

KINGSLEY & KINGSLEY, APC
ERIC B. KINGSLEY, Esq. (SBN 185123)
eric@kingsleykingsley.com
KELSEY M. SZAMET, Esq. (SBN 260264)
kelsey@kingsleykingsley.com
ZACHARY D. GREENBERG, Esq. (SBN 331501)
zach@kingsleykingsley.com
16133 Ventura Blvd., Suite 1200
Encino, CA 91436
(818) 990-8300, Fax (818) 990-2903

Attorneys for Plaintiff and all aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

RENE DIEGO JUAREZ, an individual, on
behalf of the State of California as a private
attorney general,

PLAINTIFF,

v.

HARBOR PIPE AND STEEL INC.; and
DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. RIC2001200

[Case Assigned for All Purposes to Hon. Daniel
A. Ottolia in Dept. 4]

**JOINT STIPULATION REQUESTING
APPROVAL OF REPRESENTATIVE
ACTION SETTLEMENT; [PROPOSED]
ORDER THEREON**

1 Plaintiff RENE DIEGO JUAREZ (“Plaintiff”), on behalf of himself and the people of the
2 State of California as an “aggrieved employee” under the California Labor Code Private Attorneys
3 General Act of 2004, Labor Code § 2699, *et seq.* (“PAGA”) and Defendant HARBOR PIPE AND
4 STEEL INC. (“Defendant”) (collectively, the “Parties”) submit the following:

5 **WHEREAS**, on January 10, 2020, Plaintiff sent a letter to the Labor and Workforce
6 Development Agency (“LWDA”) giving notice of his intent to pursue a representative action
7 pursuant to PAGA, as codified in California Labor Code § 2698 *et seq.*, on behalf of himself and
8 the State of California on behalf of all aggrieved employees.

9 **WHEREAS**, on March 16, 2020, Plaintiff filed a Complaint against Defendant in the
10 Superior Court of the State of California, County of Riverside, Case No. RIC2001200 (the
11 “Action” or “Lawsuit”).

12 **WHEREAS**, this Action alleged a single cause of action pursuant to PAGA, through which
13 Plaintiff seeks to represent certain current and former employees of Defendant for alleged
14 underlying California Labor Code violations that give rise to liability under PAGA.

15 **WHEREAS**, Plaintiff asserted the following cause of action on behalf of all aggrieved
16 employees: PAGA Penalties Pursuant to Labor Code § 2699, *et seq.* for violations of Labor Code
17 §§ 204(d) and 210. Specifically, Plaintiff alleged that Defendant engaged in a practice of failing
18 to properly pay its employees in violation of Labor Code §§ 204(d) and 210.

19 **WHEREAS**, Defendant denies that it has engaged in any unlawful activity, that it has
20 failed to comply with the law in any respect, that it has any liability to anyone under the claims
21 asserted in this Action.

22 **WHEREAS**, the Parties have reached a settlement of the claims as alleged by Plaintiff and
23 all aggrieved employees, who are defined as: “Plaintiff and all persons who are employed or have
24 been employed as an hourly employee by HARBOR PIPE AND STEEL, INC., in the State of
25 California who worked one or more pay periods between March 18, 2019 and February 10, 2020.”
26 (“PAGA Members” or “Aggrieved Employees”).

27 **WHEREAS**, the Parties engaged in arm’s length negotiations in which they reached a
28 resolution of the PAGA claim asserted in this Action. The Parties’ agreement is memorialized in

1 the fully executed agreement entitled "Settlement Agreement and Release" attached hereto as
2 Exhibit "1".

3 **WHEREAS**, the Parties' evaluation of the risk and analysis supporting settlement are
4 detailed in the Settlement Agreement and Release on pages 2-6. In summary, there are 6,026
5 Eligible Work Weeks at issue during the Covered Period and the maximum potential exposure is
6 \$602,600.00 (based on a \$100 penalty for each Eligible Work Week).

7 **WHEREAS**, pursuant to California Labor Code Section 2699(l), the Parties are required
8 to obtain court approval of the penalties provided for in the settlement of a PAGA claim and
9 therefore file the instant Joint Stipulation.

10 **WHEREAS**, as explained by the California Supreme Court in *Arias v. Superior Court*
11 (2009) 46 Cal.4th 969, the Parties are not obligated to follow class action procedural rules in PAGA
12 cases and therefore do not need to follow class action procedures for obtaining an approval of this
13 settlement.

14 **WHEREAS**, the Parties seek to obtain the Court's approval of the PAGA penalties in the
15 most efficient manner possible.

16 **WHEREAS**, if there is a conflict between the language of this Joint Stipulation and the
17 language of the Settlement Agreement and Release ("Exhibit 1"), the language of the Settlement
18 Agreement and Release shall control.

19 **IT IS HEREBY STIPULATED AND PROPOSED BY THE PARTIES HERETO AS**
20 **FOLLOWS:**

21 The Parties stipulate and jointly propose that the Court approve the following terms of the
22 fully executed Settlement Agreement and Release which includes the following key terms:

- 23
- 24 a) Settlement of the claim asserted in Plaintiff's Complaint on behalf of
25 himself and all "aggrieved" employees for PAGA penalties in the gross
26 amount of \$200,000.00.
- 27 b) After deductions of attorneys' fees and litigation expenses, a litigation
28 enhancement to the Plaintiff, and settlement administration costs as

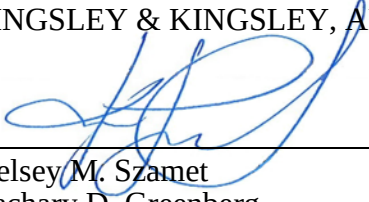
discussed in the Settlement Agreement and Release, the remaining amount of \$118,333.33 is allocated as PAGA penalties.

- c) Per Labor Code § 2699(i), a split of the settlement payment between the LWDA and the Aggrieved Employees with \$88,750.00 (75%) paid to the LWDA and \$29,583.33 (25%) paid to PAGA Members on a pro-rata basis.

