

PATRICK PINEDA v. OLDCASTLE INFRASTRUCTURE, INC.

California Superior Court, County of Riverside

Case No. RIC2001981

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims (“Agreement” or “Settlement”) is made and entered into by and between Plaintiff Patrick Pineda (“Plaintiff”), individually and in his capacity as representative of the State of California on behalf of all “Aggrieved Employees” as defined herein, on the one hand, and Defendant Oldcastle Infrastructure, Inc. (“Defendant”), on the other hand. Plaintiff and Defendant are hereinafter collectively referred to as “the Parties.” The Labor Code Private Attorneys General Act of 2004, California Labor Code section 2698 *et seq.*, is hereinafter referred to as the “PAGA.”

This Agreement is subject to the approval of the Court and is made for the sole purpose of consummating the settlement of this PAGA Action subject to the following terms and conditions. As detailed below, in the event the Court does not enter orders consistent with the terms of the Settlement or the conditions precedent are not met for any reason, this Agreement shall be void and shall be of no force or effect whatsoever.

I. DEFINITIONS

As used in this Agreement, the following terms shall have the meanings specified below. To the extent terms or phrases used in this Agreement are not specifically defined below, but are defined elsewhere in this Agreement, they are incorporated by reference into this definition section.

1. Action.

“Action” shall refer to the civil action filed by Plaintiff on June 24, 2020, in the Riverside County Superior Court, Case No. RIC2001981, and any amendments thereto.

2. Administrative Expenses.

“Administrative Expenses” shall include all costs and expenses associated with the duties performed by the Settlement Administrator.

1 **3. Aggrieved Employees.**

2 The “Aggrieved Employees,” for the purposes of this Settlement only, shall consist of all
3 current and former nonexempt California employees of Defendant, from April 20, 2019, through
4 the date of the Court’s order granting approval of the Settlement.

5 **4. Attorneys’ Fees and Expenses.**

6 “Attorneys’ Fees and Expenses” shall mean Plaintiff’s Counsel’s attorneys’ fees and
7 expenses as set forth in Paragraph III.1.

8 **5. Court.**

9 “Court” shall mean the Superior Court of California in and for the County of Riverside.

10 **6. Defendant.**

11 “Defendant” shall mean Oldcastle Infrastructure, Inc.

12 **7. Defense Counsel.**

13 “Defense Counsel” shall mean the attorneys of Hopkins & Carley, a Law Corporation.

14 **8. Effective Date.**

15 The “Effective Date” shall be the date when all of the following events have occurred: (1)
16 the Court has heard Plaintiff’s Motion for Approval of the Settlement and entered an order and
17 judgment approving the Settlement; and (2) the time for appeal, if applicable (as explained herein),
18 has expired. If no objection is made to the Settlement, there is no right to appeal and the Effective
19 Date is the date upon which the Court signs the final order and judgment. If an objection has been
20 filed and/or heard at the hearing on Plaintiff’s Motion for Approval, the Effective Date means: (1)
21 the date of final affirmation of the approval order and judgment from any appeal, the expiration of
22 the time for, or the denial of, a petition to review the approval order, or if review is granted, the
23 date of final affirmation of the approval order and judgment following review pursuant to that
24 grant; (2) the date of final dismissal of any appeal from the approval order and judgment or the
25 final dismissal of any proceeding to review the approval order and judgment, provided that the
26 approval order and judgment is affirmed and/or not reversed in any part; or (3) if no appeal is filed,
27 the expiration date of the time for the filing or noticing of any appeal from the Court’s order and
28

1 judgment approving the Settlement, as determined under Rule 8.104(a)(3) of the California Rules
2 of Court.

3 **9. Enhancement Payment.**

4 “Enhancement Payment” shall mean any additional monetary payment provided to
5 Plaintiff for: (i) his efforts and risks on behalf of the State of California and the Aggrieved
6 Employees in this Action as well, and (ii) the execution of a general release.

