint adding a Private Attorney's General Act cause of action.

2. Defendant answered the Complaint and First Amended Complaint, denying all allegations.

3. The Parties agreed to mediate the case, and a mediation took place with mediator Lynn Frank on April 16, 2019.

4. Prior to the mediation, the Parties conducted investigation and discovery of the facts and law. Prior to mediation, Defendant produced documents relating to its policies, practices, and procedures regarding paying non-exempt employees for all hours worked; meal and rest period policies; and general payroll policies and procedures. As part of Defendant's production, Plaintiff also reviewed time records, pay records, and

information relating to the size and scope of the Class, as well as data permitting Plaintiff to understand the number of Workweeks in the Release Period. Plaintiff believes that the above-described investigation and evaluation, as well as the information exchanged during the settlement negotiations before, during and after the mediation, are more than sufficient to assess the merits of the respective Parties' positions and to compromise the issues on a fair and equitable basis.

5. **Benefits of Settlement to Class Members.** Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to continue the litigation against Defendant through trial and through any possible appeals. Plaintiff and Class Counsel also have taken into account the uncertainty and risk of further litigation, the potential outcome, and the difficulties and delays inherent in such litigation. Plaintiff and Class Counsel have conducted extensive settlement negotiations, including formal conversations and written correspondence before and after the April 16, 2019 mediation. Based on the foregoing, Plaintiff and Class Counsel believe the Settlement set forth in this Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the Class Members.

6. **Defendant's Denial of Wrongdoing.** Defendant generally and specifically denies any and all liability or wrongdoing of any sort with regard to any of the claims alleged, makes no concessions or admissions of liability of any sort, and contends that for any purpose other than settlement, the Litigation is not appropriate for class treatment. Defendant asserts a number of defenses to the claims and has denied any wrongdoing or liability arising out of any of the alleged facts or conduct in the Litigation. This Agreement, any document referred to or contemplated herein, any other ancillary

documents, filings, statements, or any actions taken by any of the Parties, shall not be construed as, and cannot be used as an admission, concession, evidence, or indication by or against Defendant or any of the Released Parties of any fault, wrongdoing, liability whatsoever, or for purposes of class, collective, or representative action, certification, or for any other purpose whatsoever. There has been no final determination by any court as to the merits of the claims asserted by Plaintiff against Defendant or as to whether a class or classes should be certified, other than for settlement purposes only.

7. **Plaintiff's Claims.** Plaintiff asserts that Defendant's defenses are without merit. However, in the event that this Settlement is finally approved by the Court, Plaintiff, Class Members, and Class Counsel will not oppose Defendant's efforts to use this Agreement to prove that Plaintiff and Class Members have resolved and are forever barred from re-litigating the Released Claims.

### III. SETTLEMENT TERMS AND CONDITIONS

1. **Dismissal of Monarch Landscape Holdings, LLC.** Within ten (10) business days after the parties' execution of this Joint Stipulation and Settlement Agreement, Plaintiff will dismiss defendant Monarch Landscape Holdings, LLC from the Litigation with prejudice.

2. **Gross Settlement Amount.** The Gross Settlement Amount is an "all in" maximum amount that shall cover any and all payments and disbursements associated with the Settlement, and Defendant may not be called upon or required to contribute additional monies above the Gross Settlement Amount and the Employer's Payroll Taxes under any circumstances whatsoever. This is a non-reversionary settlement, and if the Settlement becomes final and binding, there will be no reversion of the Gross Settlement

Amount to Defendant. Except as provided in this Joint Stipulation and Settlement Agreement, each Party and Class Member shall bear its or her own attorneys' fees and costs.

3. **Return of Funded Amounts if Settlement Does Not Take Effect.** In the event that the Settlement is canceled, rescinded, terminated, voided, or nullified, in whole or in part, however that may occur, or the Settlement is barred by operation of law, is invalidated, is not approved or otherwise is ordered not to be carried out by a court of competent jurisdiction, Defendant shall cease to have any obligation to pay any portion of the Gross Settlement Amount to anyone under the terms of this Joint Stipulation and Settlement Agreement, and all previous disbursements from the Gross Settlement Amount shall immediately be repaid to Defendant by the person or entity who received such disbursement.

4. **Class Certification for Settlement Purposes Only.** Solely for the purposes of this Settlement, the Parties conditionally stipulate and agree to certification of the claims asserted on behalf of Class Members. As such, the Parties stipulate and agree that in order for this Settlement to occur, the Court must certify the Class for the purpose of settlement as defined in this Joint Stipulation and Settlement Agreement. If, for any reason, the Settlement does not become effective, the fact that the Parties were willing to stipulate to certification as part of the Settlement shall not be admissible or used in any way in connection with the question of whether the Court should certify any claims in a non-settlement context in this Lawsuit or in any other lawsuit. If the Settlement does not become effective, Defendant reserves the right to contest any issues relating to class certification and liability.

5. **Appointment of Class Representative.** Solely for the purposes of this Settlement, the Parties stipulate and agree Plaintiff shall, subject to Court approval, be appointed as the representative for the Class.

6. **Appointment of Class Counsel.** Solely for the purpose of this Settlement, the Parties stipulate and agree that the Court appoint Class Counsel to represent the Class.

7. **Individual Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay an Individual Settlement Share from the Net Settlement Amount to each Participating Class Member. Each Participating Class Member's gross Individual Settlement Share shall be determined based on the following formula:

a. dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members ("Individual Settlement Share Workweek Value");

b. multiplying the Individual Settlement Share Workweek Value by the total number of Workweeks worked by the Participating Class Member.