WHEREAS, the Parties request that the Court enter the accompanying order, approving the PAGA penalties, as permitted by Labor Code § 2699(l), and dismissing this Action with prejudice.

DATED: November 23, 2020

KINGSLEY & KINGSLEY, APC

By: 

Kelsey M. Szamet
Zachary D. Greenberg
Attorneys for Plaintiff Rene Diego Juarez and all
aggrieved employees

DATED: November 23, 2020

KAUFMAN DOLOWICH VOLUCK LLP

By: _____

Barry Z. Brodsky
Brian D. Peters
Attorneys for Defendant Harbor Pipe and Steel Inc.

discussed in the Settlement Agreement and Release, the remaining amount of \$118,333.33 is allocated as PAGA penalties.

- c) Per Labor Code § 2699(i), a split of the settlement payment between the LWDA and the Aggrieved Employees with \$88,750.00 (75%) paid to the LWDA and \$29,583.33 (25%) paid to PAGA Members on a pro-rata basis.

WHEREAS, the Parties request that the Court enter the accompanying order, approving the PAGA penalties, as permitted by Labor Code § 2699(l), and dismissing this Action with prejudice.

DATED: December 7, 2020

KINGSLEY & KINGSLEY, APC

By: _____

Kelsey M. Szamet
Zachary D. Greenberg
Attorneys for Plaintiff Rene Diego Juarez and all
aggrieved employees

DATED: December 7, 2020

KAUFMAN DOLOWICH & VOLUCK LLP

By: _____

Barry Z. Brodsky
Brian D. Peters
Attorneys for Defendant Harbor Pipe and Steel Inc.

1 **[PROPOSED] ORDER**

2 Pursuant to the Joint Stipulation submitted by Plaintiff RENE DIEGO JUAREZ
3 (“Plaintiff”), on behalf of himself and the people of the State of California as an “aggrieved
4 employee” under the California Labor Code Private Attorneys General Act of 2004, Labor Code
5 § 2699, *et seq.* (“PAGA”) and Defendant HARBOR PIPE AND STEEL INC. (“Defendant”)
6 (collectively, the “Parties”) and good cause appearing:

7 Having considered the Parties’ Joint Stipulation, and all legal authorities and documents
8 submitted in support thereof, including the Settlement Agreement and Release (“Settlement
9 Agreement” or “Settlement”) attached hereto as Exhibit “1”, and good cause appearing, IT IS
10 HEREBY ORDERED that the Parties’ request is GRANTED, subject to the following findings
11 and orders:

- 12 a) The Court approves the settlement of Plaintiff’s claim on behalf of himself
13 and all “aggrieved employees” for PAGA Penalties set forth in his
14 Complaint in the amount of \$200,000.00.
- 15 b) After deduction of attorneys’ fees and litigation expenses, a litigation
16 enhancement to the Plaintiff, and settlement administration costs as
17 discussed in the Settlement, the remaining amount of \$118,333.33 is
18 allocated as PAGA penalties.
- 19 c) The Court approves 75% of the PAGA penalties be allocated to the Labor
20 Workforce Development Agency (“LWDA”) in the amount of \$88,750.00.
- 21 d) The Court directs the remaining 25% of the PAGA penalties, in an amount
22 of \$29,583.33, be allocated to the Aggrieved Employees (as defined in the
23 Joint Stipulation Requesting Approval of Representative Action
24 Settlement) on a pro-rata basis.

25 **IT IS SO ORDERED.**

26
27 DATED: _____

JUDGE OF THE SUPERIOR COURT

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EXHIBIT “1”

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (hereinafter “Settlement Agreement” or “Settlement”) is made and entered into by and between Plaintiff Rene Diego Juarez (hereinafter “Plaintiff”), on behalf of the State of California, and on behalf of similarly aggrieved and situated employees, on the one hand, and Defendant Harbor Pipe And Steel Inc. (“Defendant”), on the other hand. Plaintiff and Defendant are collectively referred to herein as “the Parties.”

This Settlement shall be binding on Plaintiff and the PAGA Members (as defined below) that Plaintiff purports to represent and on Defendant, and its present and former parent companies, subsidiaries, divisions, related or affiliated companies, shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any individual or entity which could be jointly liable with Defendant, subject to the terms and conditions hereof and the approval of the Court.

For the purposes of this Settlement, the terms below have the following meanings:

I. DEFINITIONS

1. “Action” or “Lawsuit” refers to the civil action filed on March 16, 2020 in the litigation entitled *RENE DIEGO JUAREZ, on behalf of the State of California as a private attorney general, PLAINTIFF, v. HARBOR PIPE AND STEEL, INC.; and DOES 1 thru 50, inclusive, DEFENDANTS*, Riverside County Superior Court, Case No. RIC2001200.

2. “Counsel For Defendant” and “Defense Counsel” shall refer to Barry Z. Brodsky and Brian D. Peters of KAUFMAN DOLOWICH & VOLUCK LLP.

3. “Court” refers to the Riverside County Superior Court.

4. “Covered Claims” means any and all claims, demands, rights, liabilities, and/or causes of action for PAGA penalties pursuant to Labor Code §2699, et seq., including, but not limited to, for violations of Labor Code §§204 and 210 for pay periods where aggrieved employees were paid their wages more than seven (7) days following the close of the payroll period based on the facts alleged in the Action during the Covered Period.

5. “Covered Period” shall mean the period from March 18, 2019 to February 10, 2020.

6. “Eligible Work Weeks” means the total number of work weeks that each Aggrieved Employee received a wage statement during the Covered Period.

7. “Effective Date” means the date the Court has signed and entered the Approval Order (in substantially the form attached hereto as Exhibit “B”) or the Final Judgment (in substantially the form attached hereto as Exhibit “C”) as defined below, whichever is sooner.

8. “LWDA” means the California Labor and Workforce Development Agency.

