

SETTLEMENT AGREEMENT AND RELEASE

Subject to approval by the Superior Court of the State of California, County of Kern (the “Superior Court”), this Settlement Agreement and Release (“Agreement”) is made and entered into by and between Plaintiff Fred Butler (“Plaintiff”), on behalf of himself and representative aggrieved employees pursuant to the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), California Labor Code section 2698, *et seq.*, and Defendant Excalibur Well Services Corporation (“Defendant” or “Excalibur”) to settle the civil action entitled *Butler v. Excalibur Well Services Corporation*, Case Number BCV-20-101126 (the “Lawsuit”), in the Kern County Superior Court. Plaintiff and Defendant are collectively referred to herein as the “Parties,” and each may be individually referred to herein as a “Party.”

RECITALS

This Agreement is made in consideration of the following facts:

A. Plaintiff is a former salaried and exempt employee, who worked for Excalibur during the relevant time period.

B. Plaintiff contends that his status as an exempt employee was a misclassification since he was primarily assigned nonexempt tasks, that he suffered one or more violations of the California Labor Code during his work at Excalibur, and that he is therefore an “aggrieved employee” under PAGA, Labor Code section 2698 *et seq.*, pursuant to which an “aggrieved employee” may, after exhausting administrative remedies with the California Labor and Workforce Development Agency (the “LWDA”), act as an agent of the State of California to bring an action to recover civil penalties from their former employer on behalf of themselves and other current or former employees for violations of the California Labor Code.

C. Pursuant to PAGA, on February 3, 2020, Plaintiff submitted a letter to the LWDA (the “PAGA Notice”), alleging that Defendant subjected Plaintiff, current and former hourly-paid, non-exempt, salaried, and/or exempt, employees of Defendant within the State of California, to certain violations of the California Labor Code, including sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 226.8, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders, premised upon Defendant’s alleged failure to compensate for all hours worked, failure to pay all minimum and overtime wages, failure to provide, authorize, and/or permit meal and rest breaks (or pay premiums in lieu thereof), failure to keep and provide complete and accurate wage statements, failure to reimburse employees for all necessary business expenses and related costs, failure to timely pay all wages due during employment and upon termination, and failure to maintain accurate and complete payroll records, all of which are collectively referred to herein as the “PAGA Claims.”

D. The Lawsuit includes the Complaint Plaintiff filed on May 12, 2020, which sought to recover civil penalties and attorneys’ fees based on the PAGA Claims.

E. Defendant denies all of the allegations in the Lawsuit and any contention that Defendant committed any misconduct, wrongdoing, or any other actionable conduct of any kind, including any violation of the California Labor Code.

F. The Parties have each independently analyzed and investigated the facts and law relevant to the Lawsuit through informal and formal discovery. Pursuant to this discovery, Defendant produced, and Plaintiff reviewed, a substantial amount of documents and data, including, but not limited to, information pertaining to the employment policies, practices, and procedures implicated by the PAGA Claims, such as Defendant's meal and rest period, overtime, timekeeping, and payroll policies; a sampling of timekeeping and payroll records; wage statements for Plaintiff and other hourly-paid, non-exempt, salaried, and/or exempt employees on whose behalf Plaintiff brought the PAGA Claims asserted in the Lawsuit; and summaries of data pertaining to the number of employees allegedly affected by the PAGA Claims.

G. After evaluating the strengths and weaknesses of their respective positions; considering the time, expense, and risk associated with litigating the Lawsuit to judgment; and engaging in arm's-length settlement negotiations at an all-day mediation session with mediator Jeffrey Krivis, an experienced and well-respected mediator, the Parties desire, and have agreed, to fully and finally settle any and all claims in the Lawsuit up to and through the Settlement Period (as defined herein).

NOW, THEREFORE, in consideration of the promises and agreements contained herein, the Parties agree to, and, pursuant to Labor Code section 2699(1)(2), seek approval of, the following settlement terms.

SETTLEMENT TERMS

1. **Superior Court Approval of the Agreement.** In accordance with California Labor Code section 2699(1)(2), the Parties will present this Agreement to the Superior Court for its review and approval via stipulation or a noticed motion.

2. **Delivery of Agreement to the LWDA.** As required by California Labor Code section 2699(1)(2), Plaintiff will cause this Agreement to be submitted to the LWDA at the same time that this Agreement is submitted to the Superior Court for approval.

