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Attorneys for Plaintiff and the Putative Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

NICHOLAS B. TOY, on behalf of himself and
all others similarly situated;

Plaintiff,

v.

MYERS & SONS CONSTRUCTION, LLC, a
California Limited Liability Company; MYERS
& SONS, L.P., a California Limited Partnership;
and DOES 1-50, inclusive;

Defendants.

CASE NO.: 34-2020-00279448

Assigned to the Hon. Richard K. Sueyoshi

**DECLARATION OF MEHRDAD
BOKHOUR IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

HEARING INFO

Date: September 29, 2021

Time: 9:00 a.m.

Dept.: 54

RES: 2576961

Complaint Filed: May 26, 2020

Trial Date: None Set

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I, Mehrdad Bokhour, say and declare, as follows:

1. I am an attorney at law, duly licensed to practice before all the Courts of the State of California and I am the principal of Bokhour Law Group, P.C. and I serve as attorney of record for Plaintiff Nicholas B. Toy (“Plaintiff”) and the Putative Class. I am familiar with the file in this matter and if called as a witness I could and would competently testify to the following facts of my own personal knowledge. I submit this declaration in support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement.

2. I have been a member, in good standing, of the State Bar of California since 2012. I am admitted to practice before all California state courts, and the Ninth Circuit Court of Appeal, the United States District Court of California for the Central District, Eastern District, and Southern District and have litigated class action and Private Attorney General Act (“PAGA”) representative action cases in various courts in California.

3. I graduated from the University of California, Berkeley in 2007. I received my J.D. from Loyola Law School—Los Angeles in 2012. I began my legal career focusing on plaintiff-side employment litigation with an emphasis on disability discrimination and harassment matters under the Fair Employment and Housing Act. I opened my law firm in 2014 with an exclusive concentration in representation of employees against employers to recover unpaid wages and vindicate harassment, discrimination and retaliation claims in various contexts. The vast majority of my cases have been litigated as class actions, representative PAGA actions, or a combination of the two.

4. I am also an active member of the California Employment Lawyers' Association ("CELA") and have attended various Continuing Legal Education courses pertaining to advocacy on behalf of employees. My firm has the experience, resources, and means necessary to allow us to provide adequate representation as Class Counsel to all aggrieved employees in this litigation. Currently, my firm is acting as lead counsel in at least twenty-five wage-and-hour class actions and co-counsel in at least twenty other wage-and-hour class action.

1 5. I was selected as a “Super Lawyer Rising Star” in Employment Litigation during the
2 years 2017, 2018, 2019, 2020, and 2021, a distinction that is reserved for the top 2.5% of lawyers in
3 the practice area.

4 6. On March 26, 2020, Plaintiff Nicholas Toy filed a putative wage-and-hour class
5 action lawsuit in the Sacramento County Superior Court against Myers & Sons Construction, LLC
6 and Myers and Sons Construction, LP, stemming from its (1) failure to issue accurate itemized wage
7 statements, (2) failure to provide meal periods or compensation lieu thereof, (3) failure to provide
8 rest periods or compensation in lieu thereof, (4) failure to pay all earned wages due to separated
9 employees, (5) failure to reimburse necessary business expense; and (7) unfair competition.

10 7. However, due to the existence of valid Collective Bargaining Agreements precluding
11 various claims, Plaintiff’s dismissed without prejudice his meal and rest period claims and waiting
12 time penalty claims.

13 8. Through a contested but productive mediation, Plaintiff and Defendants Myers &
14 Sons Construction, LLC and Myers & Sons Construction, LP (“Defendants”) (collectively, the
15 “Parties”) entered into a Class Action Settlement Agreement and Release of Claims resolving the
16 wage and hour claims of the Class (“Settlement Agreement” and/or “Settlement”), which is attached
17 hereto as **Exhibit “A”**. The Settlement Agreement seeks to fully release and discharge Defendants
18 from the claims brought against it in this matter in exchange for Defendants’ agreement to pay
19 \$350,000 on a non-reversionary, non-claims made basis (each Class Member will receive his/her
20 share of the Net Settlement Amount without having to submit a claim form or taking action, except
21 for those who opt-out). Plaintiff seeks to represent a class of similarly situated current and former
22 non-exempt employees employed by Defendants (the “Class” or “Class Members”) at any time
23 during the period from May 26, 2016 through September 20, 2021. (the “Class Period”).

24 9. Under the terms of the Settlement Agreement, Defendants will not oppose Class
25 Counsel’s application for a reasonable award of attorney’s fees not to exceed one third of the
26 Settlement Amount, Class Counsel’s litigation costs not to exceed \$15,000.00, Settlement
27 Administration Costs not to exceed \$15,000, PAGA penalties of \$10,000 (of which \$7,500.00 or
28 75% will be paid to the LWDA and the remaining \$2,500 or 25% will be paid to the Settlement

Class Members), and a Service Award not to exceed \$10,000 to the named Plaintiff (S.A. ¶ 48(a)-(h)), as follows:

	Total Amount
<i>Settlement Amount</i>	\$350,000.00
Attorneys' Fees	\$116,666.66
Litigation Costs (not to exceed)	\$15,000.00
Administrator Costs (not to exceed)	\$15,000.00
PAGA payment to LWDA (75% of 10k award)	\$7,500.00
Plaintiff's Service Award	\$10,000.00
<i>Net Settlement Amount</i>	\$180,833.34

10. The Class includes approximately 1,508 non-exempt employees who all work and/or worked for Defendants in California during the Class Period. Regardless of their roles, all non-exempt employees worked under the same workplace policies and scheduling practices, and therefore, the Individual Settlement Payments will be paid on a pro-rata basis based on the number of Workweeks during the Class Period.

11. The Settlement is non-reversionary, and Class Members will not be required to submit claim forms to receive payment, but each Class Member will receive the Notice Packet containing information about his/her share, the opportunity to dispute the number of Compensable Workweeks worked by the Class Member, and the opportunity to opt-out or object to the Settlement. All Class Members who do not affirmatively opt-out will receive a settlement check upon the Court granting final approval (attached hereto as **Exhibit "B"**).

12. My office has performed considerable work and diligently investigated and prosecuted this case to a successful conclusion. Our work has resulted in the creation of a significant Settlement Amount for the benefit of the Class. We effectively communicated and exchanged information informally with Defense counsel, which enabled the Parties to successfully settle the case at mediation before Mark Rudy, Esq. Because of the risks involved in litigating the case and the contested legal and factual issues, Plaintiff's counsel believes this Settlement to be fair, reasonable, and adequate.

13. Because the Settlement is fair and reasonable and was negotiated at arm's length by experienced counsel and an experienced mediator following a sufficient exchange of information

1 and documents in advance of mediation, it should be preliminarily approved. Plaintiff respectfully
2 requests that the Court enter an order preliminarily approving the Settlement, conditionally
3 certifying the Class under Code of Civil Procedure § 382 for settlement purposes, approving the
4 proposed Notice Packet, appointing Plaintiffs' counsel as Class Counsel, appointing Phoenix Class
5 Action Settlement Administrators ("Phoenix") as the Settlement Administrator, and scheduling a
6 hearing for the final approval of the Settlement.

7 14. Defendants provide civil construction services, including but not limited to, highway,
8 transportation and street construction services across California and within the United States.

9 15. Defendants retained counsel, denied the allegations, and vowed to vigorously defend
10 against it. However, before engaging in protracted litigation, the Parties agreed to explore resolution
11 through private mediation. In preparation for mediation, the Parties agreed to an informal discovery
12 process where information was exchanged relating to the applicable policies and procedures, payroll
13 and time keeping records, size of the Class, compensation policies and practices, and potential value
14 of the case. The sampling enabled Plaintiff's counsel and their expert to fully evaluate the potential
15 claims and extrapolate the data to the entire Class. During this process, Plaintiff and his counsel
16 analyzed, researched, and investigated the potential claims of all similarly situated employees.

17 16. On July 20, 2021, Plaintiff and Defendants participated in a private mediation before
18 Tripper Orman, Esq. ("Mediator"), a highly experienced and knowledgeable wage and hour class
19 action mediator. After a full-day mediation, the Parties ultimately reached a Settlement and then
20 memorialized the terms of the Settlement in a long-form Settlement Agreement.

21 17. Plaintiff alleges two distinct wage and hour violations on behalf of the non-exempt
22 employees who worked for Defendants during the Class Period.

23 18. First, Plaintiff alleges the wage statements issued by Myers & Sons fail to include the
24 name and address of the legal entity that is the employer in Labor Code Section 226(a)(8).

25 19. Second, Plaintiff alleges that Defendants uniformly fail to reimburse all class
26 members for use of their personal cell phones for business purposes in violation of Labor Code §
27 2802. Finally, based on the above claims, Plaintiff brings a cause of action for civil penalties under
28 the PAGA.

1 20. Defendants contested and denied each of Plaintiff's material allegations on the merits
2 and as to the propriety of the class and PAGA Action. First, Defendants argued that the large majority
3 of wage statements issued to Class Members were compliant with Labor Code § 226(a)(8) because
4 the electronic wage statements issued to Class Members included all information required under the
5 law, including the proper name and address of the legal entity that is the employer.

6 21. Second, as it pertains to Plaintiff's reimbursement claim, Defendants argued that it
7 did not require its employees to incur business expenses for cell phone use, that it had a valid
8 reimbursement policy, and that it issued company paid work cell phones to numerous class members
9 during the Class Period.

10 22. Finally, Defendants also contended that Plaintiff's claims were not suitable for class
11 certification because individual inquiries would be required to establish, amongst other things, which
12 employees, if any, received non-compliant wage statements or used personal cell phones for business
13 purposes without reimbursement.

14 23. Based upon detailed data obtained through informal discovery and information
15 exchanges, and factoring in claim certification probabilities and liability probabilities, Class Counsel
16 formulated detailed damages models to evaluate the claims in preparation for mediation and in order
17 to reach a realistic and reasonable resolution as further detailed below.

18 24. Plaintiff first alleges that Defendants failed to issue accurate and compliant wage
19 statements during the relevant liability period. Plaintiff estimates that the maximum potential
20 penalties for the wage statement claims as \$257,300 (based on approximately 5,146 allegedly
21 violative wage statements issued during the Class Period). In calculating Defendant's exposure,
22 Plaintiff gave Defendants the benefit of assuming Plaintiff could only obtain the "initial" wage
23 statement penalty of \$50 per violation, in potential wage statement penalties. (*Id.*; see also Lab. Code
24 § 226(e) (providing for \$50 penalty for "initial" violations); *Amaral v. Cintas Corp.* No. 2, 163
25 Cal.App.4th 1157, 1207 (2008) (finding that "initial" violation rate applies until the employer has
26 been notified that it is violating a Labor Code provision.)