9. “PAGA” refers to the Labor Code Private Attorneys General Act of 2004, codified at Labor Code §§ 2699 et seq.

10. “Plaintiff” or “PAGA Representative” shall refer to RENE DIEGO JUAREZ.

11. “PAGA Members” or “Aggrieved Employees” are defined as: Plaintiff and all persons who are employed or have been employed as an hourly employee by HARBOR PIPE AND STEEL, INC., in the State of California who worked one or more pay periods between March 18, 2019 and February 10, 2020.

12. “PAGA Counsel” shall refer to Eric B. Kingsley and Kelsey M. Szamet of KINGSLEY & KINGSLEY APC.

13. “Released Claims Period” means the period from March 18, 2019 to July 31, 2020.

14. “Settlement” or “Settlement Agreement” means the terms and conditions as set forth in this Settlement Agreement and Release.

15. “Settlement Administrator” shall refer to ILYM, Inc.

II. NATURE OF THE ACTION

16. On January 10, 2020, Plaintiff sent notice to LWDA giving notice of his intent to pursue a representative action pursuant to PAGA, on behalf of himself and the State of California as well as on behalf of a group of aggrieved employees, for Defendant’s alleged violation of Labor Code §§ 204 and 210.

17. Plaintiff received confirmation that the LWDA was electronically served on January 10, 2020 and Defendant received the letter on January 13, 2020.

18. On March 16, 2020, Plaintiff commenced a putative representative action under the PAGA for alleged violations of Labor Code §§ 204 and 210 on behalf of himself and other allegedly aggrieved employees by filing the Lawsuit.

19. This Settlement relates solely to the claims raised by Plaintiff and the PAGA Members whom Plaintiff purports to represent in the Lawsuit.

20. After the matter was at issue, the Parties began to engage in fact discovery and exchange pertinent information necessary to understand the nature of the allegations and the scope of potential liability.

21. Thereafter, the Parties began to engage in informal arms-length settlement discussions. Through the exchange of information and attendant discussions between the Parties, Plaintiff learned that the number of PAGA Members is approximately 224 (including Plaintiff) and there is a maximum of 6,026 Eligible Work Weeks at issue during the Covered Period. Plaintiff asserts that the maximum potential exposure for the PAGA claims for PAGA Members is \$602,600.00 (6,026 eligible work weeks at issue x \$100 = \$602,600.)

22. PAGA Counsel considered the following facts and arguments in determining that the Settlement was fair and reasonable:

a. Defendant's financial status. PAGA Counsel also had to consider Defendant's financial status and its ability to pay any sizeable judgment against it.

b. Defendant's arguments. Defendant contends that once it learned of the alleged violation, Defendant corrected any alleged deficiency immediately. Defendant further contends that until the Lawsuit was filed, no employees complained about any alleged violation of Labor Code §204. While Plaintiff maintains that violations under Labor Code §204 are not curable as this is a specifically defined term of art in the PAGA statute, Plaintiff believed that Defendant may persuasively argue that the Court should exercise its discretion to significantly reduce any

penalties under PAGA. And in accordance with PAGA, the Court in a PAGA action has the same discretion “to assess a civil penalty” that the Labor Commissioner would have, as well as complete discretion to “award a lesser amount than the maximum civil penalty amount specified [by PAGA] if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” (Labor Code §2699(e)(1) and (e)(2). PAGA Counsel anticipated that, at trial, Counsel for Defendant could make potentially persuasive arguments that: (1) since Defendant paid employees weekly, when it could have paid employees as infrequently as twice per month, Defendant’s practices were not intended to harm its employees and its employees have not experienced any appreciable economic harm as a result of the alleged violation of Labor Code §204, (2) Defendant took measures to swiftly cure any alleged violation, once it received notice from Plaintiff and (3) until this lawsuit was filed, no employees had complained about any alleged violations of Labor Code §204. All of which, Counsel for Defendant would argue, should mitigate in favor of substantially reducing any PAGA penalties. While Plaintiff disagreed that this analysis is legally correct or persuasive, PAGA Counsel had to consider the foregoing facts and arguments and how they might impact any judgement ultimately awarded to Aggrieved Employees if the Court were persuaded by them.

23. In consideration of the foregoing arguments and the potential risk, PAGA counsel determined that the Settlement was fair and reasonable.

24. This Settlement relates solely to the PAGA claim on behalf of all PAGA Members whom Plaintiff purports to represent in the Lawsuit as to its alleged claim for violation of Labor Code §2699, *et seq.*, based upon the underlying violation of Labor Code §§204 and 210.

25. Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in the Lawsuit, denies any liability or intentional wrongdoing for the Covered Claims, and further denies that this action is appropriate for representative treatment for any purpose other than settling this Lawsuit. Defendant contends, among other things, that it has complied at all times with the California Labor Code, the related California Wage Orders, and the California Business & Professions Code, all other state and federal wage laws, and further

contends that all of its respective employees were and are paid properly and timely, and that the Lawsuit is without merit. Defendant has denied and continues to deny each and every material factual allegation and alleged claim asserted against it in the Lawsuit, and has further denied and continues to deny that either Plaintiff, PAGA Members, or any other alleged aggrieved employee has been harmed based on the facts alleged in the Lawsuit; that the errors were knowing, intentional, deliberate, or otherwise purposeful; and that Defendant is or can be held liable under any provision of the Labor Code for any penalties associated with such inadvertent omissions.

26. Neither the existence of this Settlement nor anything contained in this Settlement shall be construed or deemed as an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant. Nothing herein shall constitute an admission by Defendant that the Lawsuit was properly brought as a class or representative action other than for settlement purposes. Settlement of the Lawsuit, the negotiation and execution of this Settlement, and all acts performed or documents executed pursuant to or in furtherance of this Settlement or the settlement of the Lawsuit: (a) are not, shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of Defendant or of the truth of any of the factual allegations in the operative Complaint in the Lawsuit; (b) are not, shall not be deemed to be, and may not be used as, an admission or evidence of any fault or omissions on the part of Defendant in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal; and (c) are not, shall not be deemed to be, and may not be used as, an admission or evidence of the appropriateness of these or similar claims for representative treatment, class certification, or administration other than for purposes of administering this Settlement.