3. **Effective Date.** This Agreement will become effective on the date that the Court enters approval of the settlement.

4. **No Admission of Liability.** The Parties acknowledge and agree that this Agreement is the result of, and evidences, a compromise and settlement of disputed claims in the Lawsuit and that this Agreement is made and entered into without any admission of liability or wrongdoing of any kind whatsoever by Defendant, who expressly deny and disclaim any liability or wrongdoing whatsoever. Accordingly, neither the execution of this Agreement, its creation, the payment of any sum or consideration hereunder, nor the performance of any obligation required by this Agreement is, or shall be construed as, an admission of wrongdoing or liability on the part of Defendant. Additionally, neither the execution of this Agreement, its creation, the payment of any sum or consideration hereunder, nor the performance of any obligation required by this

Agreement is, or shall be construed as, an admission of the truth or accuracy of any allegation made by Plaintiff or Plaintiff's Counsel in the Lawsuit.

5. **Persons and Entities Covered by this Agreement.**

(a) **The PAGA Period.** This Agreement shall cover the period from February 3, 2019, through May 5, 2023 (the "PAGA Period").

(b) **The PAGA Group.** This Agreement shall cover all current and former hourly-paid, non-exempt, salaried, and/or exempt employees of Excalibur, who worked in California at any time during the PAGA Period. Such employees shall be collectively referred to herein as the "PAGA Group." Each employee within the PAGA Group may be individually referred to herein as a "PAGA Group Member."

6. **Settlement Administration.**

(a) The Parties will retain CPT Group, Inc., to act as the "Settlement Administrator" with respect to this Agreement.

(b) The Settlement Administrator shall be responsible for establishing a qualified settlement fund pursuant to 26 U.S.C. § 486B, making all payments required by this Agreement, handling all required state and federal tax withholding and reporting related thereto to the extent necessary, and issuing all appropriate tax forms to Plaintiff, Plaintiff's Counsel, the PAGA Group, and the LWDA resulting from the settlement payments under this agreement.

(c) Any disputes concerning administration of the Agreement may be submitted to Jeffrey Krivis, the mediator who facilitated the negotiation of this Agreement. If the Parties cannot resolve their dispute with the mediator's assistance, the dispute may be submitted to and resolved by the Superior Court.

7. **Settlement Payments.**

(a) **Gross Settlement Amount.** In consideration of, and subject to, the promises, terms, and conditions set forth in this Agreement – including the releases set forth in Section 9 of this Agreement – Defendant shall pay the maximum gross sum of One Hundred Sixty-Five Thousand Dollars (\$165,000.00) (the "Gross Settlement Amount"), in the manner and method set forth in this Agreement, to fully, finally, and completely settle the Lawsuit and the PAGA Claims alleged therein on behalf of the LWDA and PAGA Group, including any and all associated claims for civil penalties, attorneys' fees, and litigation costs and expenses. Nothing in this Agreement, shall require Defendant to pay, or make Defendant liable for, more than the Gross Settlement Amount to fully, finally, and completely settle the Lawsuit and all claims alleged therein.

(b) **Allocation of Gross Settlement Amount.** The Gross Settlement Amount shall consist of the following categories of payments: the proposed award of attorneys' fees to Plaintiff's Counsel in the Lawsuit, the proposed award of litigation costs and expenses to Plaintiff's

Counsel, the proposed payment of settlement administration costs to the Settlement Administrator, the proposed payments of civil penalties to the LWDA and the PAGA Group, and the proposed enhancement award to Plaintiff in the amount of \$10,000.00 for his time and effort and for the risk he undertook in bringing and prosecuting the Lawsuit. Subject to approval by the Superior Court, these amounts shall be paid and allocated as set forth below in Sections 7(b)(i) through 7(b)(v) of this Agreement.

(i) **Attorneys' Fees Award.**

(A) Plaintiff's attorneys in the Lawsuit – Douglas Han and Shunt Tatavos-Gharajeh of Justice Law Corporation ("Plaintiff's Counsel") – may submit a combined application to the Superior Court for an award of attorneys' fees in an amount not to exceed the gross sum of Sixty-Two Thousand Seven Hundred Dollars (\$62,700.00) (38% of the Gross Settlement Amount) (the "Attorneys' Fees Award"). Defendant will not oppose or object to this application.