The value of each Participating Class Member's Individual Settlement Share ties directly to the amount of Workweeks that he or she worked. The gross amount of each Individual Settlement Share will be reduced by required withholding and deductions for employee taxes on the wage portion of the Individual Settlement Share on the terms set forth in this Joint Stipulation and Settlement Agreement. In no event shall the total Individual Settlement Shares paid to Participating Class Members exceed the Net Settlement Amount. If Workweek data is not available for any Participating Class Member, that Participating Class Member's total Workweeks shall be calculated using some other

reasonable basis, such as the first and last dates of employment with Defendant but excluding any leave or non-work periods exceeding three (3) consecutive days.

c. **Payment to PAGA Employees.** The portion of the PAGA Fund that is paid to each PAGA Employee (“Individual PAGA Share”) shall be determined based on the following formula:

(i) dividing the value of the portion of the PAGA Fund that will be paid to PAGA Employees (\$2,500) by the total number of Workweeks worked by all PAGA Employees during the PAGA Period (“PAGA Workweek Value”);

(ii) multiplying the PAGA Workweek Value by the total number of Workweeks worked by each PAGA Employee during the PAGA Period.

The payment to the PAGA Employees is on account of a claim for penalties. As such, it shall not be treated as wages, and the Settlement Administrator shall issue a Form 1099 to PAGA Employees for this payment. For the avoidance of doubt, an individual who is both a Participating Class Member and a PAGA Employee will receive: (1) an Individual PAGA Share payment and (2) an Individual Settlement Share payment. If Workweek data is not available for any PAGA Employee, that PAGA Employee’s total Workweeks shall be calculated using some other reasonable basis, such as the first and last dates of employment with Defendant but excluding any leave or non-work periods exceeding three (3) consecutive days. In no event shall the total Individual PAGA Shares paid to PAGA Employees exceed \$2,500.

d. **Tax Withholdings.** Each Participating Class Member’s gross Individual Settlement Share payment will be apportioned as follows: 20% wages and 80% interest and penalties. The amounts paid as wages by the Settlement Administrator shall

be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported by W-2 forms. Payment of all amounts will be made subject to backup withholding unless a duly executed W-9 form is received from the payee(s). The amounts paid as penalties and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms. The Settlement Administrator will withhold the employee share of payroll tax and required income tax from each Participating Class Members' Individual Settlement Share. For the avoidance of doubt, the employee's share of payroll taxes is included in the Gross Settlement Amount.

**8. Settlement Disbursement.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will make the following payments from the Gross Settlement Amount:

a. **To the Plaintiff Arsenia Rodriguez:** In addition to her respective Individual Settlement Share, and subject to the Court's approval, Plaintiff will receive the Class Representative Enhancement Payment. The Settlement Administrator will pay the Class Representative Enhancement Payment out of the Qualified Settlement Fund. Because the Class Representative Enhancement Payment is intended to compensate the Class Representative for her service to Class Members, and is not intended by the Parties to be wages, Payroll and income taxes will not be withheld from the Class Representative Enhancement Payment. An IRS Form 1099 will be issued to Plaintiff with respect to her Class Representative Enhancement Payment. Plaintiff agrees to assume the responsibility of remitting to the Internal Revenue Service, the California Franchise Tax



Board, and any other relevant taxing authority the amounts required by law, if any, to be withheld from the Class Representative Enhancement Payment, and Plaintiff assumes all responsibility and liability for reporting and paying any taxes due on the Class Representative Enhancement Payment received by her. Plaintiff shall hold Defendant, the Released Parties, and Defense Counsel harmless and indemnify each of them for all taxes, interest, penalties, and costs, including attorneys' fees, incurred by reason of any claims against her arising from or relating to the non-withholding of taxes from the Class Representative Enhancement Payment. In the event the Court does not approve the entirety of the application for the Class Representative Enhancement Payment, the Settlement Administrator shall pay from the Gross Settlement Amount whatever amount the Court awards, and neither Defendant nor the Settlement Administrator shall be responsible to Plaintiff for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Plaintiff, the difference shall become part of the NSA and be available for distribution to Participating Class Members.

b. **To Class Counsel.** Before the final approval and fairness hearing, and with required statutory notice, Class Counsel will apply to the Court for, and Defendant agrees not to oppose, a total Attorneys' Fee Award not to exceed Two Hundred Sixty Six Thousand Six Hundred Sixty Six Dollars and Sixty Seven Cents (\$266,666.67), of the Gross Settlement Amount and a Cost Award not to exceed Ten Thousand Dollars and Zero Cents (\$10,000.00). If requested by the Settlement Administrator, Class Counsel will provide the Settlement Administrator with a completed and signed Form W-9 within fifteen (15) calendar days after the Effective Final

Settlement Date. The Settlement Administrator will pay the court-approved amounts for the Attorneys' Fee Award and Cost Award out of the Gross Settlement Amount. Payroll taxes will not be withheld from the Attorneys' Fee Award or the Cost Award. IRS Forms 1099 will be issued to Class Counsel by the Settlement Administrator for these payments. Class Counsel shall hold Defendant, the Released Parties, and Defense Counsel harmless and indemnify each of them for all taxes, interest, penalties, and costs, including attorneys' fees, incurred by reason of any claims against it arising from or relating to the non-withholding of taxes from the Attorneys' Fees and Cost Award. In the event the Court does not approve the entirety of the application for the Attorneys' Fee Award and/or Cost Award, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendant nor the Settlement Administrator shall be responsible for paying the difference to Class Counsel between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Class Counsel for the Attorneys' Fee Award and/or Cost Award, the difference shall become part of the NSA and be available for distribution to Participating Class Members.

c. **To the Appropriate Tax Authorities.** The Settlement Administrator will be responsible for forwarding all payroll taxes and penalties to the appropriate government authorities. All Settlement payments shall be deemed to be paid to each Participating Class Member and Plaintiff solely in the year in which the payment is actually received.