27. The Parties recognize that the issues presented in the Lawsuit are likely only to be resolved with extensive and costly pretrial and trial proceedings, and that further litigation will cause inconvenience, distraction, disruption, delay, and expense disproportionate to the potential benefits of litigation. The Parties have taken into account the risk and uncertainty of the outcome inherent in any litigation.

28. Plaintiff and PAGA Counsel contend that they have diligently pursued an investigation of the PAGA Members' claims against Defendant.

29. Based on their own independent investigations and evaluations, Defendant and Plaintiff and their respective counsel are of the opinion that the settlement for the consideration and on the terms set forth in this Settlement is fair, reasonable, and adequate and is in the best interests of the Plaintiff, the PAGA Members, and Defendant in light of all known facts and circumstances and the risks inherent in litigation, including the potential appellate issues. Further, PAGA Counsel believes that the settlement amount entered into is in the best interests of the PAGA Members and that the settlement for each PAGA Member is fair, reasonable, and adequate, given the inherent risk of litigation.

30. The purpose of this Settlement is to settle and compromise the Lawsuit and all Covered Claims that Plaintiff and the PAGA Members have against Defendant and the Releasees (as defined below).

III. TERMS OF SETTLEMENT

31. In consideration of the mutual covenants, promises and representations set forth in this Settlement, Plaintiff, on behalf of himself and the PAGA Members, and Defendant agree to settle and compromise the Lawsuit and the Covered Claims.

A. The Amount of Settlement

32. As consideration for the settlement described herein and the release contained in this Settlement, Defendant agrees to pay a total settlement of \$200,000.00 ("Settlement Payment"). The Settlement Payment will be allocated as follows:

- (a) PAGA Counsel will request Court approval of a 33.33% fee in the amount of \$66,666.67 and cost reimbursement of up to \$2,500.00; and
- (b) \$5,000.00 litigation enhancement to Plaintiff; and
- (c) administration costs of up to \$7,500.00 to be paid to the Settlement Administrator; and

- (d) the remainder of the Settlement Payment after deducting the items (a)-(c) herein (\$118,333.33) shall be designated as “PAGA penalties” to be split between the LWDA and the PAGA Members as required by Labor Code section 2699(i) with 75% (or \$88,750.00) going to the LWDA and 25% (or \$29,583.33) going to the PAGA Members.

33. Except as provided in paragraphs 70-71 herein, under no circumstances will the total amount of the Settlement Payment exceed \$200,000.00.

B. Allocation and Calculation of the PAGA Penalties

34. Each PAGA Member shall receive a portion of the Settlement Payment on a pro-rata basis. The actual amount paid will be calculated through a two-step process. First, the \$118,333.33 allocated as “PAGA Penalties” will be divided by the total number of Eligible Work Weeks paid by Defendant to all PAGA Members during the Covered Period (the “Work Week Amount”) and then the Work Week Amount will be multiplied by the number of Eligible Work Weeks worked by the individual PAGA Member as determined by the Settlement Administrator. The resulting number is the “Individual Settlement Payment.” Second, once the total Individual Settlement Payment is calculated, 75% of the Individual Settlement Payment will be paid to the LWDA as is required by PAGA. The remaining amount, which is 25% of the Individual Settlement Payment, shall be paid to the PAGA Members in the form of a payment check (“Individual Settlement Check”).

C. PAGA Counsel’s Fees and Costs

35. As part of the request for approval of this Settlement, PAGA Counsel will request court approval of 33.33% of the Settlement Payment, which is \$66,666.67 in attorneys’ fees and cost reimbursement of up to \$2,500.00. Any attorneys’ fees and costs awarded to PAGA Counsel, hereinafter referred to as “PAGA Counsel Fees & Costs,” shall fully compensate and reimburse PAGA Counsel for any and all of the work already performed in connection with the Lawsuit and all work remaining to be performed in fully and finally resolving the Lawsuit, including but not limited to securing Court approval of the settlement, appearing at hearings, making sure that the

settlement is fairly and properly administered, defending the settlement in any appeal or other post-approval matter, all other work that PAGA Counsel has performed or will perform, and all costs that PAGA Counsel has incurred or will incur.

36. Should PAGA Counsel request a lesser amount for attorneys' fees and costs and/or the court approve a lesser amount, the difference shall be divided among the participating PAGA Members pursuant to the allocation described above.

37. Payment of PAGA Counsel Fees & Costs will be reflected in a Form 1099 to PAGA Counsel who shall assume full responsibility and liability for the payment of taxes due on such payments.

D. Tax Treatment of Individual Settlement Checks to PAGA Members

38. The Parties agree that Individual Settlement Checks(s) sent to PAGA Members shall be allocated as 100% penalties and Form 1099s will be issued. Nothing in this Settlement is intended to constitute legal advice regarding federal, state, and/or local tax obligations. Plaintiff acknowledges that he has obtained no tax advice from Defendant and that neither Defendant nor its attorneys has made any representation concerning the tax consequences, if any, of the Settlement Amount in this Settlement. To the extent that this Settlement or any of its attachments is interpreted to contain or constitute advice regarding any state or federal tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding penalties under the Internal Revenue Code. Defendant is not responsible for any employee tax obligations regarding the allocation of the settlement payments. The Settlement Payment and any Individual Settlement Check paid to Plaintiff and the PAGA Members pursuant to this Settlement is not intended to and does not cause the accrual of wages allocated to any retirement plan(s) or benefit(s).

39. The Settlement Payment and any Individual Settlement Check paid to Plaintiff and the PAGA Members pursuant to this Settlement is not intended to count as earnings by Plaintiff or the PAGA Members.

