

1
2
3
4
5
6
7
8
9
10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF RIVERSIDE**
13
14

15 ISIDORO ALVARADO, individually and
16 on behalf of others similarly situated,

17 Plaintiff,

18 vs.

19 KIWI II CONSTRUCTION, INC., a
20 California Corporation; and DOES 1 through
21 50, inclusive,

22 Defendants.
23
24
25
26
27
28

Case No.: RIC2001558

*Assigned for all purposes to the Honorable
Sunshine S. Sykes, Dept. 6*

**JOINT STIPULATION OF CLASS
ACTION AND PAGA SETTLEMENT**

Complaint Filed: June 8, 2020

Trial Date: None Set

JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT

This Joint Stipulation of Class Action and PAGA Settlement is entered into by and between Plaintiff Isidoro Alvarado, individually and on behalf of the Class, and Defendant Kiwi II Construction, Inc.

DEFINITIONS

1. “Agreement” or “Settlement Agreement” means this Joint Stipulation of Class Action and PAGA Settlement, including the attached Exhibits.

2. “Action” represents all causes of action, claims, and allegations in the operative First Amended Class Action and Representative Action Complaint filed in *Isodoro Alvarado, individually and on behalf of others similarly situated, v. Kiwi II Construction, Inc., a California Corporation; and Does 1 through 50, inclusive*, Case No. RIC2001558, pending before the Riverside County Superior Court (commenced by Plaintiff on June 8, 2020).

3. “Class Counsel” means Heather Davis and Amir Nayebdadash of Protection Law Group, LLP.

4. “Class Counsel’s Fees and Costs” means Plaintiff’s Counsel’s attorneys’ fees approved by the Court for Class Counsel’s litigation and resolution of this Action, and all costs incurred and to be incurred by Plaintiff’s Counsel in the Action, including, but not limited to, costs associated with documenting the Settlement, providing any notices required as part of the Settlement or Court order, securing the Court’s approval of the Settlement, administering the Settlement, and expenses for any experts. Class Counsel will request attorneys’ fees not to exceed thirty-three and one-third percent (35%) of the Gross Settlement Amount (\$226,611) and the reimbursement of any costs and expenses associated with Class Counsel’s litigation and settlement of the Action, not to exceed twenty-five thousand dollars (\$25,000.00), subject to the Court’s approval. Defendant has agreed not to oppose Class Counsel’s request for fees and reimbursement of costs and expenses as set forth above.

5. “Class List” means a complete list of all Class Members that Defendant will diligently and in good faith compile from its records and provide to the Settlement Administrator within fourteen (14) calendar days after Preliminary Approval of this Settlement. The Class List

1 will be formatted in a readable Microsoft Office Excel spreadsheet containing the following
2 information for each Class Member: (1) full name; (2) last known home address; (3) last known
3 telephone number; (4) social security number; (5) start and end dates of active employment as a
4 non-exempt employee of Defendant in the State of California; (6) total Workweeks during the
5 Class Period; (7) total pay periods during the PAGA Period; and (8) any other information
6 required by the Settlement Administrator in order to effectuate the terms of the Settlement.

7 6. "Class Members" means all current and former hourly-paid, non-exempt
8 employees employed by Defendant and who worked in the State of California at any time during
9 the Class Period.

10 7. "Class Notice" means the Notice of Class and Representative Action Settlement
11 in a form substantially similar to the form attached hereto as **Exhibit A**, in both English and
12 Spanish, as approved by the Court, that will be mailed to Class Members' last known addresses
13 and which will provide Class Members with information regarding the Action and information
14 regarding the settlement of the Action.

15 8. "Class Period" means the period commencing on June 8, 2016, until and including
16 March 26, 2021.

17 9. "Class Representative" means Plaintiff Isidoro Alvarado in his capacity as a
18 representative of the Participating Class Members. "Class Representative Incentive Payment"
19 means the amount that the Court authorizes to be paid to Plaintiff, in addition to his Individual
20 Settlement Payment, in recognition of the efforts and risks he has taken in assisting with the
21 prosecution of the Action and in exchange for the General Release of his claims as provided
22 herein.

23 10. "Court" means the Superior Court of the State of California for the County of
24 Riverside or any other court assuming jurisdiction of the Settlement.

25 11. "Defendant" means Kiwi II Construction, Inc.

26 12. "Defense Counsel" means Julie A. Vogelzang and Lisa Hird Chung of Schor
27 Vogelzang & Chung LLP.
28

1 13. “Effective Date” means the later of the following: (a) if no timely objections are
2 filed or if all objections are withdrawn, the date upon which the Court enters Final Approval; (b)
3 if an objection is filed and not withdrawn, the date for filing an appeal and no such appeal being
4 filed; (c) if any timely appeals are filed, the date of the resolution (or withdrawal) of any such
5 appeal in a way that does not alter the terms of the settlement.

6 14. “Final Approval” means the Court entering an order granting final approval of
7 the Settlement issuing an associated entry of final judgment.

8 15. “Gross Settlement Amount” means the sum of Six Hundred and Forty-Seven
9 Thousand Four Hundred and Sixty Dollars (\$647,460). The Gross Settlement Amount is non-
10 reversionary; no portion of the Gross Settlement Amount will return to Defendant. The
11 employer’s share of payroll taxes arising from the payments made under this Settlement shall be
12 paid by Defendant separate from and in addition to the Gross Settlement Amount.

13 16. “Individual Settlement Payment” means the amount payable from the Net
14 Settlement Amount to each Participating Class Member and any payment a PAGA Member is
15 eligible to receive from the employee portion of the PAGA Penalties. Individual Settlement
16 Payments shall be paid by a single settlement check made payable to Participating Class Members
17 and/or PAGA Members.

18 17. “LWDA” means California’s Labor and Workforce Development Agency.

19 18. “Net Settlement Amount” means the funds available for payments to the Class,
20 which shall be the amount remaining after the following amounts are deducted from the Gross
21 Settlement Amount: (1) Class Counsel’s Fees and Costs, (2) Settlement Administration Costs, (3)
22 Class Representative Incentive Payment to Plaintiff, and (4) PAGA Penalties to be paid to the
23 California Labor and Workforce Development Agency (“LWDA”) and PAGA Members.

24 19. “Notice Packet” means the Class Notice, the Objection form, and the Request for
25 Exclusion form, which are attached hereto as Exhibits A, B and C, respectively, each subject to
26 Court approval.

27 20. “Objection” means a Class Member’s valid and timely written objection to the
28 Settlement Agreement. For an Objection to be valid, it must include: (a) the Class Member’s full

1 name, address, telephone number, and the last four digits of the Class Member's social security
2 number; and (b) a written statement of all grounds for the objection accompanied by legal support,
3 if any, for such objection. An objection form substantially in the form attached hereto as **Exhibit**
4 **B** shall be mailed to Class Members, in English and in Spanish, as part of the Notice Packet.

5
6 21. "PAGA" means the California Labor Code Private Attorneys General Act of 2004
7 (Cal. Lab. Code §§ 2698, *et seq.*).

8 22. "PAGA Penalties" means the portion of the Gross Settlement Amount that the
9 Parties have agreed to allocate as civil penalties in order to settle claims arising under PAGA. The
10 Parties have agreed to allocate fifty thousand dollars (\$50,000) of the Gross Settlement Amount
11 as PAGA Penalties. Seventy-five percent (75%) of the PAGA Penalties (i.e., \$37,500) shall be
12 paid directly to the LWDA in accordance with Labor Code §§ 2698 *et seq.* The remaining twenty-
13 five percent (25%) of the PAGA Penalties (i.e., \$12,500) shall be distributed pro rata to PAGA
14 Members, as described in this Agreement. PAGA Members will receive payment from the
15 employee portion of the PAGA Penalties regardless of whether they submit a Request for
16 Exclusion if the PAGA Penalties are approved by the Court.

17 23. "PAGA Period" means the period commencing on June 8, 2019, until and
18 including March 26, 2021.

19 24. "PAGA Members" means all current and former hourly-paid, non-exempt
20 employees employed by Defendant and who worked in the State of California at any time during
21 the PAGA Period.

22 25. "Parties" means Plaintiff and Defendant, collectively, and "Party" shall mean
23 either Plaintiff or Defendant, individually.

24 26. "Participating Class Members" means all Class Members who do not submit a
25 valid and timely Request for Exclusion.

26 27. "Plaintiff" means Isidoro Alvarado.

27 28. "Preliminary Approval" means the Court order granting preliminary approval of
28 the Settlement Agreement.

1 29. “Qualified Settlement Fund” or “QSF” means a fund within the meaning of
2 Treasury Regulation § 1.468B-1, 26 CFR § 1.468B-1 *et seq.*, that is established by the Settlement
3 Administrator for the benefit of Participating Class Members and PAGA Members.

