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Attorneys for Plaintiff Smith, the Class, and Aggrieved Employees

[Additional counsel information on next page]

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

CLARENCE SMITH, as an individual and
on behalf of all others similarly situated,

Plaintiffs,

v.

WATLOW ELECTRIC
MANUFACTURING COMPANY, a
Missouri corporation; and DOES 1 through
50, inclusive,

Defendants.

CASE NO. 20CV365250
Consolidated with Case No. 20CV362069

[Assigned for all purposes to the Hon. Sunil R.
Kulkarni, Dept. 1]

**DECLARATION OF MAI TULYATHAN IN
SUPPORT OF PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: September 9, 2021
Time: 1:30 P.M.
Dept.: 1

PHUOC TRUONG, on behalf of himself
and all "aggrieved employees" pursuant to
Labor Code § 2698 et seq.,

Plaintiff,

v.

WATLOW ELECTRIC
MANUFACTURING COMPANY, a
Missouri corporation, and DOES 1 through
10, inclusive,

Defendants.

Complaint filed: March 18, 2020
Trial Date: None

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DECLARATION OF MAI TULYATHAN

I, Mai Tulyathan, declare as follows:

1. I am an attorney at law, duly licensed to practice before all Courts in the State of California, and am with the law firm Diversity Law Group, counsel of record for Named Plaintiff Clarence Smith (“Plaintiff Smith”). I have personal knowledge of the facts set forth below and if called to testify I could and would do so competently.

2. On February 24, 2020, Plaintiff Smith filed his written notice with the LWDA, alleging violations of Labor Code § 226(a) against Defendant Watlow Electric Manufacturing Company (“Defendant”), pursuant to the PAGA, Labor Code § 2699.

3. On March 18, 2020, Plaintiff Smith filed his class and representative PAGA complaint against Defendant in Santa Clara County Superior Court. The *Smith* complaint alleges causes of action for: (1) violation of Labor Code § 226(a), and (2) violation of the PAGA, Labor Code § 2698, *et seq.*

4. The *Smith* and *Truong* actions have since been consolidated in the Santa Clara County Superior Court pursuant to a joint stipulation between the Parties. On June 8, 2021, Plaintiff Smith and Plaintiff Truong (“Plaintiffs”) filed the operative First Amended Consolidated Class and Representative Action Complaint (“FAC”) in this Court.

5. Plaintiffs’ class and PAGA claims as pled in this consolidated *Smith* and *Truong* actions are predicated upon the following allegations. With respect to Plaintiffs’ meal and rest period claims, Plaintiffs allege that Defendant failed to provide proper off-duty meal and rest breaks to Plaintiffs and other non-exempt employees. Plaintiffs also allege that Defendant failed to pay premium compensation to Plaintiffs and other employees in lieu of the noncompliant meal and rest breaks.

6. With respect Plaintiffs’ Labor Code § 212 claim, Plaintiffs allege that Defendant failed to pay wages to Plaintiffs and employees in a form that was negotiable and payable in cash, without discount, at an established place of business in California. In this regard, Plaintiffs and employees received paychecks drawn from a bank without California locations and could not be cashed in California without incurring fees. As a result, Plaintiffs and employees were allegedly forced to incur various fees to access their wages and therefore were not provided with all earned

1 wages upon separation of employment.

2 7. With respect to Plaintiffs' wage statement claims, Plaintiffs contend that
3 Defendant issued deficient wage statements that failed to identify the gross wages earned, net
4 wages earned, and premium pay for missed meal and rest breaks. Additionally, Plaintiffs also
5 allege that whenever overtime wages were paid, the wage statements issued to Plaintiffs and other
6 employees failed to accurately state the overtime rates of pay, in violation of Labor Code §
7 226(a)(9), and failed to accurately state the correct total hours worked during the pay period, in
8 violation of Labor Code § 226(a)(2).

9 8. As to Plaintiffs' claim pursuant to Labor Code §§ 201-203, Plaintiffs allege on a
10 derivative basis that Plaintiffs and other employees were denied the timely payment of wages at
11 the separation of their employment, based on the failures to pay all wages as detailed above.

12 9. As a result of the alleged violations in this consolidated lawsuit, Plaintiffs seek
13 wages, statutory penalties, and civil penalties under the California Labor Code and the PAGA,
14 restitution under California's Unfair Competition Law, as well as attorneys' fees and costs and
15 other forms of relief.

16 10. After the initial Case Management Conference held on July 24, 2020, the Parties
17 agreed to participate in private mediation. In connection with mediation, the Parties engaged in
18 informal discovery to allow Plaintiffs to assess the claims and liability, as well as analyze the
19 maximum exposure of damages and penalties. Defendant provided Plaintiffs' counsel with
20 informal data and information pertaining to the number of putative class members, the number of
21 shifts at issue, the number of pay periods at issue, the number of wage statements and paychecks
22 at issue, the hourly rates of pay for class members, as well as information pertaining to
23 Defendant's various wage and hour policies and practices. The information provided by
24 Defendant allowed Plaintiffs to review and analyze the liability and potential exposure.

25 11. On January 19, 2021, the Parties engaged in a full-day mediation with mediator
26 Steven Rottman, Esq. After thorough investigation and evaluation of the facts and claims, and as
27 a result of the arm's-length negotiations facilitated by Mr. Rottman, the Parties and their counsel
28 ultimately reached the current settlement. Attached as **Exhibit A** is a true and correct copy of the
Parties' Joint Stipulation of Class Action and PAGA Settlement and Release (the "Settlement

1 Agreement”).

2 12. The Parties recognize the risk, expense, and delay in continuing litigation with the
3 class and PAGA claims, and believe the Settlement to be fair, reasonable, and adequate.

4 13. Each side has apprised the other of their respective factual contentions, legal
5 theories and defenses, resulting in negotiations taking place between the Parties.

6 14. Plaintiffs’ counsel conducted an exposure analysis based on the data provided by
7 Defendant as part of informal discovery. Based on the class data provided by Defendant,
8 Plaintiffs estimated that Defendant would face potential liability of up to approximately
9 \$2,860,418.56 for Plaintiffs’ meal and rest class claims, wage statement class claims, and waiting
10 time penalties, if Plaintiffs succeeded at trial. This amount was calculated based on data provided
11 by Defendant, including the number of employees in the putative class, the number of wage
12 statements at issue, the number of shifts at issue, and the hourly rates of pay applicable to the
13 putative class members.

14 15. With respect to potential liability of Plaintiffs’ PAGA claims, Plaintiffs estimated
15 that Defendant could face civil penalties of up to a maximum \$2,971,000.00 if Plaintiffs were
16 successful at trial. This analysis “stacks” PAGA penalties, although Plaintiffs would expect a
17 more modest maximum civil penalty recovery of \$457,000 if these civil penalties were not
18 assessed at a rate of multiple violations per employee pay period.

19 16. The total maximum amount of class and PAGA penalties amount to approximately
20 \$5,831,418.56, without discounting for potentially losing on any of the causes of action. The
21 Total Settlement Amount is \$500,000, which is approximately **8.6%** of the maximum class and
22 PAGA penalties. Without “stacking” the PAGA penalties, this number skyrockets to more than
15%.

23 17. Although Plaintiffs believe in the merits of their alleged claims and maintain that
24 there is no reason for reducing PAGA penalties, Plaintiffs are aware that Defendant may raise
25 defenses to the claims and further with respect to the reduction of PAGA penalties and that these
26 arguments could be persuasive to the Court. The Total Settlement Amount was premised with
27 this substantial risk in mind, associated with the possibility of the Court significantly reducing
28 Plaintiff’s PAGA penalties, along with other attendant risks, even if Plaintiff was to prevail at

1 trial.

2 18. Further, Defendant raised several defenses that presented risk on the various
3 theories of liability alleged by Plaintiffs, including that (1) its meal and rest periods were
4 compliant with California law such that it faced no liability on these claims, (2) that it has revised
5 its wage statement practices as of May 28, 2020, and (3) that it only issued 27 live paychecks
6 among all Class members that could potentially be subject to liability and their maximum value
7 under PAGA is \$2,700.

8 19. Although Plaintiffs believe that the class can be certified, Plaintiffs and their
9 counsel also believe in the fairness of the settlement that is based on factoring in the uncertainty
10 and risks to Plaintiffs involved in not prevailing on one or more of the causes of action or theories
11 alleged in the operative Complaint, the possibility of non-certification, and the potential for
12 appeals.

13 20. The net average payment to each participating Class Member is approximately
14 **\$1,642.31**. The amount actually paid to each participating Class Member may increase or
15 decrease depending on the individual number of workweeks each Class Member worked during
16 period of November 15, 2018, through the date the Court enters an order granting preliminary
17 approval of the settlement (the “Class Period”).

18 21. Any remaining monies from uncashed settlement checks shall be distributed to
19 Legal Aid at Work. Plaintiffs’ counsel does not have any relationship or connection with or to
20 Legal Aid at Work.

21 22. Attached as **Exhibit B** is a true and correct copy of the proposed “Notice of
22 Pendency of Class Action Settlement and Final Hearing” (“Class Notice”) to be sent to Class
23 Members.

24 23. The Parties have agreed to engage Phoenix Settlement Administrators to
25 administer this settlement, including the Class Notice dissemination process and for settlement
26 fund disbursement.

27 24. From the inception of the case, Class Counsel has zealously represented the
28 interests of the Class. Class Counsel engaged in significant meet and confer discussions with
opposing counsel to obtain informal data on behalf of the Class. This settlement was obtained for

1 the benefit of the Class, as opposed to the individual Class Representative.

2 25. I have spent significant time researching and pursuing the claims that have been
3 alleged in this action. The Parties engaged in informal discovery in connection with mediation,
4 and participated in the exchange of class data and Defendant's pertinent policies and practices.
5 Based on my review of all the documents and information, and based on my experience in class
6 action litigation, I believe this settlement to be fair, adequate, and reasonable.

7 26. I was retained based upon a contingency fee arrangement wherein Plaintiff Smith's
8 counsel agreed to advance all costs and receive no fee unless a recovery was accomplished.
9 Specifically, had Plaintiff Smith failed to prevail in this case, counsel for Plaintiff Smith would
10 have spent a significant amount of time, money and other resources without any benefit or return.
11 In addition, had Plaintiff Smith also failed to prevail in the present case, Defendant would have
12 been able to seek costs in connection with their defense of the case.