IV. RELEASE

A. Release By All PAGA Members

40. Upon the approval by the Court of this Settlement, each PAGA Member (including Plaintiff), shall, for the Released Claims Period, fully release and forever discharge Defendant, and its present and former parent companies, subsidiaries, divisions, related or affiliated companies, shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any individual or entity which could be jointly liable with Defendant (the foregoing are collectively referred to hereafter as the “Releasees”) from the Covered Claims, from all claims that were asserted based on the facts alleged in the Lawsuit, or which directly arise out of such facts, whether known or unknown and from any and all claims, causes of action, damages, wages, benefits, expenses, penalties, interest, debts, liabilities, demands, obligations, attorneys’ fees, costs, and any other form of relief or remedy in law, equity, or whatever kind or nature that were asserted, or could have been asserted, pursuant to Labor Code §2699, et seq., including, but not limited to, for violation of Labor Code §§204 and 210 based on the facts alleged in the Lawsuit.

B. General Release by Named Plaintiff Only.

41. In consideration for a payment of Five Thousand Dollars (\$5,000), and in addition to the release made in Paragraph 39, Plaintiff makes the additional following general release of all claims, known or unknown, except for such claims that cannot be released by law. Plaintiff releases Defendant from all claims, demands, rights, liabilities and causes of action of every nature and description whatsoever, known or unknown, asserted or that might have been asserted prior to the final approval of settlement, whether in tort, contract, or for violation of any state or federal statute, rule or regulation arising out of, relating to, or in connection with any act or omission by or on the part of any and all Defendant. (The release set forth in this Paragraph shall be referred to hereinafter as “Plaintiff’s General Release.”).

With respect to the Plaintiff’s General Release, Plaintiff stipulates and agrees that, upon the date of the Order and Judgment, he shall be deemed to have expressly waived and

relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS, WHICH 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 RELEASING PARTY.

Accordingly, if the facts relating in any manner to this Settlement are found hereafter to be other than or different from the facts now believed to be true, the release of claims contained herein shall be effective as to all unknown claims.

V. DUTIES OF THE PARTIES PRIOR TO APPROVAL

42. The Parties recognize that, in accordance with Labor Code Section 2699(1)(2), Court approval is required in the event of a settlement of a PAGA action [“The superior court shall review and approve any settlement of any civil action filed pursuant to this part”]. However, as explained in *Arias v. Superior Court* (2009) 46 Cal.4th 969, the Parties are not obligated to follow the class action procedural rules in PAGA cases and therefore need not obtain approval of the PAGA settlement through a motion for preliminary or final approval. Instead, in order to comply with the requirements of Labor Code §2699, Plaintiff shall submit a Motion for Approval of Representative Action Settlement to the Court identifying the key terms of this Settlement and requesting that the Court approve the PAGA Penalties provided for in this Settlement Agreement (“Approval Motion”). Plaintiff shall concurrently apply to the Court for the entry of an order approving the PAGA Penalties provided for in this Settlement and a Proposed Final Judgment in the amount of \$200,000.00 which requests that the Court: (1) enter judgment in the Lawsuit and permanently bar all Aggrieved Employees from prosecuting any of the Covered Claims released in this Settlement against Defendant and the Releasees; and (2) waive all rights to appeal.

43. At the same time the Parties submit the Approval Motion to the Court, they shall also submit a copy of the Approval Motion to the LWDA.

44. The Settlement is contingent upon the approval by the Court. If the Court should fail to approve the PAGA Penalties as agreed upon by the Parties, the Parties shall coordinate efforts to address the Court's questions or concerns and resubmit the Approval Motion if required by the Court. If, after the Parties coordinate their efforts to make a second attempt to obtain approval of the terms of the Settlement, unless the Parties specifically agree to continue with their coordinated efforts to obtain Court approval, (a) the Court fails to approve this Settlement in the form agreed to by the Parties (except for the amount of attorneys' fees or costs requested), or (b) the Court's approval of this Settlement is reversed, modified, or declared or rendered void, then (i) this Settlement shall be considered null and void; (ii) neither this Settlement nor any of the related negotiations or proceedings shall be of any force or effect; and (iii) all Parties to this Settlement shall stand in the same position, without prejudice, as if the Settlement had been neither entered into nor filed with the Court. Invalidation of any material portion of this Settlement, except for the amount of attorneys' fees and costs, shall invalidate this Settlement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

VI. DUTIES AFTER COURT APPROVAL AND ADMINISTRATION OF THE SETTLEMENT

45. Within seven (7) calendar days after the Effective Date, Defendant will compile and send a list of all PAGA Members to the Settlement Administrator containing each PAGA Member's: (1) name; (2) last known home address and telephone number; (3) number of work weeks as a PAGA Member during the Covered Period; and (4) the last four digits of Social Security Number ("PAGA Member List"). The format and transmittal of the list shall be in excel format and determined by the requirements of the Settlement Administrator.

46. Defendant shall pay the Settlement Payment to the Settlement Administrator within fifteen (15) calendar days after the Effective Date, or September 1, 2021, whichever is

later ("Payment Date"). Settlement Administrator shall release the approved PAGA Counsel Fees and Cost to PAGA Counsel upon receipt of the Settlement Payment.

47. Within three (3) calendar days of receipt of the PAGA Member List, the Settlement Administrator shall send an email to the Parties confirming receipt of the PAGA Member List and indicating the number of PAGA Members and the number of Eligible Work Weeks included in the data.

48. Within fifteen (15) calendar days after the Effective Date, the Settlement Administrator shall run all the addresses provided in the PAGA Member List through the United States Postal Service NCOA database (which provides updated addresses for any individual who has moved in the previous four years who has notified the U.S. Postal Service of a forwarding address) to obtain current address information.

49. Within thirty (30) calendar days after the Payment Date, the Settlement Administrator shall mail via U.S. First Class mail each Individual Settlement Check to the last known address with directions to the Postmaster to forward the payment checks and return all undeliverable payment checks to the Settlement Administrator. It will be conclusively presumed that a PAGA Member's Individual Settlement Check was received if the payment check has not been returned within thirty (30) days of the original mailing of the payment check. The date of the initial mailing of the payment check shall be conclusively determined according to the records of the Settlement Administrator.