7 **10. Gross Settlement Amount.**

8 “Gross Settlement Amount” or “GSA” shall mean Three Hundred and Forty-Five
9 Thousand Dollars (\$345,000). The GSA includes: (1) Administrative Expenses; (2) Enhancement
10 Payment; (3) Attorneys’ Fees and Expenses; (4) Individual Penalties Payments; and (5) the
11 payment to the LWDA.

12 **11. Individual Penalties Payment.**

13 “Individual Penalties Payment” shall mean the amount which is ultimately distributed to
14 each Aggrieved Employee.

15 **12. Net Settlement Amount.**

16 “Net Settlement Amount” or “NSA” shall mean the GSA, less Administrative Expenses,
17 Plaintiff’s Enhancement Payment, and Attorneys’ Fees and Expenses.

18 **13. PAGA Representative.**

19 “PAGA Representative” shall mean Plaintiff Patrick Pineda.

20 **14. Parties.**

21 “Parties” shall mean the Plaintiff and Defendant.

22 **15. Plaintiff.**

23 “Plaintiff” shall mean Plaintiff Patrick Pineda.

24 **16. Plaintiff’s Counsel.**

25 “Plaintiff’s Counsel” shall mean the attorneys of Sutton Hague Law Corporation, Brett
26 Sutton, Jared Hague, and Brady Briggs.

1 **17. Released Claims.**

2 “Released Claim(s)” shall mean and include any and all claims for civil penalties that
3 could have been assessed or collected by Plaintiff or the LWDA, a State of California Executive
4 Branch Agency under the PAGA, on behalf of himself and all Aggrieved Employees, based on the
5 factual allegations of Plaintiff’s Complaint, filed in this Action on June 24, 2020, including but
6 not limited to any claims for civil penalties for failure to pay minimum and overtime wages, failure
7 to provide meal periods, failure to provide, authorize and permit rest periods, failure to issue
8 accurate itemized wage statements, failure to pay all wages due and owing twice each calendar
9 month, failure to pay all wages due and payable upon demand, failure to pay all wages due and
10 owing upon termination, failure to maintain adequate and accurate payroll records, and failure to
11 provide notice of pay. The Released Claims only include claims under PAGA, arising out of the
12 facts and circumstances at issue in the Action.

13 **18. Released Parties.**

14 “Released Parties” shall mean and include Defendant and its past, present and/or future
15 officers, directors, employees, and agents.

16 **19. Settlement.**

17 “Settlement” shall mean the settlement memorialized in this Agreement.

18 **20. Settlement Administrator.**

19 “Settlement Administrator” means Phoenix Settlement Administrators, or any other third-
20 party administrator mutually agreed to by the Parties and approved by the Court, which will
21 perform the duties of: (a) calculating the amounts due to each Aggrieved Employee pursuant to
22 the Settlement; (b) establishing a Qualified Settlement Fund pursuant to applicable law for the
23 purpose of administering this Settlement; (c) providing Individual Penalties Payments, along with
24 IRS Forms 1099, to the Aggrieved Employees; (d) utilizing the National Change of Address
25 Database maintained by the United States Postal Service, mail-forwarding information and/or skip
26 tracing methods, as reasonable, to update the Database and taking steps to send Individual
27 Penalties Payments to current mailing addresses; (e) distributing the payment provided by this
28 Agreement to the LWDA; (f) distributing the Attorneys’ Fees and Expenses payment, along with

1 IRS Form 1099; (g) distributing the Enhancement payment, along with IRS Form 1099 to Plaintiff;
2 (h) reporting the Individual Penalties Payment amounts of each Aggrieved Employee, the
3 Attorneys' Fees and Expense payment, and the Enhancement Payment to all required taxing and
4 other authorities; and (f) performing such other duties as are described herein.

5 **21. Settlement Approval Date.**

6 "Settlement Approval Date" shall mean the date upon which the Court enters an order
7 approving this Settlement.