13 27. I am one of the primary attorneys on this matter. My qualifications are as follows:
14 I received my JD from Loyola Law School in 2017. I received the First Honors Award in Legal
15 Research and Writing, First Honors Award in Appellate Advocacy, and First Honors Award in
16 Civil Litigation Practicum I for achieving the highest grade in those classes. During law school, I
17 was a Staff Editor for Loyola Law Review. I was also an extern at the U.S. District Court,
18 Central District of California, for the Honorable Christina A. Snyder, and a certified law clerk at
19 the San Diego County District Attorney's Office, Collaborative Courts Division, and the Los
20 Angeles County District Attorney's Office, Consumer Protection and Environmental Crimes
21 Division. In 2016, I participated in Loyola Law School's Scott Moot Court Competition, where I
22 placed Top 16 and was awarded the Top Ten Brief Award. In 2017, I participated in the
23 Employment Rights Clinic, an extension of the Division of Labor Standards Enforcement created
24 to investigate retaliation complaints. Upon graduation from law school, I was admitted to the
25 California Bar in December 2017.

26 28. I am currently an associate at the law firm Diversity Law Group, P.C., an
27 employment law firm that has handled numerous wage and hour class and individual actions, on
28 both plaintiff and defense sides. The firm currently has cases in numerous state courts, including
the Santa Clara Superior Court, Los Angeles Superior Court, Orange County Superior Court, San

1 Diego County Superior Court, Monterey County Superior Court, as well as the United States
2 District Courts for the Central, Northern, Southern, and Eastern Districts of California.

3 29. I am currently handling and/or have handled numerous wage and hour class action
4 and PAGA lawsuits, including *Magadia v. Wal-Mart Associates, Inc., et al.* (Case Number 5:17-
5 cv-00062-LHK); *Garcia v. Wal-Mart Associates, Inc., et al.* (Case Number 3:18-cv-00500-L-
6 MDD); *Hernandez v. Wells Fargo Bank, N.A.* (Case Number 16CV299319); *Lao v. H & M*
7 *Hennes & Mauritz, L.P.* (Case Number 5:16-cv-333 EJD); *Arroyo v. Int'l Paper Company* (Case
8 Number 5:17-cv-06211-BLF); *Baker v. California Forensic Medical Group, Inc., et al.*, Judicial
9 Council Coordination Proceeding No. 4999 (Lead Case No. 17CV003723); and *Garcia v. Apex*
10 *Systems, LLC, et al.* (Case Number RG19014709).

11 30. In 2018, I argued before the California Court of Appeal, Second Appellate District,
12 in the case of *Lee v. California Commerce Club, Inc.* (California Court of Appeal Case Number
13 B276171, LASC Case Number BC596924), and *Perez v. Standard Drywall, Inc.* (California
14 Court of Appeal Case Number A146819, Alameda Sup. Ct. No. RG15761142). In that same year,
15 I also assisted the firm in successfully obtaining class certification and partial summary judgment
16 by the United States District Court, Central District of California in the case of *Magadia v. Wal-*
17 *Mart Associates, Inc.* (Case Number 17-CV-00062-LHK). I third chaired the bench trial in that
18 same case in December 2018.

19 31. I have also been certified and/or approved as class counsel in numerous other
20 wage/hour class actions. Most recently, I was certified and/or approved as class counsel in the
21 cases *Garcia v. Wal-Mart Associates, Inc., et al.* (Case Number 3:18-cv-00500-L-MDD), *Richert*
22 *v. Samaritan, LLC, et al.* (Case Number 17CV314186), *Song v. THC – Orange County, Inc.* (Case
23 No. 8-17-cv-965-JLS (DFM)), and *Hernandez v. Wells Fargo Bank National Ass'n, et al* (Case
24 No. 16-CV-299319). Moreover, I was granted final approval as class counsel in *California*
25 *Forensic Medical Group Wage and Hour Cases* (Case No. JCCP4999), *Valles v. Community*
26 *Hospital of the Monterey Peninsula* (Case No. 17CV003452), *Chavez v. Hugo Boss Retail, Inc.*
27 (Case No. 18CV322644), *Hernandez v. Wells Fargo Bank National Ass'n, et al* (Case No. 16-CV-
28 299319), *Mendez v. Falcon Trading Company* (Case No. 19CV004512), *Khan v. Amy's Kitchen,*
Inc. (Case No. SCV-266127), and *Truong v. DS Services of America, Inc.* (Case No. FCS054399).

1 I acted as lead counsel in these cases listed above.

2 32. My co-counsel and I will adequately represent the Class Members in this action.
3 Plaintiffs' Counsel have and will zealously represent Plaintiffs and the Class and pursue this
4 lawsuit to its conclusion. I have no conflicts with the Class and will adequately represent the
5 Class.

6 I declare under penalty of perjury under the laws of the State of California that the
7 foregoing is true and correct.

8 Executed on this 17th day of August, 2021, at Los Angeles, California.

9 

10 Mai Tulyathan

EXHIBIT A

JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT AND RELEASE

This Joint Stipulation of Class Action and PAGA Settlement and Release ("Agreement") is dated March 1, 2021, and made and entered into by and between Plaintiffs Phuoc Truong and Clarence Smith ("Plaintiffs" or "Class Representatives"), as individuals and on behalf of all others similarly situated and aggrieved employees, and Defendant Watlow Electric Manufacturing Company ("Defendant") (collectively with Plaintiffs, the "Parties").

This Agreement shall be binding on Plaintiffs and Settlement Class Members (as defined below) and on Defendant, subject to the terms and conditions hereof and the approval of the Court.

RECITALS

1. On January 13, 2020, Phuoc Truong commenced a PAGA action entitled *Phuoc Truong v. Watlow Electric Manufacturing, Inc.*, Superior Court of California for the County of Santa Clara, Case No. 20-cv-362069 ("*Truong Action*") against Defendant. On March 18, 2020, Clarence Smith filed commenced a putative class and representative PAGA action entitled *Clarence Smith v. Watlow Electric Manufacturing, Inc.*, Superior Court of California for the County of Santa Clara, Case No. 20-cv-365250 ("*Smith Action*") (collectively, the "Actions") against Defendant. On [date], 2021, Clarence Smith filed the First Amended Consolidated Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, et Seq. ("Operative Complaint"), which added Plaintiff Phuoc Truong and alleges causes of action against Defendant for failure to provide compliant meal and rest periods and associated premium payments, pay all wages for hours worked, timely pay wages during and after employment and pay associated waiting-time penalties, provide compliant wage statements, and maintain complete and accurate payroll records, for violations of California Business and Professions Code Section 17200, et seq., and for civil penalties pursuant to the Private Attorneys General Act of 2004, California Labor Code Section 2698, et seq. ("PAGA"), on behalf of all current and former hourly-paid or non-exempt employees who worked for Defendant in California at any time during the period from November 15, 2018, through the date of Preliminary Approval.

2. Defendant denies all material allegations set forth in the Action, defined below, and has asserted numerous affirmative defenses. Notwithstanding, in the interest of avoiding further litigation, Defendant desires to fully and finally settle the Actions and Released Claims (as defined below).

3. Class Counsel (as defined below) in the Actions diligently investigated the proposed Class Members' claims against Defendant, including any and all applicable defenses and the applicable law. The investigation included, *inter alia*, the exchange of information, data, and documents, and review of numerous corporate policies and practices.

4. On January 19, 2021, the Parties participated in mediation with Steven Rottman (the "Mediator"), a respected mediator of complex wage and hour actions, and eventually, after continued settlement negotiations and with the assistance of the Mediator and his evaluations, the Parties reached the settlement that is memorialized in this Agreement. The settlement discussions were conducted at arm's-length, and the settlement is the result of an informed and detailed analysis of Defendant's potential liability and total exposure in relation to the costs and risks associated with continued litigation. Based on the documents produced, as well as Class Counsel's own independent investigation and evaluation, Class Counsel believe that the settlement with Defendant for the consideration and on the terms set forth in this Agreement is fair, reasonable, and adequate and is in the best interest of the Class Members in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation and various defenses asserted by Defendant.

5. The Parties expressly acknowledge that this Agreement is entered into solely for the purpose of compromising significantly disputed claims and that nothing in this Agreement is an admission of liability or wrongdoing by Defendant. If for any reason this Agreement is not approved, it will be of no force or effect, and the Parties shall be returned to their original respective positions.

DEFINITIONS

6. The following definitions are applicable to this Agreement. Definitions contained elsewhere in this Agreement will also be effective:

a. "Attorneys' Fees and Costs" means attorneys' fees approved by the Court for Class Counsel's litigation and resolution of this Action, and all actual costs incurred and to be incurred by Class Counsel in the Action, as set forth in Paragraph 10 below.

b. "Class Counsel" means Larry W. Lee and Mai Tulyathan of Diversity Law Group, APC and Daniel F. Gaines and Alex P. Katofsky of Gaines & Gaines, APLC, counsel for Plaintiffs, who will seek to be appointed counsel for the Class.

c. "Class Data and List" means a complete list of all Class Members that Defendant will diligently and in good faith compile from its records and provide to the Settlement Administrator within fifteen (15) calendar days after Preliminary Approval. The Class Data and List will be formatted in a readable Microsoft Office Excel spreadsheet and will include each Class Member's full name, last known mailing address, Social Security Number, dates worked or the number of workweeks worked for Defendant as an hourly-paid or non-exempt employee during the Class Period, and such other information as is necessary for the Settlement Administrator to calculate Workweeks (as defined below).

d. "Class Member(s)" or "Class" means all current and former hourly-paid or non-exempt employees, who worked for Defendant in California at any time during the Class Period (as defined below) and who received at least one paycheck during the Class Period from Defendant.

e. "Class Notice" means the Notice of Class Action Settlement approved by the Court, substantially in the form attached as "**Exhibit A.**"

f. "Class Period" means the time period from November 15, 2018, through the date of Preliminary Approval (as defined below).

g. "Class Representatives" or "Plaintiffs" means Phuoc Truong and Clarence Smith.

h. "Court" means the Superior Court of the State of California for the County of Santa Clara.

i. "Defendant" means Watlow Electric Manufacturing Company.

j. "Defendant's Counsel" means A.J. Weissler, Bob Tomaso, and Amberly Morgan of Husch Blackwell LLP.

k. "Effective Date" means the date when all of the following events have occurred: (1) this Agreement has been executed by all Parties, Class Counsel, and Defendant's Counsel; (2) the Court has given preliminary approval to the Settlement; (3) the Class Notice has been mailed to the Class Members, providing them with an opportunity to object to the terms of the Settlement or opt out of the Settlement; (4) the Court has held a Final Approval Hearing and entered a Final Approval Order and Judgment; and (5) in the event there are written objections filed prior to the Final Approval Hearing which are not later withdrawn or denied, the later of the following events: five business days after the period for filing any appeal, writ, or other appellate proceeding opposing the Court's Final Approval Order and