50. A letter approved by the Parties in advance of Plaintiff's filing of the Approval Motion, or if required by the Court, a Motion, explaining this Settlement will be included in the mailing of each PAGA Member's Individual Settlement check. The letter, attached hereto as Exhibit A, will notify all PAGA Members of the binding nature of the release and the Parties agree that such shall have the same force and effect as if this Settlement were executed by each PAGA Members.

51. The Settlement Administrator shall ensure that 75% of the PAGA Penalties is paid to the LWDA.

52. Settlement checks shall remain valid and negotiable for one hundred eighty (180) calendar days from the date of their issuance. If there are uncashed checks following this period, the Settlement Administrator will ensure that uncashed funds shall be forwarded the State of California Office of Controller Unclaimed Property Fund in the name of the PAGA Member who did not cash his or her Individual Settlement Payment check. If for some reason the escheatment process is not able to be completed by the Settlement Administrator, the Parties agree to send the uncashed monies to a mutually agreed-upon cy pres beneficiary pursuant to C.C.P. §384.

VII. BEST EFFORTS

53. The Parties agree to use their best efforts to carry out the terms of this settlement.

VIII. PARTIES' AUTHORITY

54. The signatories hereto hereby represent that they are fully authorized to enter into this Settlement and bind the Parties hereto to the terms and conditions hereof.

IX. MUTUAL FULL COOPERATION

55. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement, including, but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement. The Parties to this Settlement shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement and the terms set forth herein. As soon as practicable after execution of this Settlement, PAGA Counsel shall, with the assistance and cooperation of Defendant and its counsel, take all necessary steps to secure the approval of this Settlement from the Court.

X. NO PRIOR ASSIGNMENTS

56. The Parties hereto represent, covenant, and warrant that they have 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 except as set forth herein.

XI. NO ADMISSION

57. Nothing contained herein is-- nor is the consummation of this Settlement to be construed or deemed-- an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant or any of the Releasees. Each of the Parties hereto has entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience and expense. Defendant denies that it has engaged in any unlawful activity, that it has failed to comply with the law in any material respect, or that it has any liability to anyone under the claims asserted in the Lawsuit. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or shall be construed as an admission of liability or wrongdoing by Defendant.

XII. NON-EVIDENTIARY USE

58. Whether or not the Effective Date occurs, neither this Settlement nor any of its terms nor the Settlement itself shall be: (a) construed as, offered, or admitted in evidence as, received as, or deemed to be evidence for any purposes adverse to Defendant or any other of the Releasees, including but not limited to, evidence of a presumption, concession, indication, or admission by any of the Releasees of any liability, fault, wrongdoing, omission, concession, or damage, or (b) disclosed, referred to, or offered in evidence against any of the Releasees in any further proceeding in the Lawsuit, or any other civil, criminal, or administrative action or proceeding except for the purposes of effectuating the Settlement pursuant to this Settlement or for Defendant to establish that an Aggrieved Employee has resolved any of his/her claims released through this Settlement.

XIII. ATTORNEYS' FEES, COSTS AND EXPENSES

59. Except as specifically set forth herein, each party shall bear its/his/her own attorneys' fees, costs, and expenses, taxable or otherwise, incurred by him/her/it arising out of the Lawsuit, and shall not seek reimbursement thereof from any other party to this Agreement.

XIV. CONSTRUCTION

60. The Parties hereto agree that the terms and conditions of this Settlement are the result of lengthy, intensive, arms-length negotiations between the Parties and that this Agreement constitutes the entire agreement between Plaintiff (on behalf of himself and all other PAGA Members) and Defendant regarding actual or potential claims asserted by Plaintiff against Releasees. Excluding any Arbitration or Confidentiality Agreement executed by Plaintiff with Defendant, both of which will remain in full force and effect, this Agreement supersedes all prior agreements, written or oral, between or among the Parties regarding those claims or potential claims and the resolution of those claims. Consequently, no other agreement, statement, or promise made by one Party to another as to any matter addressed in this Agreement shall be binding or valid.

XV. CAPTIONS AND INTERPRETATIONS

61. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any provision hereof. Each term of this Settlement is contractual and not merely a recital.

XVI. MODIFICATION

62. This Settlement may not be amended, changed, altered, or modified, except in writing and signed by the Parties (or their successors-in-interest) hereto. This Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

XVII. MISCELLANEOUS

63. This Settlement contains the entire agreement between the Parties relating to the Settlement of the Covered Claims and Plaintiff's General Release, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing. The Parties have made such investigation of the facts

and the law pertaining to the matters described herein and to this Agreement as they deem necessary, and have not relied, and do not rely, on any statement, promise, or representation of fact or law, made by any of the other parties, or any of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted rights, or with regard to the advisability of making and executing this Agreement, or with respect to any such matters that would alter or change the terms of this Agreement. No representations, warranties, or inducements have been made to any party concerning this Agreement other than those expressly set forth or referred to herein.

64. This Settlement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

65. This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California, irrespective of the State of California's choice of law principles.

66. This Settlement may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement, which shall be binding upon and effective as to all Parties. The counterparts may be transmitted electronically (PDF) or by facsimile.

67. Upon full execution of this Agreement, the Parties agree that based upon Code of Civil Procedure §583.310 ("the 5 year rule"), the Lawsuit shall be stayed in its entirety except for the submission of documents needed to obtain approval of the PAGA Penalties provided for in this Settlement. Should the Court fail to grant approval of this Settlement, the stay will be lifted five (5) days thereafter and the Parties will be restored to their position prior to the Settlement and the Settlement shall be null and void.

