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By: C. Beutler, Deputy

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County of San Diego
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

DANIEL RODRIGUEZ, individually, and on
behalf of aggrieved employees pursuant to the
Private Attorneys General Act ("PAGA");

Plaintiff,

v.

MEANS ENGINEERING, INC, a California
corporation; DAVID WILLIAM MEANS, an
individual; and DOES 1 through 100, inclusive;

Defendants.

Case No.: 37-2020-00024397-CU-OE-CTL

Honorable Katherine Bacal
Department C-69

**AMENDED [~~PROPOSED~~] ORDER AND
JUDGMENT GRANTING APPROVAL
OF PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE §§ 2698, *ET SEQ.*)
SETTLEMENT AGREEMENT AND
ATTORNEYS' FEES AWARD,
LITIGATION COSTS AWARD, AND
ENHANCEMENT PAYMENT**

Hearing Date: April 1, 2022
Hearing Time: 1:30 p.m.
Hearing Place: Department C-69

Complaint Filed: July 15, 2020
FAC Filed: September 21, 2020
Trial Date: None Set

1 This matter has come before the Honorable Katherine Bacal in Department C-69 of the San
2 Diego Superior Court (Hall of Justice), located at 330 W. Broadway, San Diego, California 92101,
3 on Plaintiff Daniel Rodriguez's ("Plaintiff") Motion for Approval of Private Attorneys General Act
4 (Labor Code §§ 2698, *et seq.*) Settlement Agreement, Attorneys' Fees Award, Litigation Costs
5 Award, and Enhancement Payment. This Court has reviewed the papers submitted by Plaintiff in
6 support of approval of the Confidential Settlement Agreement and Release ("Settlement
7 Agreement," "Settlement," and "Agreement") pursuant to the Private Attorneys General Act of
8 2004, Labor Code sections 2698, *et seq.* ("PAGA"). The Agreement is attached hereto as **Exhibit**
9 1. Based upon this review, and the findings below, the Court finds good cause to enter this order.

10 **FINDINGS:**

11 1. Unless otherwise specified, defined terms in this Order Approving Settlement
12 Agreement ("Order") have the same definition as the terms in the Settlement Agreement.

13 2. The Court has jurisdiction over the subject matter of this litigation over all current
14 and former hourly-paid employees of Defendant Means Engineering, Inc, and David William
15 Means ("Defendants") who worked for Defendants at any time from May 1, 2019, through
16 December 9, 2021 ("Settlement Group," "Settlement Group Members," and "Settlement Period").
17 The Court also has jurisdiction over those persons or entities undertaking affirmative obligations
18 under the Settlement Agreement.

19 3. On or about May 1, 2020, Plaintiff served a notice letter to the California Labor and
20 Workforce Development Agency ("LWDA") and Defendants, pursuant to Labor Code section
21 2699.3, to notify the LWDA and Defendants of the alleged Labor Code violations.

22 4. On or about July 15, 2020, Plaintiff filed this representative PAGA action against
23 Defendant, on behalf of the State of California, to represent himself and all current and former
24 hourly-paid employees of Defendant who worked for Defendant at any time from May 1, 2019,
25 through resolution.

26 5. The Parties expressly acknowledge that the Settlement Agreement is entered solely
27 for the purpose of compromising significantly disputed claims, and that nothing contained therein
28 is an admission of liability or wrongdoing by Defendant.

1 6. The Court determines that there is sufficient evidence to suggest that the Settlement
2 was entered in good faith, that the Settlement is fair, reasonable, and adequate under the
3 circumstances, and that the Parties have satisfied the standards and applicable requirements for
4 approval of a settlement of claims brought under PAGA.

5 7. The Court finds that pursuant to Labor Code sections 2699(1)(2) and (1)(4), the
6 LWDA was given timely notice of the Agreement. On February 8, 2022, Plaintiff submitted to the
7 LWDA a Notice of Settlement, attached to which was a copy of the Agreement. Plaintiff's Notice
8 of Settlement complied with the requirements of Labor Code section 2699(1)(2).

9 **IT IS HEREBY ORDERED THAT:**

10 1. The terms of the Settlement Agreement are fair, adequate, and reasonable, and the
11 Settlement is approved under Labor Code section 2699(1)(2).