d. **To the Settlement Administrator.** In conjunction with the motion for final approval, Plaintiff will seek an order from the Court authorizing the payment of the Administration Costs. The Settlement Administrator will be authorized to

deduct the Court-approved Administration Costs from the Qualified Settlement Fund twenty (20) calendar days after the Effective Final Settlement Date. The Administration Costs will be paid from the Gross Settlement Amount, including, if necessary, any such costs in excess of the amount represented by the Settlement Administrator as being the maximum costs necessary to administer the Settlement. The Settlement Administrator will pay to itself Administration Costs (reasonable fees and expenses) approved by the Court not to exceed Seventeen Thousand Five Hundred Dollars and Zero Cents (\$17,500.00). The Parties will cooperate in the administration of the Settlement and will make reasonable efforts to minimize the Settlement Administration Costs. If the actual amount of Administration Costs is less than the amount estimated and/or requested, the difference shall become part of the NSA and be available for distribution to Participating Class Members.

e. **To Class Members.** The Settlement Administrator will pay Participating Class Members according to the Individual Settlement Share calculations set forth above. All payments to Participating Class Members shall be made from the NSA.

f. **PAGA Payment.** The Parties allocate Ten Thousand Dollars and Zero Cents (\$10,000.00) to the PAGA claims. Of that amount, the Settlement Administrator will pay seventy-five percent (75%), or Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00), to the LWDA and twenty-five percent (25%), or Two Thousand Five Hundred Dollars and Zero Cents (\$2,500.00), will be in the PAGA Fund for distribution to PAGA Employees.

**9. Appointment of Settlement Administrator.** Solely for the purposes of this Settlement, the Parties stipulate that a Settlement Administrator will be appointed based on mutual agreement of the parties. The Parties have selected Phoenix Class Action Administration Solutions as the Settlement Administrator. The Settlement Administrator shall be responsible for preparing, printing, and mailing the Class Notice; keeping track of any objections or requests for exclusion from Class Members; performing skip traces and re-mailing Notices and Individual Settlement Shares to Class Members; calculating any and all payroll and income tax amounts to be withheld as required by law and this Joint Stipulation and Settlement Agreement; calculating each Class Member's Individual Settlement Share; calculating each PAGA Employee's Individual PAGA Share; providing weekly status reports to Defendant's Counsel and Class Counsel, which is to include updates on and copies of any objections or requests for exclusion that have been received; contacting objecting Class Members, when applicable, to resolve any uncertainties contained in their Notice of Objection, providing a due diligence declaration for submission to the Court prior to the Final Approval hearing which shall include authenticating a copy of every Notice of Objection and Request for Exclusion received by the Settlement Administrator; mailing Individual Settlement Shares to Participating Class Members; mailing the PAGA Fund Shares to individual PAGA Employees ; calculating and mailing seventy-five percent (75%) of the PAGA Payment to the LWDA as ordered by the Court; distributing the Attorneys' Fee Award and Cost Award to Class Counsel; printing and providing Class Members and Plaintiff with W-2s and 1099 forms as required under this Joint Stipulation and Settlement Agreement and applicable law; providing a due diligence declaration for submission to

the Court upon the completion of the Settlement; providing any funds remaining in the Qualified Settlement Fund as a result of uncashed checks as ordered by the Court, including the administration of related tax items; and for such other tasks as the Parties mutually agree. The Settlement Administrator will carry out any additional duties as set forth in this Joint Stipulation and Settlement Agreement or as ordered by the Court.

**10. Procedure for Approving Settlement.**

**a. Motion for Preliminary Approval and Conditional Certification.**

(i) Plaintiff will, by way of regularly noticed motion pursuant to California Rule of Court (“CRC”) 3.769(c), seek Preliminary Approval of the Settlement and an order: (i) appointing Class Counsel, Class Representative, and the Settlement Administrator, (ii) conditionally certifying the Class for settlement purposes only, (iii) preliminary approving the terms of the Settlement, subject to the Court approving the amount of the Attorneys’ Fees Award, Cost Award, Class Representative Enhancement Payment, and Administration Costs at the final approval / settlement fairness hearing, (iv) scheduling a final approval / settlement fairness hearing, (v) ordering the Parties to administer the Settlement; (vi) approving the Class Notice to be sent to all Class Members; and (vii) enjoining Class Members from filing or prosecuting any claims, suits, or administrative proceedings regarding the Released Claims and PAGA Released Claims from the time Class Notices are mailed to Class Members until such Class Members have filed valid Requests for Exclusion with the Settlement Administrator. The motion for Preliminary Approval will attach as exhibits: (i) the Settlement Agreement and (ii) the Class Notice. The motion for Preliminary Approval

will be supported by admissible evidence, in the form of declarations of Class Counsel, that address the potential value of each claim being settled, the value of other forms of relief, and the allocation of the Individual Settlement Shares between wages and non-wages, all as sufficient to satisfy the standard set forth in *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4<sup>th</sup> 116 (2008). Class Counsel will be responsible for drafting all documents, pleadings and declarations necessary to obtain Preliminary Approval, including a Proposed Order Granting Preliminary Approval that includes the requisite language and adequate information to provide clear instructions to the Settlement Administrator, and that attaches the Class Notice. Plaintiff will provide a draft of the Preliminary Approval motion to Defendant for review prior to filing.

(ii) At the Preliminary Approval hearing, the Plaintiff, through her attorneys, will appear, support and argue for the granting of the motion, and submit a proposed order that grants conditional certification of the Class and Preliminary Approval of the Settlement; appoints the Class Representative, Class Counsel, and Settlement Administrator; approves the Class Notice; and sets the Final Approval hearing.

