

1 **BIBIYAN LAW GROUP, P.C.**

2 DAVID D. BIBIYAN (SBN 287811)

3 david@tomorrowlaw.com

4 DIEGO AVILES (SBN 315533)

5 diego@tomorrowlaw.com

6 8484 Wilshire Boulevard, Suite 500

7 Beverly Hills, California 90211

8 Tel: (310) 438-5555; Fax: (310) 300-1705

9 Attorneys for Plaintiff, DELIA SIERRA, on behalf of
10 herself and all others similarly aggrieved

11 **The Law Offices of Cheryl A. Canty, APC**

12 Cheryl A. Canty

13 240 Newport Center Drive, Suite 219-5

14 Newport Beach, California 92660

15 cherylacanty@gmail.com

16 **BROWNE GEORGE ROSS O'BRIEN ANNAGUEY & ELLIS LLP**

17 Eric M. George

18 Russell F. Wolpert

19 2121 Avenue of the Stars, Suite 2800

20 Los Angeles, California 90067

21 egeorge@bgrfirm.com

22 rwolpert@bgrfirm.com

23 Attorneys for Defendant NEXEM-ALLIED, LLC

24 [attorneys continue]

25 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

26 **FOR THE COUNTY OF LOS ANGELES**

27 DELIA SIERRA, on behalf of herself and all
28 others similarly aggrieved,

Claimant,

vs.

NEXEM-ALLIED, LLC, a California limited
liability company; BERSHTEL ENTERPRISES,
LLC, a California limited liability company dba
WEPACKITALL; and DOES 1 through 100,
inclusive,

Respondents.

Case No. 20STCV1181

**JOINT STIPULATION OF
REPRESENTATIVE ACTION
SETTLEMENT**

[Assigned for all purposes to The Honorable
Stuart M. Rice in Dept. 49,
111 N. Hill St., Los Angeles 90012]

Action Filed: August 24, 2021

1 **LITTLER MENDELSON, P.C.**

2 Shiva Shirazi Davoudian
3 2049 Century Park East, 5th Floor
4 Los Angeles, California 90067
5 SDavoudian@littler.com

6 **LITTLER MENDELSON, P.C.**

7 James Payer
8 633 West Fifth Street, 63rd Floor
9 Los Angeles, California 90071
10 JPayer@littler.com

11 Attorneys for Defendant BERSHTel ENTERPRISES, LLC
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1 This Joint Stipulation of Representative Action Settlement ("Stipulation") is made and
2 entered into by and between plaintiff Delia Sierra ("Plaintiff"), as a representative of aggrieved
3 employees and the State of California, on the one hand; and defendants Nexem-Allied, LLC
4 ("Nexem") and Bershtel Enterprises LLC ("Bershtel") (collectively with Nexem, "Defendants"),
5 on the other hand. Plaintiff and Defendants shall be referred to collectively as the "Parties."

6 **I. DEFINITIONS**

7 The following definitions are applicable to this Stipulation. Definitions contained
8 elsewhere in this Stipulation will also be effective.

9 1. "Action" means the action entitled *Delia Sierra v. Nexem-Allied, LLC, et al.*, Los
10 Angeles Superior Court, Case No. 20STCV1181.

11 2. "Aggrieved Employee" or "Aggrieved Employees" mean: (a) all hourly, non-
12 exempt employees of Nexem who were assigned to work at Bershtel during the PAGA Period; and
13 (b) all hourly-paid, non-exempt employees of Bershtel who worked in California during the PAGA
14 Period.

15 3. "Aggrieved Employee List" means a complete list of all Aggrieved Employees that
16 Defendants will diligently and in good faith compile from its records and provide to the Settlement
17 Administrator within fourteen (14) calendar days after the Effective Date. The Aggrieved
18 Employee List will be formatted as a Microsoft Office Excel spreadsheet and will include each
19 Aggrieved Employee's: (a) full name, (b) last known address, (c) last known telephone number, (d)
20 Social Security number, and (e) the number of Pay Periods worked as an Aggrieved Employee in
21 California during the PAGA Period.

22 4. "Attorneys' Fees and Costs" means attorneys' fees agreed upon by the Parties and
23 approved by the Court for Plaintiff's Counsel's litigation and resolution of the Action, and all costs
24 incurred and to be incurred by Plaintiff's Counsel in the Action, including, but not limited to, fees
25 and costs associated with court filings, documenting the Settlement, securing the Court's approval
26 of the Settlement, and obtaining entry of the Judgment terminating the Action. Plaintiff's Counsel
27 will request attorneys' fees from the Court in an amount not to exceed 35% of the Gross Settlement
28 Amount, which, prior to escalation pursuant to Paragraph 56, would amount to One Hundred

1 Thirty-Four Thousand, Four Hundred Dollars and Zero Cents (\$134,400.00), subject to the Court's
2 approval. Plaintiff's Counsel will also request reimbursement of costs incurred by Plaintiff's
3 Counsel's litigation and resolution of the Action in an amount up to Twenty-Five Thousand Dollars
4 (\$25,000.00), subject to the Court's approval.

5 5. **"Court"** means the Superior Court of the State of California for the County of Los
6 Angeles or any other court taking jurisdiction of the Action.

7 6. **"Defendants"** mean collectively Nexem-Allied, LLC, and Bershtel Enterprises
8 LLC.