8 **22. Settlement Period.**

9 The "Settlement Period" shall be defined as commencing on April 20, 2019, and continuing
10 through the date of the Court's order granting approval of the Settlement.

11 **II. RECITALS**

12 1. This Agreement encompasses and shall include all Aggrieved Employees as
13 defined herein.

14 2. On or around January 3, 2020, Plaintiff, on behalf of himself and all Aggrieved
15 Employees, sent the LWDA a notice of allegations against Defendant. Plaintiff alleged that
16 Defendant failed to pay minimum and overtime wages, failed to provide meal periods, failed to
17 provide rest periods, failed to pay all wages due and payable twice monthly, failed to pay all wages
18 due and owing at the time of termination, failed to pay wages due and payable upon demand, and
19 failed to provide accurate itemized wage statements. The LWDA did not provide any notice that
20 it intended to investigate Plaintiff's allegations.

21 3. On June 22, 2020, Plaintiff filed Case No. 18CV-0143 in the Riverside County
22 Superior Court. Plaintiff alleged PAGA claims for civil penalties for failure to pay minimum and
23 overtime wages, failure to provide meal periods, failure to provide rest periods, failure to issue
24 accurate itemized wage statements, failure to pay all wages due and owing twice each calendar
25 month, failure to pay all wages due and payable upon demand, failure to pay all wages due and
26 owing upon termination, failure to maintain adequate and accurate payroll records, and failure to
27 provide notice of pay.

1 4. On or around September 11, 2020, Defendant filed a general denial to the
2 allegations in Plaintiff's Complaint, denying all material allegations of liability and asserting
3 various affirmative defenses. Defendant asserts that it complied with applicable laws during the
4 Settlement Period and was at all times in compliance with California law.

5 5. Defendant is entering this Agreement solely to avoid the time and expense of
6 further litigation. Nothing in this Agreement may be construed as an admission of any wrongdoing
7 by Defendant. Defendant has taken into account the uncertainty and risks inherent in litigation.
8 Defendant has therefore concluded that it is desirable that the Action be settled in the manner and
9 upon the terms and conditions set forth in this Agreement.

10 6. On or around December 16, 2020, the Parties agreed to stay formal discovery,
11 including Plaintiff's outstanding written discovery requests and notice of the deposition of
12 Defendant's corporate representative, in order to proceed to private mediation. In advance of the
13 mediation, Defendant produced a significant amount of documents and data to allow Plaintiff and
14 his counsel to assess the case, including but not limited to Plaintiff's personnel file, time records,
15 and wage statement; Defendant's employee handbooks in effect during the Settlement Period, as
16 well as Defendant's written policies pertaining to nonexempt employee timekeeping,
17 compensation, payment of wages, and meal and rest periods; a list of all Aggrieved Employees
18 identified by employee ID number, including job title, employment division, work location, and
19 dates of employment; and a 25 percent random sampling of all Aggrieved Employee's wages
20 statements and time records.

21 7. On April 26, 2021, the Parties attended a full-day mediation with John S. Adler,
22 Esq. of Judicate West. The Parties did not reach a settlement on the day of the mediation. Mr.
23 Adler made a mediator's proposal on April 27, 2021, which was not accepted by the Parties.
24 Following mediation and the failed mediator's proposal, the Parties continued to negotiate at arm's
25 length and ultimately reached the settlement embodied in this Agreement.

26 8. Based on information produced by Defendant as of April 5, 2021, there are
27 approximately 734 Aggrieved Employees as of April 20, 2021, including Plaintiff. Upon approval
28

of this Settlement by the Court, Defense Counsel will provide a Database of Aggrieved Employee names and contact information to the Settlement Administrator as described in Paragraph VI.2.

9. Plaintiff warrants he has not sold, assigned, or transferred any claim or cause of action which he has or had against Defendant or any of the Released Parties.