Judgment has elapsed without any appeal, writ, or other appellate proceeding having been filed; or, if any appeal, writ, or other appellate proceeding opposing the Court's Final Approval Order and Judgment has been filed, five business days after any appeal, writ, or other appellate proceedings opposing the Settlement has finally and conclusively dismissed with no right to pursue further remedies or relief.

l. "Enhancement Payments" means the amounts to be paid to Plaintiffs Phuoc Truong and Clarence Smith in recognition of their efforts and work in prosecuting the Action on behalf of Class Members and in exchange for a general release and withdrawal of any pending claims, as set forth in Paragraph 11 below.

m. "FLSA Settlement Class Members" means all Class Members who cash their Individual Settlement Payment checks, and thereby will be deemed to have given their consent to "opt in" as a party plaintiff in this action pursuant to the Fair Labor Standards Act of 1938, 29 U.S.C. § 216(b) ("FLSA") and to have waived and released any claims they may have under the FLSA as related to the claims that were or arise from the facts asserted in the Actions.

n. "Final Approval" means the determination by the Court that the settlement is fair, reasonable, and adequate, and entry of the Final Approval Order and Judgment based thereon.

o. "Final Approval Hearing" means the hearing at which the Court will consider and determine whether the settlement should be granted Final Approval.

p. "Individual Settlement Payment" means the net payment of each Settlement Class Member's Individual Settlement Share, after reduction for the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Share, as provided in Paragraph 25 below.

q. "Individual Settlement Share" means the *pro rata* share of the Net Settlement Amount that a Class Member may be eligible to receive under this Agreement, to be calculated in accordance with Paragraph 14.

r. "LWDA Payment" means the amount that the Parties have agreed to pay to the California Labor and Workforce Development Agency ("LWDA") as set forth in Paragraph 13.

s. "Net Settlement Amount" means the portion of the Total Settlement Amount that is available for distribution to Settlement Class Members, which is the Total Settlement Amount less the

1 Court-approved Enhancement Payments, Settlement Administration Costs, LWDA Payment, and
2 Attorneys' Fees and Costs.

3 t. "Notice of Objection" means a Class Member's valid and timely written objection
4 to this Agreement, which must be in writing and include: (a) the case name and number of the Action; (b)
5 the objector's full name, signature, address, and telephone number, (c) a written statement of all grounds
6 for the objection accompanied by any legal support for such objection, and (d) copies of any papers, briefs,
7 or other documents upon which the objection is based.

8 u. "Party" means either Plaintiff or Defendant.

9 v. "Parties" collectively means Plaintiffs and Defendant.

10 w. "Preliminary Approval" means entry by the Court of an order granting preliminary
11 approval of the settlement in this Agreement.

12 x. "Released Claims" means all claims under state, federal, or local law, whether
13 statutory law, common law, or administrative law, arising out of or assertable based upon the allegations
14 set forth in the Operative Complaint. These claims include, but are not limited to: claims for rest period
15 violations, meal period violations, unpaid wages, failure to keep proper records, itemized wage statement
16 violations, waiting time penalties, unfair competition, declaratory relief, claims for violation of the Private
17 Attorneys General Act, California Labor Code section 2698, *et seq.* ("PAGA"), penalties of any nature
18 premised on Labor Code §§ 201-203, 212, 225.5, 226, 226.3, 226.7, 512, and 558, interest, fees, costs,
19 and all other claims and allegations made or which could have been made in the Actions arising during
20 the Class Period.

21 y. "Released FLSA Claims" means all claims under the FLSA arising out of or related
22 to allegations set forth in the Operative Complaint which arose during the Class Period., including but not
23 limited to: claims for failure to pay overtime wages, injunctive relieve, punitive damages, liquidated
24 damages, penalties of any nature, interest, fees, costs.

25 z. "Released Parties" means Defendant, and all its present and former parent
26 companies, subsidiaries, divisions, related or affiliated companies, shareholders, officers, directors,
27 employees, agents, attorneys, insurers, successors and assigns, and any individual or entity which could
28 be liable for any of the Released Claims.

1 aa. “Request for Exclusion” means a timely letter submitted by a Class Member
2 indicating a request to be excluded from the settlement. The Request for Exclusion must: (a) contain the
3 case name and number of the Action, (b) be signed by the Class Member, (c) contain the full name,
4 address, telephone number, and the last four digits of the Social Security Number of the Class Member
5 requesting exclusion, (d) clearly state that the Class Member does not wish to be included in the settlement,
6 and (e) be returned by fax or mail to the Settlement Administrator at the specified address and/or facsimile
7 number, postmarked or faxed on or before the Response Deadline. The date of the postmark on the return
8 mailing envelope or fax-stamp on the submission will be the exclusive means to determine whether a
9 Request for Exclusion has been timely submitted. A Class Member who does not request exclusion from
10 the settlement will be deemed a Settlement Class Member and will be bound by all terms of this
11 Agreement, if the settlement is granted Final Approval by the Court.

12 bb. “Response Deadline” means the deadline by which Class Members must submit a
13 Request for Exclusion, objection, and/or dispute of the Workweeks credited to them, which shall be the
14 date that is forty-five (45) calendar days from the initial mailing of the Class Notice by the Settlement
15 Administrator, unless the forty-fifth (45th) day falls on a Sunday or Federal holiday, in which case the
16 Response Deadline will be extended to the next day on which the U.S. Postal Service is open. The
17 Response Deadline may also be extended by express agreement between Class Counsel and Defendant’s
18 Counsel. Under no circumstances, however, will the Settlement Administrator have the authority to
19 extend the Response Deadline. In the event that a Class Notice is re-mailed to a Class Member, the
20 Response Deadline for that Class Member shall be the extended by fifteen (15) calendar days.

21 cc. “Settlement Administrator” means Simpluris, or any other third-party class action
22 settlement administrator agreed to by the Parties and approved by the Court for purposes of administering
23 this settlement. The Parties each represent that they do not have any financial interest in the Settlement
24 Administrator or otherwise have a relationship with the Settlement Administrator that could create a
25 conflict of interest.

26 dd. “Settlement Administration Costs” means the costs payable from the Total
27 Settlement Amount, subject to Court approval, to the Settlement Administrator for administering this
28 settlement, as set forth in Paragraph 12 below.

1 ee. "Settlement Class Members" means all Class Members who do not submit a valid
2 and timely Request for Exclusion.

3 ff. "Total Settlement Amount" means the amount of Five Hundred Thousand Dollars
4 (\$500,000) to be paid by Defendant in full resolution of all Released Claims and the Action, which
5 includes all Attorneys' Fees and Costs, Enhancement Payments, LWDA Payment, Net Settlement Amount
6 to be paid to the Settlement Class Members (which includes the Settlement Class Members' portion of the
7 PAGA Payment), and Settlement Administration Costs. No portion of the Total Settlement Amount shall
8 revert to Defendant. The employer's share of taxes on the wages portion of Individual Settlement Shares
9 will be paid separately and in addition to the Total Settlement Amount.

10 gg. "Workweeks" means the number of weeks each Class Member worked for
11 Defendant as an hourly-paid or non-exempt employee in California during the Class Period, which will
12 be calculated by the Settlement Administrator as the total number of days from the first day of a Class
13 Member's employment as an hourly-paid or non-exempt employee. Each Class Member will be credited
14 with at least one (1) Workweek.

15 CLASS CERTIFICATION

16 7. For the purposes of this settlement only, the Parties stipulate to the certification of the
17 following Class: all current and former hourly-paid or non-exempt employees, who worked for Defendant
18 in California at any time during the Class Period.

19 8. The Parties agree that certification for the purpose of settlement is not an admission that
20 certification is proper under Section 382 of the California Code of Civil Procedure or 29 U.S.C. § 216(b).
21 Should, for whatever reason, the Court not grant Final Approval, the Parties' stipulation to class and
22 collective action certification as part of the settlement shall become null and void *ab initio* and shall have
23 no bearing on, and shall not be admissible in connection with, the issue of whether or not certification
24 would be inappropriate in a non-settlement context.

25 TERMS OF AGREEMENT

26 NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements set
27 forth in this Agreement, the Parties agree, subject to the Court's approval, as follows:
28

1 9. Funding of the Total Settlement Amount. Within fifteen (15) calendar days after the
2 Effective Date, the Settlement Administrator will provide the Parties with an accounting of the amounts
3 to be paid by Defendant pursuant to the terms of this Agreement. Within thirty (30) calendar days of the
4 Effective Date, Defendant will make a one-time deposit of the Total Settlement Amount and all employer
5 taxes due on wage payments made hereunder into a settlement account to be established by the Settlement
6 Administrator. Within seven (7) calendar days of the funding of Total Settlement Amount, the Settlement
7 Administrator will issue payments due under the settlement and approved by the Court, as follows: (a)
8 Individual Settlement Payments to Settlement Class Members; (b) LWDA Payment to the Labor and
9 Workforce Development Agency; (c) Enhancement Payments to Plaintiffs; and (d) Attorneys' Fees and
10 Costs to Class Counsel. The Settlement Administrator will also issue a payment to itself for Court-
11 approved services performed in connection with the settlement.

12 10. Attorneys' Fees and Costs. Class Counsel will request and Defendant will not oppose
13 attorneys' fees of up to thirty-five percent (35%) of the Total Settlement Amount (i.e., up to One Hundred
14 Seventy-Five Thousand (\$175,000.00)) and reimbursement of actual costs and expenses associated with
15 Class Counsel's litigation and settlement of the Actions, in an amount not to exceed Twenty-Five
16 Thousand Dollars (\$25,000), both of which will be paid from the Total Settlement Amount subject to
17 Court approval. These amounts will cover any and all work performed and any and all costs incurred by
18 Class Counsel in connection with the litigation of the Actions, including without limitation all work
19 performed and costs incurred to date, and all work to be performed and all costs to be incurred in
20 connection with obtaining the Court's approval of this Agreement, including any objections raised and
21 any appeals necessitated by those objections. Class Counsel shall be solely and legally responsible for
22 correctly characterizing this compensation for tax purposes and for paying any taxes on the amounts
23 received. Any portion of the Attorneys' Fees and Costs not awarded to Class Counsel shall be a part of
24 the Net Settlement Amount for the benefit of Settlement Class Members.