4 30. “Released Claims” means all claims, rights, demands, liabilities and causes of
5 actions arising during the Class Period that are alleged, or reasonably could have been alleged
6 based on the facts and claims asserted in the Action and/or in the letters sent by Plaintiff to the
7 LWDA concerning Defendant and the other Released Parties, whether sounding in law or equity,
8 tort, contract, statute, or other applicable federal, state or local law or regulation, including but
9 not limited to the following claims: (i) failure to pay all regular wages, minimum wages and
10 overtime wages due; (ii) failure to provide meal periods or compensation in lieu thereof; (iii)
11 failure to provide rest periods or compensation in lieu thereof; (iv) failure to reimburse necessary
12 business expenses; (v) failure to provide complete, accurate wage statements; (vi) failure to pay
13 wages timely at time of termination or resignation; (vii) failure to provide timely pay wages
14 during employment; (viii) unfair business practices that could have been premised on the claims,
15 causes of action or legal theories of relief described above or any of the claims, causes of action
16 or legal theories of relief pleaded in the Action; (ix) failure to maintain required payroll records;
17 (x) all claims under PAGA or for civil penalties that could have been premised on the claims,
18 causes of action or legal theories described above or any of the claims, causes of action or legal
19 theories of relief pleaded in the Action or Plaintiff’s letters to the LWDA, including but not
20 limited to the California Code of Regulations and to Labor Code sections 210, 226, 226.3, 1174.5,
21 1197.1, 558, and 2699; and (xi) any and all damages, restitution, disgorgement, civil penalties,
22 statutory penalties, taxes, interest or attorneys’ fees or costs resulting therefrom. Released Claims
23 shall not apply to claims for workers’ compensation benefits, unemployment insurance benefits,
24 or any other claim or right that as a matter of law cannot be waived or released. The Parties
25 acknowledge that Released Claims includes any claims for penalties by a PAGA Member
26 resulting from any LWDA investigation. The Parties will meet and confer in good faith if the
27 Court requires changes to the scope of the Released Claims.

1 31. “Released Parties” means Defendant and its past, present and/or future, direct
2 and/or indirect, officers, directors, members, managers, employees, agents, representatives,
3 attorneys, insurers, partners, investors, shareholders, administrators, parent companies,
4 subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers.

5 32. “Request for Exclusion” means a valid and timely written statement submitted by
6 a Class Member requesting to be excluded from the Action. To be effective, the Request for
7 Exclusion must contain (a) the Class Member’s name, address, telephone number, and the last
8 four digits of the Class Member’s Social Security number; and (b) a clear statement requesting to
9 be excluded from the settlement of the class claims, as set forth on the Request for Exclusion form
10 or similar to the following: “I wish to exclude myself from the class settlement reached in the
11 matter of *Alvarado v. Kiwi II Construction, Inc.* I understand that by excluding myself, I will not
12 receive money from the settlement of my individual claims.” To be effective, the Request for
13 Exclusion must be post-marked by the Response Deadline and received by the Settlement
14 Administrator. The Request for Exclusion shall not be effective as to the release of claims arising
15 under PAGA and shall not preclude the Class Member from receiving their share of the PAGA
16 Penalties. A Request for Exclusion form substantially in the form attached hereto as **Exhibit C**,
17 in English and in Spanish, shall be included in the Notice Packet and mailed to Class Members.

18 33. “Response Deadline” means the date sixty (60) days after the Settlement
19 Administrator mails the Notice Packet to Class Members, which is the last date on which Class
20 Members may submit Requests for Exclusion, written objections to the Settlement, or workweek
21 disputes. In the event the 60th day falls on a Sunday or federal holiday, the Response Deadline
22 will be extended to the next day on which the U.S. Postal Service is open. The Response Deadline
23 for Requests for Exclusion or Objections will be extended fifteen (15) calendar days for any Class
24 Member who is re-mailed a Notice Packet by the Settlement Administrator, unless the 15th day
25 falls on a Sunday or federal holiday, in which case the Response Deadline will be extended to the
26 next day on which the U.S. Postal Service is open. The Response Deadline may also be extended
27 by express written agreement between Class Counsel and Defense Counsel. Under no
28

1 circumstances, however, will the Settlement Administrator have the authority to unilaterally
2 extend the Response Deadline.

3 34. "Settlement" means the disposition of the Action pursuant to this Agreement.

4 35. "Settlement Administrator" means Phoenix Class Action Administration
5 Solutions. The Parties represent that they do not have any financial interest in the Settlement
6 Administrator or otherwise have a relationship with the Settlement Administrator that could
7 create a conflict of interest.

8 36. "Settlement Administration Costs" means the costs payable from the Gross
9 Settlement Amount to the Settlement Administrator for administering this Settlement, including,
10 but not limited to, printing, distributing, and tracking documents for this Settlement, translating
11 the Notice Packet into Spanish, calculating/confirming the Workweeks from the information
12 contained in the Class List, calculating each Participating Class Member's Individual Settlement
13 Payment and share of PAGA Penalties, tax reporting, distributing the Gross Settlement Amount,
14 providing necessary reports and declarations, and other duties and responsibilities set forth herein
15 to process this Settlement, and as requested by the Parties or the Court. Settlement Administration
16 Costs shall not exceed Seven Thousand Five Hundred Dollars (\$7,500).

17 37. "Workweek" means any week (as defined by Defendant for business purposes as
18 beginning on Tuesday and ending the following Monday) in which a Class Member worked at
19 least one (1) day in California during the Class Period as a Class Member, rounded up to the next
20 whole integer.

21 **TERMS OF AGREEMENT**

22 38. Settlement Consideration. Defendant shall fund the Gross Settlement Amount
23 following Final Approval by the Court and the occurrence of the Effective Date. The following
24 will be paid out of the Gross Settlement Amount: (i) the sum of the Individual Settlement
25 Payments, (ii) Class Representative Incentive Payment, (iii) Class Counsel's Fees and Costs, (iv)
26 the PAGA Penalties, and (v) the Settlement Administration Costs, as specified in this Agreement.
27 Any employer-side payroll taxes due on the Individual Settlement Payments shall be paid by
28 Defendant separately from and in addition to the Gross Settlement Amount. Aside from any

1 employer-side payroll taxes owed on the wage portion of the Individual Settlement Payments, or
2 as specified below, Defendant shall not be required under any circumstances to pay more than the
3 Gross Settlement Amount. The Gross Settlement Amount is non-reversionary; no portion of the
4 Gross Settlement Amount will revert to Defendant.

5 39. Potential Increase to the Gross Settlement Amount. Defendant has represented
6 there are approximately 10,791 Workweeks between June 8, 2016, and January 22, 2021. Should
7 the actual number of Workweeks during the Class Period increase by more than ten percent (10%)
8 (i.e. increase by more than 1,079 Workweeks), the Gross Settlement Amount shall increase by a
9 percentage equal to the percentage by which the number of Workweeks is more than ten percent
10 (10%) higher than Defendant's estimate of 10,791. For example, if the actual number of
11 Workweeks is eleven percent (11%) higher than 10,791 Workweeks, the Gross Settlement
12 Amount would increase by one percent ($1\% = 11\% - 10\%$).

13 40. Funding of the Gross Settlement Amount. Within fourteen (14) calendar days after
14 the Effective Date of the Settlement, Defendant will deposit the Gross Settlement Amount, and
15 all applicable employer-side payroll taxes, into QSF to be established by the Settlement
16 Administrator. Defendant shall provide all information necessary for the Settlement
17 Administrator to calculate necessary payroll taxes including its official name, state
18 unemployment insurance tax ID number, and other information requested by the Settlement
19 Administrator, no later than seven (7) calendar days after the Effective Date.

20 41. Distribution of the Gross Settlement Amount. Within fourteen (14) calendar days
21 after the funding of the Settlement, the Settlement Administrator will issue the following
22 payments under the Settlement: (a) Individual Settlement Payments to all Participating Class
23 Members and all PAGA Members; (b) the portion of the PAGA Penalties to be paid to the LWDA;
24 (c) the Class Representative Incentive Payment to Plaintiff; (d) Class Counsel's Fees and Costs;
25 and (e) Settlement Administration Costs.

26 42. Class Counsel's Fees and Costs. Defendant agrees not to oppose or impede any
27 application or motion by Class Counsel for attorneys' fees of up to thirty-five percent (35%) of
28 the Gross Settlement Amount (\$226,611), plus the reimbursement of costs and expenses

1 associated with Class Counsel's litigation and settlement of the Action in an amount not to exceed
2 twenty-five thousand dollars (\$25,000), both of which will be paid from the Gross Settlement
3 Amount. Any portion of the requested fees or costs that is not awarded by the Court to Class
4 Counsel shall become part of the Net Settlement Amount and distributed to Participating Class
5 Members as provided in this Agreement. Any adjustments made by the Court to the requested
6 Class Counsel's Attorneys' Fees and Costs shall not be deemed a material modification of this
7 Agreement.

8 43. Class Representative Incentive Payment. Defendant agrees not to oppose or object
9 to any application or motion by Plaintiff for a Class Representative Incentive Payment of seven
10 thousand five hundred dollars (\$7,500). The Class Representative Incentive Payment is in
11 exchange for the Released Claims, General Release of the Plaintiff's individual claims, and for
12 Plaintiff's time, effort and risk in bringing and prosecuting the Action. Any adjustments made by
13 the Court to the requested Class Representative Incentive Payment shall not be deemed a material
14 modification of this Agreement. In the event that the Court reduces or does not approve the
15 requested Class Representative Incentive Payment, the Settlement Agreement remains in full
16 force and effect, Plaintiff shall not have the right to revoke the Settlement for that reason, it shall
17 remain binding, and any portion of the requested Class Representative Incentive Payment that is
18 not awarded to the Class Representative shall become part of the Net Settlement Amount and
19 distributed to Participating Class Members as provided in this Agreement.