10. The Parties understand that the Court must approve the Settlement of this Action.

THEREFORE, in consideration of the mutual promises, assurances, and covenants set forth in this Agreement, the parties agree as follows:

III. AGREEMENT

1. **Gross Settlement Amount.** Subject to the notice procedures set forth below and Approval by the Court, Defendants agree to pay the Gross Settlement Amount ("GSA") of THREE HUNDRED AND FORTY-FIVE THOUSAND DOLLARS AND ZERO CENTS (\$345,000.00) to settle the Action. The GSA shall be allocated as follows, subject to approval by the Court: (i) up to one-third of the GSA (\$115,000.00) for an award of Plaintiff's Counsel's attorneys' fees; (ii) up to Twelve Thousand Dollars (\$12,000.00) for reimbursement of actual costs incurred in Plaintiff's Counsel's litigation of this case; (iii) up to Five Thousand Dollars (\$5,000.00) for payment of Administrative Expenses; (iv) up to Two Thousand Five Hundred Dollars (\$2,500.00) for Plaintiff's Enhancement Payment; (v) after deduction of the amounts enumerated above, the Net Settlement Amount ("NSA"), estimated to be at least Two Hundred and Ten Thousand Five Hundred Dollars (\$210,500), shall be made to the Aggrieved Employees (including Plaintiff) and to the LWDA in accordance with Paragraph III.2.

2. **Distribution of the Net Settlement Amount.** The NSA shall be calculated after deducting the Attorneys' Fees and Expenses, Administrative Expenses, and Enhancement Payment. The NSA will then be distributed as follows:

a) A total of 75% of the NSA shall be paid to the LWDA pursuant to Labor Code section 2699(i).

b) A total of 25% of the NSA shall be distributed to the Aggrieved Employees on a pro rata basis, based on their respective number of compensable pay periods during the

1 Settlement Period, according to Defendant's records. Aggrieved Employees will receive an IRS
2 Form 1099-MISC (Box 3) for this payment.

3 3. **Court Approval.** After full execution of this Agreement, Plaintiff shall promptly
4 move the court for approval of the Settlement, as well as approval of all amounts to be deducted
5 from the GSA as described in Paragraph III.1. Defendant shall not oppose the motion, and shall
6 make reasonable efforts to cooperate in obtaining approval of the Settlement. Plaintiff's Counsel
7 shall submit the Agreement to the Court and LWDA, as necessary under Labor Code section
8 2699(l) and any other applicable provision. Should the Court not grant approval of this Agreement,
9 then the entirety of the Agreement shall be null and void, unless otherwise agreed upon in writing
10 by the Parties. The Court shall retain jurisdiction to enforce the terms and conditions of the
11 judgment. The judgment shall not be recorded in any manner, and no effort shall be made to
12 enforce it, unless Defendant defaults on its payment obligations under this Agreement. If the
13 Agreement is null and void, and a new trial date is selected, all discovery deadlines shall be based
14 on the new trial date.

15 4. **Reversion.** In the event the Court does not approve any amount requested to be
16 deducted from the GSA as described in Paragraph III.1, including Attorneys' Fees and Expenses,
17 Administrative Expenses, and the Enhancement Payment, any amount requested but not approved
18 shall not revert to Defendants, but shall be added to the NSA for distribution pursuant to Paragraph
19 III.2.

20 5. **Notice of Settlement.** As part of the Agreement to settle the PAGA claims, Plaintiff
21 will file a Notice of Settlement with the Court within five (5) court days of the Parties' execution
22 of the Agreement.

23 6. **Additional Non-Monetary Consideration.** Plaintiff recognizes and acknowledges
24 that Defendant issued an updated 2021 California Attendance Policy as of on or around April 6,
25 2021, which, among other things, addresses in more detail various California wage-and-hour
26 matters, including nonexempt employee timekeeping, meal periods, and rest periods. In addition,
27 Defendant agrees to take further preventive action by distributing a communication regarding
28 wage-and-hour compliance to its nonexempt California employees most pertinent to the

allegations of Plaintiff's complaint in this Action. Specifically, no later than ten (10) business days following the Court's Order granting approval of this Settlement, Defense Counsel will confirm in writing to Plaintiff's Counsel that Defendant has distributed a written communication to all nonexempt employees within its California "Enclosures Division" who carry a work radio and/or work cell phone incident to their job duties, which shall include the following language:

As a reminder, it is imperative that you accurately record all time worked. Time worked is all time actually spent performing job-related duties. This includes time spent on work-related phone calls and emails. You are required to report the time you begin and end every work period.