68. The Riverside County Superior Court shall retain jurisdiction to enforce this Agreement pursuant to California Code of Civil Procedure §664.6. The Court shall retain continuing jurisdiction over this Lawsuit and over all Parties and PAGA Members, to the fullest

extent to enforce and effectuate the terms and intent of this Agreement.

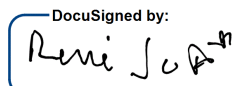
69. This Agreement shall not be subject to collateral attack by any PAGA Member. Such prohibited collateral attack shall include, but not be limited to, claims that the PAGA Member failed, for any reason, to timely receive his or her Individual Settlement Payment.

70. It was represented to Plaintiff that there were a maximum of 6,026 Eligible Work Weeks at issue. As detailed above, upon receipt of the PAGA Member List, the Settlement Administrator shall confirm to Plaintiff that the data is consistent with the terms of this Settlement. To the extent that the number of number of Eligible Work Weeks increase beyond 6,026 by more than 5%, Defendant will have the option to increase the Settlement Payment by a proportionate amount. If for example, if the number of Eligible Work Weeks increases by 7% then Defendant shall increase the Settlement Payment by 7%. If Defendant declines to do so, Plaintiff shall have the right to terminate this Settlement in its entirety and the Parties will be returned to their respective positions as if no settlement had been contemplated and the Settlement shall be null and void.

71. It was represented to Plaintiff that there were a maximum of 224 PAGA Members at issue. As explained above, upon receipt of the PAGA Member List, the Settlement Administrator shall confirm to Plaintiff that the data is consistent with the terms of this Settlement Agreement. To the extent that the number of PAGA Members increases beyond 224 by more than 5%, Defendant will have the option to increase the Settlement Payment by a proportionate amount. If for example, the number of PAGA Members increases by 7% then Defendant shall increase the Settlement Payment by 7%. If Defendant declines to do so, Plaintiff will have the option to terminate the settlement in its entirety and the Parties will be returned to their respective positions as if no settlement had been contemplated and the Settlement shall be null and void.

I HAVE READ THE FOREGOING SETTLEMENT. I ACCEPT AND AGREE TO THE PROVISIONS IT CONTAINS, AND HEREBY EXECUTE IT VOLUNTARILY WITH FULL UNDERSTANDING OF ITS CONSEQUENCES.

DATED: septiembre 30, 2020

DocuSigned by:

EB4A077DE4CC432...

RENE DIEGO JUAREZ

DATED: _____

HARBOR PIPE AND STEEL, INC.

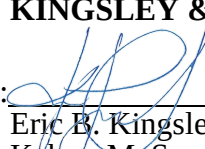
By: _____

Its: _____

APPROVED AS TO FORM AND CONTENT:

DATED: September 30, 2020

KINGSLEY & KINGSLEY APC

By:  _____

Eric B. Kingsley

Kelsey M. Szamet

Attorneys for Plaintiff RENE DIEGO JUAREZ
and PAGA Members

DATED: _____

KAUFMAN DOLOWICH & VOLUCK LLP

By: _____

Barry Z. Brodsky

Brian D. Peters

Attorneys for Defendant

HARBOR PIPE AND STEEL, INC.

DATED: _____

RENE DIEGO JUAREZ

DATED: 11-3-2020


HARBOR PIPE AND STEEL, INC.

By: Jon Brattin

Its: President

APPROVED AS TO FORM AND CONTENT:

DATED: _____

KINGSLEY & KINGSLEY APC

By: _____

Eric B. Kingsley

Kelsey M. Szamet

Attorneys for Plaintiff RENE DIEGO JUAREZ
and PAGA Members

DATED: 11/2/2020

KAUFMAN DOLOWICH & VOLUCK LLP

By: 

Barry Z. Brodsky

Brian D. Peters

Attorneys for Defendant

HARBOR PIPE AND STEEL, INC.

EXHIBIT "A"

[Mailing Date]

NOTICE OF SETTLEMENT

Re: *Rene Diego Juarez v. Harbor Pipe and Steel Inc.*
Riverside County Superior Court, Case No RIC2001200

[Settlement Administrator's Info]

Dear Harbor Pipe and Steel Inc. Employee:

A settlement was reached between Plaintiff Rene Diego Juarez and Defendant Harbor Pipe and Steel Inc. On XXXX, the Court issued an order approving settlement of Plaintiff's claim under the Private Attorneys General Act of 2004 ("PAGA") for Defendant's alleged failure to timely pay employees on a bi-weekly basis under California Labor Code Section 204. Defendant denies these allegations and denies any wrongdoing of any kind associated with these allegations.

After accounting for Court-approved deductions from the Settlement amount for things such as attorneys' costs, administration of the settlement and a payment to Rene Diego Juarez for his work in bringing the lawsuit, the remainder is \$118,333.33. Of this, the law requires that 75% is allocated to the State of California and 25% is allocated to the eligible employees (described below). Therefore, the State of California will receive \$88,750.00 (75% of the penalties) and the eligible employees will each receive a pro rata share of the remaining \$29,583.33 (25% of the penalties).

The settlement and enclosed check represent your pro-rata share of the penalties and are based on a formula that took into account the total number of wage statements that were issued to you in relation to the number of wage statements issued to all eligible employees during the time period from March 18, 2019 to February 10, 2020.

By way of this Settlement, you release Harbor Pipe and Steel Inc. and its present and former officers, directors, employees, shareholders, agents, trustees, representatives, attorneys, insurers, parent companies, subsidiaries, divisions, affiliates, predecessors, successors, assigns, including any individual or entity that could be jointly liable with Defendant from any and all claims for civil penalties under Labor Code section 2699, including, but not limited to, for violations of Labor Code sections 204 and 210 based on the facts alleged in the lawsuit.

Your check is valid for 180 days from the date of issuance. Funds attributable to any uncashed checks will be sent to a charitable legal services organization approved by the Court, and in accordance with California Code of Civil Procedure Section 384.

If you have any questions concerning this Settlement, please contact [Settlement Administrator] at XXXX.