(B) Any Attorneys' Fees Award approved by the Superior Court will be paid by Defendant out of the Gross Settlement Amount and shall constitute a full and complete satisfaction of all claims Plaintiff may have for attorneys' fees arising out of the Lawsuit through the Effective Date of this Agreement, including work not yet performed.

(C) This Agreement is not contingent upon the Superior Court approving an Attorneys' Fees Award in an amount equal to the maximum amount authorized by Section 7(b)(i)(A) of this Agreement. This Agreement shall remain fully effective and enforceable notwithstanding any decision by the Superior Court to approve an Attorneys' Fees Award that is less than the amount authorized by Section 7(b)(i)(A) of this Agreement or the amount requested by Plaintiff's Counsel.

(D) In the event that any portion of the Attorneys' Fees Award authorized by Section 7(b)(i)(A) of this Agreement is not approved by the Superior Court, only the approved amount shall be paid, and the payment of that amount shall constitute satisfaction of Defendant's obligations with respect to the Attorneys' Fees Award. Additionally, any difference between the Attorneys' Fees Award authorized by Section 7(b)(i)(A) and the Attorneys' Fees Award approved by the Superior Court will become part of the Net Settlement Amount.

(ii) **Litigation Costs Award.**

(A) Plaintiff's Counsel may submit an application to the Superior Court for an award for reimbursement of litigation costs and expenses incurred by Plaintiff's Counsel in connection with the Lawsuit that is currently estimated not to exceed the combined gross sum of Fifteen Thousand Dollars (\$15,000.00) (the "Litigation Costs Award"). Defendant will not oppose or object to this application.

(B) Any Litigation Costs Award approved by the Superior Court will be paid by Defendant out of the Gross Settlement Amount and shall constitute a full and

complete satisfaction of all claims Plaintiff may have for litigation costs and expenses arising out of the Lawsuit through the Effective Date of this Agreement, including litigation costs and expenses not yet incurred.

(C) This Agreement is not contingent upon the Superior Court approving a Litigation Costs Award in an amount equal to the maximum amount authorized by Section 7(b)(ii)(A) of this Agreement. This Agreement shall remain fully effective and enforceable notwithstanding any decision by the Superior Court to approve a Litigation Costs Award that is less than the amount authorized by Section 7(b)(ii)(A) of this Agreement or the amount requested by Plaintiff's Counsel.

(D) In the event that any portion of the Litigation Costs Award authorized by Section 7(b)(ii)(A) of this Agreement is not approved by the Superior Court, only the approved amount shall be paid, and the payment of that amount shall constitute satisfaction of Defendant's obligations with respect to the Litigation Costs Award. Additionally, any difference between the Litigation Costs Award authorized by Section 7(b)(ii)(A) and the Litigation Costs Award approved by the Superior Court will become part of the Net Settlement Amount.

(iii) **Settlement Administration Costs.**

(A) Subject to approval by the Superior Court, an amount not to exceed Seven Thousand Five Hundred Dollars (\$7,500.00) will be paid to the Settlement Administrator out of the Gross Settlement Amount to cover the costs of the settlement administration process ("Administration Costs"). If the actual costs of the settlement administration process are less than the amount approved by the Superior Court, the balance will become part of the Net Settlement Amount.

(B) Any Administration Costs approved by the Superior Court will be paid by Defendant out of the Gross Settlement Amount and shall constitute a full and complete satisfaction of any settlement administration costs.

(C) This Agreement is not contingent upon the Superior Court approving Administration Costs in an amount equal to the maximum amount authorized by Section 7(b)(iii)(A) of this Agreement. This Agreement shall remain fully effective and enforceable notwithstanding any decision by the Superior Court to approve Administration Costs in an amount that is less than the amount authorized by Section 7(b)(iii)(A) of this Agreement.

(D) In the event that any portion of the Administration Costs authorized by Section 7(b)(iii)(A) of this Agreement is not approved by the Superior Court, no more than the approved amount shall be paid to the Settlement Administrator out of the Gross Settlement Amount. Additionally, the difference between the Administration Costs authorized by Section 7(b)(iii)(A) and the Administration Costs approved by the Superior Court will become part of the Net Settlement Amount.