You are prohibited from working "off the clock." An employee who performs work for the Company and does not accurately report the time is subject to disciplinary action up to, and including, termination.

The communication shall also provide a point of contact in the event the employee has questions about recording his/her/their time.

7. **Non-Disparagement.** Plaintiff agrees not to publicly disparage Defendant or any of the Released Parties.

8. **Covenant Regarding Rehire.** Plaintiff hereby waives his right to seek reinstatement, employment, or re-employment with Defendant and affirmatively agrees that he will not apply for such reinstatement, employment, or re-employment. Plaintiff agrees that if he were to seek employment with Defendant in the future, Defendant would have legitimate non-discriminatory and/or non-retaliatory reasons justifying a refusal to hire him, as contemplated by California Code of Civil Procedure § 1002.5(b)(2).

IV. RELEASED CLAIMS

1. Plaintiff's Release of Claims and General Release.

a) Plaintiff, individually and in his capacity as a representative of the State of California and the LWDA, agrees to release the Released Parties from the Released Claims.

b) Plaintiff further agrees to a general release of claims for himself and his respective spouse, heirs, successors and assigns, forever releasing the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies,

1 damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties and
2 expenses of any nature whatsoever, from the beginning of time through the date of his signature
3 on this Agreement, known or unknown, suspected or unsuspected, whether in tort, contract, equity,
4 or otherwise, for violation of any federal, state or local statute, rule, ordinance or regulation,
5 including but not limited to all claims arising out of, based upon, or relating to his employment
6 with Defendant or the remuneration for, or termination of, such employment. Plaintiff's Release
7 of Claims also includes a waiver of California Civil Code section 1542, which provides as follows:

8 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
9 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
10 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
11 RELEASE AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE
12 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
13 DEBTOR OR RELEASED PARTY.

14 This release excludes any release of any claims not permitted to be released by law.

15 c) Plaintiff acknowledges that: (a) he has consulted with an attorney prior to
16 executing this Agreement; (b) he has read the release and understands the effect of his release and
17 that he is releasing legal rights; (c) he is aware of certain rights to which he may be entitled under
18 certain statutes and laws identified in the release; (d) he has had adequate time to consider this
19 Agreement; (e) he understands the Agreement and agrees to be bound by its terms; and (f) as
20 consideration for executing this Agreement, he has received additional benefits and compensation
21 of value to which he would not otherwise be entitled.

22 V. ADMINISTRATIVE EXPENSES

23 1. **The Settlement Administrator's Costs and Expenses.** All costs and expenses due
24 the Settlement Administrator in connection with its administration of the Settlement including, but
25 not limited to, those set forth in Paragraph I.20.

26 VI. NOTICE AND PAYMENT PROCEDURES

27 1. **The Settlement Administrator.** The Parties agree that Phoenix Settlement
28 Administrators, 1411 N. Batavia St. Suite 105, Orange, CA 92867, should be appointed as
Settlement Administrator. The Settlement Administrator will be responsible for the duties outlined
in Paragraph I.20.

Administrative Expenses are not anticipated to exceed \$5,000. In the event that Administrative Expenses exceed \$5,000 any and all additional amounts shall be deducted from the Gross Settlement Amount and the Net Settlement Amount will be recalculated to reflect such additional Administrative Expenses. To the extent that Administrative Expenses exceed \$5,000, Plaintiff's Counsel agrees to provide an explanation to the Court, supported by declarations from Plaintiff's Counsel, as to the source of the additional Administrative Expenses, the reason such additional expenses were not anticipated prior to the execution of this Agreement, and an explanation as to whether such additional expenses should be deducted from the Gross Settlement Amount or allocated in some other manner, subject to Court approval. In the event that Administrative Expenses are less than \$5,000, the difference shall be added to the Net Settlement Amount for distribution to the LWDA and Aggrieved Employees.