EXHIBIT "B"

KINGSLEY & KINGSLEY, APC
ERIC B. KINGSLEY, Esq. (SBN 185123)
eric@kingsleykingsley.com
KELSEY M. SZAMET, Esq. (SBN 260264)
kelsey@kingsleykingsley.com
ZACHARY D. GREENBERG, Esq. (SBN 331501)
zach@kingsleykingsley.com
16133 Ventura Blvd., Suite 1200
Encino, CA 91436
(818) 990-8300, Fax (818) 990-2903

Attorneys for Plaintiff and all aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

RENE DIEGO JUAREZ, an individual, on
behalf of the State of California as a private
attorney general,

PLAINTIFF,

v.

HARBOR PIPE AND STEEL INC.; and
DOES 1 thru 50, inclusive,

DEFENDANTS.

Case No. RIC2001200

[Case Assigned for All Purposes to Hon. Daniel
A. Ottolia in Dept. 4]

[PROPOSED] ORDER GRANTING
APPROVAL OF REPRESENTATIVE
ACTION SETTLEMENT

1 **[PROPOSED] ORDER**

2 Pursuant to the Joint Stipulation submitted by Plaintiff RENE DIEGO JUAREZ
3 (“Plaintiff”), on behalf of himself and the people of the State of California as an “aggrieved
4 employee” under the California Labor Code Private Attorneys General Act of 2004, Labor Code
5 § 2699, *et seq.* (“PAGA”) and Defendant HARBOR PIPE AND STEEL INC. (“Defendant”)
6 (collectively, the “Parties”) and good cause appearing:

7 Having considered the Parties’ Joint Stipulation, and all legal authorities and documents
8 submitted in support thereof, including the Settlement Agreement and Release (“Settlement
9 Agreement” or “Settlement”) attached hereto as Exhibit “1”, and good cause appearing, IT IS
10 HEREBY ORDERED that the Parties’ request is GRANTED, subject to the following findings
11 and orders:

- 12 a) The Court approves the settlement of Plaintiff’s claim on behalf of himself
13 and all “aggrieved employees” for PAGA Penalties set forth in his
14 Complaint in the amount of \$200,000.00.
- 15 b) After deduction of attorneys’ fees and litigation expenses, a litigation
16 enhancement to the Plaintiff, and settlement administration costs as
17 discussed in the Settlement, the remaining amount of \$118,333.33 is
18 allocated as PAGA penalties.
- 19 c) The Court approves 75% of the PAGA penalties be allocated to the Labor
20 Workforce Development Agency (“LWDA”) in the amount of \$88,750.00.
- 21 d) The Court directs the remaining 25% of the PAGA penalties, in an amount
22 of \$29,583.33, be allocated to the Aggrieved Employees (as defined in the
23 Joint Stipulation Requesting Approval of Representative Action
24 Settlement) on a pro-rata basis.

25 **IT IS SO ORDERED.**

26
27 DATED: _____

JUDGE OF THE SUPERIOR COURT

EXHIBIT "C"

KINGSLEY & KINGSLEY, APC
ERIC B. KINGSLEY, Esq. (SBN 185123)
eric@kingsleykingsley.com
KELSEY M. SZAMET, Esq. (SBN 260264)
kelsey@kingsleykingsley.com
ZACHARY D. GREENBERG, Esq. (SBN 331501)
zach@kingsleykingsley.com
16133 Ventura Blvd., Suite 1200
Encino, CA 91436
(818) 990-8300, Fax (818) 990-2903

Attorneys for Plaintiff and all aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

RENE DIEGO JUAREZ, an individual, on
behalf of the State of California as a private
attorney general,

PLAINTIFF,

v.

HARBOR PIPE AND STEEL INC.; and
DOES 1 thru 50, inclusive,

DEFENDANTS.

Case No. RIC2001200

[Case Assigned for All Purposes to Hon. Daniel
A. Ottolia in Dept. 4]

[PROPOSED] FINAL JUDGMENT

1 The Court has received and considered the joint stipulation of Plaintiff, as an individual,
2 and on behalf of the people of the State of California as an “aggrieved employee” acting as a
3 private attorney general under the California Labor Code Private Attorneys General Act of 2004,
4 Labor Code § 2699, *et seq.* (“PAGA”), and Defendant in the above captioned action filed on March
5 16, 2020.

6 **NOW THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED:**

7 The Court having entered an order approving the PAGA Penalties as reflected in the
8 Parties’ proposed Settlement Agreement hereby enters FINAL JUDGMENT in favor of Plaintiff
9 and the aggrieved employees in the amount of \$200,000.00. This “Judgment” is intended to be a
10 final disposition of the above captioned action in its entirety and is intended to be immediately
11 appealable.

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13 **IT IS SO ORDERED.**

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15 DATED: _____

16 JUDGE OF THE SUPERIOR COURT
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(PROOF OF SERVICE)
[CCP 1013(a)(3)]
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On December 7, 2020, I served all interested parties in this action the following documents described as: **JOINT STIPULATION REQUESTING APPROVAL OF REPRESENTATIVE ACTION SETTLEMENT; [PROPOSED] ORDER THEREON** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Barry Z. Brodsky
Brian D. Peters
KAUFMAN DOLOWICH VOLUCK LLP
11755 Wilshire Blvd., Suite 2400
Los Angeles, CA 90025
bbrodsky@kdvlaw.com
bpeters@kdvlaw.com

☐ **(BY MAIL)** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage fully prepaid at Encino, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☒ **BY ELECTRONIC SERVICE:** I caused a true and correct copy thereof to be electronically filed using the Labor and Workforce Development Agency Electronic Filing ("EF") System (<https://dir.tfaforms.net/271>) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

☒ **BY ELECTRONIC MAIL TRANSMISSION:** I caused the document to be send to the persons at the e-mail address(es) listed on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. A pdf copy of which was sent via email to the below email address(es).

☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 7, 2020, at Woodland Hills, California.



Michelle Tanzer