27 25. In response to Plaintiff's wage statement claims, Defendants contended that they
28 cured any alleged violations, and its violations were not "knowing and intentional," that Plaintiff

1 could not establish that they or anyone else suffered “injury” as a result of any alleged wage
2 statement violations. As such, Plaintiff discounted the calculated maximum exposure by 40% for
3 risk of non-certification, and by an additional 40% for risk of being unsuccessful on the merits, to
4 arrive at an estimated total of \$92,628.

5 26. Plaintiff also alleges that Defendants failed to reimburse Plaintiffs and putative class
6 members for all necessary business expenses such during the Class Period. Based on Defendants’
7 calculations, there are a total of 53,113 weekly pay periods during the entire Class Period. Assuming
8 that putative class members should have been paid \$10 per weekly pay period (\$40/month), Plaintiff
9 calculates a total of \$531,130 in unreimbursed expenses for cell phone use.

10 27. Defendants contended that Plaintiff and other putative class members never requested
11 reimbursement from Defendants, and Defendants did not know and had no reason to know that the
12 alleged business-related expenses were incurred and not reimbursed. Defendants further contended
13 that the reason for why a putative class member undertook certain expenses, while not others, and
14 failed to receive reimbursement for certain expenses while not others, would raise individual issues
15 that could not be certified. *Id.* Defendants contended that the California Labor Code only requires
16 reimbursement of “necessary” expenses—as opposed to any expense that is incurred in the course
17 of performing work—and argued that distinguishing a necessary expense from an unnecessary one
18 would require individualized inquiry. *Id.*; *See*, Cal. Lab. Code § 2802; *Gattuso v. Harte-Hanks*
19 *Shoppers, Inc.* (2007) 42 Cal.4th 554.

20 28. Furthermore, whether or not an expense was necessary, would depend, in part, on the
21 reasonableness of the employee’s choice, and whether or not an expense was incurred, would have
22 to be established by way of extensive individual factual inquiry and/or statistical evidence. *Cochran*
23 *v. Schwan’s Home Services, Inc.* (2014) 228 Cal.App.4th 1137. In light of these defenses and
24 arguments, Plaintiff discounted Defendants’ maximum exposure by 50% for the risk of non-
25 certification to arrive at an estimated total of \$265,565.

26 In sum when factoring in defenses and risks of ongoing litigation, Plaintiff estimates the
27 risk-adjusted class recovery as follows:

28 • Wage Statement Claims: \$92,628

- Business reimbursement \$265,565.
- **Total Risk-Adjusted Penalties and Damages:** **\$358,193**

29. Given the realistic value of Plaintiff's claims, the \$350,000 Maximum Settlement Amount is an excellent result for the Class considering that the Maximum Settlement Amount totals approximately 95% of Plaintiff's risk-adjusted value of the case. Preliminary approval is appropriate since the Settlement will provide significant monetary relief to the Class.

30. The Settlement was the product of extensive arm's length negotiations between counsel and was facilitated by an experienced wage-and-hour class action mediator. Though cordial and professional, the Settlement negotiations were adversarial and non-collusive in nature. The Settlement reached is the product of substantial effort by the Parties and their counsel. Although Plaintiff and Class Counsel believed that there was a possibility of certifying the claims, they recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or on the damages awarded, and/or on an appeal that can take several more years to litigate. In addition, if Defendants prevailed on any of its defenses, the Class Members may not have received any substantial monetary recovery.

31. The Settlement will result in a fair payment to each Settlement Class Member based on the number of Compensable Workweeks worked during the Class Period. As set forth hereinabove, Plaintiff and his counsel have diligently investigated the claims and defenses on behalf of the Class Members and worked to achieve a resolution of the claims to maximize the recovery by avoiding further expenditure of attorneys' fees and costs. After evaluating the significant risks attendant with further litigation described above and weighing them against the benefits of a known compromise and settlement as set forth in the Settlement Agreement, settlement on the terms agreed to is believed to be in the best interest of Plaintiff and the Class and is a fair and reasonable resolution of the claims alleged.

32. Plaintiff's counsel brought to bear a great deal of collective experience in negotiating the settlement of this case. As detailed herein, Plaintiff's counsel engaged in necessary informal discovery, investigation, sampling and expert evaluation, making it possible to exercise informed judgment throughout the settlement process, including significant document review (e.g., documents

1 pertaining to Defendant's policies and procedures, personnel documents, wage statements, time
2 records, among others) and conducted an extensive analysis and extrapolation of the sampling of
3 class-wide data provided by Defendant.

4 33. Based on our experience in other cases, including wage and hour matters, I believe
5 Joshua Falakassa and I are qualified to evaluate the class claims and viability of defenses in this
6 class action. In this case, the recovery for each Class Member is reasonable, fair and adequate, and
7 a settlement at this time is in the best interest of the Class. The Settlement provides each Class
8 Member with compensation for the alleged violations when viewed in relation to the costs and risks
9 inherent in obtaining class certification and proceeding to trial.

10 34. Plaintiff's counsel, as well as Defendants' counsel, fully endorse the terms and
11 conditions of the Settlement as set forth in the abovementioned Settlement Agreement.

12 35. Of course, the Settlement Amount represents a compromise figure, taking into
13 account the various risks surrounding class certification and the merits of Defendant's asserted
14 defenses. Nevertheless, the Settlement provides for fair and adequate payments to the Class
15 Members, with no reversion to Defendant.

16 36. Plaintiff seeks a Service Awards in an amount not to exceed \$10,000.00, which we
17 believe is fair and warranted. Plaintiff agreed to come forward in an effort to effectuate a policy and
18 practice change that benefitted all other Class Members, and to recover unpaid wages and penalties.
19 He assumed significant risk in bringing this litigation, namely, had he lost, he would have been
20 ordered to pay Defendant's costs.

21 37. Plaintiff provided invaluable assistance to the investigation and prosecution of this
22 case, including providing factual background for the class and PAGA Complaint; reviewing the
23 litigation documents; providing information and documentation about Defendant's policies and
24 practices; participating in phone calls to discuss litigation and settlement strategy; and reviewing the
25 settlement documents. Plaintiff agreed to participate in this case with no guarantee of personal
26 benefit. Plaintiff's comprehensive declaration setting forth all of the reasons why he believes that
27 the Service Award should be approved has been filed herewith.

1 38. As set forth above, I have handled upwards of 50 class and representative actions,
2 have been appointed as class counsel and have successfully litigated and resolved several class
3 actions, and many others remain pending.

4 39. When this case was taken on a contingency fee basis, with our firms agreeing to
5 assume responsibility for all litigation costs, the ultimate result was far from certain. In the course
6 of this litigation, we paid all costs including the filing fees, court costs, research/database fees,
7 mediation costs, and expert costs. There was never a guarantee that our firms would recoup these
8 expenditures.

9 40. It is our experience that attorneys' fee awards of one-third of a common fund
10 settlement are the standard in California. Defendants do not oppose this fee request. The fee is
11 further warranted because it is within the range of reasonableness typically awarded in class actions.
12 Our firm's costs will not exceed \$15,000 and will be based on the actual amount incurred at the time
13 of final approval.

14 41. Subject to the Court's approval, the parties stipulated to Phoenix to serve as the
15 Settlement Administrator. Phoenix is experienced in administering class action settlements and will
16 no more than \$15,000 to administer this class action Settlement.

17 42. Plaintiff has concurrently submitted the Settlement to the LWDA in accordance with
18 Labor Code Section 2699(1)(2). The proof of submission is attached hereto as **Exhibit "C"**.

19 43. For the foregoing reasons, it is respectfully requested that the Court grant preliminary
20 approval of the Settlement as being fair, reasonable, and in the best interests of the Class, as well as
21 preliminarily approve the requested attorneys' fees and costs, and service award to the Class
22 Representative.

23 44. The proposed Notice Packet and proposed plan for the Settlement Administrator to
24 mail the Notice Packet to the last known address of all Class Members complies with all the
25 requirements of California Rule of Court 3.79(f) and 3.766(b). The contents of the proposed Notice
26 Packet include (1) the material terms of the Settlement; (2) the proposed attorneys' fees and costs
27 and the Settlement Administration Costs; (3) details about the final fairness hearing and how Class
28 Members may elect to exclude themselves or make an objection; and (4) how Class Members can

1 obtain additional information.

2 I declare under penalty of perjury under the laws of the state of California that the foregoing
3 is true and correct on this 7th day of September 2021, at Los Angeles, California.

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5 By: _____
6 Mehرداد Bokhour, Esq.

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EXHIBIT “A”

1 **CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

2 This Class Action Settlement Agreement and Release of Claims is entered into by and
3 between Plaintiff Nicholas B. Toy, individually and on behalf of all others similarly situated, and
4 Defendants Myers & Sons Construction, LLC and Myers & Sons Construction, LP, and is
5 approved by their respective counsel of record, subject to the terms and conditions hereof and the
6 Court's approval.

7 **A. Definitions**

8 1. "Action" or "Lawsuit" means and refers to the case entitled *Nicholas B. Toy v.*
9 *Myers & Sons Construction, LLC, et al.*, Sacramento County Superior Court Case No. 34-2020-
10 00279448-CU-OE-GDS.

11 2. "Settlement Agreement," "Settlement," "Agreement," or "Stipulation" shall mean
12 this Class Action Settlement Agreement and Release of Claims, including any attached Exhibits.

13 3. "Class Counsel" refers to Mehrdad Bokhour of Bokhour Law Group, P.C. and
14 Joshua Falakassa of Falakassa Law, P.C.

15 4. "Class Counsel Fees" means the amount to compensate Class Counsel for their
16 attorneys' fees incurred in connection with the Action, including their pre-filing investigation,
17 their filing and litigation of the Action, and this Settlement, as approved by the Court.

18 5. "Class Counsel Expenses" means the actual amount of litigation expenses Class
19 Counsel incurred in connection with this Action, as approved by the Court.

20 6. "Class Data" means a complete list that Defendants will diligently and in good
21 faith compile from its records and provide to the Settlement Administrator on one spreadsheet
22 and shall include the Settlement Class Members' full names; last-known addresses; last-known
23 telephone numbers; Social Security Numbers; and dates of employment or number of Workweeks
24 Worked as non-exempt employees of Defendants during the Class Period.

25 7. "Class Period" is deemed to be the period of May 26, 2016, through the
26 Preliminary Approval Date, or September 20, 2021, whichever occurs first.

27 8. "Class Representative" or "Plaintiff" means and refers to Nicholas B. Toy.
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1 9. “Complaint” refers to the Second Amended Complaint filed in this Court on or
2 about October 20, 2020, in the action entitled *Nicholas B. Toy v. Myers & Sons Construction,*
3 *LLC, et al.*, Case No. 34-2020-00279448-CU-OE-GDS.