2. **Timing of Payments.**

a) Within ten (10) calendar days of the Effective Date, Defendant shall: (i) provide the Settlement Administrator with an up-to-date list of Aggrieved Employees containing names, social security numbers, last-known telephone numbers, last-known mailing addresses and pay periods for each Aggrieved Employee (the "Database"); and (ii) deposit the GSA into a Qualified Settlement Account to be established by the Settlement Administrator.

b) Within ten (10) calendar days following receipt of the Database and deposit of the GSA, the Settlement Administrator shall calculate and distribute all settlement payments, including: (i) the Attorneys' Fees and Expenses, (ii) Plaintiff's Enhancement Payment, (iii) the Individual Penalties Payments for the Aggrieved Employees, and (iv) the LWDA Payment.

3. **Notice to Aggrieved Employees.** Each Individual Penalties Payment shall be accompanied by a letter ("Notice Form") explaining why the check is being sent and a basis for the calculation. The letter shall be approved by the Court upon approval of the Settlement. Defendant represents the addresses and data to be provided to effectuate the pro rata distribution of the Settlement will be accurate to the best of Defendant's knowledge.

4. **No Right to Exclusion or Objection.** This Settlement resolves claims brought pursuant to PAGA by Plaintiff acting as proxy and as a Private Attorney General of and for the

1 State of California and the LWDA. As such, the Parties agree that no Aggrieved Employee has the
2 right to be excluded from the Settlement. Aggrieved Employees will be bound by the terms of the
3 Settlement, upon its approval by the Court, regardless of whether they cash any Individual
4 Penalties Payment received as a result of the Settlement. The Parties also agree that no Aggrieved
5 Employee has the right to object to the terms of the Settlement or to intervene in the Action.

6 5. **Returned Settlement Checks.** In the event that an Individual Penalties Payment
7 check is returned to the Settlement Administrator with a forwarding address, the Individual
8 Penalties Payment check will be re-mailed to the forwarding address. In the event an Individual
9 Penalties Payment check is returned to the Settlement Administrator without a forwarding address
10 or is otherwise undeliverable, the Settlement Administrator will make a diligent effort to correct
11 the address and re-mail the returned Individual Penalties Payment check. If within the 120-
12 calendar day period following issuance of the Individual Penalties Payment check, the Aggrieved
13 Employee contacts the Settlement Administrator or counsel for either Party with a new address,
14 the Individual Penalties Payment check will be re-issued and mailed to the new address provided
15 any such re-issued Individual Penalties Payment check will indicate on its face that it is void if not
16 negotiated within 120 calendar days of its issuance.

17 6. **Disposition of Uncashed Individual Penalties Payment Checks.** Individual
18 Penalties Payment checks shall be negotiable for not less than 120 calendar days from issuance.
19 All Individual Penalties Payment checks will indicate on their face that they are void if not
20 negotiated within 120 calendar days of issuance. The Notice Form enclosed with the Individual
21 Penalties Payments will also note this 120-day requirement. For Individual Penalties Payment
22 checks remaining uncashed for more than 120 calendar days after issuance, the net funds shall be
23 deposited into the California Secretary of State's Unclaimed Property division in the name of each
24 such Aggrieved Employee.