(iii) Should the Court decline to Preliminarily Approve all material aspects of the Settlement, the Settlement will be null and void, and the Parties will have no further obligations under it. The Parties agree that if the Court declines to preliminarily approve non-material aspects of the Settlement, the Parties will work cooperatively to make such changes required by the Court. In the event that the Settlement Agreement is null and void, the parties will be equally responsible to the Settlement Administrator for the costs of such Administration Costs actually incurred to

date, in an amount not to exceed Seventeen Thousand Five Hundred Dollars and Zero Cents (\$17,500.00).

b. **Notice to Class Members.** After the Court enters its Preliminary Approval Order, every Class Member will be provided with the Class Notice in accordance with the following procedure:

(i) Within forty-five (45) days after entry of the Preliminary Approval Order, Defendant shall deliver to the Settlement Administrator the following information about each Class Member in an Excel spreadsheet or other electronic database (“Class Data”): (1) first and last name; (2) last known mailing address; (3) social security number; (4) dates of employment with Defendant; (5) the total number of Workweeks each Class Member worked during the Release Period; and (6) the total number of Workweeks during which each PAGA Employee performed any actual work during the PAGA Period. If any or all of this information is unavailable to Defendant, Defendant will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon how to deal with the unavailable information. The Settlement Administrator will conduct a search on the National Change of Address database for the address of all former Defendant employee Class Members prior to mailing. The Class Data shall be based on Defendant’s payroll, personnel files, and other business records. The Settlement Administrator shall maintain the Class Data and all data contained within the Class Data as private and confidential. The Settlement Administrator shall use commercially reasonable efforts to avoid inadvertent or unauthorized disclosure or use of such data other than as permitted by this Settlement Agreement and shall destroy the data (and all copies) in a complete and secure manner

when such data is no longer required for purposes of this Settlement Agreement. The Settlement Administrator shall use this data solely for the purposes of effectuating this Settlement and will comply with all state and federal laws that protect the privacy of current and former employees and personnel of Defendant.

Within fourteen (14) days after receipt of the Class Data, the Settlement Administrator will mail the Class Notice to all identified Class Members via first-class regular U.S. Mail, using the mailing address information provided by Defendant and the results of the search on the National Change of Address database performed on all former Defendant employee Class Members. The envelope containing the Class Notice shall bear the following phrase, in bold type, 1/4 inch below the return address or 1/4 inch above the addressee's address: **RETURN SERVICE REQUESTED.**

(ii) If a Class Notice is returned because of an incorrect address, within seven (7) days from receipt of the returned Class Notice, the Settlement Administrator will promptly resend the Class Notice, via regular first class mail, to the forwarding address for the Class Member, if any, on the return envelope, and the Settlement Administrator will indicate the date of re-mailing on the Class Notice. The Settlement Administrator will re-mail returned Class Notices only once per Class Member regardless of the number of forwarding addresses received, unless counsel for all Parties agree further mailings are necessary. If no forwarding address is provided on non-deliverable Class Notices, the Settlement Administrator will promptly make one attempt to find a valid address for the Class Member using the National Change of Address Database or one skip trace to attempt to find the current address, and if an address is found, will then perform a single re-mailing to the new address. The Settlement



Administrator will follow the same process for any Individual Settlement Share payments or Individual PAGA Share payments returned as non-deliverable, but in no event will the Settlement Administrator perform more than one skip trace per Class Member. If Class Members dispute any of the information provided in their Class Notice, the Settlement Administrator will resolve the disputes in its discretion. Defendant's records will be presumed correct, but the Settlement Administrator will evaluate the evidence submitted by the Class Members and counsel in order to make a final decision on the merits of any dispute. All disputes will be decided no later than ten (10) business days in advance of the Response Deadline, and disputes raised or received by the Settlement Administrator after that date shall be considered untimely and denied.

(iii) If any Exclusion Form received is incomplete or deficient, the Settlement Administrator shall, within three (3) business days of receiving such a request, send a letter informing the Class Member of the deficiency, identify the defect(s), and state that the defect(s) must be cured in writing if the Class Member wishes to be excluded from the Settlement. The Settlement Administrator will also copy (via email) Class Counsel and Defense Counsel with any such notices of deficiency. The Class Member will have until the later of the Response Deadline or ten (10) calendar days from the date of mailing of the notice of deficiency, whichever is later, to mail or fax a corrected Request for Exclusion to the Settlement Administrator. If the corrected Exclusion Form is not postmarked or received by fax within the cure period, the Exclusion Form will be deemed untimely. Requests for Exclusion, whether original or corrected, that are not timely shall not be considered, and the corresponding Class Member will be classified as a Participating Class Member who is bound by the

Settlement. If after the cure period the Exclusion Form is not cured, it will be determined that the Class Member did not exclude himself from the Settlement and will be bound by the Settlement.

(iv) The Settlement Administrator shall provide a weekly status report to the Parties. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defendant's Counsel of the number of Class Notices mailed, the number of Class Notices returned as undeliverable, the number of Notices re-mailed, whether any Class Member has submitted a challenge to any information contained in his or her Class Notice, and the number of objections to the settlement received (and copies of the same), the number of valid Exclusion Forms received, and any other updates on the administration of the Settlement as needed or requested.

(v) No later than fourteen (14) days after the Response Deadline, the Settlement Administrator will serve on the Parties a declaration of due diligence setting forth its compliance with its obligations under this Agreement. The declaration from the Settlement Administrator shall also be filed with the Court by Class Counsel no later than ten (10) days before the Final Approval hearing. Before the Final Approval hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration, and such declaration shall include a statement authenticating each Notice of Objection and Exclusion Form received by the Settlement Administrator.

c. **Objections to Settlement.** The Class Notice will provide that the Class Members who wish to object to the Settlement must inform the Settlement Administrator in writing of his or her intention to object by submitting a valid Notice of

Objection in the manner required in this Settlement on or before the Response Deadline. The timeframe to submit a Notice of Objection will not be increased for returned mailings. All Notices of Objection, supporting papers and/or notices of intent to appear at the final approval hearing must (i) clearly identify the case name and number *Rodriguez v. Hort Tech, LLC, et al.*, Riverside County Superior Court Case No. RIC1816212, Riverside County Superior Court), (ii) state the objecting Class Member's full name, address, and telephone number (iii) be mailed to the Settlement Administrator at the address provided in the Class Notice, and (iv) be postmarked on or before the Response Deadline. Class Members who fail to serve timely written objections and who fail to object in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement. If a Class Member timely submits both a Notice of Objection and a Request for Exclusion, the Request for Exclusion will be given effect and considered valid, the Notice of Objection shall be rejected, and the Class Member shall not participate in or be bound by the Settlement. Any Class Member who does not submit a timely Notice of Objection that includes the required information, or who fails to otherwise comply with the specific and technical requirements of this section, will be foreclosed from objecting to the Settlement and seeking any adjudication or review of the Settlement, by appeal or otherwise.