(iv) **Plaintiff's Enhancement Award.**

(A) Plaintiff may submit an application to the Superior Court for an award of an enhancement award in an amount not to exceed Ten Thousand Dollars (\$10,000.00) for Plaintiff's time and effort and for the risk he undertook in bringing and prosecuting the Lawsuit ("Enhancement Award"). Defendant shall not oppose any requests by Plaintiff for the Enhancement Award, which will be paid out of the Gross Settlement Amount.

(B) This Agreement is not contingent upon the Superior Court approving the Enhancement Award in an amount equal to the maximum amount authorized by Section 7(b)(iv)(A). This Agreement shall remain fully effective and enforceable notwithstanding any decision by the Superior Court to approve the Enhancement Award in an amount less than that authorized by Section 7(b)(iv)(A).

(C) In the event that any portion of the Enhancement Award authorized by Section 7(b)(iv)(A) is not approved by the Superior Court, no more than the approved amount shall be paid to Plaintiff from the Gross Settlement Amount. Additionally, any difference between the Enhancement Award authorized by Section 7(b)(iv)(A) and the Enhancement Award approved by the Superior Court will become part of the Net Settlement Amount.

(v) **PAGA Penalties Fund.** The portion of the Gross Settlement Amount remaining after the Attorneys' Fees Award, Litigation Costs Award, Enhancement Payment, and Administration Costs are paid shall be designated the "PAGA Penalties Fund," from which payments deemed to constitute a full and complete satisfaction of any and all claims in the Lawsuit for civil penalties under PAGA shall be made. Based on the terms of the Agreement, the PAGA Penalties Fund is estimated to be Sixty-Nine Thousand Eight Hundred Dollars (\$69,800.00). (This number may change if the Attorneys' Fees Award, Litigation Costs Award, Administration Costs and/or the Enhancement Award are awarded in amounts other than those set forth above.) Subject to approval by the Superior Court, the PAGA Penalties Fund shall be allocated and paid as follows:

(A) **The LWDA Payment.** The gross sum of Fifty-Two Thousand Three Hundred Fifty Dollars (\$52,350) which represents seventy-five percent (75%) of the PAGA Penalties Fund, will be paid to the LWDA for enforcement of California's labor laws, including the administration of PAGA, and for education of employers and employees about their rights and responsibilities under the California Labor Code.

(B) **Individual Settlement Awards.** The gross sum of Seventeen Thousand Four Hundred Fifty Dollars (\$17,450), which represents twenty-five percent (25%) of the PAGA Penalties Fund, shall be designated as the "Net Settlement Amount" and will be paid to the PAGA Group on a pro rata basis. Each PAGA Group Member will receive a pro-rated share of the Net Settlement Amount based on the total number of pay periods the PAGA Group Member worked as an employee of Defendant during the PAGA Period. The maximum amount that each PAGA Group Member is entitled to receive ("Individual Settlement Award") is determined by multiplying the Net Settlement Amount by a ratio that is determined by dividing

the total number of pay periods worked by the PAGA Group Member for Defendant in California during the PAGA Period by the total number of pay periods worked by all PAGA Group Members for Defendant in California during the PAGA Period, as expressed in the following formula:

(1) $\text{PAGA Group Member Payment} = \frac{\text{Net Settlement Amount}}{\text{Total PAGA Group Members during the PAGA Period}} \times \text{Total PAGA Group Members during the PAGA Period}$
Amount, multiplied by the total number of pay periods worked by the PAGA Group Member during the PAGA Period, divided by the total number of pay periods worked by all PAGA Group Members during the PAGA Period.

(2) The Parties intend that the Net Settlement Amount shall be sufficient to pay all valid claims of PAGA Group Members in accordance with the formula set forth above. Accordingly, if for any reason the total value of payments to PAGA Group Members exceeds this amount, then payments to each PAGA Group Member will be adjusted on a pro-rata basis so that the total payout to PAGA Group Members does not exceed the Net Settlement Amount.

(c) **No Effect on Employee Benefits.** The payments made to PAGA Group Members pursuant to this Agreement shall not be utilized to calculate any additional benefits under any benefit plans to which any PAGA Group Members may be eligible, including, but not limited to, any profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, or other benefit plans available to the PAGA Group. It is the Parties' intention that this Agreement will not affect any rights, contributions, or amounts to which any PAGA Group Members may be entitled under any benefit plans.

(i) **Payments to Plaintiff's Counsel.** The Attorneys' Fees Award and Litigation Costs Award shall be treated as IRS Form 1099 income. Accordingly, the Settlement Administrator shall issue an IRS Form 1099 to Justice Law Corporation in connection with their Attorneys' Fees Award and Litigation Costs Award.