12 2. The Court affirms approval of the Settlement as to the following group of
13 individuals, collectively referred to as the "Settlement Group Members":

14 All current and former hourly-paid employees of Defendants who
15 worked for Defendants at any time from May 1, 2019, through
 December 9, 2021.

16 3. Upon the Effective Date, this settlement forever bars Plaintiff, the LWDA, and any
17 other representative, proxy, or agent thereof, including, but not limited to, any and all allegedly
18 aggrieved employees, from pursuing any action against Defendants; or any of Defendants' agents,
19 employees, representatives, officers, directors, parents, subsidiaries, assigns, heirs, executors,
20 administrators, insurers, and successors in interest (collectively, the "Released Parties") under
21 PAGA based on or arising out of alleged violations of Labor Code sections alleged in this case
22 through the end of the Settlement Period ("Released Claims").

23 4. The Gross Settlement Amount of \$292,500, the PAGA Penalties Fund of
24 approximately \$158,897.12, and the methodology used to calculate and pay each Individual
25 Settlement Award, in accordance with the Settlement, is approved under Labor Code section
26 2699(1)(2).

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1 5. The Court approves the Attorneys' Fees Award to Plaintiff's Counsel in the amount
2 of \$111,150, which represents thirty-eight percent (38%) of the Gross Settlement Amount, the
3 Litigation Costs Award to Plaintiff's Counsel as reimbursement of documented actual litigation
4 costs and expenses in the sum of \$12,452.88, an Enhancement Payment to Plaintiff in the amount
5 of \$5,000, and the Settlement Administration Costs in a sum not to exceed \$5,000 to Simpluris,
6 Inc., the Settlement Administrator, all payable from the Gross Settlement Amount. The Court finds
7 that the amounts requested are fair and reasonable.

8 6. After deducting the approved payments described above, the balance of the
9 settlement amount will be approximately \$158,897.12 ("PAGA Penalties Fund"). Under the terms
10 of the Settlement, seventy-five (75%) of the PAGA Penalties Fund (\$119,172.84) will be paid to
11 the LWDA ("LWDA Payment"), and the remaining twenty-five percent (25%) of the PAGA
12 Penalties Fund (\$39,724.28) will be paid to the Settlement Group on a pro rata basis ("Net
13 Settlement Amount" and "Individual Settlement Awards").

14 7. The Court authorizes the Settlement Administrator to calculate and pay the
15 Individual Settlement Awards in accordance with the terms of the Settlement.

16 8. Within five (5) business days after the Effective Date of the Agreement, Defendants
17 shall deposit with the Settlement Administrator the entire \$292,500 of the Gross Settlement
18 Amount. Within fourteen (14) calendar days of the funding of the Settlement, the Settlement
19 Administrator will issue the payments required by section 7 of the Agreement to the appropriate
20 entities or persons. Individual Settlement Awards will be paid in the form of a check delivered to
21 each Settlement Group Member at the last known address on file with Defendant or as updated by
22 the Settlement Administrator. Each Individual Settlement Award will be accompanied by an
23 explanatory letter (attached as **Exhibit A** to the Agreement).

24 9. Individual Settlement Award checks will remain negotiable for one hundred twenty
25 (120) days after the date of their issuance (the "Check Stale Date"). Any Individual Settlement
26 Award checks that are not cashed, deposited, or negotiated after the Check Stale Date will be void
27 and the amount of those checks will be directed to the California State Controller for the deposit in
28 the Unclaimed Property Fund in the name of the employee.

10. Plaintiff's Counsel will not seek or be entitled to any attorneys' fees and/or expenses related to the claims encompassed by the Agreement, other than those set forth above.

11. Plaintiff's compliance with the notice procedures described in the Settlement Agreement shall constitute due and sufficient notice to the LWDA and shall be deemed to satisfy any requirement of due process. Nothing else shall be required of, or done by, the Parties, Plaintiff's Counsel, or Defendants' Counsel to provide notice of the Settlement.

12. Pursuant to Code of Civil Procedure section 664.6, the Court shall retain continuing jurisdiction over this representative PAGA action and the Parties to the fullest extent necessary to enforce and effectuate the terms and intent of the Agreement.

13. Nothing in this Order or the Settlement Agreement shall be construed as evidence of an admission or concession by any Party. The Settlement and this resulting Order simply represents a compromise of significantly disputed allegations.

14. Within ten (10) calendar days of entry of this Order, Plaintiff shall provide a copy of this Order to the LWDA, pursuant to Labor Code section 2699, subdivisions (1)(3) and (1)(4).