(i) **Option to Appear.** Class Members who timely submit valid objections to the Settlement may (though are not required to) appear at the Final Approval Hearing, either in person or through the objector's own counsel, provided the objector has timely and fully complied with the specific and technical requirements for

Notices of Objection. A timely filed valid Notice of Objection will still be considered even if an objecting Class Member does not appear at the Final Approval Hearing, either in person or through the objector's own counsel.

d. **Request for Exclusion from the Settlement (“Opt-Out”).**

Members of the Settlement Class shall have until the Response Deadline (and in the case of a re-mailed Class Notice, the Response Deadline or fourteen (14) days from the date of re-mailing, whichever is later) to request to opt out. The Class Notice will provide that Class Members who wish to exclude themselves from the Settlement must mail to the Settlement Administrator an Exclusion Form. To be valid, a written request to opt out must: (1) state the Class Member's name, last four digits of his or her social security number, address and telephone number; (2) state that the Class Member wishes to opt out from the Settlement; (3) be signed by the Class Member or his or her lawful representative; and (4) be postmarked no later than the Response Deadline (and in the case of a re-mailed Class Notice, the Response Deadline or fourteen (14) days from the date of re-mailing, whichever is later). Members of the Settlement Class that are PAGA Employees who opt-out shall still be provided an Individual PAGA Share and still are subject to the release of the PAGA Released Claims.

(i) **Confirmation of Authenticity.** If there is a question about the authenticity of a signed request for exclusion, the Settlement Administrator may demand additional proof of the Class Member's identity. Any Class Member who returns a timely, valid, and executed Exclusion Form will not participate in or be bound by the Settlement and subsequent judgment (except with respect to the PAGA Share and PAGA Released Claims as set forth in subsection 9(d) above) and will not receive an Individual

Settlement Share. Any Class Member who does not submit a timely and valid Exclusion Form will be deemed to be a Participating Class Member whose rights, claims, and obligations are determined, and who is bound, by all of the terms of this Settlement Agreement, including its release provisions, as well as any judgment that may be entered by the Court in connection with the Settlement. The Parties expressly acknowledge and agree that any Class Member who does not submit a valid Exclusion Form pursuant to this Joint Stipulation and Settlement Agreement will be bound by the terms of this Joint Stipulation and Settlement Agreement, even if such Class Member cashed an Individual Settlement Share that was issued in error, was not issued an Individual Settlement Share in error, did not cash his or her Individual Settlement Share, or failed to receive the Class Notice.

(ii) **Report.** No later than seven (7) days after the Response Deadline, the Settlement Administrator will provide the Parties with a complete and accurate accounting of the number of Class Notices mailed to Class Members, the number of Class Notices returned as undeliverable, the number of Class Notices re-mailed to Class Members, the number of re-mailed Class Notices returned as undeliverable, the number of Class Members who objected to the Settlement and copies of their submitted objections, the number of Class Members who returned valid Exclusion Forms and copies of those Exclusion Forms, and the number of Class Members who returned invalid Exclusion Forms.

(iii) **Defendant's Option to Terminate.** If at any time prior to Final Approval more than five percent (5%) of the Class Members submit Exclusion Forms, Defendant, at its sole option, may withdraw from the Settlement and this

Agreement is null and void. Should this occur, the Parties agree they shall be equally responsible for the Settlement Administrator's Administration Costs incurred through that date, which shall not be more than \$17,500. The Settlement Administrator shall provide Defense Counsel with the information necessary to effectuate this provision on a regular basis, but no less frequently than every two weeks.

e. **No Solicitation of Objection or Requests for Exclusion.** Neither the Parties nor their respective counsel will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, request exclusion from the Settlement, or appeal from the Judgment. Class Counsel will not represent any Class Members with respect to any such objections to this Settlement.

f. **Motion for Final Approval.**

(i) Class Counsel will file unopposed motions and memorandums in support of Final Approval of the Settlement and the following payments in accord with the terms of the Settlement: (1) the Attorneys' Fee Award; (2) the Cost Award; (3) Administrative Costs; (4) the Class Representative Enhancement Payment; and (5) the PAGA Payment. The final approval/settlement fairness hearing will be held no sooner than thirty (30) calendar days after the Response Deadline. Class Counsel will be responsible for drafting all documents necessary to obtain final approval. Class Counsel will also move the Court for an order of Final Approval (and associated entry of Judgment) releasing and barring any Released Claims and PAGA Released Claims of the Class Members who do not opt out of the Settlement.

(ii) If the Court does not grant Final Approval of the Settlement, or if the Court's Final Approval of the Settlement is reversed or materially modified on

appellate review, then this Settlement will become null and void. If that occurs, the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount or any amounts that otherwise would have been owed under this Agreement. Further, should this occur, the Parties agree they shall be equally responsible for the Settlement Administrator's Administration Costs incurred through that date, which shall not be more than \$17,500. An award by the Court of a lesser amount than sought by Plaintiff and Class Counsel for the Class Representative Enhancement, Attorneys' Fee Award, Cost Award or Settlement Administrator Administration Costs Award will not constitute a material modification to the Settlement within the meaning of this paragraph.