25 11. Enhancement Payments. In recognition of their efforts and work in prosecuting the Action,
26 Defendant agrees not to oppose or impede any application or motion for Enhancement Payments in an
27 amount up to Ten Thousand Dollars (\$10,000.00) to Plaintiff Phuoc Truong and an amount up to Ten
28 Thousand Dollars (\$10,000.00) to Plaintiff Clarence Smith. The Enhancement Payments, which will be

1 paid from the Total Settlement Amount, subject to Court approval, will be in addition to their Individual
2 Settlement Payments that are to be paid pursuant to the settlement. The Settlement Administrator will
3 issue an IRS Form 1099 to each Plaintiff for their Enhancement Payments, and Plaintiffs shall be solely
4 and legally responsible for correctly characterizing this compensation for tax purposes and for paying any
5 taxes on the amounts received. Plaintiffs agree to indemnify and hold Defendant harmless from any claim
6 or liability for taxes, penalties, or interest arising as a result of the Enhancement Payments. Should the
7 Court approve the Enhancement Payments to Plaintiffs in an amount that is less than that set forth above,
8 the difference between the lesser amount approved by the Court and the amount allocated toward the
9 Enhancement Payments will be part of the Net Settlement Amount for the benefit of Settlement Class
10 Members.

11 12. Settlement Administration Costs. The Settlement Administrator will be paid for the
12 reasonable costs of administration of the Settlement and distribution of payments under the settlement,
13 which is currently estimated not to exceed Six Thousand Five Hundred Dollars (\$6,500.00). These costs,
14 which will be paid from the Total Settlement Amount, subject to Court approval, will include, *inter alia*,
15 printing, distributing, and tracking Class Notices and other documents for this settlement, calculating and
16 distributing payments due under the settlement, issuing of 1099 and W-2 IRS Forms and all required tax
17 reporting, filings, withholdings, and remittances, providing necessary reports and declarations, and other
18 duties and responsibilities set forth in this Agreement to process this settlement, and as requested by the
19 Parties. To the extent actual Settlement Administrations Costs are greater than the estimated amount
20 stated in this Agreement, such excess amount will be deducted from the Total Settlement Amount, subject
21 to approval by the Court. Any portion of the estimated, designated, and/or awarded Settlement
22 Administration Costs which are not in fact required to fulfill payment to the Settlement Administrator to
23 undertake the requirement settlement administration duties will become part of the Net Settlement
24 Amount.

25 13. Labor and Workforce Development Agency Payment. Subject to approval by the Court,
26 the Parties agree that the amount of Eighty Thousand Dollars (\$80,000.00) from the Total Settlement
27 Amount will be allocated toward penalties under the Private Attorneys General, California Labor Code
28 Section 2698, *et seq.* ("PAGA Penalties"), of which seventy-five percent (75%), or \$60,000, will be paid

to the LWDA (i.e., the LWDA Payment) and twenty-five percent (25%) or, \$20,000, will be distributed to Settlement Class Members as part of the Net Settlement Amount.

14. Individual Settlement Share Calculations. Individual Settlement Shares will be calculated and apportioned from the Net Settlement Amount based on the Class Members' Workweeks, as follows:

a. After Preliminary Approval of the Settlement, the Settlement Administrator will divide the Net Settlement Amount by the Workweeks of all Class Members to yield the "Estimated Workweek Value," and multiply each Class Member's individual Workweeks by the Estimated Workweek Value to yield his or her estimated Individual Settlement Share that he or she may be eligible to receive under the Settlement.

b. After Final Approval of the Settlement, the Settlement Administrator will divide the final Net Settlement Amount by the Workweeks of all Settlement Class Member to yield the "Final Workweek Value," and multiply each Settlement Class Member's individual Workweeks by the Final Workweek Value to yield his or her Individual Settlement Share.

15. Settlement Awards Do Not Trigger Additional Benefits. All payments made under the settlement shall be deemed to be paid to the payee solely in the year in which such payments actually are issued to the payee. It is expressly understood and agreed that payments made under this settlement shall not in any way entitle Plaintiffs or any Settlement Class Member to additional compensation or benefits under any new or additional compensation or benefits, or any bonus, contest or other compensation or benefit plan or agreement in place during the Class Period, nor will it entitle any Settlement Class Member to any increased retirement, 401K benefits or matching benefits, or deferred compensation benefits (notwithstanding any contrary language or agreement in any benefit or compensation plan document that might have been in effect during the Class Period).

16. Delivery of the Class Data and List. Within fifteen (15) calendar days of Preliminary Approval, Defendant will provide the Class Data and List to the Settlement Administrator.

17. Notice by First-Class U.S. Mail.

a. Within ten (10) calendar days after receiving the Class Data and List from Defendant, the Settlement Administrator will perform a search based on the National Change of Address Database or any other similar services available, such as provided by Experian, for information to update

and correct for any known or identifiable address changes, and will mail a Class Notice in English and Spanish (in the form attached as **Exhibit A** to this Agreement) to all Class Members via First-Class U.S. Mail, using the most current, known mailing addresses identified by the Settlement Administrator.

b. With respect to Class Notices that are returned as undeliverable on or before the Response Deadline, the Settlement Administrator will search for an alternate address by way of skip-trace and re-mail the Class Notice within five (5) calendar days.

18. Dispute Regarding Workweeks. Class Members will have an opportunity to dispute the number of Workweeks to which they have been credited, as reflected in their respective Class Notices. In order to dispute Workweeks, Class Members must submit a written letter to the Settlement Administrator that: (a) contains the case name and number of the Action, (b) is signed by the Class Member, (c) contains the full name, address, telephone number, and the last four digits of the Social Security Number of the disputing Class Member, (d) clearly states that the Class Member disputes the number of Workweeks credited to him or her and what he or she contends is the correct number to be credited to him or her, (e) includes information and/or attaches documentation demonstrating that the number of Workweeks that he or she contends should be credited to him or her are correct, and (f) is returned by fax or mail to the Settlement Administrator at the specified address and/or facsimile number, postmarked or fax-stamped on or before the Response Deadline. The date of the postmark on the return mailing envelope or fax-stamp on the submission will be the exclusive means to determine whether a dispute has been timely submitted. Absent evidence rebutting the accuracy of Defendant's records and data as they pertain to the number of Workweeks to be credited to a disputing Class Member, Defendant's records will be presumed correct and determinative of the dispute. However, if a Class Member produces information and/or documents to the contrary, the Settlement Administrator will evaluate the materials submitted by the Class Member and the Settlement Administrator will resolve and determine the number of eligible Workweeks that the disputing Class Member should be credited with under the settlement. The Settlement Administrator's decision on such disputes will be final and non-appealable.

19. Settlement Checks. The Settlement Administrator will be responsible for undertaking appropriate deductions, required tax reporting, and issuing the Individual Settlement Payments by way of check to the Settlement Class Members in accordance with this Agreement. Each Individual Settlement

1 Payment check will be valid and negotiable for one hundred eighty (180) calendar days from the date the
2 checks are issued, and thereafter, shall be cancelled. All funds associated with such cancelled checks will
3 be transmitted, pursuant to California Code of Civil Procedure Section 384, to Legal Aid at Work. The
4 Parties each represent that they do not have any significant affiliation or involvement with the proposed
5 *cy pres* recipient. The Settlement Administrator shall undertake amended and/or supplemental tax filings
6 and reporting, required under applicable local, state, and federal tax laws, that are necessitated due to the
7 cancellation of any Individual Settlement Payment checks. Settlement Class Members whose Individual
8 Settlement Payment checks are cancelled shall, nevertheless, be bound by this Agreement. Each
9 Individual Settlement Payment issued to Settlement Class Members shall contain the following language
10 on the back: "I understand and agree that I am releasing any and all claims described in the Notice of
11 Class Action Settlement and that by cashing this check I am electing to opt into an action under the Fair
12 Labor Standards Act ("FLSA") and to release any and claims I may have under the FLSA related to the
13 claims that were made or arise out of the facts asserted in this case."

14 20. Procedure for Requesting Exclusion from the Settlement. Any Class Member wishing to
15 be excluded from the Settlement must submit a written Request for Exclusion to the Settlement
16 Administrator, by mail or fax, within the Response Deadline. The date of fax or the postmark on the
17 return mailing envelope will be the exclusive means to determine whether a Request for Exclusion has
18 been timely submitted. The Settlement Administrator will certify jointly to Class Counsel and
19 Defendant's Counsel the Requests for Exclusion that were timely submitted, and also identify the
20 individuals who have submitted a timely and valid Request for Exclusion in a declaration that is to be filed
21 with the Court in advance of the Final Approval Hearing. Any Class Member who submits a Request for
22 Exclusion is prohibited from making any objection to this Agreement.

23 21. Settlement Terms Bind All Class Members Who Do Not Request Exclusion. Any Class
24 Member who does not affirmatively request exclusion from the settlement by submitting a timely and
25 valid Request for Exclusion will be bound by all of the terms of this Agreement, including and not limited
26 to those pertaining to the Released Claims, as well as any judgment that may be entered by the Court if it
27 grants Final Approval to the settlement.

1 22. Procedures for Objecting to the Settlement. To object to the settlement, Class Members
2 who have not opted out of the Settlement (i.e., Settlement Class Members) must submit a timely and
3 complete written Notice of Objection to the Settlement Administrator, by fax or mail, on or before the
4 Response Deadline. The Notice of Objection must be signed by the Settlement Class Member and contain
5 all information required by this Agreement. The postmark or fax-stamp date will be deemed the exclusive
6 means for determining that the Notice of Objection is timely. The Settlement Administrator will furnish
7 copies of any such objections to counsel for the Parties within three (3) calendar days after receipt. Class
8 Members may appear at the final approval hearing, either in person or through counsel retained at their
9 own expense, to have their objections heard, whether or not they had submitted a prior written Notice of
10 Objection as specified in this paragraph. At no time will any of the Parties or their counsel seek to solicit
11 or otherwise encourage Settlement Class Members to object to this Agreement or appeal from the Final
12 Approval Order and Judgment.

13 23. Reports by the Settlement Administrator Regarding Settlement Administration. The
14 Settlement Administrator will provide Defendant's Counsel and Class Counsel a weekly report which
15 certifies: (a) the number of Class Members who have submitted a dispute of Workweeks; (b) the number
16 of Class Members who have submitted timely and valid Requests for Exclusion or timely and complete
17 Notices of Objection; and (c) the number of undeliverable and re-mailed Class Notices. Additionally, the
18 Settlement Administrator will provide to counsel for both Parties any updated reports regarding the
19 administration of this Agreement as needed or requested, and immediately notify the Parties when it
20 receives a request from an individual or any other entity regarding inclusion in the Class and/or settlement.

21 24. Certification of Completion. Upon completion of administration of the settlement, the
22 Settlement Administrator will provide a written declaration under oath to certify such completion to the
23 Court and counsel for all Parties.