(ii) **Payments to the LWDA.** The seventy-five percent (75%) of the PAGA Penalties Fund payable to the LWDA under Section 7(b)(v)(A) of this Agreement shall be deemed to consist entirely of civil penalties recovered under PAGA and subject to treatment as IRS Form 1099 income.

(iii) **Payments to the PAGA Group.** Individual Settlement Awards shall be deemed to consist entirely of civil penalties recovered under PAGA and subject to treatment as IRS Form 1099 income. Accordingly, an IRS Form 1099 will be issued to each PAGA Group Member in connection with their Individual Settlement Award if it is \$600.00 or more.

(d) **Tax Indemnification.** Plaintiff, Plaintiff's Counsel, the PAGA Group, and applicable governmental authorities (including the LWDA) are solely responsible for all tax obligations, including all reporting and payment obligations, attributable to them that may arise as a consequence of this Agreement and the payment of the amounts set forth above in Section 7(b). Neither Defendant nor Defendant's attorneys make any express or implied promise, representation, or warranty regarding the tax consequences or tax treatment under federal or state tax laws for any sum paid pursuant to this Agreement.

8. **Distribution of Settlement Payments.**

(a) **Funding of Settlement by Defendant.** Thirty (30) calendar days after the Effective Date, Defendant shall: deposit One Hundred Sixty-Five Thousand Dollars (\$165,000.00) with the Settlement Administrator.

(b) **Timing of Payment by Settlement Administrator.** Within fourteen (14) calendar days of the funding of the Settlement, the Settlement Administrator will issue the payments required by Section 7(b) of this Agreement to the appropriate entities or persons. The Settlement Administrator shall obtain approval from all counsel of the calculations before mailing Individual Settlement Awards.

(c) **Payment of Individual Settlement Awards.**

(i) Individual Settlement Awards will be paid in the form of a check delivered to each PAGA Group Member at the last known address on file with Defendant or as updated by the Settlement Administrator. Each Individual Settlement Award will be accompanied by an explanatory letter, mutually approved by the Parties, substantially in the form attached hereto as **Exhibit A**.

(ii) Individual Settlement Award checks will remain negotiable for one hundred eighty (180) days after the date of their issuance (the "Check Stale Date"). Any Individual Settlement Award checks that are not cashed, deposited, or negotiated by the Check Stale Date will be void and the amount of those checks will be distributed to the California State Controller's Unclaimed Property Fund.

(iii) Any checks to the PAGA Group that are returned as undeliverable on or before the Check Stale Date will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip trace or other reasonable method and will then perform a single remailing. Any PAGA Group Member who cannot be located after the above procedures are followed will continue to be bound by this Agreement, but the funds associated with their Individual Settlement Award will be directed to the California State Controller's Unclaimed Property Fund.

9. **Releases.**

(a) **Release of PAGA Claims.** Upon fully funding of the Gross Settlement Amount, Plaintiff, each Aggrieved Employee, and the LWDA will release all PAGA claims under the California Labor Code which were, or could have been, alleged in the operative Complaint filed by Plaintiff and/or Plaintiff's PAGA letter to the LWDA based upon the facts alleged therein, including: (1) failure to pay minimum and overtime wages; (2) failure to provide meal and rest periods; (3) failure to timely pay wages during employment; (4) failure to timely pay wages upon termination; (5) failure to provide accurate wage statements; (6) failure to reimburse business expenses; and (7) failure to properly calculate the regular rate of pay ("Released Claims"). Each

Aggrieved Employee will be barred from seeking civil penalties based on the Released Claims against Released Parties.

(b) **General Release as to Plaintiff.** Upon fully funding of the Gross Settlement Amount, Plaintiff releases Defendant from all claims and causes of action, including but not limited to the Released Claims, and stipulates and agrees that, upon the Effective Date, Plaintiff will be deemed to have, and by operation of the final judgment will have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which Section provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Plaintiff may hereafter discover facts in addition to or different from those he now knows or believes to be true, but upon the Effective Date, will be deemed to have, and by operation of the final judgment will have, fully, finally, and forever settled and released any and all claims and causes of action against the Released Parties, whether known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist, or heretofore have existed, upon any theory of law or equity, including but not limited to conduct that is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts.