9 7. **"Effective Date"** means the settlement embodied in this Stipulation of Settlement
10 shall become effective when all of the following events have occurred: (a) this Stipulation of
11 Settlement has been executed by all Parties and by counsel; (b) the Court has approved the
12 settlement; and (c) the later of the following events: when the period for filing any appeal, writ or
13 other appellate proceeding opposing this Stipulation of Settlement has elapsed without any appeal,
14 writ or other appellate proceeding having been filed; or any appeal, writ or other appellate
15 proceeding opposing the this Stipulation of Settlement has been voluntarily or involuntarily
16 dismissed finally and conclusively with no right to pursue further remedies or relief; or any appeal,
17 writ or other appellate proceeding has upheld the Court's order with no right to pursue further
18 remedies or relief. In this regard, it is the intention of the Parties that this settlement shall not
19 become effective until the Court's order approving the settlement is completely final, and there is
20 no further recourse by an appellant or objector who seeks to contest the settlement. For purposes
21 of determining the Effective Date, the Parties agree that only California Courts have jurisdiction
22 over any such appeals, except for any appellate procedure over which the United States Supreme
23 Court may exercise jurisdiction.

24 8. **"Enhancement Payment"** shall mean a payment of \$7,500 to Delia Sierra for
25 bringing the instant action.

26 9. **"Individual Settlement Payment"** means the *pro rata* amount payable to each
27 Aggrieved Employee from the 25% portion of the Net Settlement Amount allocated to payments to
28 the Aggrieved Employees.

1 10. **“Judgment”** means the Court’s Judgment approving the Settlement, substantially in
2 the form attached hereto as Exhibit 2, including any revisions required by the Court.

3 11. **“LWDA”** means the California Labor and Workforce Development Agency.

4 12. **“LWDA Letter”** means Plaintiff’s January 15, 2020 letter to the LWDA.

5 13. **“Gross Settlement Amount”** is the settlement amount of Three Hundred Eighty-
6 Four Thousand Dollars and Zero Cents (\$384,000.00), which Defendants shall pay to resolve the
7 Action. The Gross Settlement Amount includes: (a) the payment to the LWDA; (b) all Individual
8 Settlement Payments to Aggrieved Employees; (c) Plaintiff Counsel’s Attorneys’ Fees and Costs;
9 (d) the Enhancement Payment to Plaintiff in the amount of \$7,500.00 in exchange for, among other
10 things, a more expansive release than provided by other Aggrieved Employees; and (e) Settlement
11 Administration Costs.

12 14. **“Net Settlement Amount”** means the total amount that will be paid to the LWDA
13 and the Aggrieved Employees pursuant to Paragraphs 34 and 35. The Net Settlement Amount is
14 equivalent to the Gross Settlement Amount less deductions for: (a) the Court-approved Settlement
15 Administration Costs and Plaintiff’s Counsel’s Attorneys’ Fees and Costs; (b) the separate payment
16 to Plaintiff in the amount of \$7,500.00 in exchange for, among other things, a broader release than
17 other Aggrieved Employees; and (c) Settlement Administration Costs.

18 15. **“Settlement Period”** or **“PAGA Period”** means the period of time beginning on
19 January 15, 2019 through July 29, 2021.

20 16. **“PAGA”** means the Labor Code Private Attorneys General Act of 2004, codified at
21 California Labor Code §§ 2698, *et seq.*

22 17. **“PAGA Payment Letter”** means a letter that the Settlement Administrator will
23 send to each Aggrieved Employee with his/her/their Individual Settlement Payment, which
24 explains the reason for the Individual Settlement Payment, substantially in the form attached hereto
25 as Exhibit 1, including any revisions required by the Court.

26 18. **“Parties”** means Plaintiff and Defendants, collectively.

27 19. **“Pay Period”** means a pay period in which an Aggrieved Employee performed
28 work for Defendants as an Aggrieved Employee during the PAGA Period.

1 20. **“Plaintiff”** means plaintiff Delia Sierra.

2 21. **“Plaintiff’s Counsel”** means BIBIYAN LAW GROUP, P.C., located at 8484
3 Wilshire Boulevard, Suite 500, Beverly Hills, California, 90211, and its attorneys David Bibiyan,
4 Diego Aviles, and Sara Ehsani-Nia.

5 22. **“Released Claims”** means all claims arising or that could arise under PAGA during
6 the PAGA Period arising from the facts and/or claims alleged against Defendants in the LWDA
7 Letter and the operative Complaint in the Action that were pled, seeking civil penalties available to
8 the LWDA or any agency acting under the authority of the LWDA under the California Labor
9 Code, against Defendants and the Released Parties, that are based on the alleged violations by
10 Defendants of the California Labor Code, including, but not limited to: (a) failure to pay employees
11 for all overtime wages owed (Labor Code §§ 510, 558, 1194); (b) failure to compensate employees
12 with minimum wages for all hours worked (Labor Code §§ 558, 1194, 1194.2, 1197.1); (c) failure
13 to provide compliant meal breaks or compensation in lieu thereof (Labor Code §§ 226.7, 512); (d)
14 failure to authorize or permit employees to take compliant rest breaks or provide compensation in
15 lieu thereof (Labor Code § 226.7); (e) failure to maintain accurate time records (Labor Code §§
16 226, 1174); (f) failure to provide employees with accurate wage statements (Labor Code §§ 226,
17 226.3); (g) failure to timely pay all compensation owed to terminated and/or resigned employees
18 (Labor Code §§ 201, 202, 203); and (h) failure to comply with the requirements of the Wage Theft
19 Protection Act of 2011 (Labor Code § 2810.5).

20 23. **“Released Parties”** means Nexem, Bershtel, all of their current or former parent
21 companies, subsidiary companies and/or related companies, partnerships, joint ventures, and/or
22 staffing agencies, and, with respect to each of them, all of their and/or such related entities’
23 predecessors and successors, and, with respect to each such entity, all of its past, present, and
24 future employees, officers, managers, partners, principals, directors, stockholders, owners,
25 representatives, assigns, attorneys, agents, insurers, employee benefit programs (and the trustees,
26 administrators, fiduciaries, and insurers of such programs), and any other persons acting by,
27 through, under, or in concert with any of the persons or entities listed in this subsection, and their
28 successors.

