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

JAMES ABERNATHY, as an individual  
and on behalf of all others similarly  
situated,

Plaintiff,

vs.

DEACON CONSTRUCTION, LLC, an  
Oregon limited liability company; and  
DOES 1 through 50, inclusive,

Defendants.

Case No.: 20CV367327

[Assigned for all purposes to the Hon. Charles F.  
Adams, Dept. 7]

**DECLARATION OF KEVIN LEE  
REGARDING NOTICE AND SETTLEMENT  
ADMINISTRATION**

Date: January 16, 2025  
Time: 1:30 P.M.  
Dept.: 7

Action Filed: June 17, 2020

Trial Date: None Set

**DECLARATION OF KEVIN LEE**

I, Kevin Lee, declare as follows:

1. I am a Case Manager at Phoenix Settlement Administrators (“Phoenix”), the Court-appointed Class Action Settlement Administrator for *Abernathy v. Deacon Construction, LLC* (the “Action”). I have personal knowledge of the facts stated herein and, if called upon to testify, I could and would testify competently to such facts.

2. Phoenix was selected by the Parties to provide notice of the Settlement and perform class administration duties in this Action. Pursuant to the Joint Stipulation of Class Action and PAGA Settlement (“Settlement Agreement” or “Settlement”) for this matter, Phoenix was responsible for: (i) preparing, printing, and mailing the *Notice of Class Action Settlement* (“Notice”); (ii) responding to inquiries from Class Members; (iii) confirming the number of pay periods each Class Member worked during the period from April 6, 2016 to December 18, 2023 (“Class Period”), number of pay periods each Exempt Class Member worked during the period from April 6, 2019 to June 21, 2020 (“Exempt Class Period”), and the number of pay periods that each Aggrieved Employee worked during the time period from April 6, 2019 to December 18, 2023 (“PAGA Period”); (iv) determining the validity of letters indicating a request to be excluded from the Class Settlement (“Requests for Exclusion”), written objections to the Class Settlement (“Objections”), and/or dispute regarding the number of pay periods submitted by Class Members; (v) calculating the Net Settlement Amount and the Individual Settlement Shares to Class Members; (vi) calculating and issuing the Individual Settlement Payments and distributing them to Participating Class Members and Individual PAGA Payments to Aggrieved Employees; (vii) issuing the payment to Class Counsel for attorneys’ fees and costs, the Incentive Payment to Plaintiff, and the employer/employee payroll taxes to the appropriate taxing authorities; and (viii) such other tasks as set forth in the Settlement Agreement or as the Parties mutually agree or as the Court orders.

3. On August 16, 2024, Phoenix received a data file from Defense Counsel that contained names, last known mailing addresses, Social Security numbers, exempt or non-exempt status, and pay periods for each Class Member (“Class List”) during the Class Period. The final mailing list contained two hundred fifty-six (256) individuals identified as Class Members, of which

one hundred fifty-seven (157) were identified as Non-Exempt employees, and ninety-nine (99) were identified as Exempt employees.

4. On August 26, 2024, Phoenix conducted a National Change of Address (“NCOA”) search in an attempt to update the class list of addresses as accurately as possible. A search of this database provides updated addresses for any individual who has moved in the previous four (4) years and notified the U.S. Postal Service of their change of address.

5. On August 26, 2024, Phoenix mailed the Notice via U.S. first class mail, in English, to all two hundred fifty-six (256) Class Members on the Class List. A true and correct copy of the mailed Notice is attached hereto as **Exhibit A**.

6. As of the date of this declaration, twenty-two (22) Notices have been returned to Phoenix. None were returned with a forwarding address. For the twenty-two (22) Notices returned from the Post Office without a forwarding address, Phoenix attempted to locate a current mailing address using TransUnion TLOxp, one of the most comprehensive address databases available for skip tracing. Of the twenty-two (22) Notices that were skip traced, twenty-two (22) updated addresses were obtained and the Notice was promptly re-mailed to those Class Members via first class mail.

7. As of the date of this declaration, zero (0) Notices are considered undeliverable.

8. As of the date of this declaration, Phoenix has received zero (0) Requests for Exclusion from Class Members. The deadline to request exclusion from the Class Settlement was October 10, 2024.

9. As of the date of this declaration, Phoenix has received zero (0) Notices of Objection from Class Members. The deadline for objecting to the Class Settlement was October 10, 2024.

10. As of the date of this declaration, Phoenix has received zero (0) Pay period disputes from Class Members. The deadline for submitting a dispute was October 10, 2024.

11. There are two hundred fifty-six (256) Class Members who did not submit timely and valid Requests for Exclusion and are therefore deemed Participating Class Members, representing 100% of the Class. Non-Exempt Participating Class Members have worked a collective total of sixteen thousand five hundred forty-four (16,544) Pay Periods during the Class Period, and Exempt

1 Participating Class Members have worked four thousand five hundred fifty-five (4,554) Pay Periods  
2 during the Exempt Class Period. Each Non-Exempt pay period is valued at approximately \$18.57,  
3 and each Exempt pay period is valued at approximately \$3.72.

4 12. The Calculation of Gross Settlement Amount clause of the Agreement indicates that,  
5 if the total number of Non-Exempt pay periods worked during the Class Period exceeds 18,799 then  
6 the Gross Settlement Amount shall be proportionally increased by the same percentage increase  
7 over 18,799 pay periods, or, that should be the total number of Exempt pay periods worked during  
8 the Exempt Class Period exceeds 5,617, then the parties will meet and confer. Because neither pay  
9 period count exceeded these caps, the Gross Settlement Amount did not increase, nor did the parties  
10 need to confer on this topic.