24 25. Treatment of Individual Settlement Payments. Each Individual Settlement Share will be
25 allocated as follows: one-quarter(1/4), or 25%, as wages and three-quarters (3/4), or 75%, as penalties,
26 interest, and non-wage damages. The portion allocated to wages will be reported on an IRS Form W-2
27 and the portions allocated to interest and penalties will be reported on an IRS Form-1099 by the Settlement
28 Administrator. The Settlement Administrator will withhold the employee's share of taxes and

1 withholdings with respect to the wages portion of the Individual Settlement Shares, and issue checks to
2 Settlement Class Members for their Individual Settlement Payment (i.e., payment of their Individual
3 Settlement Share net of these taxes and withholdings). The employer's share of taxes and contributions
4 on the wages portion of Individual Settlement Shares will be paid separately and in addition to the Total
5 Settlement Amount.

6 26. Administration of Taxes by the Settlement Administrator. The Settlement Administrator
7 will be responsible for issuing to Plaintiffs, Settlement Class Members, and Class Counsel any W-2, 1099,
8 or other tax forms as may be required by law for all amounts paid pursuant to this Agreement. The
9 Settlement Administrator will also be responsible for forwarding all payroll taxes, contributions, and
10 withholdings to the appropriate government authorities.

11 27. Tax Liability. Plaintiffs, Class Counsel, Defendant, and Defendant's Counsel make no
12 representations or warranties as to the tax consequences, treatment, or legal effect of any payments made
13 under this Agreement, do not intend anything contained in this Agreement to constitute advice regarding
14 taxes or taxability, nor shall anything in this Agreement be relied on as such. Plaintiffs and Settlement
15 Class Members understand and agree that Plaintiff and Settlement Class Members will be solely
16 responsible for correctly characterizing any compensation received under the settlement on his/her
17 personal income tax returns and paying any and all taxes due for any and all amounts paid to them under
18 the settlement.

19 28. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF
20 THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT
21 OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND
22 AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN
23 COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR
24 ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR WILL ANY SUCH
25 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON
26 AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT
27 CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS
28 RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX

1 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
2 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
3 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY
4 OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR
5 DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY
6 TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
7 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT
8 PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX
9 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON
10 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
11 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED
12 BY THIS AGREEMENT.

13 29. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant that
14 they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
15 encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or
16 right in this Agreement released and discharged.

17 30. Release of Claims by Settlement Class Members and FLSA Settlement Class Members.
18 Upon the Effective Date, and subject to Defendant's full payment of the Total Settlement Amount,
19 Plaintiffs and all Class Members who do not submit a valid and timely Request for Exclusion (i.e.,
20 Settlement Class Members) will be deemed to have fully, finally and forever released, settled,
21 compromised, relinquished, and discharged the Released Parties of all Released Claims he or she may
22 have or had. Upon cashing their Individual Settlement Payment checks, FLSA Settlement Class Members
23 will be deemed to have fully, finally and forever released, settled, compromised, relinquished, and
24 discharged the Released Parties of all Released FLSA Claims under the FLSA he or she may have or had.

25 31. General Release of Claims by Plaintiffs. In addition, upon the Effective Date, Plaintiffs
26 will be deemed to have fully released and discharged the Released Parties of and from all claims arising
27 from Plaintiffs' employment with Defendant, separation of employment from Defendant, and any acts
28 that have or could have been asserted in any legal action or proceeding against Defendant, whether known

1 or unknown, arising under any federal, state, or local law, or statute, including, *inter alia*, those arising
2 under the California Labor Code, Fair Labor Standards Act, Americans with Disabilities Act, Title VII of
3 the Civil Rights Act of 1964, Employee Retirement Income Security Act, National Labor Relations Act,
4 California Corporations Code, California Business and Professions Code, California Fair Employment
5 and Housing Act, California Constitution (all as amended), and law of contract and tort, as well as for
6 discrimination, harassment, retaliation, wrongful termination, lost wages, benefits, other employment
7 compensation, emotional distress, medical expenses, other economic and non-economic damages,
8 attorney fees, and costs, arising on or before the date on which the Settlement is executed. With respect to
9 those claims released by Plaintiffs in an individual capacity, Plaintiffs acknowledge and waive any and all
10 rights and benefits available under California Civil Code Section 1542, which provides:

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

15 Plaintiffs understand and agree that claims or facts in addition to or different from those which are now
16 known or believed by her to exist may hereafter be discovered. It is Plaintiffs' intention to settle fully
17 and release all claims they now have against the Released Parties, whether known or unknown, suspected
18 or unsuspected. The Enhancement Payments shall be paid to Plaintiffs specifically in exchange for the
19 general release of the Released Parties from all claims, including those specified in this paragraph and a
20 covenant not to sue the Released Parties. To the extent either Plaintiff has a claim or claims against any
21 Released Party pending with any administrative agency or court, Plaintiff agrees to withdraw such claim
22 or claims with prejudice within (14) days of the final approval of this settlement. Notwithstanding the
23 above, the general release by Plaintiffs shall not extend to claims for workers' compensation benefits,
24 claims for unemployment benefits, or other claims that may not be released by law.

25 32. Duties of the Parties with Respect to Obtaining Preliminary Approval of the Settlement.

26 Upon execution of this Agreement, Plaintiffs shall promptly obtain a hearing date for Plaintiffs' Motion
27 for Preliminary Approval of the Settlement, which Plaintiffs and Class Counsel will be responsible for
28 drafting, and submit this Agreement to the Court in support of said motion. Class Counsel will provide

1 Defendant's Counsel a draft of the Preliminary Approval Motion at least three (3) calendar days before
2 the filing deadline. Defendant agrees not to oppose the Motion for Preliminary Approval of the Settlement
3 consistent with this Agreement. Said motion shall apply to the Court for the entry of an order ("Preliminary
4 Approval Order"), which shall be mutually agreed upon by the Parties, seeking the following:

- 5 a. Conditionally certifying the Class for settlement purposes only;
- 6 b. Granting Preliminary Approval of the Settlement;
- 7 c. Preliminarily appointing Plaintiffs as representatives of the Class;
- 8 d. Preliminarily appointing Plaintiffs' Counsel as counsel for the Class;
- 9 e. Approving, as to form and content, the mutually-agreed upon and proposed Class
10 Notice substantially in the form attached hereto as Exhibit A, and directing its mailing to the Class by first
11 class mail;
- 12 f. Approving the manner and method for Class Members to request exclusion from
13 the Settlement as contained in this Agreement and within the Class Notice; and
- 14 g. Scheduling a Final Approval Hearing at which the Court will determine whether
15 the Settlement should be finally approved as fair, reasonable and adequate as to the Settlement Class
16 Members.

17 33. Duties of the Parties with Respect to Obtaining Final Approval of the Settlement. After
18 the Response Deadline, and with the Court's permission, a Final Approval Hearing will be conducted to
19 determine whether Final Approval of the Settlement should be granted, along with the amounts properly
20 payable for (a) Individual Settlement Payments; (b) LWDA Payment; (c) Attorneys' Fees and Costs; (d)
21 Enhancement Payments; and (e) Settlement Administration Costs. Plaintiffs and Class Counsel will be
22 responsible for drafting the motion seeking Final Approval of the Settlement. Class Counsel will provide
23 Defendant's Counsel a draft of the Final Approval Motion at least three (3) calendar days before the filing
24 deadline. By way of said motion, Plaintiffs will apply for the entry of the mutually agreed upon proposed
25 order and judgment ("Final Approval Order and Judgment"), which will provide for, in substantial part,
26 the following:

- 27 a. Approval of the Settlement as fair, reasonable, and adequate, and directing
28 consummation of its terms and provisions;

- b. Certification of the Settlement Class;
- c. Approval of the application for Attorneys' Fees and Costs to Class Counsel;
- d. Approval of the application for Enhancement Payments to Plaintiffs;
- e. Directing Defendant to fund all amounts due under this Agreement and ordered by the Court; and
- f. Entering judgment in this Action barring and enjoining all Settlement Class Members and FLSA Settlement Class Members from prosecuting the Released Claims and/or Released FLSA Claims against any of the Released Parties, while maintaining continuing jurisdiction, in conformity with California Rules of Court 3.769 and this Agreement.

34. Termination or Revocation of Settlement.

a. If ten percent (10%) or more of the Class Members submit timely and valid Requests for Exclusion, Defendant may elect to rescind this Agreement. Defendant must exercise this right of rescission in writing that is provided to Class Counsel within ten (10) calendar days of the Response Deadline. If Defendant exercises this option, Defendant shall pay any costs of settlement administration owed to the Settlement Administrator incurred up to that date.

b. If the Court finds the Total Settlement Amount to be insufficient to warrant Preliminary Approval or Final Approval of the Settlement, Defendant may, at its election, rescind this Agreement and all actions taken in furtherance of it will thereby be null and void.

c. If the total number of Class Members exceeds One Hundred Thirty (130) individuals, Defendant may, in its sole discretion, choose to amend this Settlement Agreement to end the Class Period on the last day when the total number of Class Members was not more than One Hundred Thirty (130). If Defendant chooses to amend this Agreement pursuant to this Paragraph 34, it must do so by written notice to Plaintiffs within ten (10) days after written notice to the Parties from the Class Administrator that the total number of Class Members exceeds One Hundred Thirty (130). If the total number of Class Members exceeds One Hundred Thirty (130) individuals and Defendant does not choose to amend this Agreement pursuant to this Paragraph 34, then Plaintiffs may, in their discretion, choose to terminate this Agreement. If Plaintiffs choose to terminate this Agreement pursuant to this Paragraph 34,

they must do so by written notice to Defendant within twenty (20) days after written notice to Plaintiffs from the Class Administrator that the total number of Class Members exceeds One Hundred Thirty (130).

35. Effects of Termination of the Settlement. Termination of this Agreement shall have the following effects:

a. This Agreement shall be void and shall have no force or effect, and no Party shall be bound by any of its terms;

b. In the event this Agreement is terminated, Defendant shall have no obligation to make any payments to any Party, Class Member or attorney, except that the terminating Party shall pay the Settlement Administrator for services rendered up to the date the Settlement Administrator is notified that the settlement has been terminated;

c. The Preliminary Approval Order, Final Approval Order and Judgment, including any order certifying the Class, shall be vacated;

d. This Agreement and all negotiations, statements and proceedings relating thereto shall be without prejudice to the rights of any of the Parties, all of whom shall be restored to their respective positions in the Action prior to the execution of this Agreement;

e. Neither this Agreement, nor any ancillary documents, actions, statements or filings in furtherance of the Settlement (including all matters associated with the mediation) shall be admissible or offered into evidence in the Action or any other action for any purpose whatsoever;

f. Any documents generated to bring the settlement into effect, will be null and void, and any order or judgment entered by the Court in furtherance of this Agreement will likewise be treated as void from the beginning; and

g. The Parties shall request that the Court reopen proceedings within thirty (30) calendar days.