24. **"Settlement Administration Costs"** means the costs payable from the Gross Settlement Amount to the Settlement Administrator for administering this Settlement. The Settlement Administration Costs are currently estimated to be no more than Three Thousand, Seven Hundred Fifty Dollars and Zero Cents (\$3,750.00).

25. **"Settlement Administrator"** means Phoenix Settlement Administrators or any other settlement administrator agreed to by the Parties and approved by the Court.

26. **"Settlement"** shall mean the settlement between the Parties that is memorialized in this Stipulation and subject to Court approval.

27. **"Stipulation"** means this Joint Stipulation of Representative Action Settlement, and its exhibits, attached hereto and incorporated herein, including all subsequent amendments agreed to in writing by the Parties and any exhibits to such amendments.

II. RECITALS

28. **PAGA Notice Letter To The LWDA.** On or about January 15, 2020, Plaintiff sent a Notice of Labor Code Violations and PAGA Penalties to the LWDA and to Defendants, advising that Plaintiff intended to seek civil penalties pursuant to PAGA, on behalf of herself and Aggrieved Employees, seeking civil penalties under California Labor Code §§ 226.3, 558, 1197.1 and 2699 for Defendants' alleged violation of Labor Code §§ 201, 202, 203, 226, 226.7, 510, 512, 1174, 1194, 1194.2 1197, 1197.1 and 2810.5.

29. **Class Action Filed In Los Angeles County Superior Court.** On or about January 15, 2020, Plaintiff filed a lawsuit in Los Angeles County Superior Court, Case No. 20STCV01756, alleging individual and putative class claims against Defendants for: (1) Failure to pay overtime wages, (2) Failure to pay minimum wages; (3) Failure to provide meal periods or compensation in lieu thereof; (4) Failure to provide rest periods or compensation in lieu thereof; (5) Failure to pay due wages at termination; (6) Failure to provide accurate wage statements; and (7) Unfair business practices.

a. **Class Action Case Compelled to Arbitration.** On or about November 9, 2020, the Court struck class allegations in the putative wage-and-hour class action and ordered the Parties to arbitrate that dispute on an individual basis.

1 30. **Representative Action Filed In Los Angeles County Superior Court.** After
2 fulfilling the prerequisites required by Labor Code section 2699.3, on or around March 20, 2020,
3 Plaintiff filed this representative lawsuit against Defendants in Los Angeles County Superior
4 Court, Case No. 20STCV11281, alleging a single cause of action under PAGA for civil penalties
5 under Labor Code sections 226.3, 558, 1197.1 and 2699 for the violations of the Labor Code
6 alleged in the LWDA Letter.

7 31. **Mediation And Settlement.** On May 25, 2021, the Parties and their counsel
8 participated in a full-day mediation with Steve Serratore, Esq., a well-respected mediator with
9 considerable experience mediating wage-and-hour class and PAGA actions. At the conclusion of
10 the mediation session, the Parties were unable to reach an agreement to resolve the Action. The
11 mediator made a settlement proposal that was later accepted by the Parties.

12 32. **Memorandum of Understanding (“MOU”).** On or about August 4, 2021, the
13 Parties executed a Memorandum of Understanding. This Agreement supersedes the MOU upon its
14 full execution.

15 **III. TERMS OF SETTLEMENT**

16 A. **Conditional Nature Of The Settlement**

17 33. **All Terms Subject To Court Approval.** California Labor Code section 2699(1)(2)
18 requires that the Court review and approve any penalties sought as part of a proposed settlement
19 agreement pursuant to PAGA. All amounts and procedures described in this Stipulation are subject
20 to the Court’s approval. Should the Court not approve the Settlement, the Parties shall request
21 leave to, and jointly attempt to, modify this settlement and Stipulation in order to obtain the Court’s
22 approval.

23 B. **Settlement Consideration and Distributions**

24 34. **Gross Settlement Amount.** Defendants shall pay the Gross Settlement Amount of
25 Three Hundred Eighty-Four Thousand Dollars and Zero Cents (\$384,000.00) to settle this Action.
26 No portion of the Gross Settlement Amount shall revert to Defendants. Defendants shall determine
27 between themselves the amount paid by each Defendant; the total amount paid by Defendants shall
28 not, in the aggregate, exceed the Gross Settlement Amount, unless the Escalator Provision in

Paragraph 55 below is triggered. Defendants shall be jointly and severally liable for the total Gross Settlement Amount.

35. **Deductions From The Gross Settlement Amount.** Deductions from the Gross Settlement Amount, all subject to Court approval, shall be made for the following:

a. **Plaintiff's Counsel's Attorneys' Fees And Costs.** Plaintiff's Counsel may apply for an award of attorneys' fees and costs, with the fee portion not to exceed 35% of the Gross Settlement Amount, which, prior to escalation pursuant to Paragraph 56 below, would amount to One Hundred Thirty Four Thousand, Four Hundred Dollars and Zero Cents (\$134,400.00)—and the costs portion not to exceed Twenty-Five Thousand Dollars (\$25,000.00). Plaintiff's Counsel's Attorneys' Fees and Costs will be paid from, and not in addition to, the Gross Settlement Amount. The amount of Attorneys' Fees and Costs shall include all past and future attorneys' fees and costs to Plaintiff's Counsel—including, without limitation, all time and costs expended by Plaintiff's Counsel in defending the Settlement and securing approval of the Settlement (including any appeals). Any amounts not awarded by the Court under this provision shall be included in the Net Settlement Amount. Defendants agree not to oppose any such application which is consistent with this paragraph; however, the Settlement is not contingent on Plaintiff recovering that or any particular amount as Attorneys' Fees and Costs.