(iii) Upon Final Approval of the Settlement, the Parties shall present to the Court a proposed Final Approval Order, approving of the Settlement and entering Judgment in accordance therewith. After entry of Judgment, pursuant to CRC 3.769(h), the Court shall have continuing jurisdiction over the Action for purposes of: (1) interpreting and enforcing this Settlement Agreement; (2) addressing settlement administration matters, and (3) addressing such post-Judgment matters as may be appropriate under Court rules, this Settlement Agreement, and applicable law.

g. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms and conditions of this Joint Stipulation and Settlement Agreement, if Class Members do not timely object to the Settlement, then the Parties and their respective counsel waive any and all rights to appeal from the Judgment, including, but not limited to, all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate or set aside judgment, and any extraordinary writ, and the

Judgment will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceeding, or post-judgment proceeding. Defendant, through its attorneys, shall cooperate with Class Counsel in opposing any appeal, appellate proceeding, or post-judgment proceeding.

h. **Vacating, Reversing, or Modifying Judgment on Appeal.** If, after a notice of appeal, the reviewing court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement, and that Court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher court, then this Settlement will become null and void and the Parties will have no further obligations under it. A material modification would include, but not necessarily be limited to, any alteration of the Gross Settlement Amount and an alteration in the calculation of the Net Settlement Amount or PAGA Payment.

i. **Disbursement of Settlement Shares and Payments.** Subject to the Court finally approving the Settlement, the Settlement Administrator shall distribute funds pursuant to the terms of this Joint Stipulation and Settlement Agreement and the Court's Final Approval Order and Judgment. The maximum amount Defendant can be required to pay under this Settlement for any purpose is the Gross Settlement Amount. The Settlement Administrator shall keep Defendant's Counsel and Class Counsel apprised of all distributions from the Gross Settlement Amount. The Settlement Administrator shall respond to questions from Defendant's Counsel and Class Counsel. No person shall have any claim against Defendant, Defendant's Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on the distributions and payments made in accordance with this Agreement.



(i) **Funding the Settlement:** No later than thirty (30) calendar days after the Effective Final Settlement Date, Defendant shall transfer the Gross Settlement Amount of Eight Hundred Thousand Dollars and Zero Cents (\$800,000.00) by wiring the funds into a Qualified Settlement Fund set up and controlled by the Settlement Administrator. In addition, no later than thirty (30) calendar days after the Effective Final Settlement Date, the Settlement Administrator shall provide to Defendant the amount of the Employer's Payroll Taxes with respect to the Net Settlement Amount. Defendant shall transfer this amount into a Qualified Settlement Fund set up and controlled by the Settlement Administrator within fifteen (15) business days after receiving the amount of Employer's Payroll Taxes from the Settlement Administrator.

(ii) **Disbursement:** Within twenty (20) calendar days after the Effective Final Settlement Date, the Settlement Administrator shall calculate and pay all payments due under the Settlement Agreement, including all Individual Settlement Shares, the Attorneys' Fee Award, the Cost Award, the Class Representative Enhancements, the PAGA Payment (including Individual PAGA Shares), and the Administration Costs.

(iii) **Qualified Settlement Fund ("QSF"):** The Parties agree that the QSF is intended to be a "Qualified Settlement Fund" under Section 468B of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder, and will be administered by the Settlement Administrator as such. The Parties shall cooperate in securing an order of the Court to establish the QSF in accordance with the terms hereof in conjunction with its Final Approval of the Settlement. The Court will retain jurisdiction over the administration of the QSF. The Parties and

Settlement Administrator shall treat the QSF as coming into existence as a Qualified Settlement Fund on the earliest date permitted as set forth in Treasury Regulations Section 1.468B-1, and such election statement shall be attached to the appropriate returns as required by law. Any taxes due as a result of income earned by the QSF will be paid by the QSF.

j. **Uncashed Checks.** Participating Class Members and PAGA Employees must cash or deposit their Individual Settlement Share checks and/or their PAGA Fund Share checks within one hundred and eighty (180) calendar days after the checks are mailed to them. If any checks are not redeemed or deposited within this time period, they will expire and become non-negotiable. Any unclaimed amounts from the Gross Settlement Amount, including but not limited to Individual Settlement Shares and PAGA Fund Shares that remain uncashed after 180 days and any unclaimed settlement funds, shall be paid in the form of a donation to The Boys and Girls Clubs of Coachella Valley, a 501(c)(3) tax-exempt non-profit organization.

k. **Notice to LWDA.** Class Counsel will be responsible for timely submitting any copies of judgments or orders that are required to be submitted to the LWDA, including but not limited to the proposed Settlement to the LWDA pursuant to Labor Code section 2699(1)(2).

l. **Final Report by Settlement Administrator.** Within ten (10) days of completion of administration of the Settlement, the Settlement Administrator will serve on the Parties a written declaration under oath certifying such completion and providing a final report and accounting on the disbursements of all funds. Class Counsel

will be responsible for submitting such a final report to the Court pursuant to the Court's order or request.

**11. Release of Claims.** As of the Effective Final Settlement Date, Class Members who do not submit a timely and valid Exclusion Form release the Released Parties from the Released Claims. Participating Class Members agree not to sue or otherwise make a claim against any of the Released Parties for any of the Released Claims. It is further understood and agreed that Plaintiff, on behalf of herself, the LWDA, and the other aggrieved employees in the State of California, release Defendant and all Released Parties from any and all PAGA Released Claims. The Parties acknowledge that under the release, the right of the LWDA to investigate the PAGA Released Claims is not released, but PAGA Released Claims do include any claims for penalties by a PAGA Employee as a result of any such LWDA investigation, and all PAGA Employees are waiving their right to act as a private attorney general and releasing the PAGA Released Claims, regardless of whether he/she validly Opt-Out/Requests Exclusion from the Settlement.