(c) Plaintiff, each Aggrieved Employee, and the LWDA will release and discharge Defendant and their past and present officers, directors, shareholders, unit holders, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, clients, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents, and attorneys from all claims, demands, rights and liabilities as set forth above (“Released Parties”).

10. **Escalator Clause.** This Agreement was reached based on a total number of 9,800 pay periods. If the number of pay periods as of the end of the date of the PAGA Period exceeds this figure by more than ten percent (10%), Defendant shall increase the Gross Settlement Amount on a pro-rata basis.

11. **Dismissal.** Upon the Superior Court’s approval of this Agreement and payment of all sums required by this Agreement, Plaintiff shall file a request for dismissal of the Action in its entirety as to Defendant with prejudice. Pursuant to California Code of Civil Procedure section 664.6, the Superior Court shall retain jurisdiction to enforce the terms of this Agreement.

12. **Acknowledgement of Fair and Reasonable Settlement.** The Parties have arrived at this Agreement after arm’s-length negotiations between experienced counsel and facilitated by a full-day mediation with Jeffrey Krivis, an experienced and well-respected mediator. Each of the Parties acknowledges, agrees, and believes that this Agreement is a fair, adequate, and reasonable settlement of the Lawsuit. The Parties further acknowledge that they are each represented by

competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Agreement. Each Party to this Agreement agrees and represents that it has investigated the facts relevant to this Agreement, and all matters pertaining thereto, to the full extent that each Party deems necessary. The Parties agree that this Agreement reflects their good faith compromise of the claims raised in the Lawsuit based on their assessment of the mutual risks and costs of further litigation and the assessments of their respective counsel.

13. **Authority to Enter into Agreement.** Each Party represents and warrants that it has the right and authority to execute this Agreement.

14. **Ownership of Claims.** The Parties represent that they have not transferred or assigned, or purported to transfer or assign, to any person or entity any portion of any liability, claim, demand, action, cause of action or right herein released and discharged.

15. **Authorization of Counsel.** Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of this Agreement.

16. **Attorneys' Fees.** Except as set forth in this Agreement, each side shall bear its own costs and attorneys' fees.

17. **Confidentiality.** Except as provided below to the extent necessary to effectuate the settlement or as required by court or legal process, the Parties and their respective Counsel will keep the facts relating to the existence of this Agreement, the negotiations leading to the execution of this Agreement, the terms of this Agreement, and the alleged factual basis for Plaintiff's claims, if any, confidential. Counsel shall not issue a press release, hold a press conference, publish information about the settlement on any website or through any social media or otherwise publicize the settlement or communicate its terms in public or in private, unless ordered by the Court. However, for the limited purpose of establishing adequacy of counsel in future actions, Plaintiff's Counsel may reference the Action only by name and case number in a declaration establishing adequacy as class or representative counsel.

18. **Duty to Cooperate.** Each Party agrees that it will abide by this Agreement, and that the Parties and their counsel will cooperate with each other to effect the implementation of this Agreement. The Parties pledge their good faith and fair dealing in supporting the approval of this Agreement by the Superior Court, including, but not limited to, fully documenting the settlement, completing or filing any other documents or pleadings, arguing that the terms and conditions agreed upon should be enforced fully, commencing any required action (either in court or in arbitration), jointly appealing and/or otherwise exhausting judicial review of any adverse ruling, etc. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties may seek the assistance of Jeffrey Krivis, the mediator who facilitated the negotiation of this Agreement. If the Parties cannot resolve their

dispute with the assistance of the mediator, the Parties may seek the assistance of the Superior Court to resolve their disagreement.

19. **Nullification of Agreement.** Defendant's payment of the Gross Settlement Amount shall be subject to the Superior Court granting approval, and if the Superior Court fails to grant approval, the Parties shall be returned to their original respective positions as though this Agreement had never been entered into at all, with the exception that if any settlement administration costs are due and payable, the Parties agree to split those costs.

20. **Implementation of Agreement.** Should the settlement, or any terms therein, be modified, vacated, altered, or become otherwise subject to challenge by law, including, but not limited to, any law that became effective after the execution of this Agreement, so that this Agreement is not approved by the Superior Court in its entirety, the Parties shall work together in good faith to effectuate the settlement.