20 44. Settlement Administration Costs. The Settlement Administrator will be paid for
21 the reasonable costs of administration of the Settlement and distribution of payments from the
22 Gross Settlement Amount as further set forth in this Agreement. Settlement Administration Costs
23 shall not exceed Seven Thousand Five Hundred Dollars (\$7,500). To the extent that Settlement
24 Administration Costs are less than \$7,500, the difference shall become part of the Net Settlement
25 Amount and distributed to Participating Class Members as provided in this Agreement.

26 45. PAGA Penalties. Fifty thousand dollars (\$50,000) of the Gross Settlement Amount
27 shall be allocated from the Gross Settlement Amount for settlement of PAGA Members' claims
28 for civil penalties under the PAGA. The Settlement Administrator shall pay seventy-five percent

(75%) of the PAGA Penalties, or thirty-seven thousand five hundred dollars (\$37,500.00), to the LWDA. The remaining twenty-five percent (25%) of the PAGA Penalties, or twelve thousand five hundred dollars (\$12,500), will be distributed to PAGA Members on a *pro rata* basis based on the total number of pay periods (full or partial) worked by each PAGA Member during the PAGA Period. Partial pay periods shall be rounded up to the nearest whole integer. PAGA Members shall receive their portion of the PAGA Penalties regardless of their decision to submit a Request for Exclusion form to opt out of the Settlement.

46. Net Settlement Amount for Payment of Class Claims. The Net Settlement Amount will be used to satisfy the class portion of Participating Class Members' Individual Settlement Payments in accordance with the terms of this Agreement. The estimated Net Settlement Amount is as follows:

Gross Settlement Amount	\$	647,460.00
Class Representative Incentive Payment:	\$	7,500.00
Class Counsel's Fees:	\$	226,611.00
Class Counsel's Costs:	\$	25,000.00
PAGA Penalties:	\$	50,000.00
Settlement Administration Costs:	\$	\$7,500.00
Estimated Net Settlement Amount:	\$	330,849.00

47. Individual Settlement Payment Calculations. Individual Settlement Payments will be paid from the Net Settlement Amount, and the 25% portion of the PAGA Penalties allocated for PAGA Members, and shall be paid pursuant to the formula set forth herein:

a) Calculation of Class Portion of Individual Settlement Payments.

Defendant will provide the Settlement Administrator with the total number of Workweeks for each Class Member. Defendant will also provide the total aggregated number of Workweeks worked by all Class Members during the Class Period. The amount that each Participating Class Member will be eligible to receive will be calculated by dividing each Participating Class

1 Member's individual Workweeks by the total Workweeks of all Participating Class Members,
2 and then multiplying the resulting fraction by the Net Settlement Amount.

3 b) Calculation of PAGA Portion of Individual Settlement Payments.

4 Defendant will provide the Settlement Administrator with the total number of pay periods (full or
5 partial) during the PAGA Period for each PAGA Member. Defendant will also provide the total
6 aggregated number of pay periods worked by all PAGA Members during the PAGA Period. The
7 amount that each PAGA Member will receive will be calculated by dividing each participating
8 PAGA Member's individual pay periods by the total pay periods of all PAGA Members, and then
9 multiplying the resulting fraction by the 25% share of the PAGA Penalties designated for
10 distribution to PAGA Members. PAGA Members shall receive this portion of their Individual
11 Settlement Payment regardless of whether they submit a Request for Exclusion to opt out of the
12 Settlement regarding the class claims.

13 c) Allocation of Individual Settlement Payments. All Individual Settlement
14 Payments will be allocated as follows: twenty percent (20%) of each Individual Settlement
15 Payment will be allocated as wages, forty percent (40%) shall be allocated as interest, and forty
16 percent (40%) shall be allocated as penalties. The 20% portion of the Individual Settlement
17 Payment allocated to wages will be reported by the Settlement Administrator on an IRS Form W-
18 2. The remaining non-wage payments will be reported on an IRS Form-1099 by the Settlement
19 Administrator. For PAGA Members who submit a timely and valid Request for Exclusion, 100%
20 of the Individual Settlement Payment to that individual shall be allocated as penalties, and not
21 wages, for which the Settlement Administrator will issue to the PAGA Member an IRS Form-
22 1099.
23

24 48. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
25 Participating Class Members and/or PAGA members under this Settlement, as well as any other
26 payments made pursuant to this Settlement, will not be utilized to calculate any additional benefits
27 under any benefit plans to which any Class Members and/or PAGA Members may be eligible,
28

including but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which any Class Members and/or PAGA Members may be entitled under any benefit plans.

49. Settlement Administration Process. The Parties agree to cooperate in the administration of the Settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in administration of the Settlement. The Settlement Administrator will provide the following services:

49(a) Establish and maintain a QSF.

49(b) Calculate the Individual Settlement Payment each Participating Class Member is eligible to receive and the portion of the PAGA Penalties each PAGA Member shall receive.

49(c) Translate the Class Notice, Request for Exclusion form, and Objection form from English to Spanish.

49(d) Print and mail the Notice Packet.

49(e) Perform address searches as detailed in herein, including conduct additional address searches and skip traces for mailed Notice Packets that are returned as undeliverable.

49(f) Process Requests for Exclusion, Objections, calculate Participating Class Members' Individual Settlement Payments, and field inquiries or disputes from Class Members. This service will include Individual Settlement Payment calculations, printing and issuance of Individual Settlement Payment checks, and preparation of any necessary IRS W2 and 1099 tax forms. Basic accounting for and payment of employee tax withholdings will also be included as part of this service.

49(g) Distribute the Plaintiff's Incentive Payment, Class Counsel's Fees and Costs, the LWDA's portion of the PAGA Payment, and the Settlement Administration Costs, including all related tax forms.

- 1 49(h) Inform Defendant of its employer-side payroll tax liability and making
2 all necessary deposits and payments to the necessary taxing authorities
3 for the payments received for the employer-share of payroll taxes.
- 4 49(i) Track and deliver uncashed Individual Settlement Payment checks as
5 outlined in this Agreement.
- 6 49(j) Supply Class Counsel with a draft declaration at the conclusion of the
7 Response Deadline.
- 8 49(k) Provide declarations and/or other information to this Court as requested
9 by the Parties and/or the Court.
- 10 49(l) Provide weekly status reports to counsel for the Parties.
- 11 49(m) Post a notice of final judgment, after Final Approval and entry of the
12 judgment, online at the Settlement Administrator's website for a period
13 of sixty (60) days pursuant to California Rule of Court 3.769.
- 14 49(n) All other duties assigned to the Settlement Administrator as set forth in
15 this Agreement or by Court order.

16 50. Delivery of the Class List. Within fourteen (14) calendar days of Preliminary
17 Approval, Defendant will provide the Class List to the Settlement Administrator. This is a
18 material term of the Agreement, and if Defendant fails to comply, Plaintiff shall have the right to
19 void the Agreement.

20 51. Notice Packet by First-Class U.S. Mail. Within seven (7) calendar days after
21 receiving the Class List from Defendant, the Settlement Administrator will mail the Notice Packet
22 to all Class Members via regular First-Class U.S. Mail, using the most current, known mailing
23 addresses identified in the Class List.

24 52. Confirmation of Contact Information in the Class List. Prior to mailing, the
25 Settlement Administrator will perform a search based on the National Change of Address
26 Database for information to update and correct for any known or identifiable address changes.
27 Any Notice Packet returned to the Settlement Administrator as non-deliverable on or before the
28 Response Deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding

1 address affixed thereto, and the Settlement Administrator will indicate the date of such re-mailing
2 on the Notice Packet. If no forwarding address is provided, the Settlement Administrator will
3 promptly attempt to determine the correct address using a skip-trace, or other search using the
4 name, address and/or Social Security number of the Class Member involved, and will then
5 perform a single re-mailing. If any Notice Packet sent to a Class Member by the Settlement
6 Administrator is returned as undeliverable to a current employee, then Defendant shall make all
7 reasonable efforts to obtain the current address from the Class Member and provide the same
8 within seven (7) calendar days of notice from the Settlement Administrator. Those Class Members
9 who receive a re-mailed Notice Packet, whether by skip-trace or by request, will have between
10 the later of (a) an additional fifteen (15) calendar days or (b) the Response Deadline to postmark
11 a Request for Exclusion or an Objection to the Settlement.

12 53. Notice Packet. All Class Members will be mailed a Notice Packet by the
13 Settlement Administrator. Each Class Notice within the Notice Packet will provide: (a)
14 information regarding the nature of the Action; (b) a summary of the Settlement's principal terms;
15 (c) the Class definition; (d) the total number of Workweeks each respective Class Member worked
16 for Defendant during the Class Period; (e) each Class Member's estimated Individual Settlement
17 Payment and the formula for calculating Individual Settlement Payments; (f) the dates which
18 comprise the Class Period and PAGA Period; (g) the deadlines by which the Class Member must
19 postmark Requests for Exclusion, Objections to the Settlement, or Workweek disputes; (h) the
20 Released Claims, as set forth herein; and (j) the date for the Final Approval hearing.