15. Plaintiff shall file a request for dismissal of the PAGA Action in its entirety as to Defendant with prejudice, within ten (10) court days of the Court entering this Order and serving it on the Parties.

IT IS SO ORDERED.

Dated: 4/11/22


HON. JUDGE KATHERINE BACAL
JUDGE OF THE SUPERIOR COURT

EXHIBIT 1

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

Subject to approval by the Superior Court of the State of California, County of San Diego (the "Superior Court"), this Confidential Settlement Agreement and Release ("Agreement") is made and entered into by and between Plaintiff Daniel Rodriguez ("Plaintiff"), on behalf of himself and as a representative aggrieved employee pursuant to the California Labor Code Private Attorneys General Act of 2004 ("PAGA"), California Labor Code section 2698 *et seq.*, and Defendants Means Engineering, Inc. ("Means Engineering") and David William Means ("Mr. Means") (collectively, "Defendants") to settle the civil action entitled *Rodriguez v. Means Engineering, Inc., et al.*, Case Number 37-2020-00024397-CU-OE-CTL (the "Lawsuit"), in the San Diego County Superior Court. Plaintiff and Defendants are collectively referred to herein as the "Parties," and each may be individually referred to herein as a "Party."

RECITALS

This Agreement is made in consideration of the following facts:

A. Plaintiff Daniel Rodriguez ("Plaintiff") is a former hourly-paid non-exempt employee of Means Engineering, Inc., who worked for Means Engineering as a welder from March 12, 2018, until or about February 3, 2020.

B. Plaintiff contends that he suffered one or more violations of the California Labor Code during his work at Means Engineering and that he is therefore an "aggrieved employee" under PAGA, Labor Code section 2698 *et seq.*, pursuant to which an "aggrieved employee" may, after exhausting administrative remedies with the California Labor and Workforce Development Agency (the "LWDA"), act as an agent of the State of California to bring an action to recover civil penalties from his or her former employer on behalf of himself or herself and other current or former employees for violations of the California Labor Code.

C. Pursuant to PAGA, on May 1, 2020, Plaintiff submitted a letter to the LWDA (the "PAGA Notice"), alleging that Defendants subjected Plaintiff and other current and former hourly-paid or non-exempt employees of Defendants within the State of California to certain violations of the California Labor Code, including sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, premised upon Defendants' alleged failure to compensate their hourly-paid or non-exempt employees for all hours worked, failure to pay all minimum and overtime wages, failure to provide, authorize, and/or permit meal and rest breaks (or pay premiums in lieu thereof), failure to keep and provide complete and accurate wage statements, failure to reimburse employees for all necessary business expenses and related costs, failure to timely pay all wages due during employment and upon termination, and failure to maintain accurate and complete payroll records, all of which are collectively referred to herein as the "PAGA Claims."

D. The Lawsuit includes the Complaint Plaintiff filed on July 15, 2020, and the First Amended Complaint Plaintiff filed on September 21, 2020, which sought to recover civil penalties and attorneys' fees based on the PAGA Claims.

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

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

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

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

SETTLEMENT TERMS

1. **Superior Court Approval of the Agreement.** In accordance with California Labor Code section 2699(1)(2), the Parties will present this Agreement to the Superior Court for its review and approval via stipulation or a noticed motion, which is set for hearing on March 18, 2022 in Department C-69 of the Superior Court.

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

3. **Effective Date.** This Agreement shall become fully effective the later of either: (i) the date the Superior Court approves the Settlement; or, (ii) if the LWDA files an objection, the date there is a final resolution of the objection or appeal.

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

by this Agreement is, or shall be construed as, an admission of wrongdoing or liability on the part of Defendants. Additionally, neither the execution of this Agreement, its creation, the payment of any sum or consideration hereunder, nor the performance of any obligation required by this Agreement is, or shall be construed as, an admission of the truth or accuracy of any allegation made by Plaintiff or Plaintiff's Counsel in the Lawsuit.

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

(a) **The Settlement Period.** This Agreement shall cover the period from May 1, 2019, through December 9, 2021, inclusive (the "Settlement Period").

(b) **The Settlement Group.** This Agreement shall cover all current and former hourly-paid employees of Defendants at any time from May 1, 2019, through December 9, 2021. Such employees shall be collectively referred to herein as the "Settlement Group." Each employee within the Settlement Group may be individually referred to herein as a "Settlement Group Member."