21. **Severability.** Should any clause or provision of this Agreement be declared illegal or unenforceable, it shall be modified as minimally as necessary to be enforceable. If the provision cannot be modified to be enforceable, such provision shall immediately become null and void, leaving the remainder of this Agreement in full force and effect.

22. **Governing Law and Interpretation.** This Agreement shall be governed in accordance with the laws of the State of California. The Agreement shall be interpreted in accordance with the plain meaning of its terms and shall not be strictly interpreted for or against any of the Parties to this Agreement. Given that all Parties hereto had the opportunity to draft, review, and edit the language of this Agreement, the Parties expressly waive the benefit of any legal principle or rule providing that in cases of uncertainty the language of a contract should be interpreted against the Party who caused the uncertainty to exist.

23. **Continuing Jurisdiction of the Superior Court.** Pursuant to California Code of Civil Procedure section 664.6, the Superior Court shall retain continuing jurisdiction over the Lawsuit and the Parties to the fullest extent necessary to enforce and effectuate the terms and intent of this Agreement.

24. **Admissibility of Agreement.** The Parties agree that this Agreement is admissible for the purposes of proving up and or enforcing the terms of the Agreement, as set forth herein, pursuant to California Evidence Code section 1123.

25. **Amendment and Modification.** This Agreement may not be modified, altered or changed, except by a written instrument signed by either the Parties or their successors-in-interest or counsel for all Parties.

26. **Binding on Successors and Assigns.** This Agreement will be binding upon, and inure to the benefit of, the Parties hereto and their respective agents, employees, representatives, officers, directors, parents, subsidiaries, assigns, heirs, executors, administrators, insurers, and successors in interest.

27. **No Representations.** The Parties acknowledge that, except as expressly set forth herein, no representation of any kind or character has been made to induce the execution of this Agreement.

28. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures sent by facsimile transmission or scanned e-mail transmission have the same force, validity, and effect as original signatures.

* * *

[Signatures on following page]

IN WITNESS WHEREOF, the Parties – Plaintiff Butler and Defendant Excalibur Well Services Corporation, and their counsel – knowingly and voluntarily accept the terms of this Settlement Agreement and Release by affixing their signatures below.

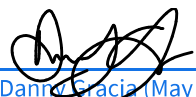
Date: 05/24/2023

PLAINTIFF FRED BUTLER

By: 
Fred Butler

Date: May 25, 2023

DEFENDANT EXCALIBUR WELL SERVICES CORPORATION

By: 
[Danny Gracia \(May 25, 2023 16:28 PDT\)](#)
Representative, on behalf of Defendant Excalibur Well Services Corporation

Date: May 25, 2023

JUSTICE LAW CORPORATION

By: 
Douglas Han
Shunt Tatavos-Gharajeh
Attorneys for Plaintiff

Date: 25MAY2023

BELDEN BLAINE RAYTIS, LLP

By: 
T. Scott Belden
Kaleb. L. Judy
Felicia L. Mears
Attorneys for Defendant

EXHIBIT A

TRANSMITTAL OF INDIVIDUAL SETTLEMENT AWARD

Fred Butler v. Excalibur Well Services Corporation
Superior Court of the State of California for the County of Kern
Case No. BCV-20-101126

Dear [PAGA Group Member's Name]:

Enclosed with this letter is a settlement check being paid to you pursuant to the settlement of the lawsuit filed in the Kern County Superior Court as *Fred Butler v. Excalibur Well Services Corporation*, which has been designated case number BCV-20-101126 (the "Lawsuit"). The purpose of this letter is to provide you with basic information about the Lawsuit, reasons why you are receiving the enclosed settlement check, and the effect of the settlement on your legal rights.

I. The Lawsuit

The Lawsuit was filed on May 12, 2020, by Plaintiff Fred Butler against Defendant Excalibur Well Services Corporation ("Defendant").

In the Lawsuit, Mr. Butler ("Plaintiff") alleged he and other current and former hourly-paid, non-exempt, salaried, and/or exempt employees of Defendant experienced violations of the Labor Code. Specifically, Plaintiff alleged Defendant violated Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 226.8, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, premised upon Defendant's alleged: (1) failure to compensate for all hours worked; (2) failure to pay all minimum and overtime wages; (3) failure to provide, authorize, and/or permit meal and rest breaks (or pay premiums in lieu thereof); (4) failure to keep and provide complete and accurate wage statements; (5) failure to reimburse employees for all necessary business expenses and related costs; (6) failure to timely pay all wages due during employment and upon termination; and (7) failure to maintain accurate and complete payroll records. Based thereon, the Lawsuit sought civil penalties under the Labor Code Private Attorneys General Act of 2004 ("PAGA"), which is codified under Labor Code section 2698 *et seq.*, on behalf of the State of California and all current and former hourly-paid, non-exempt, salaried, and/or exempt employees of Defendant.