21 54. Disputed Information on Class Notice. Class Members will have an opportunity
22 to dispute the information provided in their Class Notice. To the extent Class Members dispute
23 the number of Workweeks with which they have been credited or the amount of their Individual
24 Settlement Payment, Class Members may produce, on or before the Response Deadline, evidence
25 to the Settlement Administrator showing that such information is inaccurate. Absent evidence
26 rebutting Defendant's records, Defendant's records will be presumed determinative. However, if
27 a Class Member produces evidence contrary to Defendant's records by the Response Deadline,
28 the Settlement Administrator shall notify Class Counsel and Defense Counsel to discuss and

1 resolve the dispute, including providing all available relevant information to all counsel. The
2 Parties will resolve all disputes jointly, which shall be final and binding on any Class Member
3 disputes, and shall thereafter instruct the Settlement Administrator how to proceed in processing
4 the dispute. If the Parties cannot reach an agreement, the dispute shall be submitted to the Court
5 for final determination. All such disputes are to be resolved or submitted to the Court not later
6 than fourteen (14) calendar days after the Response Deadline.

7 55. Defective Submissions. If a Class Member's Request for Exclusion is defective as
8 to the requirements listed herein, that Class Member will be given an opportunity to cure the
9 defect(s). The Settlement Administrator will mail the Class Member a cure letter within three (3)
10 business days of receiving the defective submission to advise the Class Member that his or her
11 submission is defective and that the defect must be cured to render the Request for Exclusion
12 valid. The Class Member will have until the later of (a) the Response Deadline, or (b) fifteen (15)
13 calendar days from the date of the cure letter, whichever date is later, to postmark a revised
14 Request for Exclusion. If a Class Member responds to a cure letter by filing a defective claim,
15 then the Settlement Administrator and Parties will have no further obligation to give notice of a
16 need to cure. If the revised Request for Exclusion is not postmarked within that period, it will be
17 deemed untimely.

18 56. Request for Exclusion Procedures. Any Class Member wishing to opt out from the
19 Settlement must sign and postmark a written Request for Exclusion to the Settlement
20 Administrator on or by the Response Deadline. The date of the postmark on the return mailing
21 envelope receipt confirmation will be the exclusive means to determine whether a Request for
22 Exclusion has been timely submitted. To opt out, Class Members are permitted but not required
23 to submit the Request for Exclusion form enclosed in the Notice Packet. All Requests for
24 Exclusion will be submitted to the Settlement Administrator, who will certify jointly to Class
25 Counsel and Defense Counsel the Requests for Exclusion that were valid and timely submitted.
26 All Class Members who do not request exclusion from the Settlement will be bound by all terms
27 of the Settlement Agreement if the Settlement is granted final approval by the Court.
28

1 57. Defendant's Right to Rescind. If five percent (5%) or more of the Class Members
2 (rounded to the next whole number) elect not to participate in the Settlement by submitting a valid
3 and timely Request for Exclusion, then Defendant may, at its election, rescind the Settlement
4 Agreement and all actions taken in furtherance of it will be thereby null and void. Defense
5 Counsel must meet and confer with Class Counsel prior to exercising this right and must make
6 clear Defendant's intent to rescind the Agreement within fourteen (14) calendar days of the
7 Settlement Administrator notifying the Parties of these opt-outs. If Defendant exercises its right
8 to rescind the Agreement, Defendant shall be responsible for all Settlement Administration Costs
9 incurred to the date of rescission.

10 58. Settlement Terms Bind All Class Members Who Do Not Opt Out. Any Class
11 Member who does not affirmatively opt-out of the Settlement by submitting a timely and valid
12 Request for Exclusion will be bound by all of its terms, including those pertaining to the Released
13 Claims, as well as any judgment that may be entered by the Court if it grants Final Approval to
14 the Settlement. Class Members who opt-out of the Settlement shall not be bound by such
15 judgment or release. The names of Class Members who have opted-out of the Settlement shall be
16 disclosed to Counsel for Plaintiff and Defense Counsel and noted in the proposed final judgment
17 submitted to the Court.

18 59. Objection Procedures. To object to the Settlement, a Participating Class Member
19 must postmark a valid Objection to the Settlement Administrator on or before the Response
20 Deadline. The Objection must be signed by the Participating Class Member and contain all
21 information required by this Settlement Agreement. Participating Class Members are permitted
22 but not required to submit the Objection form enclosed in the Notice Packet. The postmark date
23 will be deemed the exclusive means for determining that the Objection is timely. Participating
24 Class Members who fail to object in the manner specified above will be foreclosed from making
25 a written objection, but shall still have a right to appear at the Final Approval hearing in order to
26 have their objections heard by the Court. At no time will any of the Parties or their counsel seek
27 to solicit or otherwise encourage Class Members to submit written objections to the Settlement
28

1 or appeal from the Final Approval order and judgment. Class Counsel will not represent any Class
2 Members with respect to any objections to this Settlement.

3 60. Certification Reports Regarding Individual Settlement Payment Calculations. The
4 Settlement Administrator will provide Defense Counsel and Class Counsel a weekly report which
5 certifies: (a) the number of Class Members who have submitted Requests for Exclusion; (b) the
6 number of re-mailed and/or undeliverable Notice Packets; and (c) whether any Class Member has
7 submitted a challenge to any information contained in the Class Notice. Additionally, the
8 Settlement Administrator will provide to counsel for all Parties any updated reports regarding the
9 administration of the Settlement Agreement as needed or requested.

10 61. Uncashed Settlement Checks. Any checks issued by the Settlement Administrator
11 to Participating Class Members and PAGA Members will be negotiable for at least one hundred
12 eighty (180) calendar days. If a Participating Class Member or PAGA Member does not cash his
13 or her Individual Settlement Payment check within 180 days, the uncashed funds, subject to Court
14 approval, shall be sent by the Settlement Administrator to the Controller of the State of California
15 to be held pursuant to the Unclaimed Property Law, California Civil Code §1500, *et. seq.* in the
16 name of and for the benefit of those Participating Class Members and PAGA Members who did
17 not cash their checks until such time that they claim their property. The Parties agree that this
18 disposition results in no “unpaid residue” under California Civil Procedure Code § 384, as the
19 entire Net Settlement Amount will be paid out to Participating Class Members and PAGA
20 Members, whether or not they all cash their Individual Settlement Payment checks. Therefore,
21 Defendant will not be required to pay any interest on such amounts. The Individual Settlement
22 Payments provided to Participating Class Members and to PAGA Members shall prominently
23 state the expiration date or a statement that the Settlement check will expire in one hundred eighty
24 (180) days, or alternatively, such a statement may be made in a letter accompanying the Individual
25 Settlement Payment. Expired Individual Settlement Payments will not be reissued, except for
26 good cause and as mutually agreed by the Parties in writing. The Parties agree no unclaimed funds
27 will result from the settlement process detailed in this Agreement.

1 62. Administration of Taxes by the Settlement Administrator. The Settlement
2 Administrator will be responsible for issuing to Plaintiff, Participating Class Members, PAGA
3 Members, and Class Counsel any W-2, 1099, or other tax forms as may be required by law for all
4 amounts paid pursuant to this Settlement. The Settlement Administrator will also be responsible
5 for forwarding all payroll taxes and penalties to the appropriate government authorities.

6 63. Tax Liability. Defendant makes no representation as to the tax treatment or legal
7 effect of the payments called for in this Agreement, and Plaintiff, Participating Class Members,
8 and PAGA Members are not relying on any statement, representation, or calculation by Defendant
9 or by the Settlement Administrator in this regard. Plaintiff, Participating Class Members, and
10 PAGA Members understand and agree that except for Defendant's payment of the employer's
11 portion of any payroll taxes, they will be solely responsible for the payment of any taxes and
12 penalties assessed on the payments described herein. Defendant's share of any employer-side
13 payroll taxes and other required employer withholdings due on the Individual Settlement
14 Payments, including but not limited to Defendant's FICA and FUTA contributions, shall be paid
15 separate and apart from the Gross Settlement Amount.

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

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

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

16 66. Release by Participating Class Members, PAGA Members, and the State of
17 California. It is the desire of the Plaintiff, Participating Class Members, and Defendant to fully,
18 finally, and forever settle, compromise, and discharge the Released Claims. Upon the funding of
19 the Gross Settlement Amount, and all applicable employer-side payroll taxes, in exchange for the
20 consideration set forth in this Agreement, Participating Class Members shall fully release and
21 discharge the Released Parties from any and all Released Claims arising during the Class Period.
22 This release shall be binding on all Participating Class Members, including each of their
23 respective attorneys, agents, spouses, executors, representatives, guardians ad litem, heirs,
24 successors, and assigns, and shall inure to the benefit of the Released Parties, who shall have no
25 further or other liability or obligation to any Participating Class Member with respect to the
26 Released Claims, except as expressly provided herein. All PAGA Members, regardless of whether
27 they submit timely and valid Requests for Exclusion from the Settlement, will release all claims
28 under PAGA that could have been premised on the claims, causes of action or legal theories

1 during the PAGA Period as described in the Action and/or in Plaintiff's letters to the LWDA
2 concerning Defendant or any other Released Party. The State of California will also release all
3 claims under PAGA that could have been premised on the claims, causes of action or legal
4 theories described in the Action and/or in Plaintiff's letters to the LWDA concerning Defendant
5 or any other Released Party.