b. **Settlement Administration Costs.** All Settlement Administration Costs shall be paid from, and not in addition to, the Gross Settlement Amount. The Settlement Administration Costs include, but are not limited to, the required tax reporting on the Individual Settlement Payments, the issuing of appropriate tax forms, as needed, confirming/auditing claims for payments for compliance with the Settlement, calculating and distributing all payments to be made pursuant to the Settlement, and providing reports and declarations as requested by the Court and/or the Parties. The amount of Settlement Administration Costs is estimated to be no more than Three Thousand, Seven Hundred Fifty Dollars and Zero Cents (\$3,750.00). Defendants agree not to oppose any application that is consistent with this paragraph. If the actual Settlement Administration Costs are less than Three Thousand, Seven Hundred Fifty Dollars and Zero Cents (\$3,750.00) those amounts shall be included in the Net Settlement Amount. If the actual

Settlement Administration Costs are more than Three Thousand, Seven Hundred Fifty Dollars and Zero Cents (\$3,750.00) the amount can be adjusted and shall be paid from the Gross Settlement Amount.

c. **Plaintiff's Enhancement Payment.** Plaintiff may request and apply for an enhancement payment of up to Seven Thousand Five Hundred (\$7,500). Plaintiff's Enhancement Payment will be paid from, and not in addition to, the Gross Settlement Amount. Any amounts not awarded by the Court under this provision shall be included in the Net Settlement Amount. Defendants agree not to oppose any such application which is consistent with this paragraph; however, the Settlement is not contingent on Plaintiff recovering that or any particular amount as an Enhancement Payment.

d. **Net Settlement Amount.** The Parties estimate the Net Settlement Amount as follows:

Gross Settlement Amount:	\$384,000
Plaintiff's Counsel's Attorneys' Fees (estimated)	-\$134,400.00
Plaintiff's Counsel's Litigation Costs (estimated)	-\$25,000.00 (up to)
Plaintiff's Separate Payment (estimated)	-\$ 7,500.00
Settlement Administration Costs	-\$3,750.00
Net Settlement Amount (estimated)	\$213,350.00

36. **LWDA Payment.** Subject to Court approval, the Parties agree that an amount equal to seventy-five percent (75%) of the Net Settlement Amount will be paid to the LWDA in settlement of all representative claims alleged by or on behalf of Plaintiff and the Aggrieved Employees.

37. **Individual Settlement Payments.** Subject to Court approval, the Parties agree that an amount equal to twenty-five percent (25%) of the Net Settlement Amount (the "Aggrieved Employee Portion") will be paid to the Aggrieved Employees in settlement of the Released Claims. Individual Settlement Payments will be calculated and apportioned from the Aggrieved Employee Portion based on the number of Pay Periods an Aggrieved Employee worked during the Settlement Period. The Settlement Administrator will determine the total number of Pay Periods worked by

1 each Aggrieved Employee during the Settlement Period based on the data provided by Defendants
2 in the Aggrieved Employee List and the aggregate number of Pay Periods worked by all Aggrieved
3 Employees during the Settlement Period. To determine each Aggrieved Employee's Individual
4 Settlement Payment, the Settlement Administrator will use the following formula: The Aggrieved
5 Employee Portion will be divided by the aggregate number of Pay Periods worked by all
6 Aggrieved Employees as Aggrieved Employees during the Settlement Period, resulting in the "Pay
7 Period Value." Each Aggrieved Employee's Individual Settlement Payment will be calculated by
8 multiplying each individual Aggrieved Employee's total number of Pay Periods by the Pay Period
9 Value. The Parties agree that the formula described herein is reasonable and that the payments are
10 designed to provide a fair settlement to each Aggrieved Employee in light of the uncertainties
11 regarding the penalties alleged to be owed and the calculation of such amounts.

12 38. **Tax Treatment Of Settlement Payments.** All Individual Settlement Payments
13 will be allocated to alleged civil penalties, and IRS Forms 1099-MISC will be issued by the
14 Settlement Administrator to each Aggrieved Employee, as necessary. The payment of Plaintiff's
15 Counsel's Attorneys' Fees and Costs will also be reported on IRS Forms 1099-MISC. The
16 Settlement Administrator will issue all such forms.

17 39. **Aggrieved Employees' Tax Liability.** Other than the reporting requirements set
18 forth in Paragraphs 42 and 49, the Aggrieved Employees shall be responsible for the reporting and
19 payment of any federal, state, and/or local income or other tax or any other withholdings, if any, on
20 any of the payments made pursuant to this Stipulation. Defendants, Defendants' Counsel, and
21 Plaintiff's Counsel make no representations, and it is understood and agreed that Defendants,
22 Defendants' Counsel, and Plaintiff's Counsel have made no representations, as to the taxability of
23 any portions of the Individual Settlement Payments to any Aggrieved Employee or the payment of
24 any costs or an award of attorney fees. The PAGA Payment Letter (Exhibit 1) will inform
25 Aggrieved Employees of the opportunity to seek their own tax advice in connection with their
26 receipt of Individual Settlement Payments.

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1 40. **Defendants Tax Liability.** The Parties do not expect there to be any employer side
2 payroll taxes arising from this Settlement as it is a settlement of a representative action for civil
3 penalties. If it is determined that employer side taxes exist on the Gross Settlement Amount, such
4 taxes will be funded by the Gross Settlement Amount.

5 41. **No Credit Towards Benefit Plans.** The Individual Settlement Payments made to
6 Aggrieved Employees under this Settlement will not be utilized to calculate any additional benefits
7 under any benefit plans for which any Aggrieved Employees may be eligible, including, but not
8 limited to: (i) profit-sharing plans, (ii) bonus plans, (iii) 401(k) plans, (iv) stock purchase plans, (v)
9 vacation plans, (vi) sick leave plans, (vii) PTO plans, and (viii) any other benefit plan. Rather, it is
10 the Parties' intention that this Stipulation and Settlement will not affect any rights, contributions, or
11 amounts to which any Aggrieved Employees may be entitled under any benefit plans.