4 10. “Court” means the California Superior Court, County of Sacramento.

5 11. “Defendants” means and refers to Myers & Sons Construction, LLC and Myers &
6 Sons Construction, LP.

7 12. “Defendants’ Counsel” or “Defense Counsel” means and refers to Shaye Schrick
8 and Caroline M. Colangelo of Delfino Madden O’Malley Coyle & Koewler LLP.

9 13. “Effective Date” means the latest of the following dates: (i) if no objections to the
10 Settlement have been filed, or any timely objections have been filed and then withdrawn, then the
11 date the Court enters judgment granting Final Approval; (ii) if an objection to the Settlement has
12 been filed, then the date on which the time expires to file an appeal of the Court’s Order granting
13 Final Approval of the Settlement; or (iii) if an objection to the Settlement was filed and a Notice
14 of Appeal of the Court’s Order granting Final Approval of Settlement was timely filed, then the
15 date the appeal is finally resolved (including any requests for rehearing and/or petitions for
16 *certiorari*), with the Final Approval unaffected.

17 14. “Final” means that the Settlement has been granted “Final Approval” by the Court
18 and the “Effective Date” has occurred.

19 15. “Final Approval” refers to the order of the Court granting final approval of this
20 Settlement Agreement and entering a judgment approving this Settlement on substantially the
21 terms provided herein or as the same may be modified by subsequent agreement of the Parties or
22 order of the Court, following: (a) distribution of the Class Notice to the Class; (b) an opportunity
23 for Class Members to review the Class Notice and submit timely objections to the Settlement;
24 and (c) the Final Approval Hearing.

25 16. “Final Approval Hearing” means the hearing set by the Court to: (a) determine
26 whether the Court should grant Final Approval of this Settlement; (b) consider any objections
27 made; (c) consider the amount requested for Class Counsel Fees, and Class Counsel Expenses;
28 (d) consider the Settlement Administration Costs; and (e) consider the amount requested for the

1 Service Award(s).

2 17. "Final Settlement Class" means, collectively, all Settlement Class Members who
3 have not opted out of the Settlement Class by submitting timely Requests for Exclusion.

4 18. "Individual Settlement Amount" shall have the meaning ascribed to it in Paragraph
5 48(c) below.

6 19. "Judgment" means the judgment or order to be rendered and entered by the Court
7 in the Action upon and/or after granting Final Approval of the Settlement.

8 20. "Maximum Settlement Amount" shall have the meaning ascribed to it in Paragraph
9 48(a) below.

10 21. "Net Settlement Amount" shall have the meaning ascribed to it in Paragraph 48(b)
11 below.

12 22. "Notice" means the notice of settlement of class action that will be sent to the
13 Settlement Class Members.

14 23. "Notice Response Deadline" is 45 calendar days from the date the Notice is
15 mailed to the Settlement Class Members and the last date on which Settlement Class Members
16 may: (a) postmark Requests for Exclusion, or (b) postmark Notices of Objections to the
17 Settlement.

18 24. "Objecting Settlement Class Member" means a Settlement Class Member, other
19 than Plaintiff, who submits a valid and timely objection to the terms of this Agreement, pursuant
20 to Paragraph 68(a) below.

21 25. "Participating Class Member" means any and all Settlement Class Members who
22 do not submit valid Requests for Exclusion requesting to be excluded from the Settlement,
23 consistent with the terms set forth in the Agreement.

24 26. "Parties" or "Settling Parties" mean Plaintiff, the Settlement Class, and Defendant,
25 collectively.

26 27. "Preliminary Approval Date" means the date the Court preliminarily approves the
27 Settlement Agreement, and the exhibits thereto, and enters the Preliminary Approval Order.

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28. “Preliminary Approval Order” means the judicial Order to be entered by the Court, upon the application or motion of the Plaintiff, preliminarily approving this Settlement and providing for the issuance of the Notice to the Settlement Class, an opportunity to opt out of the Settlement, an opportunity to submit timely objections to the Settlement, and setting a hearing on the fairness of the terms of Settlement, including approval of attorneys’ fees and costs. Defendants will not object to Plaintiff’s motion for preliminary approval as long as it comports with the terms of this Agreement.

29. “Qualified Settlement Fund” or “QSF” means the Qualified Settlement Fund set up by the Settlement Administrator into which the Maximum Settlement Amount shall be deposited, and which is intended to be a fund that qualifies under Internal Revenue Code Sec. 468.

30. “Released Claims” by the Participating Class Members upon Final Approval of the Settlement will include any and all claims which were pled in the Complaint or that could have been pled based on the facts alleged therein, including but not limited to claims for (1) failure to provide complete and accurate itemized wage statements, (2), failure to reimburse business expenses (3) unfair business practices, and (4) PAGA penalties based on Labor Code violations alleged in the Complaint.

31. “Released Parties” means Defendants, together with their current and former officers, directors, members, managers, shareholders, owners, agents, parents, subsidiaries, sister companies, affiliates, operators, partners, joint ventures, successors, and assignees.

32. “Release Period” shall mean May 26, 2016, through the Preliminary Approval Date, or September 20, 2021, whichever occurs first.

33. “Release” shall mean the release and discharge of the Released Claims by Plaintiff and all of the Participating Class Members.

34. “Request(s) for Exclusion” shall have the meaning ascribed to it in Paragraph 68(a) below.

35. “Service Payment” or “Service Award” means the amount approved by the Court to be paid to the Class Representatives in addition to their Individual Settlement Amount as a

1 Participating Class Member.

2 36. "Settlement Administrator" means and refers to the third-party class action
3 settlement administrator agreed to by the Parties, that will provide the Notice to the Class
4 Members and distribute the settlement amounts as described in this Agreement.

5 37. "Settlement Administration Costs" means the costs payable from the Maximum
6 Settlement Amount to the Settlement Administrator for administering this Settlement, including,
7 but not limited to, printing, distributing, and tracking documents for this Settlement, translating
8 the class notice into Spanish, tax reporting, unclaimed property due diligence, reporting and
9 remittance obligations, distributing the Maximum Settlement Amount, and providing necessary
10 reports and declarations, as requested by the Parties. The Settlement Administration Costs shall
11 be paid from the Maximum Settlement Amount.

12 38. "Settlement Class" or "Covered Position" is defined as "All current and former
13 non-exempt employees employed by Defendants in California at any time during the Class
14 Period."

15 39. "Settlement Class Member" or "Class Member(s)" refers to individual members
16 of the Settlement Class.

17 40. "Workweeks Worked" for each Settlement Class Members means any workweek
18 during the Class Period in which the Settlement Class Member was employed by Defendants as
19 a non-exempt employee in California and worked at least one shift during the workweek.

20 **B. General Terms**

21 41. On or about May 26, 2020, Plaintiff Nicholas B. Toy filed a putative class action
22 complaint in the Court against Defendants. On or about October 20, 2020, Plaintiff filed a Second
23 Amended Complaint alleging class lass and representative PAGA claims, including but not
24 limited to: (1) failure to provide complete and accurate itemized wage statements, (2), failure to
25 reimburse business expenses (3) unfair business practices, and (4) PAGA Payments based on the
26 foregoing Labor Code violations.

27 42. Defendants deny Plaintiff's claims and allegations and contends that the Action is
28 not suitable for class certification and/or representative treatment.

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1 43. The Class Representative believes he can proceed with his representative and class
2 claims, that the Action is meritorious, and that class certification is appropriate.

3 44. The Parties have conducted a thorough investigation into the facts of the Action.
4 This includes conducting exchange of informal discovery. Class Counsel is both knowledgeable
5 about and has done extensive research with respect to the applicable law and potential defenses
6 to the claims of the Settlement Class. Class Counsel has diligently pursued an investigation of
7 the Class Members' claims against Defendants. Based on the foregoing and on their own
8 independent investigation and evaluation, Class Counsel is of the opinion that the settlement with
9 Defendants for the consideration and on the terms set forth in this Settlement Agreement is fair,
10 reasonable, and adequate and is in the best interest of the Class Members in light of all known
11 facts and circumstances, including the risk of significant delay and uncertainty associated with
12 litigation, various defenses asserted by Defendant, and numerous potential appellate issues.

13 45. On July 20, 2021, the Parties participated in mediation before Tripper Ortman,
14 Esq., a highly experienced class action mediator. The Parties were able to resolve the matter at
15 mediation following the issuance of a mediator's proposal, which both Parties accepted.

16 46. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts
17 to be performed or judgments to be entered pursuant to the terms of the Settlement and
18 Agreement, shall be construed as an admission by Defendants of any wrongdoing or violation of
19 any statute or law or liability on the claims or allegations in the Action.

20 47. Stipulation for Class Certification. For settlement purposes only, Defendants will
21 stipulate that the Settlement Class Members described herein who do not Request Exclusion from
22 the Settlement Class may be conditionally certified as a settlement class. This stipulation to
23 certification is in no way an admission that class action certification and/or representative
24 treatment is proper and shall not be admissible in this or in any other action except for the sole
25 purposes of enforcing this Agreement. Should, for whatever reason, the Court fail to issue Final
26 Approval, the Parties' stipulation to class certification as part of the Settlement shall become null
27 and void *ab initio* and shall have no bearing on and shall not be admissible in connection with the
28 issue of whether or not class certification and/or representative treatment would be appropriate in

00168630.4

-6-

1 a non-settlement context. Defendants expressly reserve their right and declare that they will
2 continue to oppose class certification and the substantive merits of the case should the Court fail
3 to issue Final Approval. Plaintiff expressly reserves his right and declares that he will continue
4 to pursue class certification and representative treatment and a trial should the Court fail to issue
5 Final Approval.

6 **C. Terms of Settlement**

7 48. The financial terms of the Settlement are as follows:

8 (a) Maximum Settlement Amount: The Parties agree to settle this Action for Three
9 Hundred Fifty Thousand Dollars and Zero Cents (\$350,000.00) (the “Maximum Settlement
10 Amount”). The Maximum Settlement Amount is the maximum amount that will be paid by
11 Defendants, and includes Individual Settlement Amounts, Class Counsel Fees, Class Counsel
12 Expenses, Settlement Administration Costs, the Service Award, and payment to the Labor
13 Workforce Development Agency for PAGA Payments. Plaintiff, Settlement Class Members, and
14 Class Counsel shall be individually responsible for payment of all taxes related their respective
15 payments received as part of the Settlement. In no event shall Defendants pay more than the
16 Maximum Settlement Amount.

17 (b) Net Settlement Amount: The “Net Settlement Amount” is defined as the
18 Maximum Settlement Amount less Class Counsel Fees, Class Counsel Expenses, Settlement
19 Administration Costs, the Service Award, and the Ten Thousand Dollars and Zero Cents
20 (\$10,000.00) allocated to PAGA Payments as described in Paragraph 48(j) below.