36. Continued Jurisdiction. After entry of judgment pursuant to the Settlement, the Court will have continuing jurisdiction pursuant to Rule 3.769 of the California Rules of Court and Section 664.6 of the California Code of Civil Procedure, for purposes of addressing: (a) the interpretation and enforcement of the terms of the settlement, (b) settlement administration matters, and (c) such post-judgment matters as may be appropriate under court rules or as set forth in this Agreement. The Parties further understand

1 and agree that if an action is brought to enforce the terms of this Agreement, the prevailing party shall be
2 entitled to its/her reasonable attorneys' fees and costs incurred in connection with any enforcement
3 action(s).

4 37. Exhibits Incorporated by Reference. The terms of this Agreement include the terms set
5 forth in any attached exhibits, which are incorporated by this reference as though fully set forth in this
6 Agreement. Any exhibits to this Agreement are an integral part of the settlement.

7 38. Limitation on Publicity. Plaintiffs and Class Counsel, including its present and former
8 parent companies, subsidiaries, divisions, related or affiliated companies, shareholders, officers, directors,
9 employees, agents, attorneys, insurers, successors and assigns, will not make any public disclosure of the
10 settlement or discuss the settlement or this Agreement with anyone other than those necessary to effectuate
11 the filing of the Motion for Preliminary Approval, until after the Motion for Preliminary Approval is filed.
12 Class Counsel will take all steps necessary to ensure Plaintiffs are aware of, and will encourage them to
13 adhere to, the restriction against any public disclosure of the settlement until after the Motion for
14 Preliminary Approval is filed. Prior to and following Preliminary Approval of the Settlement, Plaintiffs
15 and Class Counsel will not have any communications with any media other than to direct any media
16 inquiries to the public records of the Action on file with the Court and will not publicize the Settlement,
17 including but not limited to, postings on Class Counsel's websites and social media sites/outlets. Class
18 Counsel will take all steps necessary to ensure Plaintiffs are aware of, and will encourage them to adhere
19 to, the restriction against any media comment on the settlement and its terms. Class Counsel further agrees
20 not to use the settlement of the Actions or any of its terms for any marketing or promotional purposes, or
21 for attempting to influence business relationships at Defendant, either before or after the Motion for
22 Preliminary Approval is filed. Nothing in this Agreement will restrict Class Counsel from including
23 publicly available information regarding this settlement in future judicial submissions regarding Class
24 Counsel's qualifications and experience. Furthermore, Plaintiffs and Class Counsel will undertake any
25 and all disclosures required to be made to the LWDA in conformity with PAGA. Neither Plaintiffs nor
26 Class Counsel shall engage in any disparagement of any type related to this settlement.

27 39. Entire Agreement. This Agreement and any attached exhibits constitute the entirety of the
28 Parties' settlement terms. No other prior or contemporaneous written or oral agreements may be deemed

1 binding on the Parties. The Parties expressly recognize California Civil Code § 1625 and California Code
2 of Civil Procedure § 1856(a), which provide that a written agreement is to be construed according to its
3 terms and may not be varied or contradicted by extrinsic evidence, and the Parties agree that no such
4 extrinsic oral or written representations or terms will modify, vary or contradict the terms of this
5 Agreement.

6 40. Interim Stay of Proceedings. The Parties agree to hold in abeyance all proceedings in the
7 Action, except such proceedings necessary to implement and complete this Agreement, pending the Final
8 Approval hearing to be conducted by the Court.

9 41. Waiver and Amendment. The Parties may not waive, amend, or modify any provision of
10 this Agreement except by written agreement signed by counsel for all Parties, and subject to any necessary
11 Court approval. A waiver or amendment of any provision of this Agreement will not constitute a waiver
12 of any other provision.

13 42. Authorization to Enter into Agreement. Counsel for all Parties warrant and represent they
14 are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take all
15 appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to
16 effectuate its terms and to execute any other documents required to effectuate the terms of this Agreement.
17 The Parties warrant that they understand and have full authority to enter into this Agreement, and further
18 intend that this Agreement will be fully enforceable and binding on all parties, and agree that it will be
19 admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation
20 confidentiality provisions that otherwise might apply under state or federal law.

21 43. Signatories. It is agreed that because the members of the Class are so numerous, it is
22 impossible or impractical to have each Settlement Class Member execute this Agreement. The Class
23 Notice will advise all Class Members of the binding nature of the release as to the Settlement Class
24 Members, and the release shall have the same force and effect as if this Agreement were executed by each
25 Settlement Class Member.

26 44. Binding on Successors and Assigns. This Agreement will be binding upon, and inure to
27 the benefit of, the successors or assigns of the Parties hereto, as previously defined.

1 45. California Law Governs. All terms of this Agreement and attached exhibits hereto will be
2 governed by and interpreted according to the laws of the State of California.

3 46. Execution and Counterparts. This Agreement is subject only to the execution of all Parties.
4 However, this Agreement may be executed in one or more counterparts. All executed counterparts and
5 each of them, including facsimile, electronic, pdf, or DocuSign, and scanned copies of the signature page,
6 will be deemed to be one and the same instrument.

7 47. Acknowledgment that the Settlement is Fair and Reasonable. The Parties believe this
8 Agreement is a fair, adequate, and reasonable settlement of the Actions and have arrived at this settlement
9 after arm's-length negotiations and in the context of adversarial litigation, taking into account all relevant
10 factors, present and potential. The Parties further acknowledge that they are each represented by
11 competent counsel and that they have had an opportunity to consult with their counsel regarding the
12 fairness and reasonableness of this Agreement. In addition, the Mediator may execute a declaration
13 supporting the Settlement and the reasonableness of the Settlement and the Court may, in its discretion,
14 contact the Mediator to discuss the Settlement and whether or not the Settlement is objectively fair and
15 reasonable.

16 48. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid, the
17 Court will first attempt to construe the provision as valid to the fullest extent possible consistent with
18 applicable precedents so as to define all provisions of this Agreement valid and enforceable.

19 49. Plaintiffs' Waiver of Right to Be Excluded. Plaintiffs agree to sign this Agreement and,
20 by signing this Agreement, are hereby bound by the terms in this Agreement.

21 50. Non-Admission of Liability. The Parties enter into this Agreement to resolve the dispute
22 that has arisen between them and to avoid the burden, expense and risk of continued litigation. In entering
23 into this Agreement, Defendant does not admit, and specifically denies, that it has violated any state,
24 federal, or local law; violated any regulations or guidelines promulgated pursuant to any statute or any
25 other applicable laws, regulations or legal requirements; breached any contract; violated or breached any
26 duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with
27 respect to its employees. Neither this Agreement, nor any of its terms or provisions, nor any of the
28 negotiations connected with it, shall be construed as an admission or concession by Defendant of any such

violations or failures to comply with any applicable law. Except as necessary in a proceeding to enforce the terms of this Agreement, this Agreement and its terms and provisions shall not be offered or received as evidence in any action or proceeding to establish any liability or admission on the part of Defendant or to establish the existence of any condition constituting a violation of, or a non-compliance with state, federal, local or other applicable law.

51. Captions. The captions and paragraph numbers in this Agreement are inserted for the reader's convenience, and in no way define, limit, construe or describe the scope or intent of the provisions of this Agreement.

52. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and conditions of this Agreement. Accordingly, this Agreement will not be construed more strictly against one party than another merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations between the Parties, all Parties have contributed equally to the preparation of this Agreement.

53. Representation by Counsel. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Agreement, and that this Agreement has been executed with the consent and advice of counsel, and reviewed in full. Further, Plaintiffs and Class Counsel warrant and represent that there are no liens on this Agreement.

54. All Terms Subject to Final Court Approval. All amounts and procedures described in this Agreement in this Agreement will be subject to final Court approval.

55. Notices. All notices, demands, and other communications to be provided concerning this Agreement shall be in writing and delivered by overnight mail at the addresses set for below, or such other addresses as either Party may designate in writing from time to time:

To Plaintiffs and Class Counsel:

Daniel F. Gaines
Alex P. Katofsky
GAINES & GAINES, APLC
27200 Agoura Road, Suite 101
Calabasas, CA 91301

Larry W. Lee
Mai Tulyathan

To Defendant:

Robert Tomaso
AJ Weissler
HUSCH BLACKWELL LLP
190 Carondelet Plaza, Suite 600
St. Louis, MO 63105

Amberly Morgan
HUSCH BLACKWELL LLP

DIVERSITY LAW GROUP, APC
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071

501 W. Broadway, Suite 800
San Diego, CA 92101

56. Final Judgment. The Parties shall provide the Settlement Administrator with a copy of the Final Judgment once it is entered by the Court, and the Settlement Administrator shall post the Final Judgment on its website within three (3) business days of receipt and for a period of no fewer than one hundred eighty (180) days after the Effective Date. No individualized notice to the Class will be required.

57. Cooperation and Execution of Necessary Documents. All Parties and their counsel will cooperate with each other in good faith and use their best efforts to implement the settlement, including and not limited to, executing all documents to the extent reasonably necessary to effectuate the terms of this Agreement. If the Parties are unable to reach agreement on the form or content of any document needed to implement this Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties may seek the assistance of the Mediator and then the Court to resolve such disagreement.

58. Integration Clause. This Agreement contains the entire agreement between the Parties relating to the settlement and transaction contemplated hereby, 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 in this Agreement. No rights hereunder may be waived except in writing.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Class Action and PAGA Settlement and Release between Plaintiffs and Defendant:

IT IS SO AGREED.

Dated: June 30, 2021, 2021

PHUOC TRUONG

Phuoc Truong

Phuoc Truong

CLARENCE SMITH

Dated: _____, 2021

Clarence Smith

DIVERSITY LAW GROUP, APC
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071

501 W. Broadway, Suite 800
San Diego, CA 92101

56. Final Judgment. The Parties shall provide the Settlement Administrator with a copy of the Final Judgment once it is entered by the Court, and the Settlement Administrator shall post the Final Judgment on its website within three (3) business days of receipt and for a period of no fewer than one hundred eighty (180) days after the Effective Date. No individualized notice to the Class will be required.

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IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Class Action and PAGA Settlement and Release between Plaintiffs and Defendant:

IT IS SO AGREED.