6 67. General Release of Additional Claims & Rights by Plaintiff. Upon the funding of
7 the Gross Settlement Amount and all applicable employer-side payroll taxes, and as a condition
8 of receiving any portion of his Class Representative Incentive Payment, Plaintiff hereby agrees
9 to the following General Release: In consideration of Defendant's promises and agreements as
10 set forth herein, Plaintiff hereby releases all claims related to his employment or alleged
11 employment with Defendant, including all claims alleged in the Action, and all claims known and
12 unknown, suspected or unsuspected, without exception, except as may be prohibited by law,
13 regardless of whether the knowledge of such claims, or the facts upon which they might be based,
14 would materially have affected the settlement of this matter, and that the consideration given
15 under this Agreement is also for the release of those claims and contemplates the extinguishment
16 of any such unknown claims. Also, Plaintiff expressly waives all rights and benefits afforded by
17 California Civil Code Section 1542, which provides:

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

23 This release specifically excludes claims for unemployment insurance, disability, social
24 security, and workers' compensation (with the exception of claims arising pursuant to California
25 Labor Code Sections 132(a) and 4553).

26 68. Neutral Employment Reference. Defendant agrees that it will adopt a neutral
27 reporting policy regarding any future employment references related to Plaintiff. In the event that
28 any potential or future employers of Plaintiff request a reference regarding Defendant's

1 employment of Plaintiff, Defendant shall only provide the Plaintiff's dates of employment, job
2 titles during employment, and final rate of pay. Defendant shall not refer to the Action or this
3 Settlement.

4 69. Nullification of Settlement Agreement. In the event that: (a) the Court does not
5 finally approve the Settlement as provided herein; (b) the Court strikes or does not approve any
6 material term of this Settlement Agreement; or (c) the Settlement does not become final as written
7 and agreed to by the Parties for any other reason, then this Settlement Agreement, and any
8 documents generated to bring it into effect, will be null and void, all amounts deposited into the
9 QSF will be returned to Defendant, and the Parties shall be returned to their original respective
10 positions. Any order or judgment entered by the Court in furtherance of this Settlement
11 Agreement will likewise be treated as void from the beginning. Pursuant to California Evidence
12 Code § 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding
13 to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the
14 Parties agree that this Settlement Agreement is void, and remains protected by California
15 Evidence Code § 1152. Should the Court fail to approve this Settlement for any reason, the Parties
16 agree to informally discuss a potential resolution or to attend mediation with a mutually agreed
17 mediator, with the costs of mediation shared equally by each Party, in an effort to reach a
18 settlement that may be approved by the Court.

19 70. Preliminary Approval Hearing. Plaintiff will request a hearing before the Court to
20 request Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary
21 Approval Order for: (a) conditional certification of the Class for settlement purposes only, (b)
22 Preliminary Approval of the proposed Settlement Agreement, and (c) setting a date for a Final
23 Approval hearing. The Preliminary Approval Order will provide for the Notice Packet to be sent
24 to all Class Members as specified herein. In conjunction with the Preliminary Approval hearing,
25 Plaintiff will submit this Agreement, which sets forth the terms of the Settlement, along with the
26 proposed Class Notice attached as Exhibit A and the Objection and Request for Exclusions Forms
27 attached as Exhibits B and C. Defendant agrees that it shall not oppose Plaintiff's motion for
28 Preliminary Approval provided the motion is based on the terms of this Agreement. Plaintiff shall

1 provide the Motion for Preliminary Approval to Defendant's Counsel two business days in
2 advance of filing this motion for Defendant's comment and review, which Plaintiff's Counsel
3 shall consider but not be required to accept. Any failure by the Court to fully and completely
4 approve the Agreement as to the Action, or the entry of any order by another Court with regard
5 to any of the Action which has the effect of preventing the full and complete approval of this
6 Settlement Agreement as written and agreed to by the Parties, will result in this Settlement
7 Agreement and the Memorandum of Understanding entered into by the Parties, and all obligations
8 under this Settlement Agreement and the Memorandum of Understanding being nullified and
9 voided.

10 71. Final Settlement Approval Hearing and Entry of Judgment. Upon completion of
11 the Class Notice process, including the expiration of the Response Deadline, a Final Approval
12 hearing will be conducted to determine the Final Approval of the Settlement Agreement along
13 with the amounts properly payable for: (a) Individual Settlement Payments; (b) the PAGA
14 Penalties; (c) Class Counsel's Attorneys' Fees and Costs; (d) the Class Representative Incentive
15 Payment for Plaintiff; and (d) the Settlement Administration Costs. Class Counsel will be
16 responsible for drafting all documents necessary to obtain Final Approval. Any failure by the
17 Court to fully and completely approve the Settlement Agreement as to all of the Action, or the
18 entry of any order by another Court with regard to any of the Action which has the effect of
19 modifying material terms of this Agreement or preventing the full and complete approval of the
20 Settlement Agreement as written and agreed to by the Parties, will result in this Agreement and
21 all obligations under this Agreement being null and void. Defendant agrees it will not oppose
22 Plaintiff's Motion for Final Approval provided it is based on the terms of this Agreement and
23 provided Defendant has not exercised its right to rescind pursuant to the terms of this Agreement.
24 Plaintiff shall provide the Motion for Final Approval to Defendant's Counsel two business days
25 in advance of filing this motion for Defendant's comment and review, which Plaintiff's Counsel
26 shall consider but not be required to accept.

27 72. Judgment and Continued Jurisdiction. Upon Final Approval of the Settlement by
28 the Court or after the Final Approval hearing, the Parties will present the judgment to the Court

1 for its approval. After entry of final judgment, the Court will have continuing jurisdiction solely
2 for purposes of addressing: (a) the interpretation and enforcement of the terms of the Settlement,
3 (b) settlement administration matters, and (c) such post-judgment matters as may be appropriate
4 under court rules or as set forth in this Settlement.

5 73. Exhibits Incorporated by Reference. The terms of this Settlement include the terms
6 set forth in attached Exhibits A through C, which are incorporated by this reference as though
7 fully set forth herein. Exhibits A through C to this Agreement are an integral part of the
8 Settlement.

9 74. Entire Agreement. This Settlement Agreement and the attached Exhibits constitute
10 the entirety of the Parties' Settlement. No other prior or contemporaneous written or oral
11 agreements may be deemed binding on the Parties.

12 75. Amendment or Modification. This Settlement Agreement may be amended or
13 modified only by an express written instrument signed all Parties or their successors-in-interest
14 and their counsel.

15 76. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant
16 and represent they are expressly authorized by the Parties whom they represent to negotiate this
17 Settlement Agreement and to take all appropriate action required or permitted to be taken by such
18 Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other
19 documents required to effectuate the terms of this Settlement Agreement. The Parties and their
20 counsel will cooperate with each other and use their best efforts to affect the implementation of
21 the Settlement. If the Parties are unable to reach agreement on the form or content of any
22 document needed to implement the Settlement, or on any supplemental provisions that may
23 become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance
24 of the Court to resolve such disagreement.

25 77. Binding on Successors and Assigns. This Settlement Agreement will be binding
26 upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously
27 defined.
28

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

3 79. Force Majeure. Neither Party shall be in breach of this Agreement nor liable for
4 delay in performing, or failure to perform, any of its or her obligations under this Agreement if
5 such delay or failure results from events, circumstances or causes beyond the Party's reasonable
6 control, including without limitation acts of God or natural disaster, epidemic or pandemic,
7 chemical or biological contamination, wars, strikes, riots, acts of domestic or international
8 terrorism, or any other event beyond a Party's reasonable control that renders such Party's
9 performance impossible. The affected Party shall provide written notice to the other Party of the
10 force majeure event and its impact. In such circumstances the time for performance shall be
11 extended, if possible, by a period equal to the period during which performance of the obligation
12 has been delayed or failed to be performed.

13 80. Execution and Counterparts. This Settlement Agreement is subject only to the
14 execution of all Parties. However, the Settlement Agreement may be executed in one or more
15 counterparts. All executed counterparts and each of them, including facsimile and scanned copies
16 of the signature page, will be deemed to be one and the same instrument provided that counsel
17 for the Parties will exchange among themselves original signed counterparts.

18 81. Acknowledgement that the Settlement Is Fair and Reasonable. The Parties believe
19 this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have
20 arrived at this Settlement after arm's-length negotiations and in the context of adversarial
21 litigation, taking into account all relevant factors, present and potential. The Parties further
22 acknowledge that they are each represented by competent counsel and that they have had an
23 opportunity to consult with their counsel regarding the fairness and reasonableness of this
24 Settlement.

25 82. Invalidity of Any Provision. Before declaring any provision of this Agreement
26 invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible
27 consistent with applicable precedents so as to define all provisions of this Agreement valid and
28 enforceable.

1 83. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to
2 class certification for purposes of this Settlement only; except, however, that either Party may
3 appeal any Court order that materially alters the Settlement Agreement's terms.

4 84. Class Action Certification for Settlement Purposes Only. The Parties agree to
5 stipulate to class action certification only for purposes of the Settlement. If, for any reason, the
6 Settlement is not approved, the stipulation to certification will be void. The Parties further agree
7 that certification for purposes of the Settlement is not an admission that class action certification
8 is proper under the standards applied to contested certification motions, and that this Agreement
9 will not be admissible in this or any other proceeding as evidence that either: (a) a class action
10 should be certified, or (b) Defendant is liable to Plaintiff or any Class Member, other than
11 according to the Settlement's terms.