21 (c) Individual Settlement Amounts for the Settlement Class: The Settlement
22 Administrator will use the Class Data provided by Defendants to calculate each Participating
23 Class Member’s Individual Settlement Amount based on the following formula:

24 i. PAGA Amount: Ten Thousand Dollars and Zero Cents (\$10,000.00) of
25 the Maximum Settlement Amount has been designated to Private Attorney General Act of 2004
26 (“PAGA”) claims. Twenty-five percent (25%) of that amount, or Two Thousand Five Hundred
27 Dollars and Zero Cents (\$2,500.00), shall be paid out to Participating Class Members, with the
28 remaining seventy-five percent (75%), or Seven Thousand Dollars and Zero Cents (\$7,500.00),

00168630.4

-7-

payable to the Labor Workforce Development Agency. Each Participating Class Member shall receive a portion of the \$2,500 proportionate to the number of Workweeks Worked by the Participating Class Member during the Class Period compared to the total number of Workweeks Worked by all Participating Class Members during the Class Period.

ii. Class Amount: The Net Settlement Amount shall be allocated to Participating Class Members based on his/her/their proportionate Workweeks Worked during the Class Period. This is determined by multiplying the Net Settlement Amount by a fraction, the numerator which is the Participating Class Member's total Workweeks Worked during the Class Period, and the denominator of which is the total Workweeks Worked by all Participating Class Members during the Class Period. If there are any timely submitted Requests for Exclusion, the Settlement Administrator shall proportionately increase the Individual Settlement Amounts for each Participating Class Member so that the amount actually distributed to Participating Class Members equals 100% of the Net Settlement Amount.

(d) Allocation of Individual Settlement Amounts: The Individual Settlement Amounts will be allocated as business reimbursement, interest, and penalties (pursuant to, *e.g.*, California Labor Code sections 226, 2802, 2669) from which no taxes will be withheld, and no employer payroll taxes will be owed. The Settlement Administrator will issue to each Participating Class Member an Internal Revenue Service Form 1099 with respect to the Individual Settlement Amounts.

(e) Service Payment to Class Representative: The amount awarded to the Class Representative as a Service Payment will be set by the Court in its discretion, not to exceed Ten Thousand Dollars and Zero Cents (\$10,000.00). Defendants agree not to oppose this request. The Service Payment to the Class Representative will be paid out of the Maximum Settlement Amount. The Settlement Administrator will issue the Class Representative an Internal Revenue Service Form 1099 with respect to the Service Payment. The Class Representative shall be solely and legally responsible to pay any and all applicable taxes on this payment. The Parties agree that any amount awarded as the Service Payment to the Class Representative less than the requested amount shall not be a basis for the Class Representative or Class Counsel to rescind the

1 Settlement Agreement or otherwise void the Settlement. Should the Court approve a lesser
2 amount for the Service Payment, the difference shall be added to the Net Settlement Amount to
3 be distributed to Participating Class Members.

4 (f) Class Counsel Fees and Class Counsel Expenses: Defendants agree to not oppose
5 a request by Class Counsel to the Court for an award of attorneys' fees of thirty-five percent
6 (35%) of the Maximum Settlement Amount, plus reasonable litigation costs not to exceed Fifteen
7 Thousand Dollars and Zero Cents (\$15,000.00). For purposes of this Settlement, Defendants
8 agree not to oppose any contention by Class Counsel that attorneys' fees should be based on the
9 common fund theory. Class Counsel Fees and Class Counsel Expenses shall be paid from the
10 Maximum Settlement Amount, and Defendants shall have no further obligation to pay any
11 attorneys' fees, costs, or expenses to Class Counsel. Should the Court approve a lesser amount
12 than what is sought by Class Counsel, the difference shall be added to the Net Settlement Amount
13 to be distributed to Participating Class Members. Any Court order awarding less than the amount
14 sought by Class Counsel shall not be grounds to rescind the Settlement Agreement or otherwise
15 void the Settlement. The Settlement Administrator shall issue to Class Counsel an Internal
16 Revenue Service Form 1099 with respect to the Class Counsel Fees and Class Counsel Expenses
17 awarded by the Court. Class Counsel agrees that any allocation of fees between or among Class
18 Counsel and any other attorney representing or claiming to represent the Class Members shall be
19 the sole responsibility of Class Counsel.

20 (g) Settlement Administration Costs: The fees and other charges of the Settlement
21 Administrator will be paid from the Maximum Settlement Amount, not to exceed Fifteen
22 Thousand Dollars and Zero Cents (\$15,000.00), unless approved by all Parties and the Court.

23 (j) PAGA Payment: Liability under the PAGA is disputed. For purposes of this
24 Settlement, the Parties agree that Ten Thousand Dollars and Zero Cents (\$10,000.00) is allocated
25 to PAGA ("PAGA Payment") and is to be paid from the Maximum Settlement Amount, subject
26 to Court approval. Of this amount, Seven Thousand Dollars and Zero Cents (\$7,500.00) (75%)
27 shall be paid to the Labor Workforce Development Agency in satisfaction of Participating Class
28 Members' claims under PAGA and Two Thousand Dollars and Zero Cents (\$2,500.00) (25%)

1 will be included in the Individual Settlement Amounts, payable to Participating Class Members.

2 (i) Tax Liability: Class Counsel, Defendants, and Defendants' Counsel make no
3 representations as to the tax treatment or legal effect of payments called for hereunder, and
4 Plaintiff and the Settlement Class Members are not relying on any statement or representation by
5 Class Counsel, Defendant, or Defendant's Counsel in this regard. Plaintiff, Participating Class
6 Members, and Class Counsel understand and agree that they will be solely responsible for the
7 payment of any taxes and penalties assessed on their respective payments described herein.
8 Forms 1099 will be distributed and in the manner required by the Internal Revenue Code of 1986
9 (the "Code") and consistent with this Agreement. If the Code, the regulations promulgated
10 thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes
11 set forth in this Section may be modified in a manner to bring payments into compliance with any
12 such changes.

13 (j) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS AGREEMENT (FOR
14 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY
15 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER
16 PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
17 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR
18 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS
19 INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE
20 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN
21 THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31
22 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
23 EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX
24 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
25 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
26 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO
27 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
28 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY

1 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
2 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
3 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
4 OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF
5 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
6 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
7 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
8 AGREEMENT.

9 49. "Non-Reversionary" Settlement. This is a "non-reversionary" settlement. Under
10 no circumstances will any portion of the Maximum Settlement Amount revert to Defendant.
11 Participating Class Members will not have to make a claim in order to receive an Individual
12 Settlement Amount. Distributions, in the form of Individual Settlement Amounts, will be made
13 directly to each Participating Class Member. The Settlement Administrator shall be responsible
14 for accurately and timely reporting any remittance obligations with respect to unclaimed funds as
15 a result of a Participating Class Member not cashing an Individual Settlement Amount by the
16 check cashing deadline, as set forth herein.

17 50. Class Counsel and Plaintiff believe that the Settlement is fair and reasonable, and
18 adequate, and will so represent same to the Court.

19 **D. Release by Plaintiff and the Settlement Class**

20 51. Upon the Effective Date of this Settlement, Plaintiff and each Participating Class
21 Member, for themselves and for their respective spouses, heirs, successors, beneficiaries,
22 devisees, legatees, executors, administrators, trustees, conservators, guardians, personal
23 representatives, will forever completely release and discharge the Released Parties from the
24 Released Claims for the Release Period.

25 52. Each Participating Class Member will be deemed to have made the foregoing
26 Release as if by manually signing it.

27 53. Plaintiff and Defendants intend that the Settlement described in this Agreement
28 will release and preclude any further claim, whether by lawsuit, administrative claim or action,

1 arbitration, demand, or other action of any kind, by each and all of Plaintiff and the Participating
2 Class Members to obtain a recovery based on, arising out of, and/or related to any and all of the
3 Released Claims. Settlement Class Members shall be so notified in the Notice. This paragraph
4 does not apply to any Class Member who timely and validly opts out of the Settlement.

5 54. Class Representative, on behalf of himself and the Settlement Class, acknowledges
6 and agrees that the allegations and claims in the Action are disputed, and that the payments set
7 forth herein constitute payment of all sums allegedly due to him and the Participating Class
8 Members. Class Representative, on behalf of himself and the Settlement Class, acknowledges
9 and agrees that California Labor Code Section 206.5 is not applicable to the Parties hereto.
10 Section 206.5 provides in pertinent part as follows:

11 An employer shall not require the execution of any release of any claim or right on
12 account of wages due, or to become due, or made as an advance on wages to be
13 earned, unless payment of those wages has been made.

14 **E. Release by Class Representative**

15 55. As a material inducement to Defendants to enter into this Settlement Agreement,
16 in addition to the Class Representative's release of the Released Claims, Class Representative
17 does hereby forever and completely release and discharge the Released Parties from any and all
18 charges, complaints, claims, liabilities, obligations, promises, agreements, controversies,
19 damages, actions, causes of action, suits, rights, demands, costs, losses, debts, and expenses
20 (including but not limited to back wages, statutory penalties, civil penalties, liquidated damages,
21 exemplary damages, interest, attorneys' fees, and costs) of any nature whatsoever, from the
22 beginning of time through the execution of this Stipulation, whether known or unknown,
23 suspected or unsuspected, including but not limited to all claims arising out of, based upon, or
24 relating to the Class Representative's employment with Defendants or the remuneration for or
25 termination of such employment (collectively, the "Class Representative's Claims").

26 56. Without limiting the generality of the foregoing, the Class Representative
27 expressly releases all claims or rights against Released Parties arising out of or relating to the
28 Class Representative's Claims and/or his employment and/or the separation of that employment,

including any and all known or unknown claims, whether for economic damages, non-economic damages, punitive damages, restitution, tort, contract, penalties, liquidated, injunctive or declaratory relief, attorneys' fees, costs, or other moneys or remedies. This release includes a release of all federal, state, and local statutory claims, and federal, state, and local common law claims (including but not limited to those for contract, tort, and equity), as well as, inter alia, the Americans with Disabilities Act, Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964 (as amended), 42 U.S.C. §1981, 42 U.S.C. § 1983, the Fair Labor Standards Act, the Employee Retirement Security Income Act of 1974, the California Constitution, the California Fair Employment and Housing Act, the California Labor Code, the IWC Wage Orders, Private Attorneys General Act of 2004, the California Unfair Competition Act (California Business and Professions Code section 17200, *et seq.*), and claims for additional compensation relating to stock options.

57. Class Representative expressly waives and relinquishes all rights and benefits afforded by Section 1542 of the Civil Code of the State of California and does so understanding and acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code of the State of California states:

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.

Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge of all parties, Class Representatives and Class Counsel expressly acknowledge that this Settlement Agreement is intended to include in its effect, without limitation, all claims that Class Representative knows of, as well as all claims that he does not know or suspect to exist in his favor against the Released Parties, or any of them, for the time period from the beginning of time to the execution of this Settlement Agreement, and that this

1 Settlement Agreement contemplates the extinguishment of any such Class Representative's
2 claims.

3 **F. Interim Stay of Proceedings**

4 58. Pending completion of all of the prerequisites necessary to effectuate this
5 Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the Action
6 except such as are necessary to effectuate the Settlement.

7 59. In the event an appeal is filed from the Court's Judgment, or any other appellate
8 review is sought, administration of the Settlement shall be stayed pending final resolution of the
9 appeal or other appellate review.

10 **G. Notice Process**

11 60. Appointment of Settlement Administrator. The Parties have agreed to the
12 appointment of the Settlement Administrator to perform the duties of a settlement administrator,
13 including mailing the Notice, using standard devices to obtain forwarding addresses,
14 independently reviewing and verifying documentation associated with any claims or opt-out
15 requests, resolving any disputes regarding the calculation or application of the formula for
16 determining the Individual Settlement Amounts, drafting and mailing the settlement checks to
17 Participating Class Members, issuing 1099 Tax Forms, reporting to taxing authorities, unclaimed
18 funds due diligence, reporting and remittance obligations, and performing such other tasks as set
19 forth herein or as the Parties mutually agree or that the Court orders.

20 61. Disputes Regarding Settlement Administration. Any and all disputes relating to
21 administration of the Settlement by the Settlement Administrator (except for disputes regarding
22 Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction
23 over the terms and conditions of this Settlement Agreement, until Plaintiff and Defendants notify
24 the Court that all payments and obligations contemplated by this Settlement Agreement have been
25 fully carried out. Prior to presenting any issue to the Court, counsel for the Parties will confer in
26 good faith to resolve the dispute without the necessity of Court intervention. The Settlement
27 Administrator shall also be responsible for issuing to Plaintiff, Settlement Class Members, and
28 Class Counsel any Forms 1099 or other Tax Forms as may be required by law for all amounts

1 paid pursuant to this Agreement. The Settlement Administrator shall also be responsible for
2 setting up all necessary tax accounts and forwarding all PAGA Payments to the appropriate
3 government authorities.

4 62. Class Data. Within thirty (30) days after entry of the Preliminary Approval Order,
5 Defendants shall provide the Class Data to the Settlement Administrator. The Settlement
6 Administrator will run a check of the Class Members' addresses against those on file with the
7 U.S. Postal Service's National Change of Address List. The Class Data provided to the Settlement
8 Administrator will remain confidential, shall be used solely to administer the Settlement, and will
9 not be used or disclosed to anyone, except as required by applicable tax authorities, pursuant to
10 Defendants' express written consent, or by order of the Court.

11 63. Notice. The Notice, as approved by the Court, shall be sent by the Settlement
12 Administrator to the Settlement Class Members, by first class mail, in English and Spanish, within
13 ten (10) calendar days following the Settlement Administrator's receipt of the Class Data. The
14 Settlement Administrator shall use standard devices, including a skip trace, to obtain forwarding
15 addresses of Settlement Class Members if any envelopes are returned.

16 64. Returned Notices. The Settlement Administrator will take steps to ensure that the
17 Notice is received by all Settlement Class Members, including utilization of the National Change
18 of Address Database maintained by the United States Postal Service to review the accuracy of
19 and, if possible, update a mailing address. Notices will be re-mailed to any Class Member for
20 whom an updated address is located within ten (10) calendar days following both the Settlement
21 Administrator learning of the failed mailing and its receipt of the updated address. The Notice
22 shall be identical to the original Notice, except that it shall notify the Class Member that the
23 exclusion (opt-out) request or objection must be returned by the later of the Notice Response
24 Deadline or fifteen (15) days after the remailing of the Notice.

25 65. Presumption Regarding Receipt of Notice. It will be conclusively presumed that
26 the Settlement Class Member received the Notice if an envelope has not been returned within
27 thirty (30) days of the mailing.
28

66. Disputes Regarding Class Data. Class Members are deemed to participate in the Settlement, unless they opt-out. The Notice will inform Class Members of his/her/their estimated Individual Settlement Amount and the number of Workweeks Worked during the Class Period. Class Members may dispute their Workweeks Worked if they feel they were employed more workweeks in the Class Period in California than Defendants' records show by timely submitting evidence to the Settlement Administrator. Defendants' records will be presumed determinative absent reliable evidence to rebut Defendants' records, but the Settlement Administrator will evaluate the evidence submitted by the Class Member and provide the evidence submitted to Class Counsel and Defense Counsel who agree to meet and confer in good faith about the evidence to determine the Class Member's actual number of Workweeks Worked and estimated Individual Settlement Amount. If Class Counsel and Defense Counsel are unable to agree, they agree to submit the dispute to the Settlement Administrator to render a final decision. Class Members will have until the Notice Response Deadline to dispute Workweeks Worked, opt out, or object, unless extended by the Court. In the event that the Settlement Administrator increases the number of Workweeks Worked for any Settlement Class Member, then the Settlement Administrator will recalculate all Settlement Class Members' Individual Settlement Amounts; in no event will Defendants be required to increase the Maximum Settlement Amount.

67. Declaration of Due Diligence. The Settlement Administrator shall provide counsel for the Parties, at least twenty-five (25) days prior to the final approval hearing, a declaration of due diligence and proof of mailing with regard to the mailing of the Notice.

68. Settlement Class Members' Rights. Each Settlement Class Member will be fully advised of the Settlement, the ability to object to the settlement, and the ability to opt-out or request exclusion from the Settlement. The Notice will inform the Settlement Class Members of the Court-established deadlines for filing objections or requesting exclusion from the Settlement in accordance with the following guidelines:

(a) Requests for Exclusion from Settlement Class. Any Settlement Class Member, other than Plaintiff, may request to be excluded from the Settlement Class by submitting a "Request for Exclusion" to the Settlement Administrator, postmarked on or before the Notice

Response Deadline. The Request for Exclusion should state:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE *TOY V. MYERS & SONS* LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT.”

Any Request for Exclusion must include the full name, address, telephone number, last four digits of the social security number or date of birth, and signature of the Settlement Class Member requesting exclusion. The Request for Exclusion must be returned by mail to the Settlement Administrator at the specified address by the specified deadline. Any such Request must be made in accordance with the terms set forth in the Notice. A Request for Exclusion will be timely only if postmarked by the Notice Response Deadline unless the Parties otherwise agree in writing. Any Settlement Class Member who timely requests exclusion in compliance with these requirements: (i) will not have any rights under this Agreement, including the right to object, appeal or comment on the Settlement; (ii) will not be entitled to receive any payments under this Agreement; and (iii) will not be bound by this Agreement, or the Judgment, except that Settlement Class Members who worked during the PAGA limitations period are nevertheless bound by the release of the PAGA claims.

(b) Binding Effect on Final Settlement Class Members. Except for those Settlement Class Members who exclude themselves in compliance with the procedures set forth above, all Settlement Class Members will: (i) be deemed to be Participating Class Members for all purposes under this Agreement; (ii) will be bound by the terms and conditions of this Agreement, the Judgment, and the releases set forth herein; and (iii) except as otherwise provided herein, will be deemed to have waived all objections and oppositions to the fairness, reasonableness, and adequacy of the Settlement.

(c) Objections to Settlement. Any Settlement Class Member, other than Plaintiff, may object to the terms of this Agreement. To object, a Settlement Class Member shall inform the Settlement Administrator, in writing, of his/her/their objection which must be postmarked by the Notice Response Deadline at the address set forth in the Notice. Such objection

1 shall include the full name, address, telephone number, dates of employment with Defendants of
2 the Objecting Settlement Class Member, the case name and number, the basis for the objection,
3 including any legal support and each specific reason in support of the objection, as well as any
4 documentation or evidence in support thereof, and, if the Objecting Settlement Class Member is
5 represented by counsel, the name and address of his or her counsel. If any Objecting Settlement
6 Class Member wishes to speak at the Final Approval Hearing, that Objecting Settlement Class
7 Member's written submission should include a request to be heard, and the Court will determine
8 whether Objecting Settlement Class Members will be permitted to speak. The Settlement
9 Administrator shall provide objections, if any, to Class Counsel and Defense Counsel within three
10 (3) days of receipt, and the Settlement Administrator shall attach the same to its declaration of
11 due diligence it files with the Court prior to the Final Approval Hearing. Any Participating Class
12 Member who files an objection remains eligible to receive monetary compensation from the
13 Settlement subject to the terms of the Settlement Agreement and Release. Plaintiff and
14 Defendants shall not be responsible for any fees, costs, or expenses incurred by any Class Member
15 and/or his/her/their counsel related to any objections to the Settlement. Submitting an objection
16 does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by
17 becoming a party of record by timely and properly intervening or filing a motion to vacate the
18 judgment under Code of Civil Procedure § 663.

19 (d) Failure to Object. Any Settlement Class Member who desires to object but
20 fails to timely submit a written objection waives any right to object and will be foreclosed from
21 making any objection to this Settlement. Any Settlement Class Member who does not timely and
22 properly become a party of record by intervening or filing a motion to vacate the judgment waives
23 any and all rights to appeal from the Judgment, including all rights to any post-judgment
24 proceeding and appellate proceeding, such as a motion to vacate judgment, motion for new trial,
25 a motion under California Code of Civil Procedure section 473, and extraordinary writs.

26 (e) Responses to Objections. Counsel for the Parties may file a response to
27 any objections submitted by Objecting Settlement Class Members at least five (5) court days
28 before the date of the Final Approval Hearing.

69. Settlement Class Members will have until the Notice Response Deadline to object or submit a Request for Exclusion to the Settlement Administrator by U.S. Mail. The Settlement Administrator shall disclose jointly to Class Counsel and Defendant's counsel what objections or Requests for Exclusion were timely submitted on a weekly basis, and upon the request of Class Counsel or Defense Counsel.

70. Funding of the Maximum Settlement Amount. Defendants shall make a one-time deposit into the QSF of the Maximum Settlement Amount within ten (10) calendar days after Final Approval of the Settlement.

71. Distribution of Funds. No later than ten (10) calendar days after deposit of the payment into the QSF, the Settlement Administrator will mail the payments to Participating Class Members, the payment for the Class Counsel Fees and Class Counsel Expenses, the Service Payment to the Class Representative, the payment to the LWDA for PAGA Payments, and will pay itself the Settlement Administration Costs.