**12. Plaintiff's Release of Claims and General Release.** As of the Effective Final Settlement Date, and in exchange for the Class Representative Enhancement Payment to the Plaintiff in an amount ordered by the Court and not to exceed Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00), Plaintiff agrees to a general release of Defendant and the Released Parties from all claims, claims, debts, liabilities, obligations, guarantees, penalties, costs, expenses, attorneys' fees, damages, liquidated damages, demands, rights, liabilities, grievances, demands for arbitration, and causes of action of every nature and description whatsoever, known or unknown, pending or

threatened, contingent or accrued, asserted or that might have been asserted, whether brought in tort or in contract, whether under state or federal or local law. This general release includes all employment-related and non-employment-related claims, whether known or unknown, from the beginning of time through the date Preliminary Approval is granted. Except as otherwise specifically provided under this Settlement Agreement, the Plaintiff expressly waives and relinquishes all rights and benefits afforded by Section 1542 of the Civil Code of the State of California, which states:

**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, THAT IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

This release excludes any release of any claims not permitted to be released by law. Plaintiff further agrees not to seek or obtain future employment with Defendant and the Released Parties, and further agrees that Defendant and the Released Parties will have no obligation to hire or consider her for employment. Plaintiff warrants that she is not currently aware of other claims against Defendant or any of the Released Parties, including those that cannot be released, such as workers' compensation claims.

**13. No Future Collective or Class Action.** If the Settlement is approved by the Court and not otherwise terminated, the Court will enter a judgment resolving the Litigation, and bar and permanently enjoin Plaintiff and all Participating Class Members

from participating in any other collective or class action lawsuit against the Released Parties, or any of them, concerning the Released Claims.

**14. Termination of Settlement.** In the event that the Settlement Agreement is terminated, cancelled, declared void or fails to become effective in accordance with its terms, or to the extent termination, cancellation, or voiding of the Settlement Agreement is otherwise provided, no payments shall be made or distributed to anyone in accordance with the terms of this Settlement Agreement. The Parties will bear their own costs and fees with regard to the efforts to obtain Court approval, and this Settlement Agreement shall be deemed null and void with no effect on the litigation whatsoever. The Parties will be equally responsible to the Settlement Administrator for the costs of such Administration Costs actually incurred not to exceed Seventeen Thousand Five Hundred Dollars and Zero Cents (\$17,500.00). In such event, the terms and provisions of the Settlement Agreement shall have no further force and effect with respect to the Parties and shall not be used in this litigation or any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*. In the event of a termination of settlement, each party should bear its own costs and attorneys' fees.

**15. Miscellaneous Terms.**

a. **No Admission of Liability.** Defendant makes no admission of liability or wrongdoing by virtue of entering into this Agreement. Defendant reserves the right to contest any issues relating to class certification and liability if the Settlement is not approved. Defendant denies that it has engaged in any unlawful activity, has failed to comply with the law in any respect, has any liability to anyone under the claims asserted

in the Action, or that but for the Settlement, a Class should be certified in the Litigation. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant of liability or wrongdoing. This Settlement and the Parties' willingness to settle the Litigation will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with this Settlement).

b. **No Effect on Employee Benefits.** The Class Representative Enhancement Payments, Individual Settlement Shares, and any other payments made pursuant to this Settlement paid to Plaintiff and Participating Class Members will not be credited towards or used to calculate any additional benefits owed under any benefit plan applicable to Class Members, including, but not limited to, profit-sharing plans, bonus plans, commission plans, collective bargaining agreements, multi-employer plans, pension plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, or any other benefit plans ("Benefit Plans"). The Parties do not intend for this Settlement to increase or decrease any rights, contributions, or amounts to which Class Members may be entitled to under any Benefit Plans independent of this Settlement. It is expressly understood and agreed that the receipt of Individual Settlement Shares will not entitle any Participating Class Member or Plaintiff to additional compensation or benefits under any Benefit Plan in place during the period covered by the Settlement, nor will it entitle any Participating Class Member or Plaintiff to any increased retirement, 401(k) benefits or matching benefits, or deferred compensation benefits. It is the intent of the Parties that the Individual Settlement Shares provided for in this Agreement are the sole payments to be made to the Participating Class Members (other than the Class

Representative Enhancement Payment made to the Class Representative), and that Participating Class Members, including the Class Representative, are not entitled to any new or additional compensation or benefits as a result of having received the Individual Settlement Shares (notwithstanding any contrary language or agreement in any benefit or compensation plan document that might have been in effect during the period covered by this Settlement).

c. **Publicity.** Class Counsel agree to discuss the terms of this Settlement only in declarations submitted to a court to establish their adequacy to serve as class counsel; in declarations submitted to a court in support of motions for preliminary approval, final approval, for attorneys' fees/costs, and any other pleading filed with the Court in conjunction with the Settlement; and in discussions with Class Members in the context of administering this Settlement until the Preliminary Approval Order is issued. No Court filing will be circulated by Class Counsel nor will Class Counsel post such pleadings on any website. Plaintiff agrees that neither she, nor her spouse or agents, shall publicize the terms of settlement or the lawsuit beyond taking the steps necessary to reach a final resolution and judgment as described in this Settlement Agreement. The Parties acknowledge and agree that non-public information about the business practices and business records of Defendant disclosed solely during the scope of privileged mediation proceedings and settlement negotiations ("Confidential Information") will not be disclosed to any third parties and will be returned to Defendant, with no copies retained after the Court issues Final approval of the Settlement. The Parties further acknowledge and agree that such Confidential Information has not and will not be used for any purpose other than for evaluating claims for purposes of entering into this Settlement Agreement.