12 85. Non-Admission of Liability. The Parties enter into this Agreement to resolve the
13 dispute that has arisen between them and to avoid the burden, expense and risk of continued
14 litigation. In entering into this Agreement, Defendant does not admit, and specifically denies, it
15 has violated any federal, state, or local law; violated any regulations or guidelines promulgated
16 pursuant to any statute or any other applicable laws, regulations or legal requirements; breached
17 any contract; violated or breached any duty; engaged in any misrepresentation or deception; or
18 engaged in any other unlawful conduct with respect to its current or former employees. Neither
19 this Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it,
20 shall be construed as an admission or concession by Defendant of any such violations or failures
21 to comply with any applicable law. Except as necessary in a proceeding to enforce the terms of
22 this Agreement, this Agreement and its terms and provisions shall not be offered or received as
23 evidence in any action or proceeding to establish any liability or admission on the part of
24 Defendant or to establish the existence of any condition constituting a violation of, or a non-
25 compliance with, federal, state, local or other applicable law.

26 86. Use and Return of Documents and Data. All originals, copies, and summaries of
27 documents and data provided to Class Counsel by Defendant in connection with the mediation or
28 other settlement negotiations in this matter may be used only with respect to this Settlement, and

1 for no other purpose, and may not be used in any way that violates any existing contractual
2 agreement, statute, or rule. Upon written request from Defendant, Class Counsel will return or
3 destroy all such documents and data. Class Counsel will confirm in writing to Defendant the
4 destruction of all such documents and data within fourteen (14) days of such request.

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

8 88. Waiver. Any failure of any Party, Defense Counsel, or Class Counsel to comply
9 with any obligation, covenant, agreement, or condition herein may be expressly waived in writing,
10 to the extent permitted under applicable law, by the Party or Parties and their respective counsel
11 entitled to the benefit of such obligation, covenant, agreement, or condition. No waiver of any
12 condition or covenant contained in this Settlement Agreement or failure to exercise a right or
13 remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by
14 such party of the same or any other condition, covenant, right or remedy.

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

20 90. Representation By Counsel. The Parties acknowledge that they have been
21 represented by counsel throughout all negotiations that preceded the execution of this Agreement,
22 and that this Agreement has been executed with the consent and advice of counsel and reviewed
23 in full. Further, Plaintiff and Class Counsel warrant and represent that there are no liens on the
24 Agreement. Except for Class Counsel's Fees and Costs as set forth in this Agreement, the Parties
25 agree to bear their own attorneys' fees and costs related to this Action.

26 91. All Terms Subject to Final Court Approval. All amounts and procedures described
27 in this Settlement Agreement herein will be subject to final Court approval.
28

1 92. Cooperation and Execution of Necessary Documents. The Parties agree to
2 cooperate to promote participation in the Settlement, and in seeking Court approval of the
3 Settlement. The Parties and their counsel agree not to take any action to encourage any Class
4 Members to opt out of and/or object to the Settlement. Defendant agrees not to obtain any
5 settlement agreement waivers, Pick Up Stix agreements or arbitration agreements from any Class
6 Member prior to the funding of the Gross Settlement Amount concerning claims released via this
7 Agreement, or enter into any arbitration agreement with any Class Member that covers the claims
8 released via this Agreement during the Settlement approval process prior to the funding of the
9 Gross Settlement Amount and that the Parties will work in good faith to reach an agreement
10 approved by the Court.

11 93. Enforcement and Continuing Jurisdiction of the Court. To the extent consistent
12 with class action procedure, this Settlement Agreement shall be enforceable by the Court pursuant
13 to California Code of Civil Procedure § 664.6. The Court shall retain continuing jurisdiction over
14 this Action and over all Parties and Class Members, to the fullest extent to enforce and effectuate
15 the terms and intent of this Settlement Agreement, and to adjudicate any claimed breaches of this
16 Settlement Agreement. The Court may award reasonable attorneys' fees and costs to the
17 prevailing party in any motion or action taken and based on an alleged violation of any material
18 term of the Settlement Agreement.

19 94. Voluntary Agreement. The Parties acknowledge that they have entered into this
20 Settlement Agreement voluntarily, on the basis of their own judgment and without coercion,
21 duress, or undue influence of any Party, and not in reliance on any promises, representations, or
22 statements made by the other Parties other than those contained in this Settlement Agreement.
23 Each of the Parties hereto expressly waives any right he/they might ever have to claim that this
24 Settlement Agreement was in any way induced by fraud.

25 95. Confidentiality. The Parties and their counsel agree to keep the terms of the
26 Settlement confidential until the filing of Plaintiff's Motion for Preliminary Approval. Plaintiff,
27 Class Counsel, Defendant and its counsel agree that they will not issue any press releases, initiate
28 any contact with the press, respond to any press inquiry, or have any communication with the

press about the fact, amount or terms of the Settlement Agreement. Nothing in this Settlement Agreement shall limit Defendant's ability to fulfill disclosure obligations reasonably required by law or in furtherance of business purposes, including the fulfillment of obligations stated in this Settlement Agreement or limit Class Counsel's communications with the Class Members in furtherance of approval of this Settlement.

96. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any settlement confidentiality provisions that otherwise might apply under federal or state law.

APPROVED AS TO FORM AND CONTENT:

Dated: _____

PLAINTIFF

By: _____

Isidoro Alvarado

Dated: 6/16/21

DEFENDANT KIWI II CONSTRUCTION, INC.

By: _____

Name: _____

Title: _____

1 press about the fact, amount or terms of the Settlement Agreement. Nothing in this Settlement
2 Agreement shall limit Defendant's ability to fulfill disclosure obligations reasonably required by
3 law or in furtherance of business purposes, including the fulfillment of obligations stated in this
4 Settlement Agreement or limit Class Counsel's communications with the Class Members in
5 furtherance of approval of this Settlement.

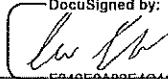
6 96. Binding Agreement. The Parties warrant that they understand and have full
7 authority to enter into this Settlement, and further intend that this Settlement Agreement will be
8 fully enforceable and binding on all Parties, and agree that it will be admissible and subject to
9 disclosure in any proceeding to enforce its terms, notwithstanding any settlement confidentiality
10 provisions that otherwise might apply under federal or state law.

11
12 APPROVED AS TO FORM AND CONTENT:

13 Dated: 6/17/2021 _____

14 **PLAINTIFF**

15 By: _____

16 DocuSigned by:

E240E2A83E4C41A...
Isidoro Alvarado

17
18 Dated: _____

DEFENDANT KIWI II CONSTRUCTION, INC.

19 By: _____

20 Name: _____

21 Title: _____

1 APPROVED AS TO FORM ONLY:

2
3 Dated: June 17, 2021

PROTECTION LAW GROUP, LLP

4
5 By: 

6 Heather Davis, Esq.

7 Amir Nayebdadash, Esq.

8 Attorneys for Plaintiff

9
10 Dated: 6/25/21

SCHOR VOGELZANG & CHUNG LLP

11 By: 

12 Julie Vogelzang, Esq.

13 Lisa Hird Chung, Esq.

14 Attorneys for Defendant

EXHIBIT A

NOTICE OF PROPOSED CLASS AND REPRESENTATIVE ACTION SETTLEMENT

Alvarado v. Kiwi II Construction, Inc.

Riverside County Superior Court, Case No. RIC2001558

**THIS IS A COURT-AUTHORIZED NOTICE. IT IS NOT A SOLICITATION.
PLEASE READ THIS NOTICE CAREFULLY.
YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT OR DO NOT ACT.**

To:	All current and former hourly-paid, non-exempt employees employed by Kiwi II Construction, Inc and who worked in the State of California at any time between June 8, 2016, and March 26, 2021.
------------	---

BASIC INFORMATION

1. What is this settlement about?

You are receiving this notice as a result of a lawsuit brought as a putative class and representative action commenced on June 8, 2020, by Isidoro Alvarado (“Plaintiff”) against Kiwi II Construction, Inc. (“Defendant”). The case is currently pending in the Riverside County Superior Court, Case No. RIC2001558 (the “Action”). Defendant’s records show that you currently work, or previously worked for Defendant in California.

The lawsuit claims that Defendant violated sections of the California Labor Code and California Business and Professions Code. Specifically, Plaintiff alleges that Defendant failed to provide compliant meal and rest periods and associated premium pay, did not properly pay employees all wages owed for time worked, did not provide accurate wage statements, did not timely pay all wages during employment and all wages owed at termination of employment, failed to reimburse employees for necessary business expenses, failed to maintain required payroll records, and maintained unfair business practices. The Settlement also seeks to recover penalties pursuant to the California Private Attorneys General Act (“PAGA”). The lawsuit claims that the Defendant violated the California Labor Code and the California Business and Professions Code, entitling Class Members to, *inter alia*, damages, penalties and restitution.