72. Deadline for Cashing Settlement Checks. Participating Class Members shall have one hundred eighty (180) calendar days after mailing by the Settlement Administrator to cash their settlement checks. If any Participating Class Member's check is not cashed within that period, the check will be void and a stop-payment will be issued, and the Settlement Administrator shall issue the unclaimed funds to the California State Controller's Office in the name of the Class Member. The release will be binding upon all Participating Class Members who do not cash their checks within the 180-day period. In the event that any settlement check is returned to the Settlement Administrator within 180 days of mailing, the Settlement Administrator will, within five (5) business days of receipt of the returned settlement check, perform a skip trace to locate the individual. If a new address is located by these means, the Administrator will have ten (10) business days to re-issue the check and will notify Defense Counsel and Class Counsel that a re-issued check has been sent. Such Participating Class Members shall then have ninety (180) calendar days after re-mailing by the Settlement Administrator to cash their settlement checks. Neither Defendants, Defense Counsel, Class Counsel, Plaintiff, nor the Settlement Administrator will have any liability for lost or stolen settlement checks, forged signatures on settlement checks,

or unauthorized negotiation of settlement checks. Without limiting the foregoing, in the event a Participating Class Member notifies the Settlement Administrator that he or she believes that a settlement check has been lost or stolen, the Settlement Administrator shall immediately stop payment on such check. If the check in question has not been negotiated prior to the stop payment order, the Settlement Administrator will issue a replacement check and such Participating Class Members shall then have one hundred eighty (180) calendar days after re-mailing by the Settlement Administrator to cash their re-issued settlement checks.

73. No person shall have any claim against Defendants, Defendants' Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on mailings, distributions, payments or reports made in accordance with or pursuant to this Agreement. This provision does not, however, prevent a Party from seeking enforcement of this Agreement.

74. Without prejudice to any other remedies, the Settlement Administrator shall agree to be responsible for any breach of its obligations (whether committed by the Settlement Administrator or its agents) and to indemnify and hold the Parties and their counsel harmless from and against all liabilities, claims, causes of action, costs and expenses (including legal fees and expenses) arising out of any breach committed by the Settlement Administrator or its agents.

H. Duties of the Parties Prior to the Court's Approval

75. Within twenty (20) calendar days of execution of this Settlement Agreement by the Parties, Plaintiff file a Motion for Preliminary Approval of the Settlement. Plaintiff will move the Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval Order accomplishing the following:

(a) Scheduling the Final Approval Hearing on the issue of whether this Settlement should be finally approved as fair, reasonable and adequate as to the Class Members and a hearing on Class Counsel Fees, Class Counsel Expenses, and Service Payment;

(b) Approving as to form and content the proposed Notice;

(c) Directing the mailing of the Notice by first class mail to the Settlement Class Members;

(d) Preliminarily approving this Settlement; and

(e) Preliminarily certifying the class for purposes of this Settlement.

I. Duties of the Parties Following Court's Final Approval

76. In connection with the Final Approval Hearing provided for in this Settlement Agreement, Class Counsel shall submit a proposed Final Approval Order:

(a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;

(b) Approving Class Counsel Fees, Class Counsel Expenses, the Service Payment to the Class Representative, and the payment to the Settlement Administrator for costs of administering the settlement; and

(c) Entering judgment approving settlement, thereby permanently barring all Settlement Class Members from prosecuting any Released Claims against any of the Released Parties.

J. Voiding the Agreement

77. If the Court fails or refuses to issue the Final Approval Order or fails to approve any material condition of this Settlement Agreement which effects a fundamental change of the Settlement, the entire Settlement Agreement shall be rendered voidable and unenforceable as to all Parties herein at the option of either Party.

78. If ten percent (10%) or more of the Class Members timely submit a Request for Exclusion, Defendants shall have the option of terminating or modifying this Agreement and Defendants being relieved of any obligation to pay the Maximum Settlement Amount or any other obligations from the Settlement by giving notice to Class Counsel and the Settlement Administrator within ten (10) court days following the later of the following two dates: (a) the Notice Response Deadline; or (2) the date the Settlement Administrator provides Class Counsel and Defendants' Counsel with a declaration attaching the date-stamped originals of all Requests for Exclusion.

79. If the Settlement is voided or fails for any reason, Plaintiff and Defendants will have no further obligations under the Settlement, including any obligation by Defendants to pay the Maximum Settlement Amount, or any amounts that otherwise would have been owed under

1 this Settlement.

2 80. If the Settlement is voided or fails for any reason, any costs incurred by the
3 Settlement Administrator shall be borne equally by Defendants and Plaintiff, unless otherwise
4 specified in this Agreement.

5 **K. Other Terms**

6 81. Waiver. The waiver by one Party of any breach of this Agreement by another
7 Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

8 82. No Effect on Employee Benefits. Amounts paid to Plaintiff or other Settlement
9 Class Members pursuant to this Agreement shall be deemed not to be pensionable earnings and
10 shall not have any effect on the eligibility for, or calculation of, any of the employee benefits
11 (e.g., vacations, holiday pay, retirement plans, union benefits, etc.) of Plaintiff or Settlement Class
12 Members.

13 83. No Publicity. The Parties agree that Class Counsel or any other attorneys acting
14 for Class Members or Plaintiff shall not make any press releases, conduct any press conferences,
15 or seek any publicity regarding the Action or the Settlement. Class Counsel may describe the
16 case, but not the amount of the settlement, on their website(s) and in subsequent submissions to
17 a court that relate to past experience of Class Counsel.

18 84. Parties' Authority. The signatories hereto represent that they are fully authorized
19 to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions
20 hereof.

21 85. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
22 accomplish the terms of this Settlement Agreement, including but not limited to, execution of
23 such documents and to take such other action as may reasonably be necessary to implement the
24 terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best
25 efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that
26 may become necessary by order of the Court, or otherwise, to effectuate this Settlement
27 Agreement and the terms set forth herein. As soon as practicable after execution of this
28

1 Settlement Agreement, Class Counsel shall, with the assistance and cooperation of Defendants
2 and Defendants' Counsel, take all necessary steps to secure the Court's preliminary and final
3 approval of the settlement, and the final entry of judgment.

4 86. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
5 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,
6 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
7 cause of action or rights released and discharged by this Settlement Agreement.

8 87. No Admission. Defendants deny any and all liability to Plaintiff and/or any
9 Settlement Class Member in this Action, as to any and all causes of action that were asserted or
10 that might have been asserted in this Action. Nonetheless, Defendants wish to settle and
11 compromise the matters at issue in the Complaint to avoid further substantial expense and the
12 inconvenience and distraction of protracted and burdensome litigation. Defendants have also
13 taken into account the uncertainty and risks inherent in litigation, and without conceding any
14 infirmity in the defenses that they have asserted or could assert against Plaintiff or the Settlement
15 Class Members, have determined that it is desirable and beneficial that the claims be settled in
16 the manner and upon the terms and conditions set forth in this Agreement.

17 88. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
18 Order, nothing contained herein, nor the consummation of this Settlement Agreement, is to be
19 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part
20 of Defendants or any of the other Released Parties. Each of the Parties hereto has entered into
21 this Settlement Agreement with the intention of avoiding further disputes and litigation with the
22 attendant inconvenience and expenses. This Settlement Agreement is a settlement document, and
23 it, along with all related documents such as the notices, and motions for preliminary and final
24 approval, shall, pursuant to California Evidence Code section 1152, be inadmissible in evidence
25 in any proceeding, except an action or proceeding to approve the settlement and/or to interpret or
26 enforce this Settlement Agreement, including its issue and/or claim preclusion effect. The
27 stipulation for class certification as part of this Settlement Agreement is for settlement purposes
28

00168630.4

-23-

only and if, for any reason the settlement is not approved, the stipulation will be of no force or effect.

89. Notices. Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, or overnight delivery, return receipt requested, addressed:

To the Settlement Class:

Mehrdad Bokhour
mehrdad@bokhourlaw.com
1901 Avenue of the Stars, Suite 450
Los Angeles, California 90067
Tel: (310) 975-1493; Fax: (310) 675-0861

Joshua Falakassa
josh@falakassalaw.com
1901 Avenue of the Stars, Suite 450
Los Angeles, California 90067
Tel: (818) 456-6168; Fax: (888) 505-0868

To Defendants:

Shaye Schrick
sschrick@delfinomadden.com
500 Capitol Mall, Suite 1550
Sacramento, California 95814
Tel: (916) 661-5700; Fax: (916) 661-5701

90. Construction. The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his/her/their/its counsel participated in the drafting of this Settlement Agreement. Plaintiff and Defendants expressly waive the common law and statutory rule of construction that ambiguities should be construed against the drafter of an agreement and further agree, covenant, and represent that the language in all parts of this Agreement shall be in all cases construed as a whole, according to its fair meaning.

00168630.4

-24-

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

5 92. Modification. This Settlement Agreement may not be changed, altered, or
6 modified, except in writing and signed by the Parties hereto, and approved by the Court. This
7 Settlement Agreement may not be discharged except by performance in accordance with its terms
8 or by a writing signed by all of the Parties hereto.

9 93. Dispute Resolution. Prior to instituting legal action to enforce the provisions of
10 this Agreement or to declare rights and/or obligations under this Agreement, a Party shall provide
11 written notice to the other Party and allow an opportunity to cure the alleged deficiencies, and
12 Plaintiff and Defendants agree to seek the help of the mediator (Tripper Ortman) to resolve any
13 dispute they are unable to resolve informally. During this period, the Parties shall bear their own
14 attorneys' fees and costs. This provision shall not apply to any legal action or other proceeding
15 instituted by any person or entity other than Plaintiff or Defendants.

16 94. Choice of Law. This Settlement Agreement shall be governed by and construed,
17 enforced and administered in accordance with the laws of the State of California, without regard
18 to its conflicts-of-law rules.

19 95. Integration Clause. This Settlement Agreement contains the entire agreement
20 between the Parties relating to the settlement and transaction contemplated hereby, and all prior
21 or contemporaneous agreements, understandings, representations, and statements, whether oral
22 or written and whether by a Party or such Party's legal counsel, are merged herein. No rights
23 hereunder may be waived except in writing.

24 96. Binding On Assigns. This Settlement Agreement shall be binding upon and inure
25 to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
26 successors and assigns.

27 97. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
28 because the members of the Settlement Class are numerous, it is impossible or impractical to have

each Class member execute this Settlement Agreement. The Notice will advise all Settlement Class Members of the binding nature of the release provided herein and such shall have the same force and effect as if this Settlement Agreement were executed by each Settlement Class Member.

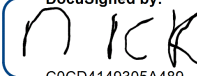
98. Counterparts. This Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully-signed Settlement Agreement, which shall be binding upon and effective as to all Parties. Electronic signatures shall have the same force and effect as an original.