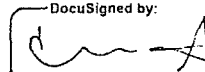
PHUOC TRUONG

Dated: _____, 2021

Phuoc Truong

CLARENCE SMITH

Dated: 7/13/2021, 2021

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Clarence Smith

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WATLOW ELECTRIC MANUFACTURING
COMPANY

Dated: July 11, 2021


Full Name: David P. McCool

Title: V.P. & General Counsel
On behalf of Defendant Watlow Electric Manufacturing
Company

APPROVED AS TO FORM

GAINES & GAINES, APLC

Dated: _____, 2021

Daniel F. Gaines
Alex P. Katofsky
Attorneys for Plaintiffs and Proposed Class Counsel

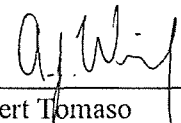
DIVERSITY LAW GROUP, APC

Dated: _____, 2021

Larry W. Lee
Mai Tulyathan
Attorneys for Plaintiffs and Proposed Class Counsel

HUSCH BLACKWELL LLP

Dated: July 12, 2021


Robert Tomaso
AJ Weissler
Amberly Morgan
*Attorneys for Defendant Watlow Electric Manufacturing
Company*

**WATLOW ELECTRIC MANUFACTURING
COMPANY**

Dated: _____, 2021

Full Name: _____

Title: _____
On behalf of Defendant Watlow Electric Manufacturing
Company

APPROVED AS TO FORM

GAINES & GAINES, APLC

Dated: __June 30th__, 2021

Daniel F. Gaines
Daniel F. Gaines
Alex P. Katofsky
Attorneys for Plaintiffs and Proposed Class Counsel

DIVERSITY LAW GROUP, APC

Dated: _____, 2021

Larry W. Lee
Mai Tulyathan
Attorneys for Plaintiffs and Proposed Class Counsel

HUSCH BLACKWELL LLP

Dated: _____, 2021

Robert Tomaso
AJ Weissler
Amberly Morgan
*Attorneys for Defendant Watlow Electric Manufacturing
Company*

**WATLOW ELECTRIC MANUFACTURING
COMPANY**

Dated: _____, 2021

Full Name: _____

Title: _____

On behalf of Defendant Watlow Electric Manufacturing
Company

APPROVED AS TO FORM

GAINES & GAINES, APLC

Dated: _____, 2021

Daniel F. Gaines
Alex P. Katofsky
Attorneys for Plaintiffs and Proposed Class Counsel

DIVERSITY LAW GROUP, APC

Dated: July 13 _____, 2021

Larry W. Lee
Mai Tulyathan
Attorneys for Plaintiffs and Proposed Class Counsel

HUSCH BLACKWELL LLP

Dated: _____, 2021

Robert Tomaso
AJ Weissler
Amberly Morgan
*Attorneys for Defendant Watlow Electric Manufacturing
Company*

EXHIBIT B

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

CLARENCE SMITH, as an individual and on
behalf of others similarly situated,

Plaintiffs,

vs.

WATLOW ELECTRIC MANUFACTURING
COMPANY, a Missouri corporation; and DOES
1 through 50, inclusive,

Defendants.

PHUOC TRUONG, on behalf of himself and all
“aggrieved employees” pursuant to Labor Code
§ 2698 et seq.,

Plaintiff,

v.

WATLOW ELECTRIC MANUFACTURING
COMPANY, a Missouri corporation, and DOES
1 through 10, inclusive,

Defendants.

CASE NO: 20-CV-365250 (Smith)
20-CV-362069 (Truong)

*Assigned for all purposes to the Honorable
Sunil R. Kulkarni, Department 1*

**NOTICE OF PENDENCY OF CLASS
ACTION SETTLEMENT AND FINAL
HEARING**

**YOU MAY BE ELIGIBLE TO RECEIVE A SETTLEMENT PAYMENT.
PLEASE READ THIS NOTICE CAREFULLY.**

A California Court authorized this notice. This is not a solicitation from an attorney.

**YOUR ESTIMATED TOTAL INDIVIDUAL SETTLEMENT SHARE FROM
THIS CLASS ACTION SETTLEMENT IS \$[REDACTED].**

According to Defendant’s records, you worked [REDACTED] weeks for Defendant as an hourly, non-exempt employee in California between November 15, 2018 and [Class Period End Date]. Based on this number of Workweeks worked, your Individual Settlement Share as a member of the Class is estimated to be \$[REDACTED].

- Plaintiffs Phuoc Truong and Clarence Smith (“Plaintiffs”) and Defendant Watlow Electric Manufacturing Company (“Defendant”) have reached a settlement whereby Defendant has

agreed to pay the total amount of \$500,000 to settle claims among those persons employed by Defendant in an hourly-paid or non-exempt position in California between November 15, 2018 and [Class Period End Date].

- The settlement resolves a lawsuit over whether Defendant failed to provide meal periods, failed to provide rest periods, failed to pay all wages, failed to timely pay wages during and upon separation of employment, failed to keep accurate payroll records, and failed to provide accurate itemized wage statements. The settlement avoids costs and risks to you, Plaintiffs and Defendant from continuing the lawsuit; pays money to employees; and releases Defendant from liability from the claims asserted in this lawsuit.
- Attorneys for the employees will ask the Court to award them up to 35% of the Maximum Settlement Amount as attorneys' fees (\$175,000) and reimbursement of costs and expenses for investigating the facts, litigating the case, and negotiating the settlement in the amount of up to \$25,000. This will be paid from the settlement amount.
- Defendant denies liability and the Parties disagree on how much money could have been awarded if employees won at trial.
- **Your legal rights are affected whether you act or do not act. Read this notice carefully.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
You Can Do Nothing	You do not need to take any action if you wish to receive your settlement payment. If the settlement is approved by the Court, you will automatically be mailed a settlement check at the address on file with the Settlement Administrator. In exchange for this settlement check, you will release or give up any rights to sue Defendant separately for the same legal claims that were settled as part of this lawsuit (see page 5 for an explanation of the claims you are giving up). If you move, you must notify the Settlement Administrator of your new address.
You Can Exclude Yourself	If you ask to be excluded from the settlement, you will get no payment from the settlement. This is the only option that allows you to ever be part of any other lawsuit against Defendant about the legal claims that were settled in this case.
You Can Object To The Settlement	If you do not agree with the settlement, you can write to the Court about why you don't like the settlement according to the procedures described below on page 7. The Court may or may not agree with your objection. Objecting to the settlement will <u>not</u> exclude you from the settlement.
You Can Attend The Final Approval Hearing	You can ask to speak in Court about the fairness of the settlement at the final fairness hearing. The Court will hold a final fairness hearing to determine whether the settlement is fair, reasonable, and adequate on [DATE], 2021 at [TIME]. More information regarding this hearing is set forth on page 5.

WHY DID YOU RECEIVE THIS NOTICE?

This notice explains a proposed settlement of a class and representative action lawsuit, and informs you of your legal rights under that proposed settlement. You are receiving this notice because you may be a member of the class/representative group on whose behalf this class action lawsuit has been brought.

WHAT IS THIS LAWSUIT ABOUT?

On January 13, 2020, Phuoc Truong commenced a representative PAGA action entitled *Phuoc Truong v. Watlow Electric Manufacturing, Inc.*, Superior Court of California for the County of Santa Clara, Case No. 20-cv-362069 (“*Truong Action*”) against Defendant. On March 18, 2020, Clarence Smith filed commenced a putative class and representative PAGA action entitled *Clarence Smith v. Watlow Electric Manufacturing, Inc.*, Superior Court of California for the County of Santa Clara, Case No. 20-cv-365250 (“*Smith Action*”) (collectively, the “*Actions*”) against Defendant. On [date], 2021, Smith and Truong together filed the First Amended Consolidated Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *et seq.*, which alleges causes of action against Defendant for failure to provide compliant meal and rest periods and associated premium payments, pay all wages for hours worked, timely pay wages during and after employment and pay associated waiting-time penalties, provide compliant wage statements, and maintain complete and accurate payroll records, for violations of California Business and Professions Code Section 17200, *et seq.*, and for civil penalties pursuant to the Private Attorneys General Act of 2004, California Labor Code Section 2698, *et seq.* (“PAGA”). Plaintiffs bring these claims on behalf of all current and former hourly-paid or non-exempt employees who worked for Defendant in California at any time during the period from November 15, 2018, through the [Class Period End Date] (“Class Period”). The lawsuit seeks recovery of unpaid wages, damages, interest, statutory and civil penalties, attorneys’ fees and costs. Defendant denies all of the allegations in the Lawsuit and maintains that it has at all times acted in good faith to comply with the requirements of the California Labor Code

The attorneys for the parties are:

Plaintiff Truong:

Daniel F. Gaines, Esq.
Alex P. Katofsky, Esq.
GAINES & GAINES, APLC
27200 Agoura Road, Suite 101
Calabasas, CA 91301
admin@gaineslawfirm.com
Phone (866) 550-0855

Plaintiff Smith:

Larry W. Lee, Esq.
Mai Tulyathan, Esq.
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa St., Suite 1250
Los Angeles, California 90071
lwlee@diversitylaw.com
Phone (213) 488-6555

William L. Marder, Esq.
POLARIS LAW GROUP, LLP
501 San Benito Street, Suite 200
Hollister, California 95023
bill@polarislawgroup.com
Phone (831) 531-4214

Defendant Watlow Electric Manufacturing Company

Kate Juvinall, Esq.

A.J. Weissler, Esq.

HUSCH BLACKWELL LLP

4801 Main Street, Suite 1000

Kansas City, MO 64112-2551

kate.juvinall@huschblackwell.com

Phone (816) 983-8361

SUMMARY OF THE SETTLEMENT

A. Why is there a Settlement?

The Court did not decide in favor of Plaintiffs or Defendant. Plaintiffs believes they would have prevailed on their claims at a trial. Defendant does not believe that Plaintiffs would have won anything from a trial. But there was no trial. Instead, both sides agreed to a settlement. That way, they all avoid the costs, risks, and uncertainty of a trial, and the people affected will get compensation. Plaintiffs and Plaintiffs' attorneys think the settlement is fair, reasonable and adequate and in the best interests of all class members. Defendant denies any wrongdoing but believes the settlement makes sense, as a business decision, to avoid the uncertainty of trial and to return its attention to its ongoing business operations.

B. Who is in the Settlement Class?

The Settlement encompasses the following class: all current and former hourly-paid or non-exempt employees who worked for Defendant in California at any time during the period from November 15, 2018, through [Class Period End Date] (the "Settlement Class").

C. What does the Settlement provide?

1. Maximum Settlement Amount.

Defendant will pay \$500,000 (the "Total Settlement Amount") to settle the lawsuit.

The following sums will be paid from the Maximum Settlement Amount: (1) \$60,000 to the California Labor and Workforce Development Agency (the "LWDA"); (2) the fees of Plaintiffs' attorneys in an amount set by the Court not to exceed 35% of the Maximum Settlement Amount (\$175,000) and Plaintiffs' attorneys' documented litigation costs in an amount set by the Court not to exceed \$25,000; (3) enhancement payments, set by the Court, to each Plaintiff, not to exceed \$10,000

each, for their service in the lawsuit; and (4) a reasonable amount set by the Court to the settlement administrator for administering the settlement, not to exceed \$6,500. The amount of the Maximum Settlement Amount remaining after these payments is the “Net Settlement Amount.”