6. **Settlement Administration.**

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

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

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

7. **Settlement Payments.**

(a) **Gross Settlement Amount.** In consideration of, and subject to, the promises, terms, and conditions set forth in this Agreement – including the releases set forth in Section 9 of this Agreement – Defendants shall pay the maximum gross sum of Two Hundred Ninety Two Thousand Five Hundred Dollars (\$292,500.00) (the "Gross Settlement Amount"), in the manner and method set forth in this Agreement, to fully, finally, and completely settle the Lawsuit and the PAGA Claims alleged therein on behalf of the Settlement Group, including any and all associated claims for civil penalties, attorneys' fees, and litigation costs and expenses. Nothing in this Agreement, aside from the conditions set forth in Section 10, shall require Defendants to pay, or make Defendants liable for, more than the Gross Settlement Amount to fully, finally, and completely settle the Lawsuit and all claims alleged therein.

(b) **Allocation of Gross Settlement Amount.** The Gross Settlement Amount shall consist of the following categories of payments: the proposed award of attorneys' fees to Plaintiff's Counsel in the Lawsuit, the proposed award of litigation costs and expenses to Plaintiff's Counsel, the proposed payment of settlement administration costs to the Settlement Administrator, the proposed payments of civil penalties to the LWDA and the Settlement Group, and the proposed enhancement payment to Plaintiff in the amount of \$5,000.00 for his time and effort and for the risk he undertook in bringing and prosecuting the Lawsuit. Subject to approval by the Superior Court, these amounts shall be paid and allocated as set forth below in Sections 7(b)(i) through 7(b)(vi) of this Agreement.

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

(A) Plaintiff's attorneys in the Lawsuit – Douglas Han, Shunt Tatavos-Gharajeh, and Chancellor D. Nobles of Justice Law Corporation ("Plaintiff's Counsel") – may submit a combined application to the Superior Court for an award of attorneys' fees in an amount not to exceed the gross sum of One Hundred Eleven Thousand One Hundred Fifty Dollars (\$111,150.00) (38% of the Gross Settlement Amount) (the "Attorneys' Fees Award"). Defendants will not oppose or object to this application.

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

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

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

(ii) **Litigation Costs Award.**

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

(B) Any Litigation Costs Award approved by the Superior Court will be paid by Defendants out of the Gross Settlement Amount and shall constitute a full and complete satisfaction of all claims Plaintiff may have for litigation costs and expenses arising out of the Lawsuit through the Effective Date of this Agreement, including litigation costs and expenses not yet incurred.

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

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

(iii) **Settlement Administration Costs.**

(A) Subject to approval by the Superior Court, an amount currently estimated at Three Thousand Four Hundred Ninety-Nine Dollars (\$3,499.00) but not to exceed Five Thousand Dollars (\$5,000.00) will be paid to the Settlement Administrator out of the Gross Settlement Amount to cover the costs of the settlement administration process ("Administration Costs"). If the actual costs of the settlement administration process are less than the amount approved by the Superior Court, the balance will become part of the Net Settlement Amount.

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

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

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

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

(A) Plaintiff may submit an application to the Superior Court for an award of an enhancement payment in an amount not to exceed Five Thousand Dollars (\$5,000.00) for Plaintiff's time and effort and for the risk he undertook in bringing and prosecuting the Lawsuit ("Enhancement Payment"). Defendants shall not oppose any requests by Plaintiff for the Enhancement Payment, which will be paid out of the Gross Settlement Amount.

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

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

(v) **PAGA Penalties Fund.** The portion of the Gross Settlement Amount remaining after the Attorneys' Fees Award, Litigation Costs Award, Enhancement Payment, and Administration Costs are paid shall be designated the "PAGA Penalties Fund," from which payments deemed to constitute a full and complete satisfaction of any and all claims in the Lawsuit for civil penalties under PAGA shall be made. Based on the terms of the Agreement, the PAGA Penalties Fund is estimated to be One Hundred Fifty-Six Thousand Three Hundred Fifty Dollars (\$156,350.00). (This number may change if the Attorneys' Fees Award, Litigation Costs Award, Administration Costs and/or the Enhancement Payment are awarded in amounts other than those set forth above.) Subject to approval by the Superior Court, the PAGA Penalties Fund shall be allocated and paid as follows:

(A) **The LWDA Payment.** The gross sum of One Hundred Seventeen Thousand Two Hundred Sixty-Two Dollars and Fifty Cents (\$117,262.50), which represents seventy-five percent (75%) of the PAGA Penalties Fund, will be paid to the LWDA for enforcement of California's labor laws, including the administration of PAGA, and for education of employers and employees about their rights and responsibilities under the California Labor Code.