APPROVAL AND EXECUTION BY PARTIES:

PLAINTIFF AND CLASS REPRESENTATIVE:

8/8/2021

Dated: August __, 2021

DocuSigned by:

C0CD4149305A489...

Nicholas B. Toy

DEFENDANTS:

MYERS & SONS CONSTRUCTION, LLC AND
MYERS & SONS CONSTRUCTION, LP

Dated: August __, 2021

By _____
Title _____

APPROVED AS TO FORM:

8/5/2021

Dated: August ___, 2021

CLASS COUNSEL:

FALAKASSA LAW, P.C.

DocuSigned by:

Joshua Falakassa

15A626B2C5A149C...

Joshua Falakassa

Attorneys for Plaintiff

8/5/2021

Dated: August ___, 2021

BOKHOUR LAW GROUP, P.C.

DocuSigned by:

Mehrdad Bokhour

08D3643F271940F...

Mehrdad Bokhour

Attorneys for Plaintiff

Dated: August ___, 2021

DEFENDANTS' COUNSEL:

**DELFINO MADDEN O'MALLEY COYLE &
KOEHLER LLP**

Shaye Schrick

Attorneys for Defendants Myers & Sons Construction,
LLC and Myers & Sons Construction, LP

1 each Class member execute this Settlement Agreement. The Notice will advise all Settlement
2 Class Members of the binding nature of the release provided herein and such shall have the same
3 force and effect as if this Settlement Agreement were executed by each Settlement Class Member.

4 98. Counterparts. This Settlement Agreement may be executed in counterparts, and
5 when each Party has signed and delivered at least one such counterpart, each counterpart shall be
6 deemed an original, and, when taken together with other signed counterparts, shall constitute one
7 fully-signed Settlement Agreement, which shall be binding upon and effective as to all Parties.
8 Electronic signatures shall have the same force and effect as an original.

9 **APPROVAL AND EXECUTION BY PARTIES:**

10 **PLAINTIFF AND CLASS REPRESENTATIVE:**

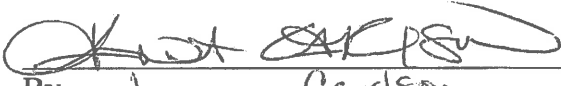
11
12 Dated: August __, 2021

13 _____
Nicholas B. Toy

14
15
16
17 **DEFENDANTS:**

18 MYERS & SONS CONSTRUCTION, LLC AND
19 MYERS & SONS CONSTRUCTION, LP

20 Dated: August 9, 2021

21 
By Jenna Carlson
22 Title Director of HR
23
24
25
26
27
28

1 **APPROVED AS TO FORM:**

2 Dated: August __, 2021

CLASS COUNSEL:

3 **FALAKASSA LAW, P.C.**

4
5 _____
6 Joshua Falakassa
7 Attorneys for Plaintiff

8 Dated: August __, 2021

BOKHOUR LAW GROUP, P.C.

9
10 _____
11 Mehrdad Bokhour
12 Attorneys for Plaintiff

13 Dated: August 9, 2021

DEFENDANTS' COUNSEL:

14 **DELFINO MADDEN O'MALLEY COYLE &**
15 **KOEHLER LLP**

16 _____
17 Shaye Schrick
18 Attorneys for Defendants Myers & Sons Construction,
19 LLC and Myers & Sons Construction, LP
20
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EXHIBIT “B”

NOTICE OF SETTLEMENT OF CLASS ACTION
Nicholas B. Toy v. Myers & Sons Construction, LLC, et al.
Superior Court of the State of California, County of Sacramento
Case No. 34-2020-00279448-CU-OE-GDS

To: All current and former non-exempt employees employed by Myers & Sons Construction, LLC and/or Myers & Sons Construction, LP (the “Companies”) in California at any time between May 26, 2016, through September 20, 2021 (the “Class”):

THIS NOTICE is of a proposed settlement of a class action lawsuit, and an announcement of a court hearing that you may choose to attend. Your rights may be affected by the legal proceedings in this action. The Court will conduct a hearing on [REDACTED], 2021 to address whether the proposed settlement should be approved (“Final Approval Hearing”). You may be entitled to receive a payment under the terms of this class action settlement contained in the Settlement Agreement.

[IDENTIFYING INFORMATION]

You have been identified as a class member in the above lawsuit. Under the terms of the proposed settlement, you are estimated to receive approximately \$**INSERT AMOUNT** as your share of the Net Settlement Amount should the Court grant the settlement in full. Please note that this is only an estimate. Your actual share of the Net Settlement Amount may be more or less than this estimate. Your estimate is based on the number of workweeks you worked at for the Companies in California between May 26, 2016, through September 20, 2021 (the “Class Period”) as a non-exempt employee. Your options and eligibility requirements for receiving payments are described below.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT (SEE SECTION VIII FOR MORE DETAILS)	
DO NOTHING	Receive a settlement payment and give up your right to sue on the Released Claims described in Section III. This settlement does <u>not</u> require a claims process to receive a payment. Therefore, there is <u>no</u> claim form for you to complete should you wish to receive payment. If you do nothing, you are automatically included and eligible to receive a payment once the Court approves the settlement.
EXCLUDE YOURSELF	You may “opt-out” of any connection with this case including any right to a settlement payment. If you choose to opt-out, you must submit a Request for Exclusion by [REDACTED], 2021 (see Section VI). All persons who validly and timely opt-out of the Settlement will <u>not</u> receive any settlement payment and will preserve Released Claims described in Section IV subject to applicable statutes of limitations, except that Settlement Class Members who worked during the PAGA limitations period are nevertheless bound by the release of the PAGA claims even if they submit a Request for Exclusion.
OBJECT	Write to the Court and Settlement Administrator about why you do not like the Settlement by completing and submitting an Objection by [REDACTED], 2021 (see Section VI). You cannot both object and exclude yourself from the Settlement.
GO TO A HEARING	Ask to speak in Court about the fairness of the Settlement.

I. Why should I read this Notice?

The Court has granted preliminary approval of a proposed settlement (the “Settlement”) in *Nicholas B Toy v. Myers & Sons Construction, LLC, et al.*, Sacramento County Superior Court Case No. 34-2020-00279448-CU-OE-GDS (the “Lawsuit”). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

The Companies’ records show that you were employed in California as a non-exempt employee (meaning you were paid hourly or otherwise eligible for overtime pay) at some point between May 26, 2016, and September 20, 2021 (“Class Period”). The Court ordered this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE SETTLEMENT: If you were employed by the Companies as a non-exempt employee in California during the Class Period, you are automatically included in the Settlement and do not need to take any further action to receive a payment.

The purpose of this Notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the proposed Settlement, and to discuss your rights and options in connection with the Lawsuit and the Settlement.

II. What is this lawsuit about?

On or about May 26, 2020, Plaintiff and Class Representative Nicholas B. Toy, through his attorneys (“Class Counsel”), filed a putative class action and representative action complaint against the Companies for alleged wage and hour violations on behalf of all current and former non-exempt employees who were employed by the Companies in California at any time since May 26, 2016. The complaint in the Lawsuit alleges, among other things that the Companies violated various Labor Code sections by failing to reimburse business expenses and failing to provide accurate and complete wage statements.

The Companies deny these allegations and contend they have done nothing wrong. The Companies deny they owe any wages, expenses, restitution, penalties, or other damages. Accordingly, this class Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of the Companies, by whom all liability is expressly denied.

The Court has not ruled on the merits of Plaintiff’s claims. And, by approving the Settlement and issuing this Notice, the Court is not suggesting which side would win or lose this case if it went to trial. However, to avoid additional expense, inconvenience, and risks of continued litigation, the Companies and Plaintiff have concluded that it is in their respective best interests and the interests of the Settlement Class to settle the Lawsuit on the terms summarized in this Notice. The Settlement was reached following an arm’s length mediation. In these negotiations, both sides recognized the substantial risk of the Court deciding against them at trial and determined that the Proposed Settlement was a good option to resolve the disputed claims.

The Class Representative and Class Counsel support this Settlement. Among the reasons for their support are the defenses to liability potentially available to the Companies, the risk of denial of class certification, the inherent risk of trial on the merits, and the delays and uncertainties associated with litigation.

If you are still employed by the Companies, this Settlement will not affect your employment. California law strictly prohibits unlawful retaliation. Further, the Companies will not take any adverse action against or otherwise target, retaliate, or discriminate against any Class Member because of the Class Member’s participation or decision not to participate in this Settlement. If a Class Member does not participate, his/her/their share will be paid to those who do participate.

III. Who are the attorneys?

Attorneys for Plaintiff and the Class Members:

Mehrdad Bokhour
mehrdad@bokhourlaw.com
1901 Avenue of the Stars, Suite 450
Los Angeles, California 90067
Tel: (310) 975-1493; Fax: (310) 675-0861

Joshua Falakassa
josh@falakassalaw.com
1901 Avenue of the Stars, Suite 450
Los Angeles, California 90067
Tel: (818) 456-6168; Fax: (818) 505-0868

Attorneys for the Companies:
Shaye Schrick <i>sschrick@delfinomadden.com</i> Caroline M. Colangelo <i>ccolangelo@delfinomadden.com</i> Delfino Madden O'Malley Coyle Koewler LLP 500 Capitol Mall, Suite 1550 Sacramento, CA 95814 Tel: (916) 661-5700; Fax (916) 661-5701

IV. What are the terms of the Settlement?

On [PA DATE], the Court certified a class, for settlement purposes only, of all non-exempt employees employed by the Companies in California between May 26, 2016, and September 20, 2021 (the "Settlement Class"). Individuals who do not opt out of the Settlement Class pursuant to the procedures set forth in this Notice ("Class Members") will be mailed Settlement checks and in exchange be bound by the Settlement and release of certain wage and hour claims against the Companies.

Without admitting any wrongdoing, the Companies have agreed to pay \$350,000 (the "Settlement Amount") in U.S. dollars to fully resolve all claims in the Lawsuit, which includes payments for Individual Settlement Payments to eligible Class Members, attorneys' fees and costs, Settlement Administration Costs, and a Class Representative Service Payment.

The Parties agreed to the following payments from the Settlement Amount:

Settlement Administration Costs. The Court has approved XX to act as the "Settlement Administrator," who is sending this Notice to you and will perform many other duties relating to the Settlement. Under the Settlement, a maximum of \$XX will be paid from the Settlement Amount to pay the Settlement Administration Costs.

Payments to the California Labor Workforce and Development Agency ("LWDA"). \$10,000 of the Settlement Amount will be allocated to Plaintiff's claim under the Private Attorneys General Act of 2004 ("PAGA"). Of this amount, \$7,500 will be paid to the LWDA in satisfaction of the claims under PAGA, and the remaining \$2,500 will be included in the Net Settlement Amounts to be divided between all Class Members.