12 **C. Waiver and Releases**

13 42. **The PAGA Release.** Upon the Effective Date, and only to the extent permissible
14 by law, the LWDA, each Aggrieved Employee, including Plaintiff (individually and on behalf of
15 Plaintiff's heirs, successors, and assigns), shall fully and finally release and forever discharge
16 Defendants and the Released Parties of the Released Claims. This Settlement effectively releases,
17 precludes, and bars all Released Claims against Defendants and the Released Parties during the
18 Settlement Period by the Aggrieved Employees, regardless of whether Plaintiff and/or the
19 Aggrieved Employees cash their settlement award checks, so long as the Settlement is approved by
20 the Court and the LWDA, administered and carried out according to this Settlement Agreement.
21 Aside as set forth in Paragraph 56 below, beyond the Gross Settlement Amount, Defendants shall
22 not owe any further monies to Plaintiff, the Aggrieved Employees, or, to the extent permitted by
23 law, to the State of California based upon any claim asserted on behalf of the LWDA under PAGA
24 relating to the Aggrieved Employees in the Action, in any complaint filed therein, or in the LWDA
25 Letter.

26 43. **Employees Are Bound By The Settlement.** Because this is a PAGA action,
27 pursuant to *Arias v. Superior Ct. (Dairy)*, 46 Cal. 4th 969 (2009), no Aggrieved Employee has the
28 right to exclude himself or herself from the Settlement. All Aggrieved Employees will be bound

1 by this Settlement Agreement, upon its approval by the Court, regardless of whether he/she/they
2 negotiates (i.e. cashes or deposits) his/her/their settlement check for the Individual Settlement
3 Payments.

4 **D. Settlement Administration**

5 44. **Settlement Administrator's Duties In General.** The Settlement Administrator
6 shall be responsible for (a) processing the data provided by Defendants to be used in calculating the
7 Individual Settlement Payments; (b) preparing, printing, and mailing to the Aggrieved Employees
8 the PAGA Payment Letter (attached hereto as Exhibit 1), as well as following up with reasonable
9 skip tracing; (c) calculating and mailing Individual Settlement Payments to Aggrieved Employees;
10 (d) filing any required federal and state tax forms and related agency reporting; (e) filing any
11 required reports with the Court; and (g) all other tasks described in this Stipulation, as to which the
12 Parties mutually agree, and/or which the Court orders the Settlement Administrator to perform.

13 Defendants and Defendants' Counsel shall have no responsibility for validating or ensuring
14 the accuracy of the Settlement Administrator's work, and shall not be bound by any contract or
15 agreement entered into between the Settlement Administrator and Plaintiff's Counsel, if any. In
16 addition, the Parties and their counsel shall not bear any responsibility any for errors or omissions
17 by the Settlement Administrator in administering the Settlement.

18 45. **Delivery Of The Aggrieved Employees List.** Within fourteen (14) calendar days
19 after the Effective Date, Defendants will provide the Aggrieved Employees List to the Settlement
20 Administrator. The Settlement Administrator shall not use the Aggrieved Employees List or any
21 information contained therein for any purpose other than to administer the Settlement in
22 accordance with this Settlement Agreement.

23 46. **Funding Of The Gross Settlement Amount.** Within twenty-one (21) calendar
24 days after the Effective Date, Defendants will deposit the Gross Settlement Amount into a
25 settlement fund to be established by the Settlement Administrator.

26 47. **Distribution Of Settlement Payments.** Within seven (7) calendar days after
27 Defendants deposit the Gross Settlement Amount into a settlement fund, the Settlement
28 Administrator will issue payments to: (a) the Aggrieved Employees; (b) the LWDA; (c) Plaintiff

1 and (d) Plaintiff's Counsel. The Settlement Administrator will mail Individual Settlement.
2 Payments to the Aggrieved Employees, along with the PAGA Payment Letter (attached as Exhibit
3 1), via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in
4 the Aggrieved Employees List. The Settlement Administrator will also issue a payment to itself for
5 Court-approved services performed in connection with the Settlement on the twenty-first (21st) day
6 after the Effective Date or upon providing the Declaration of Payment, described in Paragraph 51,
7 whichever is later.

8 48. **Confirmation Of Contact Information.** Prior to mailing the Individual Settlement
9 Payments to the Aggrieved Employees as described in Paragraph 45, the Settlement Administrator
10 will perform a search based on the National Change of Address Database for information to update
11 and correct for any known or identifiable address changes. Any Individual Settlement Payments
12 returned to the Settlement Administrator as non-deliverable will be sent, along with the PAGA
13 Payment Letter, promptly via regular First-Class U.S. Mail, to the forwarding address affixed
14 thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt
15 to determine the correct address by lawful use of skip-tracing, or other search methods using the
16 name, address, and/or Social Security Number of the Aggrieved Employee involved, and shall then
17 perform a re-mailing if another mailing address is identified. With regard to any Aggrieved
18 Employee whose Individual Settlement Payment is returned as non-deliverable, and for whom the
19 Settlement Administrator is unable to determine a reliable address using reasonable and customary
20 methods, his/her/their Individual Settlement Payment will escheat to the State of California, in the
21 name of and for the benefit of such Aggrieved Employee.

22 49. **Reports Regarding Settlement Administration.** The Settlement Administrator
23 will provide Defendants' Counsel and Plaintiff's Counsel reports regarding the administration of
24 the Settlement Agreement as needed or requested.