Throughout the litigation, Defendant has denied—and continues to deny—the factual and legal allegations in the Action and has maintained that it has valid defenses to the claims. Defendant denies any wrongdoing and asserts that its pay practices at all times complied with the law. Plaintiff and Defendant voluntarily entered into a Settlement Agreement to resolve the dispute that has arisen between them and to avoid the burden, expense and risk of continued litigation. The Court has not made a ruling on the merits of the case. Rather, the Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate, and reasonable. Any final determination of those issues will be made at the Final Approval Hearing. By agreeing to settle, Defendant is not admitting liability on any of the factual allegations or claims in the lawsuit or that the lawsuit can or should proceed as a class action or PAGA action.

2. What is a class action?

In a class action, one or more people, called the “Class Representative” (in this case Mr. Alvarado, also known as “Plaintiff”), sue on behalf of people who appear to have similar claim. All of these people are referred to here as Class Members. In a class action, one court resolves the issues for all Class Members in one lawsuit, except for those who exclude themselves from the class. The Riverside County Superior Court is in charge of this case.

As part of the settlement, Plaintiffs and Defendant agreed to conditionally certify the Class with respect to all of the claims Plaintiffs alleged against Defendant as a class and representative action, for settlement purposes only

and to ask the Court to approve the settlement. The Court has not ruled on the merits of these claims, and the decision to certify the agreed-upon Class for settlement purposes should not be viewed as a prediction or agreement that Plaintiff or the Class would ultimately prevail on the merits of the action. Defendant denies that this case should proceed as a class action.

3. Why is there a settlement?

The Court has not decided in favor of the Plaintiff or Defendant. Instead, both sides agreed to a settlement which is memorialized in the Joint Stipulation of Class Action and PAGA Settlement (“Agreement” or “Settlement”). On [DATE OF PRELIMINARY APPROVAL], the Court granted preliminary approval of the Settlement, appointed Plaintiff Isidoro Alvarado as the Class Representative, and appointed his attorneys at Protection Law Group as counsel for the Class (“Class Counsel”).

The Class Representative and Class Counsel think the Settlement is best for the Class.

WHO IS IN THE SETTLEMENT?

4. How do I know if I am part of the settlement?

You are part of the Settlement, and a Class Member, if you were employed by Defendant as a non-exempt, hourly-paid employee in the State of California at any time between June 8, 2016, and March 26, 2021.

THE SETTLEMENT BENEFITS—WHAT YOU GET

5. What does the settlement provide?

The Settlement provides that Defendant will pay a maximum of Six Hundred and Forty-Seven Thousand Four Hundred and Sixty Dollars (\$647,460). (“Gross Settlement Amount”). This includes all costs and attorneys’ fees for Class Counsel.

The “Net Settlement Amount” is the portion of the Gross Settlement Amount that will be available for distribution to Class Members who do not submit timely and valid requests for exclusion in exchange for the release of their class claims. The Net Settlement Amount is the Gross Settlement Amount less the following amounts (which are subject to Court approval):

- A. **Attorneys’ Fees to Class Counsel** not to exceed 35% of the Gross Settlement Amount or Two Hundred Twenty-Six Thousand Six Hundred and Eleven Dollars (\$226,611);
- B. **Litigation Costs/Expenses to Class Counsel** not to exceed Twenty-Five Thousand Dollars (\$25,000);
- C. **Incentive Payment to Plaintiff** in an amount not to exceed Seven Thousand Five Hundred Dollars (\$7,500);
- D. **Settlement Administration Costs** which are currently estimated to be Seven Thousand Five Hundred Dollars (\$7,500); and
- E. **PAGA Penalties** in the amount of Fifty Thousand Dollars (\$50,000) for the settlement of claims arising under the California Private Attorneys General Act of 2004 (“PAGA”). Seventy-Five percent (75%) of this amount (\$37,500) shall be paid to the LWDA. The remaining twenty-five percent (25%) (\$12,500) will be distributed to hourly-paid, non-exempt employees of Defendant in the State of California at any time from June 8, 2019, to March 26, 2021, for their claims arising under PAGA.

The amount you are eligible to receive from the settlement, your “Individual Settlement Payment,” will be determined on a *pro rata* basis, based on the number of weeks you worked in California as an hourly-paid, non-

exempt employee of Defendant from June 8, 2016, to March 26, 2021 (“workweeks”). Your Individual Settlement Payment includes both your estimated share of the Net Settlement Amount and, if eligible, your share of the PAGA Penalties. Your share of the PAGA Penalties will be calculated pro rata based on the number of pay periods that you worked between June 8, 2019, and March 26, 2021. Partial pay periods will be rounded up to the closest whole number.

Your Individual Settlement Payment will be apportioned as twenty percent (20%) wages, forty percent (40%) interest, and forty percent (40%) penalties. If you opt out of the class claims portion of the Settlement, then your share of PAGA penalties, if you are eligible to receive this payment, will be apportioned 100% as penalties. The wage portion of the Individual Settlement Payment will be subject to withholding for the employee taxes and will be reported on a W-2 Form. Employer-side payroll taxes shall be paid separately from and in addition to the Gross Settlement Amount. The penalties and interest portions of each class member’s settlement payment will not be subject to any withholdings and will be reported on an IRS Form 1099.

You worked [REDACTED] workweeks during the Class Period as a Class Member. Your estimated Individual Settlement Payment is \$[REDACTED], less applicable taxes and withholdings. The amount of this payment is subject to change depending on the payments approved by the Court and other factors.

This Amount was determined based on Defendant’s record of your employment between June 8, 2016 and March 26, 2021, and is presumed correct. If you dispute the accuracy of Defendant’s records as to the number of weeks worked during the Class Period, you must contact the Settlement Administrator and provide any documentation you have supporting such dispute by [DATE]. All disputes regarding your workweeks will be resolved and decided by the Parties or if the Parties cannot agree, the Court, after you submit evidence to the Settlement Administrator. The Settlement Administrator’s contact information is listed below:

[Settlement Administrator]
[Address]
[Telephone No].

HOW TO GET A PAYMENT FROM THE SETTLEMENT

6. How can I get a payment?

You do not have to do anything to qualify for a payment of your portion of the Settlement.

7. What am I giving up if I do not request to be excluded from the Settlement?

Upon the funding of the Gross Settlement Amount, in exchange for the consideration set forth by the Settlement, Plaintiff and all Class Members who do not submit a timely request for exclusion shall release the “Released Parties” from the “Released Claims” for the Class Period.

The “Released Parties” include Defendant Kiwi II Construction, Inc. as named by Plaintiff in the operative complaint, and its past, present and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers.

The “Released Claims” means any and all claims, rights, demands, liabilities, and causes of action arising during the Class Period that are alleged, or reasonably could have been alleged based on the facts and claims asserted in the operative complaint filed in the Action and/or in the letters sent by Plaintiff to the LWDA concerning Defendant and the other Released Parties, whether sounding in law or equity, tort, contract, statute, or other applicable federal, state or local law or regulation, including but not limited to the following claims: (i) failure to pay all regular wages, minimum wages and overtime wages due; (ii) failure to provide meal periods or

compensation in lieu thereof; (iii) failure to provide rest periods or compensation in lieu thereof; (iv) failure to reimburse employees for necessary business expenses; (v) failure to provide complete, accurate wage statements; (vi) failure to pay wages timely at time of termination or resignation; (vii) failure to provide timely pay wages during employment; (viii) unfair business practices that could have been premised on the claims, causes of action or legal theories of relief described above or any of the claims, causes of action or legal theories of relief pleaded in the Action; (ix) failure to maintain required payroll records; (x) all claims under PAGA for civil penalties that could have been premised on the claims, causes of action or legal theories described above or any of the claims, causes of action or legal theories of relief pleaded in the Action or Plaintiff's letters to the LWDA, including but not limited to the California Code of Regulations and to Labor Code sections 210, 226, 226.3, 1174.5, 1197.1, 558, and 2699; and (xi) any and all damages, restitution, disgorgement, civil penalties, statutory penalties, taxes, interest or attorneys' fees or costs resulting therefrom. Released Claims shall not apply to claims for workers' compensation benefits, unemployment insurance benefits, or any other claim or right that as a matter of law cannot be waived or released. Released Claims include any claims for penalties by a Class Member resulting from any LWDA investigation.

This release of these claims pertains to the Class Period from June 8, 2016, to and including March 26, 2021 ("Class Period").

All Class Members will be deemed to have fully, finally and forever released, settled, compromised, relinquished, and discharged any and all Released Claims arising under PAGA with respect to all of the Released Parties irrespective of whether the Class Member submits a request for exclusion.

EXCLUDING YOURSELF FROM THE RELEASE OF NON-PAGA CLAIMS

If you want to keep the right to sue or continue to sue Defendant with respect to the Released Claims (other than those which arise under PAGA), then you must submit a request for exclusion in conformity with the requirements set forth herein. If you exclude yourself, you will not receive payment from the Net Settlement Amount. However, if eligible, you will still receive a payment in an amount equal to your estimated *pro rata* share of the PAGA Penalties because the Request for Exclusion does not apply to this claim.

8. How can I exclude myself from the Settlement?

To exclude yourself from the release of Released Claims, other than the released PAGA claims, you must sign and return the Request for Exclusion form that was included with this Notice. You must include your name, address, telephone number and the last four digits of your social security number. Your Request for Exclusion must also include a statement that you do not wish to be included in this action similar to the following: I wish to exclude myself from the class action settlement reached in the matter of *Alvarado v. Kiwi II Construction, Inc.* I understand that by excluding myself I will not receive money from the class portion of the settlement." A statement to this effect is already included on the enclosed Request for Exclusion form.