Service Payment to Settlement Class Representative. Class Counsel will ask the Court to award Class Representative a Service Payment in the amount of \$10,000 to compensate him for service and extra work provided on behalf of the Class Members. The Class Representative also may receive a share of the Settlement as a Class Member.

Attorneys' Fees and Expenses. Class Counsel, which includes two firms (Falakassa Law, P.C. and Bokhour Law Group, P.C.), have been prosecuting the Lawsuit on behalf of the Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys' fees, which will be paid from the Settlement Amount. Class Members are not personally responsible for any of Class Counsel's attorneys' fees or expenses. Class Counsel will ask for fees of thirty five percent (\$122,500) of the common fund Settlement Amount as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through finalization of the Settlement. Class Counsel will split the fees award equally. Class Counsel also will ask for reimbursement of up to \$15,000 for the costs Class Counsel incurred in connection with the Lawsuit.

Calculation of Individual Settlement Payments to Class Members. After deducting the amounts above, the balance will form the Net Settlement Amount for distribution to the participating Class Members (who are Class Members who do not opt-out). The Net Settlement Amount will total approximately \$. Compensable workweeks will be all Workweeks Worked by the Settlement Class Members during the Class Period in California as non-exempt employees at the Companies. The dollars per compensable Workweek will be calculated by dividing the total Workweeks Worked (excluding any excluded workweeks) by all Settlement Class Members into the Net Settlement Amount to determine a per work week value ("Workweek Value"). The Workweek Value will be multiplied by the number of Workweeks Worked by each Settlement Class Member during the Class Period to determine the distribution for each Settlement Class

Member. If any individual in the Settlement Class opts-out of the Settlement, his/her/their Individual Settlement Amount will be distributed to all Participating Class Members (i.e., those who do not opt-out).

For each Settlement Class Member, the Workweeks Worked at the Companies during the Class Period will be calculated from the Companies' records. The Companies' records indicate that you worked for **[TOTAL WORKWEEKS]** Workweeks as a non-exempt employee in California during the Class Period of May 26, 2016 through September 20, 2021. If you disagree with this number, you may submit evidence to the Settlement Administrator on or before [REDACTED], 2021, with documentation to establish the number of workweeks you claim to have actually worked for the Companies as a non-exempt employee in California between May 26, 2016 and September 20, 2021 (excluding any excluded workweeks). **DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED; DO NOT SEND ORIGINALS.** The Parties and Administrator will evaluate the evidence submitted by the Settlement Class member and discuss in good faith how many Workweeks should be credited to each Settlement Class member. If the Parties are unable to agree, the Settlement Administrator will render a final decision.

Payments to Class Members. After the Court grants Final Approval of the Settlement and Judgment is entered, settlement checks will be mailed to all participating Class Members who did not timely request to be excluded. Participating Class Members will have 90 days from the issuance of the settlement check to cash it. In the event that any Class Member fails to timely cash a settlement check, a stop payment will be placed on the check and the funds will be paid to the California State Controller's Office in the name of the Class Member, so that the Class Member can attempt to collect the funds at a later date.

Allocation and Taxes. The Settlement Amount will be distributed to each participating Class Member as non-wage "penalties" and reimbursement of business expenses incurred (Form 1099 reporting) and as such, there will be no deduction taken from the distribution; however, it will be reported on IRS Form 1099 as income. Class Members are responsible for the proper income tax treatment and payment of the Settlement Amounts. The Settlement Administrator, the Companies and their counsel, and Class Counsel cannot provide tax advice and make no representations as to the tax treatment or legal effect of the Individual Settlement Payments. Participating Class Members will be solely responsible for the payment of any taxes and penalties assessed on their Individual Settlement Payments. Accordingly, Class Members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. Once the Court approves the proposed Settlement, enters Judgment and the Companies fund the Settlement Amount, then the Settlement Agreement will bind all participating Class Members who have not opted out of the Settlement, and will bar them from bringing certain claims against the Companies as described below. Specifically, after Final Approval by the Court, Settlement Class Members will fully release and discharge the Companies and their current and former officers, directors, members, managers, shareholders, owners, agents, parents, subsidiaries, sister companies, affiliates, operators, partners, joint ventures, successors, and assignees, of all claims, demands, rights, liabilities, and causes of action that were or could have been pleaded under local, state or federal law arising out of, relating to, or based on any facts, transactions, events, policies, occurrences, acts, disclosures, statements, omissions, or failures to act pleaded in the Complaint against Defendants for the duration of the Class Period, including but not limited to claims related to (1) failure to provide accurate itemized wage statements, (2), failure to reimburse business expenses; (3) unfair business practices, and (4) PAGA penalties based on the foregoing Labor Code violations. These released claims and damages are hereinafter referred to as "Released Claims." The time period governing these Released Claims shall be at any time from May 26, 2016, through September 20, 2021 ("Release Period"). Any Settlement Class Member who timely requests exclusion in compliance with these requirements will not be bound by this Release, except that Settlement Class Members who worked during the PAGA limitations period are nevertheless bound by the release of the PAGA claims.

Waiver of Labor Code Section 206.5(e). Class Members who do not opt out will be deemed to have acknowledged and agreed that their claims for wages and/or penalties in the Lawsuit are disputed, and that the Individual Settlement Payments constitute payment of all sums allegedly due to them. Class Members will be deemed to have acknowledged and agreed that California Labor Code Section 206.5 is not applicable to the Individual Settlement Payments. That section provides in pertinent part as follows:

"No employer shall require the execution of any release of any claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of such wages has been made."

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class, and the entry of Judgment.

V. How can I claim money from the settlement?

You are automatically included as a Settlement Class Member to receive an Individual Settlement Payment, provided that you do not exercise your right to opt-out as explained below, and do not have to take any further action. It is the responsibility of all Class Members to ensure that the Settlement Administrator has your current address on file, or you may not receive important information or an Individual Settlement Amount.

VI. What other options do I have?

- A. **Do Nothing and Participate in the Settlement.** Under the Settlement, you will automatically receive an Individual Settlement Payment unless you exclude yourself from the settlement by following the exclusion procedure set forth below. If you disagree with the number of Workweeks Worked, as described in this Notice, you may dispute the allocation of the Settlement without excluding yourself or objecting, as described below.

If you are a current employee, your decision as to whether or not to participate in this Settlement will not be considered by the Companies and the Companies will not take any adverse employment action against you based on your participation in the Settlement.

- B. **Exclude Yourself from the Settlement.** If you **do not** wish to take part in the Settlement, you may exclude yourself by sending to the Settlement Administrator a “Request for Exclusion from the Class Action Settlement” letter/card postmarked no later than [REDACTED], 2021 with your full name, address, telephone number, last four digits of your social security number or your date of birth, and signature. The Request for Exclusion should state:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE *TOY V. MEYERS & SONS* LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT.”

Send the Request for Exclusion directly to the Settlement Administrator, [ADDRESS], postmarked no later than [REDACTED], 2021. Any person who files a timely Request for Exclusion from the Class Action Settlement, upon receipt: (1) will not have any rights under this Settlement, including the right to object, appeal or comment on the Settlement; (2) will not be entitled to receive any payments under this Settlement; and (3) will not be bound by this Settlement, or the Judgment, except that Settlement Class Members who worked during the PAGA limitations period are nevertheless bound by the release of the PAGA claims.

- C. **Object to Settlement.** You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the proposed Settlement, or any portion of it, you must submit a written objection stating your full name, address, telephone number, dates of employment at Companies, the case name and number, the name and address of your attorney(s) if you are represented, each specific reason in support of your objection, and any legal support for each objection. You must also include any documentation or evidence in support of the objection, if any. Objections must be in writing and must be mailed to the Settlement Administrator, [ADDRESS], by no later than [REDACTED], 2021 for your objection to be considered. Objections that do not include all required information, or that are not submitted timely, will not be considered. **You need not object to the Settlement if you only dispute the number of Workweeks Worked.**

If you choose to object to the Settlement, you may also appear at the Final Approval Hearing scheduled for [REDACTED], 2021, at 2:30 p.m. in Department 40 of the Sacramento County Superior Court, located at 720 9th Street, Sacramento, CA 95814. You have the right to appear either in person or through your own attorney at this hearing. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before [REDACTED], 2021. All objections or other correspondence must state the name and number of the case. If you wish to appear

at the Final Approval hearing, please contact Class Counsel or the Settlement Administrator in advance of the scheduled hearing to ensure that the hearing has not been continued by the Court.

If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as participating Class Members who do not object. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment before entry of judgment.

VII. What is the effect of the settlement?

Released Rights and Claims. The Settlement is intended to settle all claims against the Released Parties that were asserted or could have been asserted in the Lawsuit regarding the alleged violations of wage and hour laws. If you were employed by the Companies in California as a non-exempt employee at any time during the Class Period and do not elect to exclude yourself from the Settlement Class, you will be deemed to have entered into this Release and to have released the above-described Released Claims. If the Settlement is not approved by the Court or does not become final for some other reason, the Lawsuit may continue, and the releases will not take effect.

VIII. What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement, and Class Counsel's request for attorneys' fees and reimbursement of documented costs and expenses and the Service Payment to the Class Representative on [REDACTED], 2021 at 8:30 a.m. in Department 53 of the Sacramento County Superior Court, located at 720 9th Street, Sacramento, CA 95814. To confirm the date and location of the hearing, please visit the Court website below and enter the case number: 34-2020-00279448:

<https://www.saccourt.ca.gov/civil/civil.aspx>

You are not required to attend the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

IX. How can I get additional information?

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's files and the Stipulation for Class Action Settlement and Release of Claims (the Settlement Agreement) at Office of the Clerk, Sacramento County Superior Court, located at 720 9th Street, Sacramento, CA 95814, during regular court hours. You may also contact Class Counsel or the Settlement Administrator using the contact information listed above for more information.

X. Court's Social Distancing Guidelines.

Please be advised that the Court has imposed social distancing guidelines for attendance at hearings and reviewing court files. Based on current conditions, including but not limited to, the spread of COVID-19, the state of emergency having been declared by Governor Gavin Newsom, the need for social distancing, Class Members are encouraged to appear remotely via CourtCall or by contacting the Judicial Assistant in Department 53 for further instructions.

X. Reminder as to time limits.

Class Members do not have to take any further action to participate in the Settlement. The deadline for submitting a Request for Exclusion is [REDACTED], 2021. The deadline for mailing an objection to the Settlement Administrator is [REDACTED], 2021. These deadlines will be strictly enforced.

**PLEASE DO NOT CALL OR WRITE THE COURT
FOR INFORMATION ABOUT THIS SETTLEMENT**