25 50. **Procedures For Uncashed Checks.** Checks for Individual Settlement Payments
26 shall be negotiable for one hundred eighty (180) calendar days from the date of their issuance. If a
27 check is returned to the Settlement Administrator as undeliverable during the 180-day period, the
28 Settlement Administrator shall take all reasonable efforts to identify the Aggrieved Employee's

1 correct address, including the performance of a "skip-trace." If an updated address can be
2 identified, the Settlement Administrator shall issue another check to the Aggrieved Employee and
3 mail it to the Aggrieved Employee at his/her/their updated address. An Aggrieved Employee who
4 fails to negotiate or receive their Individual Settlement Payment check despite the procedures
5 described herein shall nevertheless remain bound by the Settlement and the release of the Released
6 Claims contained herein.

7 The funds represented by Individual Settlement Payment checks remaining uncashed for
8 more than 180 days after issuance (collectively, the "Uncashed Settlement Checks") shall be
9 canceled and funds associated with such checks shall be considered unpaid, unclaimed or
10 abandoned cash residue pursuant to Code of Civil Procedure section 384 ("Unpaid Residue"). The
11 Unpaid Residue plus accrued interest, if any, as provided in Code of Civil Procedure section 384,
12 shall be transmitted as follows: to Bet Tzedek Legal Services, Employee Rights Project, 3250
13 Wilshire Blvd., 13th Floor, Los Angeles, CA 90010 ("Bet Tzedek") for use in the County of Los
14 Angeles, State of California.

15 51. **Administration Of Taxes By The Settlement Administrator.** The Settlement
16 Administrator will be responsible for issuing to the Aggrieved Employees and Plaintiff's Counsel
17 any Form 1099 and/or other tax forms as may be required by law for all amounts paid pursuant to
18 this Settlement.

19 52. **Sending Settlement Agreement And Judgment To LWDA.** Before or concurrent
20 with Plaintiff's filing of this stipulation for approval of the Settlement, Plaintiff's Counsel will send
21 this stipulation to the LWDA pursuant to Section 2699(1)(2) of the California Labor Code. Within
22 ten (10) days after entry of a judgment or order approving, denying, or modifying the award of
23 civil penalties contemplated by this Settlement Agreement, Plaintiff's Counsel will submit a copy
24 of the judgment or order to the LWDA pursuant to Section 2699(1)(3) of the California Labor
25 Code.

26 53. **Declaration Of Payment.** Within sixty (60) calendar days after the Effective Date,
27 the Settlement Administrator shall prepare a declaration of payment stating that all payments
28 required under the Settlement have been made. Plaintiff's Counsel shall file the Settlement

1 Administrator's declaration with the Court.

2 54. **Declaration Regarding Uncashed Settlement Check Funds.** Within ten (10)
3 calendar days after the date the Settlement Administrator transfers the total amount of funds to Bet
4 Tzedek, the Settlement Administrator will prepare a declaration confirming that the procedures for
5 the treatment of Uncashed Settlement Checks established by this Stipulation have been followed
6 and the amounts paid to Bet Tzedek. Plaintiff's Counsel shall file the Settlement Administrator's
7 declaration with the Court.

8 **E. Miscellaneous Provisions**

9 55. **Acknowledgement That The Settlement Is Fair, Adequate, And Reasonable.**
10 The Parties and their respective counsel believe that this Settlement is a fair, adequate, and
11 reasonable settlement of the Action, and they have arrived at this Settlement through arm's length
12 negotiations, taking into account all relevant factors, present and potential.

13 56. **Escalator Provision.** The Gross Settlement Amount was negotiated and is
14 premised on Defendants' representation that, as of February 26, 2021, there were no more than
15 11,924 pay periods ("Certified Pay Periods"). The Parties' agreed, and the MOU provides that,
16 Defendants, at their sole discretion, may elect to extend the PAGA Period beyond April 29, 2021,
17 such that if the total Pay Periods included in the settlement of this Action increases by more than
18 10% (*i.e.*, more than 1,192 additional Pay Periods), then the Gross Settlement Amount shall be
19 increased proportionally by the Pay Periods in excess of 13,116 Pay Periods multiplied by the
20 Gross Pay Period Value. The Parties agreed that the Gross Pay Period Value is \$32.20, which is
21 calculated by dividing the originally agreed upon the Gross Settlement Amount (\$384,000) by the
22 Certified Pay Period amount of 11,924. For example, should a total of 13,500 Pay Periods be
23 released in this Action, then the Gross Settlement Amount shall be increased by \$12,364.80 (*i.e.*,
24 13,500 Pay Periods minus 13,116 Pay Periods x \$32.20 per Pay Period). Pursuant to the Parties'
25 agreement and the express terms of the MOU, Defendants have elected to exercise their discretion
26 to extend the PAGA Period from April 29, 2021 to July 29, 2021, with the understanding that the
27 Gross Settlement Amount will be increased consistent with this escalator provision.

28 ///

1 57. **Mutual Cooperation.** The Parties and their counsel will cooperate with each other
2 and use their best efforts to effect the implementation of the Settlement. Such cooperation shall
3 include, but not be limited to, execution of such other documents and the taking of such other
4 actions as may reasonably be necessary to fulfill the terms of this Settlement. The Parties shall use
5 their best efforts, including all efforts contemplated by this Stipulation and any other efforts that
6 may become necessary by Court Order, or otherwise, to effectuate this Stipulation and the terms set
7 forth herein.

8 58. **No Admissions By The Parties.** Plaintiff has claimed and continues to claim that
9 the Released Claims have merit and give rise to liability on the part of Defendants. Defendants
10 claim that the Released Claims have no merit and do not give rise to liability. This Agreement is a
11 compromise of disputed claims. Nothing contained in this Agreement and no documents referred
12 to herein and no action taken to carry out this Agreement may be construed or used as an admission
13 by or against Defendants, Defendants' Counsel, Plaintiff, or Plaintiff's Counsel as to the merits or
14 lack thereof of the claims asserted.