The written request for exclusion must be mailed to the Settlement Administrator at the address listed below, post-marked by [DATE]. You cannot exclude yourself by phone.

[Settlement Administrator]
[Address]

If you submit a valid and timely Request for Exclusion form, then you will not be legally bound by the release of Released Claims (except for Released Claims that arise under the Private Attorney General Act (California Labor Code sections 2698 *et seq.*)).

Class Members who fail to submit a valid and timely request for exclusion on or before [DATE] will be bound by all terms of the Settlement and any final disposition entered if the Settlement is approved by the Court.

9. If I don't exclude myself, can I sue Defendant for the same thing later?

No. Unless you submit a request for exclusion, you give up the right to sue Defendant and the Released Parties for the Released Claims. If you have a pending lawsuit involving the Released Claims, speak to your lawyer in that lawsuit immediately.

10. If I exclude myself, can I get money from this settlement?

No, except if you worked between June 8, 2019 and March 26, 2021, in which case you will still receive the portion of your Individual Settlement Payment for Released Claims that arise under PAGA.

THE LAWYERS REPRESENTING YOU

11. Do I have a lawyer in this case?

The Court has preliminarily approved PROTECTION LAW GROUP, LLP as Class Counsel. The firm's contact information is:

PROTECTION LAW GROUP LLP

Heather Davis, Esq.
Amir Nayebdadash, Esq.
237 California Street
El Segundo, California 90245
Telephone: (424) 290-3095

Class Counsel will ask the Court for attorneys' fees of up to \$226,611 and reimbursement of litigation cost/expenses of up to \$25,000. These amounts are subject to Court approval and the Court may award less than these amounts.

OBJECTING TO THE SETTLEMENT

You can object to the Settlement or some part of it.

13. How do I tell the Court if I don't like the settlement?

If you are a Class Member, you can object to the Settlement and you can give reasons for why you think the Court should not approve it. The Court will consider your views. To object, you must mail your objection to the Settlement Administrator no later than [DATE]. An Objection form has been included with this Notice for you to use. Your objection must include your full name, address, telephone number, the last four digits of your social security number, and the specific reason for your objection. You may also come to the Final Approval Hearing on [DATE] and make an objection at that time, regardless of whether you submitted a written objection.

14. What is the difference between objecting and excluding?

Objecting is simply telling the Court that you do not like something about the Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement. If you exclude yourself by submitting a timely Request for Exclusion form, then you have no basis to object because the case no longer affects you.

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to grant final approval of the Settlement (“Final Approval Hearing”). You may attend, but you do not have to attend.

15. When and where will the Court decide whether to approve the settlement?

The Court will hold the Final Approval Hearing at [REDACTED] a.m./p.m. on [REDACTED], 2021], at the Riverside County Superior Court, Department 6 (Judge Sunshine S. Sykes), located at 4050 Main Street, Riverside, CA 92501.

At the Final Approval Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate, and determine whether to grant final approval of the Settlement. If there are objections, the Court will consider them.

16. Do I have to come to the hearing?

No. If you agree to the Settlement, then you do not have to come to Court to talk about it. However, you may attend. You may also retain your own lawyer at your expense to attend on your behalf. You may attend in person, but you may also attend remotely if you wish. Please see <https://riverside.courts.ca.gov/PublicNotices/telephonic-remote-appearances.php> for information on how to schedule remote appearances.

17. How will I learn if the settlement was approved?

A notice of final judgment will be posted on the Settlement Administrator website located at [www.\[REDACTED\]](http://www.[REDACTED]).

IF YOU DO NOTHING

18. What happens if I do nothing at all?

If you do nothing, you will receive your share of the Settlement, and you will release the Released Claims. You will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendant and/or the Released Parties about the Released Claims, ever again.

If the Settlement is approved by the Court, the payment will be mailed to you by the Settlement Administrator after the Final Approval Hearing. This check will remain valid and negotiable for 180 days. If you do not cash your settlement check within 180 days, these funds will be transferred to the Controller of the State of California’s Unclaimed Property Fund in your name. You may then claim these funds from there.

GETTING MORE INFORMATION

19. How do I get more information?

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement by viewing the settlement located on the Settlement Administrator’s website at [www.\[REDACTED\]](http://www.[REDACTED]) or by contacting the Settlement Administrator or Class Counsel.

The Settlement Agreement is also attached to the Declaration of Heather Davis in Support of Plaintiff’s Motion for Preliminary Approval of Class Action and PAGA Settlement as Exhibit 1. This document was filed on [REDACTED] and may be viewed at the Riverside County Superior Court located at 4050 Main Street, Riverside, California 92501 or online by entering Case No. Case No. RIC2001558 on the Riverside County Superior Court website, located at <https://epublic-access.riverside.courts.ca.gov/public-portal/?q=node/379> and purchasing this document from the Court’s docket.

WHAT IF MY INFORMATION CHANGES?

19. What if my contact information changes?

It is your responsibility to inform the Settlement Administrator of your updated information to ensure receipt of settlement payments or communications regarding this matter. You can change or update your contact information by contacting the Settlement Administrator.

**DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO THE
CLERK OF THE COURT OR THE JUDGE**

EXHIBIT B

OBJECTION FORM

Alvarado v. Kiwi II Construction, Inc.

Riverside County Superior Court, Case No. RIC2001558

INSTRUCTIONS: If you wish to tell the Court that you do not like the Settlement or some part of it, you may make an objection by completing, signing and returning this Objection Form to the Settlement Administrator at the address listed below. Please state each reason for your objection and any legal support for your objection. You must sign and complete this form accurately and in its entirety. You must mail this form to the Settlement Administrator at the address below so that it is postmarked on or before **[insert Response Deadline]**.

Settlement Administrator

Settlement Administrator Address

The Court will consider your objection at the Final Approval Hearing if you submit a timely and valid written statement of objection. All of the information on this form is required. If you do not provide all of the information below, your objection will be deemed null and void. Even if you submit an objection, you will (1) be bound by the terms of the Settlement, including the release of Released Claims, unless the Court does not approve the Settlement; and (2) receive your share of the penalties allocated to you based on the settlement of the California Private Attorneys General Act of 2004 (“PAGA”) claim in the Action, as approved by the Court. You cannot object to the Settlement if you request exclusion from the Settlement. You may come to the Final Fairness Hearing and be heard even if you do not complete this form.

1. CONTACT INFORMATION

First and Last Name: _____

Home Street Address: _____

City, State, Zip Code: _____

Home Telephone Number: (____) _____

Last 4 Digits of Social Security Number: _____

2. REASON FOR OBJECTION

Please state each reason you do not like the Settlement and any legal support for your objection:

Signed: _____ Dated: _____

Print Name: _____

EXHIBIT C

1 **REQUEST FOR EXCLUSION FROM THE SETTLEMENT**

2 *Alvarado v. Kiwi II Construction, Inc.*

3 Riverside County Superior Court, Case No. RIC2001558

4 **IF YOU COMPLETE THIS FORM YOU WILL NOT RECEIVE YOUR SHARE OF**
5 **CLASS SETTLEMENT BENEFITS UNDER THE SETTLEMENT**

6 **DO NOT COMPLETE THIS FORM IF YOU WANT TO PARTICIPATE IN THE**
7 **SETTLEMENT**

8 ***TO BE EXCLUDED FROM THE SETTLEMENT, THIS REQUEST FOR EXCLUSION FORM MUST BE SIGNED***
9 ***AND MAILED TO THE SETTLEMENT ADMINISTRATOR VIA U.S. MAIL POSTMARKED ON OR BEFORE***
10 ***_____, 2021***

11 _____
12 **INSTRUCTIONS**

13 **If you do not want to participate in this lawsuit and Settlement**, you may “opt out” of the
14 Settlement. If you opt out of this lawsuit and the Settlement, (a) you will have no right to receive
15 any class action settlement benefit under the Settlement in this case; (b) you will not be bound by
16 the terms of the Settlement; and (c) you will have no right to object to the Settlement and be heard
17 at the Final Approval hearing.

18 If you were employed between June 8, 2019, and March 26, 2021 you will still receive your share
19 of penalties arising under the California Private Attorneys General Act of 2004 (“PAGA”) claim
20 because the opt-out provision does not apply to this claim. However, you will not receive your share
21 of the settlement for the class claims.

22 To opt out, you must fill out all information in the section below, sign, and return this Request for
23 Exclusion Form to the Settlement Administrator at the address below. To be timely, your Request
24 for Exclusion Form must be postmarked **on or before [insert Response Deadline]**

25 _____
26 Settlement Administrator.
27 Settlement Administrator Address

28 _____
29 **OPT OUT SIGNATURE**

30 By signing this Request for Exclusion Form, I wish and hereby exclude myself from the class
31 settlement reached in the matter of *Alvarado v. Kiwi II Construction, Inc.* By signing this Request
32 for Exclusion Form, I understand that I will not receive money from the class portion of the
33 settlement, and cannot object to the Settlement or to be heard at the Final Approval hearing.

34 Signed: _____ Dated: _____

35 Print Name: _____

36 Address: _____

37 Home Telephone Number: _____

38 Last 4 Digits of Social Security Number: _____