Defendant denies the allegations in the Lawsuit. Defendant contends they followed lawful policies and practices and that Plaintiff and the other hourly-paid, non-exempt, salaried, and/or exempt employees at issue in the Lawsuit: (1) were properly paid for all hours worked; (2) were paid appropriate minimum wages and overtime wages; (3) were provided compliant meal and rest breaks (or were paid premiums in lieu thereof); (4) received compliant wage statements; (5) were reimbursed for all necessary business expenses; (6) were timely paid all wages due during employment and upon termination; and (7) that Defendant properly kept accurate and complete payroll records.

The merits of the Lawsuit have not been determined. However, on [Approval Date], the Kern County Superior Court approved a settlement of the Lawsuit.

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II. Why the Settlement Check Is Being Sent to You

The settlement approved by the Kern County Superior Court on [Approval Date] involves a payment of civil penalties and the reimbursement of attorneys' fees and litigation costs incurred by Plaintiff in furtherance of the Lawsuit.

In accordance with PAGA, seventy-five percent (75%) of the civil penalties paid under the settlement are being paid to the California Labor and Workforce Development Agency. The remaining twenty-five percent (25%) of the civil penalties paid under the settlement are being distributed to all current and former hourly-paid, non-exempt, salaried, and/or exempt employees of Excalibur Well Services Corporation, who worked in California at any time during the period from February 3, 2019, through May 5, 2023. ("PAGA Group" and "PAGA Group Members"). The enclosed settlement check is being sent to you because you have been identified as a PAGA Group Member.

III. How the Amount of Your Settlement Check Was Determined

The enclosed settlement check was calculated based on the total number of pay periods the PAGA Group Member worked for Excalibur Well Services Corporation in California during the period from February 3, 2019, through May 5, 2023 ("PAGA Period") relative to the entire PAGA Group. Specifically, the enclosed settlement check was calculated as follows:

- Twenty-five percent (25%) of the PAGA Penalties Fund ("Net Settlement Amount"), multiplied by the total number of pay periods worked by the PAGA Group Member during the PAGA Period, divided by the total number of pay periods worked by all PAGA Group Members during the PAGA Period.
- You should obtain tax advice from your own tax advisor with respect to any payment resulting from this Settlement.

Your settlement check will remain negotiable for one hundred eighty (180) days after the date of their issuance (the "Check Stale Date"). If you do not cash, deposit, or negotiate your settlement check by the Check Stale Date, the check will be void and the amount of your check will be distributed to the California State Controller's Unclaimed Property Fund where you will be able to claim it at a later time.

IV. Consequences of the Settlement

The Lawsuit was filed exclusively as a representative action under PAGA, which functions as a substitute for an enforcement action by California.

The Court's order and judgment approving the settlement of the Lawsuit binds all persons, including nonparty employees, who would be bound by a judgment in an action brought by California itself. As a result, although you are not a "party" to the Lawsuit, the judgment entered upon settlement of the Lawsuit is binding on you with respect to any claims for civil penalties under PAGA encompassed by the settlement. That is true regardless of whether you choose to cash, deposit, or negotiate the enclosed settlement check.

V. Taxation of Your Individual Settlement Award

If the amount of your settlement check is \$600.00 or more, you will be issued an IRS Form 1099 in connection with the funds paid to you via the enclosed check. You are solely responsible for all tax obligations attributable to you that may arise as a result of receiving the settlement check. Should you seek tax advice or have tax questions relating to your receipt of the enclosed check, you should direct them your own personal tax advisor.

VI. Where to Get More Information

Do not call or contact the Kern County Superior Court about this letter, the settlement, the settlement check sent to you, or the Lawsuit in general. If you have questions about this letter, the settlement, the settlement check sent to you, or the Lawsuit in general, you may contact the Settlement Administrator CPT Group, Inc. at [INSERT CONTACT INFORMATION].

Dated: [INSERT DATE]

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On June 1, 2023, I served the foregoing document described as

PROOF OF SERVICE