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

18 60. **Mutual Drafting Of Agreement.** The Parties agree that the terms of this
19 Stipulation and the accompanying exhibits are the result of substantial, arm's-length negotiations,
20 and that this Stipulation shall not be construed in favor of or against any of the Parties by reason of
21 the extent to which any of the Parties or their respective counsel participated in the drafting of this
22 Stipulation.

23 61. **Attorney Authorization.** Plaintiff's Counsel and Defendants' Counsel warrant and
24 represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate
25 action required or permitted to be taken by such Parties pursuant to this Settlement to effectuate its
26 terms, and to execute any other documents required to effectuate the terms of this Settlement.

27 62. **Binding On Successors And Assigns.** This Stipulation is binding upon, and inures
28 to the benefit of, the Parties' successors and assigns.

1 63. **Governing Law.** This Stipulation shall be governed by and interpreted according
2 to the laws of the State of California.

3 64. **Exhibits Incorporated By Reference.** The terms of this Stipulation include the
4 terms set forth in any attached exhibits, which are incorporated by this reference as though fully set
5 forth herein. Any exhibit to this Stipulation is an integral part of the Settlement.

6 65. **Invalidity Of Any Provision.** Before declaring any provision of this Stipulation
7 invalid, the Court shall first attempt to construe the provision(s) valid to the fullest extent possible
8 consistent with applicable precedents so as to define all provisions of this Settlement valid and
9 enforceable.

10 66. **Notices.** Whenever this Stipulation requires or contemplates that one of the Parties
11 shall or may give notice to the other, notice shall be provided by e-mail and/or next-day (excluding
12 Saturdays, Sundays, and legal holidays) express delivery service addressed to the address of the
13 Party's counsel appearing in this Stipulation.

14 67. **Attorneys' Fees And Costs.** The Parties shall bear their own respective attorneys'
15 fees and costs incurred in and/or arising out of the Action, except as otherwise provided for in this
16 Stipulation and as later approved by the Court.

17 68. **Jurisdiction Of The Court.** The Parties agree that the Court shall retain
18 jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this
19 Agreement and all orders and judgments entered in connection therewith, and the Parties and their
20 respective counsel hereto submit to the jurisdiction of the Court for purposes of interpreting,
21 implementing, and enforcing the settlement embodied in this Agreement and all orders and
22 judgments entered in connection therewith.

23 69. **Waiver Of Certain Appeals.** The Parties agree to waive appeals; except, however,
24 that either party may appeal any court order that materially alters the Settlement Agreement's
25 terms.

26 70. **Binding Agreement.** The Parties intend that this Settlement shall be fully
27 enforceable and binding on all Parties, and that it shall be admissible and subject to disclosure in
28 any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that

1 otherwise might apply under federal or state law. This Stipulation is also binding upon, and inures
2 to the benefit of, the Parties' successors and assigns.

3 71. Entire Agreement. This Stipulation and any attached exhibits constitute the
4 entirety of the Parties' settlement terms as it pertains to the Action for civil penalties under PAGA.
5 No other prior or contemporaneous written or oral agreements may be deemed binding on the
6 Parties as it pertains to civil penalties under PAGA.

7 72. Counterparts. This Stipulation may be executed in one or more counterparts. All
8 executed counterparts and each of them, including facsimile and scanned copies of the signature
9 page, will be deemed to be one and the same instrument provided that counsel for the Parties to this
10 Agreement exchange among themselves copies or originals of the signed counterparts.

11 73. Parties' Authority. The signatories to this Stipulation, including any person
12 executing this Stipulation on behalf of a corporate signatory, warrant and represent that they are
13 fully authorized to enter into this Stipulation and to bind the Parties hereto to the terms and
14 conditions of the Stipulation.

15 IN WITNESS WHEREOF, the Parties and their counsel have executed this Stipulation on
16 the dates below. The date of the Stipulation shall be the date of the latest signature.

17
18 APPROVED AS TO SUBSTANCE:

19
20 DATED: 9-24, 2021

PLAINTIFF

21 By: Delia Sierra
22 Delia Sierra

23
24 DATED: _____, 2021

DEFENDANT NEXEM-ALLIED, LLC

25
26 By: _____

27 Its: _____

28

1 otherwise might apply under federal or state law. This Stipulation is also binding upon, and inures
2 to the benefit of, the Parties' successors and assigns.

3 71. **Entire Agreement**. This Stipulation and any attached exhibits constitute the
4 entirety of the Parties' settlement terms as it pertains to the Action for civil penalties under PAGA.
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13 fully authorized to enter into this Stipulation and to bind the Parties hereto to the terms and
14 conditions of the Stipulation.

15 IN WITNESS WHEREOF, the Parties and their counsel have executed this Stipulation on
16 the dates below. The date of the Stipulation shall be the date of the latest signature.

17
18 **APPROVED AS TO SUBSTANCE:**

19
20 DATED: _____, 2021

PLAINTIFF

21
22 By: _____
Delia Sierra

23
24 DATED: Sept. 27 _____, 2021

DEFENDANT NEXEM-ALLIED, LLC

25
26 
By: Matthew Blake

27
28 Its: President

1 DATED: _____, 2021

DEFENDANT BERSHTEL ENTERPRISES, LLC

By: _____

Its: _____

7 **APPROVED AS TO FORM:**

9 DATED: September 30, 2021

BIBIYAN LAW GROUP, P.C.

By: _____

David D. Bibiyan

Attorney for Plaintiff DELIA SIERRA

14 DATED: Sept. 27, 2021

THE LAW OFFICES OF CHERYL A. CANTY, APC

By: _____

Cheryl A. Canty

BROWNE GEORGE ROSS O'BRIEN ANNAGUEY
& ELLIS LLP

By: _____

Eric M. George

Attorneys for Defendants
NEXEM-ALLIED, LLC

23 DATED: _____, 2021

LITTLER MENDELSON, P.C.