Plaintiff and Class Counsel shall return or destroy all confidential documents/information and other confidential materials obtained in discovery, mediation, or otherwise in the Litigation within 60 days of the Effective Final Settlement Date, and to provide a certification of such destruction or return to Defendant. The Parties, Class Counsel and Defendant's Counsel further agree that none of them will post commentary about this Settlement or the terms of it on any social media website, or through any online or print media outlet, or in any article or blog. Plaintiff, Class Members, and Class Counsel shall not hold any press conferences with respect to the Litigation at any time. Until the Parties file a motion with the Court seeking Preliminary Approval, all Parties and counsel will keep the terms of this Settlement Agreement confidential. At no time shall Plaintiff, Class Members, or Class Counsel, Defendant, or Defense Counsel: (i) issue any press releases or public statements with respect to the Litigation or the Settlement (except as necessary to comply with legal reporting requirements); (ii) characterize the Litigation or Settlement in a manner that disparages Defendant or their employment practices; (iii) characterize the Litigation or Settlement in a manner that disparages Plaintiff, Class Members, or Class Counsel; or (iv) otherwise publicize the Actions or the Settlement. If Class Counsel are contacted by the media or third parties regarding the Settlement, Class Counsel shall not comment in any way. Class Counsel shall not initiate any contact or other communications with Class Members other than the Court-approved Class Notice, but may respond to inquiries received from Class Members. Class Counsel shall not include, and shall affirmatively remove, any reference to any of the foregoing subjects in any advertising, mass mailing, website, or other communications, but may refer to the Settlement in adequacy of counsel declarations.



d. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire Agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any Party concerning this Agreement or its exhibits, other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.

e. **Authorization to Enter into Settlement Agreement.** Class Counsel and Defendant's Counsel warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties under this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement this Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court, and in all cases, all such documents, supplemental provisions, and assistance of the Court will be consistent with this Agreement.

f. **Representation by Counsel.** The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and that this Settlement Agreement has been executed with

the consent and advice of counsel. Further, Plaintiff and Class Counsel warrant and represent that there are no liens on the Settlement.

g. **Exhibits and Headings.** The terms of this Agreement include the terms set forth in the attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibits to this Agreement are an integral part of the Settlement and must be approved substantially as written.

h. **Interim Stay of Proceedings.** The Parties agree to stay and hold all proceedings in the Action in abeyance, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the Court.

i. **Amendment or Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by counsel for all Parties or their successors-in-interest.

j. **Agreement Binding on Successors and Assigns.** This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Parties, as previously defined.

k. **No Prior Assignment.** Plaintiff hereby represents, covenants, and warrants that he has not directly, or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged.

l. **Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of

California, without giving effect to any conflict of law principles or choice of law principles.

m. **All Terms Subject to Final Court Approval.** All amounts and procedures described in this Settlement Agreement are subject to final Court approval.

n. **Fair, Adequate, and Reasonable Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.

o. **No Tax or Legal Advice.** The Parties understand and agree that the Parties are neither providing tax or legal advice nor making representations regarding tax obligations or consequences, if any, related to this Agreement; that Class Members, including Plaintiff, will assume any such tax obligations or consequences that may arise from this Agreement; and that Class Members, including Plaintiff, shall not seek any indemnification from the Parties or any of the Released Parties in this regard. The Parties agree that, in the event that any taxing body determines that additional taxes are due from any Class Member or Plaintiff, such Class Member or Plaintiff assumes all responsibility for the payment of such taxes. Other than the Employer's Payroll Taxes as described in this Agreement, the Parties further agree that Defendant shall have no legal obligation to pay, on behalf of the Participating Class Members, any taxes, deficiencies, levies, assessments, fines, penalties, interests or costs, which may be required to be paid with respect to settlement payments.

p. **Jurisdiction of the Court.** The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgment entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all orders and judgments in connection therewith.

q. **Waiver.** No waiver of any condition or covenant contained in this Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such Party of the same or any other condition, covenant, right or remedy.

r. **Invalidity of Any Provision; Severability.** Before declaring any provision of this Agreement invalid, the Parties request that the Court first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. In the event any provision of this Agreement shall be found unenforceable, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.

s. **Enforcement Action.** In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful Party will be entitled to recover from the unsuccessful Party reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

t. **Defense of the Settlement.** Plaintiff agrees to participate in, and Class Counsel agree to join Defendant in, defending the Settlement and its approval from any collateral attack in the three year period after final approval by providing a declaration or declarations in support of the Settlement. The Parties and their counsel shall enter into a common interest agreement for the purpose of sharing information necessary to the defense of the Settlement.

u. **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.

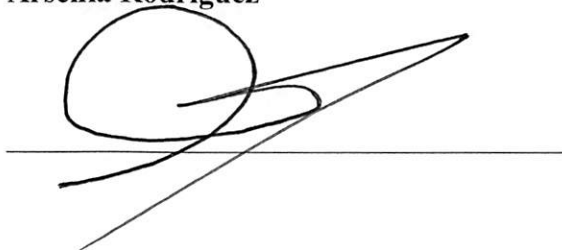
v. **Execution in Counterpart.** This Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile or PDF signatures will be accepted. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

#### IV. EXECUTION BY PARTIES

The Parties hereby execute this Agreement.

Dated: December 13, 2019

**Arsenia Rodriguez**

A handwritten signature in black ink, consisting of a large, circular loop followed by a long, sweeping horizontal stroke that extends to the right. The signature is written over a solid horizontal line.

Dated: December 17, 2019

**Hort Tech, LLC**

  
\_\_\_\_\_

Name: SCOTT GUBERT

Title: Senior Vice President

Dated: December 17, 2019

**Hort Tech, Inc.**

  
\_\_\_\_\_

Name: SCOTT GUBERT

Title: Senior Vice President

Dated: December 17, 2019

**Monarch Landscape Holdings, LLC**

  
\_\_\_\_\_

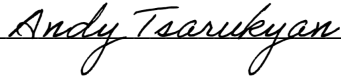
Name: Brian Helgoe

Title: CEO

**Approved as to Form:**

Dated: December 13, 2019

**Remedy Law Group LLP**

\_\_\_\_\_

Armen Zenjiryan, Esq.

Andranik Tsarukyan, Esq.

*Attorneys for Plaintiff Arsenia Rodriguez, on behalf  
of herself and all others similarly situated*

Dated: December 17, 2019

**HOGAN LOVELLS US LLP**

\_\_\_\_\_

Tao Leung, Esq.

Michael DeLarco, Esq.

*Attorneys for Defendants Hort Tech LLC, Hort  
Tech, Inc. and Monarch Landscape Holdings, LLC*