(B) **Individual Settlement Awards.** The gross sum of Thirty-Nine Thousand Eighty-Seven Dollars and Fifty Cents (\$39,087.50), which represents twenty-five percent (25%) of the PAGA Penalties Fund, shall be designated as the "Net Settlement Amount" and will be paid to the Settlement Group on a pro rata basis. Each Settlement Group Member will receive a pro-rated share of the Net Settlement Amount based on the total number of pay periods the Settlement Group Member worked as an hourly-paid employee of Defendants during the

Settlement Period. The maximum amount that each Settlement Group Member is entitled to receive ("Individual Settlement Award") is determined by multiplying the Net Settlement Amount by a ratio that is determined by dividing the total number of pay periods worked by the Settlement Group Member for Defendants in California during the Settlement Period by the total number of pay periods worked by all Settlement Group Members for Defendants in California during the Settlement Period, as expressed in the following formula:

(1) Settlement Group Member Payment = Net Settlement Amount, multiplied by the total number of pay periods worked by the Settlement Group Member, divided by the total number of pay periods worked by all Settlement Group Members.

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

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

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

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

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

(d) **Tax Indemnification.** Plaintiff, Plaintiff's Counsel, the Settlement Group, and applicable governmental authorities (including the LWDA) are solely responsible for all tax obligations, including all reporting and payment obligations, attributable to them that may arise as a consequence of this Agreement and the payment of the amounts set forth above in Section 7(b).

Neither Defendants nor Defendants' attorneys make any express or implied promise, representation, or warranty regarding the tax consequences or tax treatment under federal or state tax laws for any sum paid pursuant to this Agreement.

8. **Distribution of Settlement Payments.**

(a) **Funding of Settlement by Defendants.** Five (5) days after the Effective Date, but no earlier than April 1, 2022, Defendants shall: deposit Two Hundred Ninety-Two Thousand Five Hundred Dollars (\$292,500.00) with the Settlement Administrator.

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

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

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

(ii) Individual Settlement Award checks will remain negotiable for one hundred twenty (120) days after the date of their issuance (the "Check Stale Date"). Any Individual Settlement Award checks that are not cashed, deposited, or negotiated after the Check Stale Date will be void and the amount of those checks will be directed to the California State Controller for deposit in the Unclaimed Property Fund in the name of the employee.

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

9. **Releases.**

(a) **Release of PAGA Claims.** This Agreement and the judgment to be entered by the Superior Court following this Agreement, forever bar Plaintiff, the LWDA, and any other representative, proxy, or agent thereof, including, but not limited to, any and all allegedly aggrieved employees, from pursuing any action against Defendants under the California Labor

Code Private Attorneys General Act of 2004 ("PAGA"), Labor Code section 2698, *et seq.*, based on or arising out of violations of Labor Code sections alleged in the Lawsuit, and claims that could have been asserted in the Lawsuit based upon the facts alleged in Plaintiff's Complaint through the end of the Settlement Period ("Released Claims"). The Released Claims include, but are not limited to, claims under the PAGA for civil penalties for alleged violations of Labor Code §§ 201-204, 226, 226.7, 256, 510, 512, 516, 558, 1174, 1182.12, 1194, 1194.2, 1197, 1198; and claims for attorneys' fees, costs, or interest resulting therefrom.

10. **Escalator Clause.** This Agreement was reached based on a total number of 4,470 pay periods. If the number of pay periods as of the end date of the Settlement Period exceeds this figure by more than ten percent (10%), or 4,917 workweeks, Defendants shall increase the Gross Settlement Amount on a pro-rata basis according to the number of additional compensable pay periods over 4,917 pay periods.