25 7. **No Effect on Employee Benefits.** All Individual Penalties Payment to Aggrieved
26 Employees shall be deemed to be paid to such Aggrieved Employees in the year in which such
27 payments actually are received by the Aggrieved Employees. It is expressly understood and agreed
28 that the receipt of such Individual Penalties Payment will not entitle any Aggrieved Employees to

1 additional compensation or benefits under any company bonus, contest, or other compensation or
2 benefit plan or agreement in place during the period covered by the Agreement, nor will it entitle
3 any Aggrieved Employee to any increased retirement, 401K benefits or matching benefits, or
4 deferred compensation benefits. It is the intent of this Settlement that the Individual Penalties
5 Payments are the sole payments to be made by Defendants to the Aggrieved Employees, and that
6 the Aggrieved Employees are not entitled to any new or additional compensation or benefits as a
7 result of having received an Individual Penalties Payment (notwithstanding any contrary language
8 or agreement in any benefit or compensation plan document that might have been in effect during
9 the period covered by this Settlement).

10 8. **Final Report by Settlement Administrator.** Within ten (10) business days after
11 the disbursement of all funds, the Settlement Administrator will serve on the Parties a declaration
12 providing a final report on the disbursements of all funds.

13 **VII. TAX TREATMENT OF INDIVIDUAL PENALTIES PAYMENTS.**

14 1. **Tax Treatment.** It is expressly agreed by the Parties that the Individual Penalties
15 Payment will be considered penalties. Plaintiff and the Aggrieved Employees will receive an IRS
16 Form 1099-Misc (Box 3) for the Individual Penalties Payment received from the Settlement
17 Administrator.

18 2. **No Warranty.** The Parties make no warranty as to any tax consequences of any
19 payment hereunder. Any determination of the tax consequences of those payments is the sole
20 responsibility of the Aggrieved Employee. Aggrieved Employees who receive an Individual
21 Penalties Payment pursuant to this Settlement shall be responsible for correctly characterizing such
22 amounts for tax reporting purposes and solely responsible for any and all tax obligations associated
23 with such receipt.

24 **VIII. ADVICE OF ATTORNEY**

25 1. Plaintiff acknowledges that Defendant, through counsel to Plaintiff's counsel, has
26 encouraged Plaintiff to seek independent representation or legal counsel regarding the rights being
27 waived by this Agreement, and that Plaintiff was given a full and fair opportunity to become fully
28 informed about the legal impact of this Agreement before signing this Agreement. Plaintiff is

1 represented by counsel experienced in this type of matter, and this Agreement was reached after
2 extensive arm's-length negotiations. Plaintiff warrants and represents that in executing this
3 Agreement, he has had the opportunity to have the terms of this Agreement and its consequences
4 completely explained to him by his attorney, and fully understands the terms and consequences of
5 this Agreement.

6 2. Plaintiff represents and acknowledges he is voluntarily entering into this
7 Agreement with the full knowledge of the rights he may be waiving.

8 **IX. SUCCESSORS**

9 1. This Agreement shall inure to the benefit of Plaintiff, the Aggrieved Employees,
10 and Defendant, and each of their respective former, current and future parent companies,
11 subsidiaries, affiliates, shareholders, members, agents (including, without limitation, any
12 investment bankers, accountants, insurers, reinsurers, attorneys, and any past, present or future
13 officers, directors and employees), predecessors, successors, heirs, assigns, officers, directors,
14 employees, and any individuals or entities which could be jointly liable for any of the Released
15 Claims as defined herein.

16 **X. EFFECTUATION**

17 1. The Parties shall execute any and all other documents and do all other things which
18 may be reasonably necessary to carry out the terms of this Agreement.

19 2. The Court shall enter judgment upon approval of this Agreement. The Court shall
20 retain jurisdiction over the Parties to enforce the terms of the judgment. Notice of entry of
21 judgment and order shall be served by Plaintiff on the LWDA.

22 3. The Parties agree that this Agreement may be executed in counterparts and that
23 original signatures, facsimile signatures, or PDF files of signatures shall be binding.

24 4. The Parties agree that facsimile, electronic (i.e., Docusign) or other copies of the
25 Parties' and other signatures on this Agreement are binding and admissible to the same extent that
26 they would be if they were original signatures.