By: _____

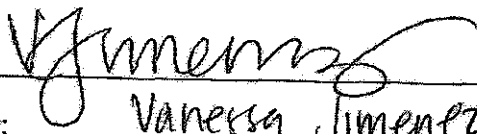
Shiva Shirazi Davoudian

James Payer

Attorneys for Defendants
BERSHTEL ENTERPRISES, LLC

1 DATED: September 29, 2021

DEFENDANT BERSHTEL ENTERPRISES, LLC

2 
3 By: Vanessa Jimenez
4
5 Its: COO

6
7 **APPROVED AS TO FORM:**

8
9 DATED: _____, 2021

BIBIYAN LAW GROUP, P.C.

10
11 By: _____
12 David D. Bibiyan
13 Attorney for Plaintiff DELIA SIERRA

14 DATED: _____, 2021

THE LAW OFFICES OF CHERYL A. CANTY, APC

15
16 By: _____
17 Cheryl A. Canty

18
19 BROWNE GEORGE ROSS O'BRIEN ANNAGUEY
& ELLIS LLP

20 By: _____
21 Eric M. George
22 Attorneys for Defendants
NEXEM-ALLIED, LLC

23 DATED: September 29, 2021

LITTLER MENDELSON, P.C.

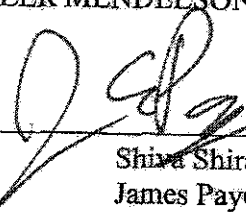
24
25 By: 
26 Shiva Shirazi Davoudian
27 James Payer
28 Attorneys for Defendants
BERSHTEL ENTERPRISES, LLC

EXHIBIT 1

NOTICE OF SETTLEMENT OF PAGA REPRESENTATIVE ACTION

Delia Sierra v. Nexem-Allied, LLC, et al.

Superior Court for the State of California, County of Los Angeles, Case No. 20STCV11281

Aggrieved Employee

Address

Address

You are receiving this notice in connection with a Court-approved settlement (the "Settlement") in a lawsuit brought on a representative basis under the Labor Code Private Attorneys General Act of 2004, California Labor Code §§ 2698, *et seq.* ("PAGA"). The plaintiff in the lawsuit is Delia Sierra ("Plaintiff") and the defendants are Nexem-Allied, LLC and Bershtel Enterprises LLC, (collectively "Defendants"). The Settlement provides for recovery of civil penalties for purported violations of the California Labor Code on behalf of all individuals who worked at Bershtel Enterprises LLC as hourly, non-exempt employees within the State of California during the PAGA Period whether directly employed or placed by Nexem-Allied, LLC ("Eligible Employees"). The PAGA statute provides that 75% of any recovery pursuant to the Settlement be paid to the State of California and 25% of any recovery be paid to the "aggrieved employee" group, which in this case is the group of Eligible Employees.

Defendants deny all claims and allegations in the lawsuit, deny that they owe any penalties, and assert that they have fully complied with all applicable Labor Code provisions. Nevertheless, to avoid further costs and time in defending the lawsuit, Defendants have settled the lawsuit. By settling the lawsuit, Defendants are not admitting that they have done anything wrong.

The Settlement resolves all claims seeking the civil penalties available to the California Labor and Workforce Development Agency ("LWDA") under the California Labor Code predicated on the claims, allegations, contentions, and representations asserted in the Action, during the PAGA Period, against Defendants and the Released Parties, including, but not limited to, claims for civil penalties under Labor Code sections 226.3, 558, 1197.1 and 2699 for alleged violations of Labor Code sections 201, 202, 203, 226, 226.7, 510, 512, 1194, 1194.2, 1197, and 2810.5, and the applicable IWC Orders, based on Defendants' alleged failure to pay employees overtime and minimum wages, failure to provide compliant meal and/or rest breaks, failure to provide accurate wage statements and maintain accurate time records, failure to timely pay employees upon termination, failure to comply with the requirements of the Wage Theft Protection Act of 2011, or that otherwise reasonably could have been alleged, based on the facts in the operative complaint on file in the above-referenced action (the "Released PAGA Claims"). This Settlement excludes all other legal claims.

By an Order dated Approval Date, the Superior Court approved the Settlement of the PAGA claims. By approving the Settlement, the Court did not decide in favor of either Plaintiff or Defendants.

According to Defendants' records, you are an Eligible Employee and are therefore entitled to a share of the Settlement based upon the Court-approved allocation. Enclosed with this Notice is your check for your share. The settlement check shall remain valid for one hundred eighty (180) days. Thereafter, all uncashed checks shall be distributed to Bet Tzedek Legal Services, Employee Rights Project, 3250 Wilshire Blvd., 13th Floor, Los Angeles, CA 90010 ("Bet Tzedek") for use in the County of Los Angeles, State of California.

Please Note: One hundred percent (100%) of the payment you are receiving in connection with the Settlement will be considered penalties and may be subject to local, state, or federal tax withholdings and will be reported to the IRS and state tax authorities. You should rely on your own tax advisors as to the tax consequences of your settlement payment. Neither Plaintiff nor Defendants have made any representations or warranties regarding the taxation of your settlement payment. Nothing in this Notice or any other communication shall constitute or be construed or relied upon as tax advice.

PLEASE DO NOT CALL OR WRITE THE COURT OR OFFICE OF THE CLERK TO ASK QUESTIONS ABOUT THE SETTLEMENT. IF YOU HAVE ANY QUESTIONS, YOU MAY CALL OR WRITE TO THE SETTLEMENT ADMINISTRATOR AT:

[ADMIN NAME]

[ADDRESS]

[ADDRESS]
[ADDRESS]

4826-7578-5981.1 / 107059-1001