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

12. **Acknowledgement of Fair and Reasonable Settlement.** The Parties have arrived at this Agreement after arm's-length negotiations between experienced counsel and facilitated by a full-day mediation with Lynn Frank, an experienced and well-respected mediator. Each of the Parties acknowledges, agrees, and believes that this Agreement is a fair, adequate, and reasonable settlement of the Lawsuit. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Agreement. Each Party to this Agreement agrees and represents that it has investigated the facts relevant to this Agreement, and all matters pertaining thereto, to the full extent that each Party deems necessary. The Parties agree that this Agreement reflects their good faith compromise of the claims raised in the Lawsuit based on their assessment of the mutual risks and costs of further litigation and the assessments of their respective counsel.

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

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

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

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

17. **Confidentiality.** Except as provided below to the extent necessary to effectuate the settlement or as required by court or legal process, the Parties and their respective Counsel will keep the facts relating to the existence of this Agreement, the negotiations leading to the execution of this Agreement, the terms of this Agreement, and the alleged factual basis for Plaintiff's claims, if any, confidential. Neither the Parties nor their respective Counsel shall issue a press release, hold a press conference, publish information about the settlement on any website or through any social media or otherwise publicize the settlement or communicate its terms in public or in private, unless ordered by the Court. However, for the limited purpose of establishing adequacy of counsel in future actions, Plaintiff's counsel may reference the Action only by name and case number in a declaration establishing adequacy as class or representative counsel.

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

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

20. **Defendants' Option to Revoke.** Should the settlement, or any terms therein, be modified, vacated, altered, or become otherwise subject to challenge by law, including, but not limited to, any law that became effective after the execution of this Agreement, so that this Agreement is not approved by the Superior Court in its entirety and therefore the intent of the Parties cannot be accomplished after jointly taken efforts to enforce it have been exhausted, Defendants shall have the option to revoke this Agreement at their sole discretion.

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

22. **Governing Law and Interpretation.** This Agreement shall be governed in accordance with the laws of the State of California. The Agreement shall be interpreted in

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

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

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

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

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

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

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

* * *

IN WITNESS WHEREOF, the Parties – Plaintiff Daniel Rodriguez and Defendants Means Engineering, Inc. and David Williams Means, and their counsel – knowingly and voluntarily accept the terms of this Settlement Agreement and Release by affixing their signatures below.

Date: 02/07/2022

PLAINTIFF DANIEL RODRIGUEZ

By: Daniel F. Rodriguez
Daniel Rodriguez

Date: 2/9/22

DEFENDANT MEANS ENGINEERING, INC.

By: David Means
Representative, on behalf of Defendant Means
Engineering, Inc.

Date: 2/7/22

DEFENDANT DAVID WILLIAM MEANS

By: David Means
David William Means

Date: February 7, 2022

JUSTICE LAW CORPORATION

By: D. Han
Douglas Han
Shunt Tatavos-Gharajeh
Chancellor D. Nobles
Attorneys for Plaintiff Daniel Rodriguez

Date: _____

LARSEN & NADDOUR, LLP

By: _____
Shawn M. Larsen
Attorney for Defendants Means Engineering, Inc. and
David William Means

By: _____
Daniel Rodriguez

Date: _____

DEFENDANT MEANS ENGINEERING, INC.

By: _____
Representative, on behalf of Defendant Means
Engineering, Inc.

Date: February 4, 2022

DEFENDANT DAVID WILLIAM MEANS

By: _____
David W
Means:A01097C00000161F82
7337600000E09
David William Means

Digitally signed by David W
Means:A01097C00000161F827337600000E09
DN: cn=US, o=U.S. Government, ou=ECA, ou=IdemTrust,
ou=MEANS ENGINEERING INC, cn=David W
Means:A01097C00000161F827337600000E09
Date: 2022.02.04 15:22:09 -08'00'

Date: _____

JUSTICE LAW CORPORATION

By: _____
Douglas Han
Shunt Tatavos-Gharajeh
Chancellor D. Nobles
Attorneys for Plaintiff Daniel Rodriguez

Date: 2/4/22

LARSEN & NADDOUR, LLP

By: _____
Shawn M. Larsen
Attorney for Defendants Means Engineering, Inc. and
David William Means

EXHIBIT A

TRANSMITTAL OF INDIVIDUAL SETTLEMENT AWARD

Rodriguez v. Means Engineering, Inc., et al.
Superior Court of the State of California, County of San Diego
Case No. 37-2020-00024397-CU-OE-CTL

Dear [Settlement Group Member Name]:

Enclosed with this letter is a settlement check being paid to you pursuant to the settlement of the lawsuit filed in the San Diego County Superior Court as *Rodriguez v. Means Engineering, Inc., et al.*, Case Number 37-2020-00024397-CU-OE-CTL (the "Lawsuit"). The purpose of this letter is to provide you with basic information about the Lawsuit, the reasons why you are receiving the enclosed settlement check, and the effect of the settlement on your legal rights.