XI. ATTORNEYS' FEES AND COSTS

1. **Attorney's Fees.** As part of the request for Court Approval, Plaintiff's Counsel will submit its request for an award of attorneys' fees and an application for reimbursement of any actual costs associated with Plaintiff's Counsel's litigation and Settlement of this case, to be paid out of the Gross Settlement Amount, as follows: (i) up to one-third of the GSA (\$115,000.00) for an award of Plaintiff's Counsel's attorneys' fees and (ii) up to Twelve Thousand Dollars (\$12,000.00) for reimbursement of actual costs incurred in Plaintiff's Counsel's litigation of this case. Defendants will not oppose this application. The Court shall determine the amount of costs and attorneys' fees to be paid to Plaintiff's Counsel at the hearing on approval of this Settlement. Any portion of the amount sought for fees and costs that is not awarded to Plaintiff's counsel will not revert to Defendants, but will be part of the Net Settlement Amount to be distributed to the LWDA and Aggrieved Employees as set forth in Paragraph III.2.

2. **Each Party to Bear Its Own Costs.** Except as is specifically provided herein, the Parties hereto will bear responsibility for their own attorneys' fees and costs, taxable or otherwise, incurred by them or arising out of this Action, and will not seek reimbursement thereof from any Party to this Agreement.

XII. MISCELLANEOUS PROVISIONS

1. **Entire Agreement.** This Agreement is the complete and entire agreement between the Parties regarding the settled claims as of the Effective Date of the Agreement, and is intended to be fully integrated. Any and all prior agreements and/or understandings, whether written or oral, that are not set forth in this Agreement shall have no force or effect. Each Party acknowledges and represents that in executing this Agreement they have not relied upon any inducements, promises, or representations made by the other Party or any person representing any other Party which are not specifically set forth in this Agreement.

2. **Modification.** This Agreement may not be modified, except by an express written agreement signed by all Parties.

1 3. **Venue.** The parties agree that this Agreement is entered into and is to be performed
2 in Riverside County, California, and that venue for any proceeding to enforce or interpret this
3 Agreement shall be in Riverside County, California.

4 4. **Construction.** Each Party to this Agreement has had an opportunity to participate
5 in the drafting of this Agreement to the extent they desire and, therefore, this Agreement shall be
6 construed according to its plain meaning and not in favor of or against any Party.

7 5. **Governing Law.** This Stipulation is intended to and shall be governed by the laws
8 of the State of California, without regard to conflict of law principles, in all respects, including
9 execution, interpretation, performance, and enforcement.

10 6. **Corporate Signatories.** Any person executing this Stipulation or any such related
11 document on behalf of a corporate signatory hereby warrants and promises, for the benefit of all
12 Parties hereto, that such person has been duly authorized by such corporation to execute this
13 Stipulation or any such related document.

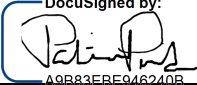
14 7. **Execution in Counterparts.** This Stipulation shall become effective upon its
15 execution by all of the undersigned. The Parties and their counsel may execute this Stipulation in
16 counterparts, and execution of counterparts shall have the same force and effect as if all Parties
17 had signed the same instrument.

18 8. **Action to Enforce Agreement.** In any suit or court action to enforce the terms of
19 this Agreement, the prevailing party shall be entitled to recover attorneys' fees and costs.

20
21
22
23 *(signatures on following page)*
24
25
26
27
28

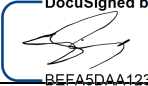
IN WITNESS WHEREOF, the Parties have executed this Agreement on the date below their signatures or the signature of their representatives. The date of the Agreement shall be the date of the latest signature.

Dated: 8/12/2021

DocuSigned by:

A9B83EBE946240B...

Patrick Pineda
Plaintiff and PAGA Representative

Dated: 16-Aug-2021

DocuSigned by:

BEEA5DAA123C429...

Oldcastle Infrastructure, Inc.

Printed: Serge Boutros

Title: President, Enclosures