2. Individual Payment Amount.

Your share of the Net Settlement Amount will be determined by the formula detailed in section E below.

D. What are you giving up to get a payment or stay in the Class?

Upon the Effective Date, and subject to Defendant’s full payment of the Total Settlement Amount, Plaintiffs and all Class Members who do not submit a valid and timely Request for Exclusion (i.e., Settlement Class Members) will be deemed to have fully, finally and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released Claims he or she may have or had. Upon cashing their Individual Settlement Payment checks, FLSA Settlement Class Members will be deemed to have fully, finally and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released FLSA Claims under the FLSA he or she may have or had.

“Released Claims” means all claims under state, federal, or local law, whether statutory law, common law, or administrative law, arising out of or assertable based upon the allegations set forth in the Operative Complaint. These claims include, but are not limited to: claims for rest period violations, meal period violations, unpaid wages, failure to keep proper records, itemized wage statement violations, waiting time penalties, unfair competition, declaratory relief, claims for violation of the Private Attorneys General Act, California Labor Code section 2698, *et seq.* (“PAGA”), penalties of any nature premised on Labor Code §§ 201-203, 212, 225.5, 226, 226.3, 226.7, 512, and 558, interest, fees, costs, and all other claims and allegations made or which could have been made in the Actions arising during the Class Period.

“Released FLSA Claims” means all claims under the FLSA arising out of or related to allegations set forth in the Operative Complaint which arose during the Class Period., including but not limited to: claims for failure to pay overtime wages, injunctive relieve, punitive damages, liquidated damages, penalties of any nature, interest, fees, costs.

“Released Parties” means Defendant, and all 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 liable for any of the Released Claims.

“FLSA Settlement Class Members” means all Class Members who cash their Individual Settlement Payment checks, and thereby will be deemed to have given their consent to “opt in” as a party plaintiff in this action pursuant to the Fair Labor Standards Act of 1938, 29 U.S.C. § 216(b) (“FLSA”) and to have waived and released any claims they may have under the FLSA as related to the claims that were or arise from the facts asserted in the Actions.

E. How is my share of the Settlement calculated?

Each Settlement Class Member (those who do not opt out of the Settlement) shall receive an Individual Settlement Share, which is a share of the Net Settlement Amount (calculated by deducting attorneys’ fees and costs, claims administration costs, any enhancement payments to the Plaintiff/Class

Representatives, and the LWDA's share of the PAGA penalty payment from the Total Settlement Amount). Your share of the Net Settlement Amount, and the share of each Class Member, is the "Individual Settlement Share." Your Individual Settlement Share will be based on the number of "Workweeks," or the number of weeks you worked for Defendant as an hourly-paid or non-exempt employee in California from November 15, 2018, through [Class Period End Date].

After Preliminary Approval of the Settlement, the Settlement Administrator will divide the Net Settlement Amount by the Workweeks of all Class Members to yield the "Estimated Workweek Value," and multiply each Class Member's individual Workweeks by the Estimated Workweek Value to yield his or her estimated Individual Settlement Share that he or she may be eligible to receive under the Settlement.

After Final Approval of the Settlement, the Settlement Administrator will divide the final Net Settlement Amount by the Workweeks of all Settlement Class Member to yield the "Final Workweek Value," and multiply each Settlement Class Member's individual Workweeks by the Final Workweek Value to yield his or her Individual Settlement Share.

Each Individual Settlement Share will be allocated as follows: 25% as wages and 75% as penalties, interest, and non-wage damages. The portion allocated to wages will be reported on an IRS Form W-2 and the portions allocated to interest and penalties will be reported on an IRS Form-1099 by the Settlement Administrator. The Settlement Administrator will withhold the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Shares, and issue checks to Settlement Class Members for their Individual Settlement Payment (i.e., payment of their Individual Settlement Share net of these taxes and withholdings).

According to the records of Defendant, you worked [] Workweeks while employed by Defendant as an hourly-paid or non-exempt employee in California between November 15, 2018 and [Class Period End Date]. Based on these Workweeks, you are entitled to an Individual Settlement Share of approximately \$[]. This amount is subject to change based on the final ruling of the Court.

Please be advised that the individual data above is presumed to be correct unless you submit documentation proving otherwise. If you disagree with the data, please submit an explanation and evidence in support of your position to the Settlement Administrator no later than [], 2021. In the event of a dispute, the Settlement Administrator will resolve the challenge with input from Defendant and will make a final and binding determination without a hearing or right of appeal by you.

THE SETTLEMENT HEARING

The Court will conduct a final fairness hearing regarding the proposed settlement (the "Final Settlement Hearing") on [], 2021, at [] a.m., in Department 1, Judge Sunil R. Kulkarni presiding, of the Santa Clara County Superior Court, located at []. The Court will determine: (i) whether the lawsuit should finally be certified as a class action for settlement purposes; (ii) whether the settlement should be given the Court's final approval as fair, reasonable, adequate and in the best interests of the Settlement Class Members; (iii) whether the Settlement Class Members should be bound by the terms of the settlement; (iv) the amount of the attorneys' fees and costs to be awarded to Plaintiffs' attorneys; and (v) the amount that should be awarded to Plaintiff as a service payment. At the Final Settlement Hearing, the Court will hear all objections, as well as arguments for and against the proposed settlement. You have a right to attend this hearing, but you are not required to do so. You also

have the right to hire an attorney to represent you, at your own expense, or to enter an appearance and represent yourself. The Final Approval Hearing may be continued to another date without further notice. Due to the ongoing COVID-19 pandemic, hearings before the judge overseeing this case are currently being conducted remotely with the assistance of a third-party service provider, CourtCall. If that remains the case at the time of the Final Approval Hearing, Class Members who wish to appear at the Final Approval Hearing should contact class counsel to arrange a remote appearance through CourtCall, at least three days before the hearing if possible. Any CourtCall fees for an appearance by an objecting class member shall be paid by class counsel.

WHAT ARE YOUR OPTIONS?

- **OPTION 1 – DO NOTHING AND PARTICIPATE IN THE SETTLEMENT**

IF YOU TAKE NO ACTION IN RESPONSE TO THIS NOTICE, YOU WILL AUTOMATICALLY RECEIVE YOUR SHARE OF THE SETTLEMENT IF IT IS APPROVED BY THE COURT. YOU ARE NEVER REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE ATTORNEYS IN THIS CASE. If you move, you must update your address with the Settlement Administrator. If you disagree with the number of Workweeks you worked as indicated in section E above, you must submit an explanation and/or documentation to the Settlement Administrator to justify your position, postmarked or faxed no later than [45 days after mailing]. The Settlement Administrator's address and fax number are [Settlement Administrator address and fax number].

- **OPTION 2 – OBJECT TO THE SETTLEMENT**

If you wish to remain a Settlement Class Member, but you object to the proposed settlement (or any of its terms) and wish the Court to consider your objection at the Final Settlement Hearing, you may object to the proposed settlement by writing to the Settlement Administrator or you may also appear at the Final Approval Hearing, either in person or through an attorney at your own expense, to have the Court hear your objections.

To submit a written objection to the settlement, Class Members who have not opted out of the Settlement (i.e., Settlement Class Members) must submit a timely written Notice of Objection to the Settlement Administrator, by fax or mail, on or before [45 days after mailing], to: [Settlement Administrator address and fax number]. The Notice of Objection must include: (a) the case name and number of this lawsuit, *Smith v. Watlow Electric Manufacturing Company*, Case No. 20-CV-365250, (b) your full name and signature, address, and telephone number, (c) a written statement of all grounds for your objection; (d) any and all evidence in support of your objection. The postmark or fax-stamp date will be deemed the exclusive means for determining that the Notice of Objection is timely. However, Class Members may appear at the final approval hearing, either in person or through counsel retained at their own expense, to have their objections heard, whether or not they had submitted a prior written Notice of Objection as specified in this paragraph.

If you submit an objection, you will remain eligible for a monetary payment under the settlement if the Court approves the settlement. If the Court rejects your objection, you will still be bound by the terms of the settlement. You cannot exclude yourself from the Settlement **and** submit an objection to the settlement.

- **OPTION 3 – EXCLUDE YOURSELF FROM THE SETTLEMENT**

You have a right to exclude yourself (“opt out”) from the Settlement Class, but if you choose to do so, you will not receive any benefits or a monetary payment from the proposed settlement. You will not be bound by a judgment in this case and you will have the right to file your own lawsuit against Defendant for the same claims in this lawsuit and pursue your own separate suit if you wish. You can opt out of the Settlement Class by sending a letter to the Settlement Administrator stating that you wish to be excluded from the *Smith v. Watlow Electric Manufacturing Company* settlement. The letter must: (a) contain the case name and number of the Action (*Smith v. Watlow Electric Manufacturing Company*, case number 20-CV-365250), (b) be signed by you, (c) contain your full name, address, telephone number, and the last four digits of your Social Security Number, (d) clearly state that you do not wish to be included in the settlement, and (e) be returned by fax or mail to the Settlement Administrator, postmarked or faxed on or before [45 days after mailing], to the following: [Settlement Administrator address and fax number]. The date of the postmark on the return mailing envelope or fax-stamp on the submission will be the exclusive means to determine whether a Request for Exclusion has been timely submitted.

If you submit a valid and timely request for exclusion, you will no longer be part of the settlement. You may not object to the settlement, and you will not receive an Individual Settlement Share. However, you will retain all rights you may have against Defendant for the same legal claims made in this lawsuit.

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you should review the detailed “Stipulation of Class Action and PAGA Settlement and Release” which is on file with the Clerk of the Court. The pleadings and other records in the Lawsuit may be examined at any time during regular business hours at the Office of the Clerk of the Santa Clara County Superior Court, located at 191 N. First Street, San Jose, CA 95113, and may also be reviewed online at [insert court website link].

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at [address], [telephone number] or Plaintiffs’ attorneys, Gaines & Gaines, APLC, at 866-550-0855 or Diversity Law Group, 213-488-6555. Please refer to the Watlow Electric Manufacturing Class Action Settlement.

PLEASE DO NOT TELEPHONE THE COURT FOR INFORMATION ABOUT THIS SETTLEMENT OR THE CLAIMS PROCESS.

**BY ORDER OF THE SANTA CLARA COUNTY
SUPERIOR COURT OF THE STATE OF
CALIFORNIA**