I. The Lawsuit

The Lawsuit was filed on July 15, 2020, by Daniel Rodriguez ("Plaintiff"), a former employee of Mean Engineering, Inc. ("Means Engineering"), against Means Engineering and David William Means (collectively, "Defendants").

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

Defendants deny the allegations in the Lawsuit. Defendants contend that they followed lawful policies and practices and that Plaintiff and the other hourly-paid employees at issue in the Lawsuit were compensated for all hours worked, were paid all minimum and overtime wages, were provided compliant meal and rest breaks (or were paid premiums in lieu thereof), received compliant wage statements, were reimbursed for all necessary business expenses, were timely paid all wages due during employment and upon termination, and that Defendants properly kept accurate and complete payroll records.

The merits of the Lawsuit have not been determined. On Approval Date, however, the San Diego County Superior Court approved a settlement of the Lawsuit.

II. Why the Settlement Check Is Being Sent to You

The settlement approved by the San Diego County Superior Court on Approval Date involves a payment of civil penalties in the amount of \$292,500, and the reimbursement of attorneys' fees and litigation costs incurred by Plaintiff in furtherance of the Lawsuit. In accordance with PAGA, seventy-five percent (75%) of the civil penalties paid under the settlement are being paid to the California Labor and Workforce Development Agency. The remaining twenty-five percent (25%) of the civil penalties paid under the settlement are being distributed to the current and former hourly-paid employees of Defendants at any time from May 1, 2019, through December 9, 2021 (the "Settlement Group"). The enclosed settlement check is being sent to you because you have been identified as a Settlement Group Member.

III. How the Amount of Your Settlement Check Was Determined

The enclosed settlement check was calculated based on the number of pay periods during which you performed work for Defendants between May 1, 2019, through December 9, 2021 (the "Settlement Period") relative to the entire Settlement Group. Specifically, the enclosed settlement check was calculated as follows:

- Each seven-day period beginning on Sunday and ending on Saturday (i.e., a calendar week) during the Settlement Period was deemed a pay period.
- Each pay period during the Settlement Period during which a Settlement Group Member actually worked was counted toward the Settlement Group Member's total number of pay periods worked during the Settlement Period.
- The amount of your settlement check was calculated by dividing the total number of pay periods you worked for Defendants in California during the Settlement Period by the total number of pay periods worked by all Settlement Group Members for Defendants in California during the Settlement Period, and multiplying this by the twenty-five percent (25%) portion of the civil penalties payable to the Settlement Group under the settlement ("Net Settlement Amount").
- You should obtain tax advice from your own tax advisor with respect to any payment resulting from this Settlement.

Your settlement check will remain negotiable for 120 days. If you do not cash, deposit, or negotiate your settlement check within 120 days, the check will become void and the funds will be directed to the California State Controller for deposit in the Unclaimed Property Fund in your name. Cashing the settlement check releases claims only for civil penalties that could be collected by the State of California.

IV. Consequences of the Settlement

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

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

V. Taxation of Your Individual Settlement Award

You will be issued an IRS Form 1099 in connection with the funds paid to you via the enclosed check if your check exceeds \$600. However, you are solely responsible for all tax obligations attributable to you that may arise as a result of receiving the settlement check. Should you seek tax advice or have tax questions relating to your receipt of the enclosed check, you should direct them to your own personal tax advisor.

VI. Where to Get More Information

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

Dated: INSERT DATE

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PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is manderson@justicelawcorp.com

On April 6, 2022, I served the foregoing document described as

AMENDED ORDER AND JUDGMENT GRANTING APPROVAL OF PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE §§ 2698, ET SEQ.) SETTLEMENT AGREEMENT AND ATTORNEYS' FEES AWARD, LITIGATION COSTS AWARD, AND ENHANCEMENT PAYMENT

for the following case: **Rodriguez v. Means Engineering, Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM-785180-20**
Court Case No.: 37-2020-00024397-CU-OE-CTL
San Diego County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

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

Executed on April 6, 2022, at Pasadena, California.



Mariah Anderson