11 13. The Net Settlement Amount of \$324,262.69 available to pay Participating Class  
12 Members and Participating Exempt Class Members was determined by subtracting the requested  
13 Class Counsel attorneys' fees (\$216,666.67), and Class Counsel costs (\$30,820.64), requested  
14 Incentive Payment to Plaintiff Abernathy (\$10,000.00), the PAGA Payment (\$60,000.00), and the  
15 requested Settlement Administration Costs (\$8,250.00) from the Gross Settlement Amount  
16 (\$650,000.00).

17 14. Of the Net Settlement Amount, 95%, or \$307,299.56 was allocated to payment to  
18 Non-Exempt Class Members. Based upon the calculations stipulated in the Settlement, the highest  
19 Non-Exempt Employee Individual Settlement Payment to be paid is approximately \$7,485.60, the  
20 lowest Non-Exempt Employee Individual Settlement Payment to be paid is approximately \$18.57,  
21 while the average Non-Exempt Employee Individual Settlement Payment to be paid is  
22 approximately \$1,957.32. Participating Class Members will be issued payment of their Individual  
23 Settlement Shares subject to reduction for the employee's share of taxes and withholdings with  
24 respect to the wages portion of the Individual Settlement Payment.

25 15. Of the Net Settlement Amount, 5%, or \$16,963.13 was allocated to payment to  
26 Exempt Class Members Based upon the calculations stipulated in the Settlement, the highest  
27 Exempt Employee Individual Settlement Payment to be paid is approximately \$238.39, the lowest  
28 Exempt Employee Individual Settlement Payment to be paid is approximately \$3.72, while the

1 average Exempt Employee Individual Settlement Payment to be paid is approximately \$171.34.  
2 Participating Class Members will be issued payment of their Individual Settlement Shares subject  
3 to reduction for the employee's share of taxes and withholdings with respect to the wages portion  
4 of the Individual Settlement Payment.

5 16. Additionally, \$60,000.00 of the Gross Settlement Amount has been allocated toward  
6 penalties under the Private Attorneys General Act ("PAGA Payment"), of which 75%, or  
7 \$45,000.00, shall be paid to the Labor and Workforce Development Agency ("LWDA"), and 25%,  
8 or \$15,000.00, of which shall be paid to all current and former individuals who are or were employed  
9 by Defendant during the PAGA Period. There are one hundred ninety-two (192) Aggrieved  
10 Employees who worked a total of thirteen thousand five hundred fifty-seven (13,557) pay periods  
11 during the PAGA Period. Of the Aggrieved Employees, there are ninety-three (93) Non-Exempt  
12 Aggrieved Employees, and ninety-nine (99) Exempt Aggrieved Employees. The highest Non-  
13 Exempt Individual PAGA Payment to be paid is approximately \$390.95, and the average Non-  
14 Exempt Individual PAGA Payment to be paid is approximately \$153.23, while the highest Exempt  
15 Individual PAGA Payment is \$10.54, and the average Exempt Individual PAGA Payment is \$7.58.

16 17. Pursuant to the Settlement, Defendant has agreed to fund the employer-side taxes  
17 due separately and apart from the Gross Settlement Amount.

18 18. Phoenix's costs associated with the administration of this matter are \$8,250.00. This  
19 includes all costs incurred to date, as well as estimated costs involved in completing the settlement  
20 distribution. A true and correct copy of the invoice from Phoenix is attached hereto as **Exhibit B**.

21 I declare under penalty of perjury of the laws of the State of California that the foregoing is  
22 true and correct.  
23

24 Executed on January 9, 2025, at Orange, California.

25  
26   
27 \_\_\_\_\_  
28 KEVIN LEE

## **Exhibit A**

**James Abernathy v. Deacon Construction, LLC**  
**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA**  
**(CASE NO. 20CV367327)**

**NOTICE OF CLASS ACTION SETTLEMENT (“NOTICE”)**

IF YOU ARE A:

- CURRENT OR FORMER NON-EXEMPT EMPLOYEE OF DEACON CONSTRUCTION, LLC (“DEACON CONSTRUCTION”) WHO WAS EMPLOYED IN THE STATE OF CALIFORNIA AT ANY TIME FROM APRIL 6, 2016, THROUGH DECEMBER 18, 2023, AND YOU WORKED MORE THAN FIVE HOURS DURING A SHIFT (the “Class”); or
- CURRENT OR FORMER EXEMPT EMPLOYEE OF DEACON CONSTRUCTION WHO WAS EMPLOYED IN THE STATE OF CALIFORNIA AT ANY TIME BETWEEN APRIL 6, 2019, THROUGH JUNE 21, 2020 (the “Exempt Class”);

YOU MAY BE ELIGIBLE TO RECEIVE MONEY AS PART OF A SETTLEMENT

*The Santa Clara County Superior Court (“Court”) authorized this Notice to be sent by Phoenix Settlement Administrators (“Settlement Administrator”). This is not an advertisement. This is not a solicitation from a lawyer.*

PSA ID «PSA\_ID»

ATTN: «First\_Name» «Last\_Name»

«Address\_1»

«City», «State» «ZIP\_Code»

**YOU ARE ESTIMATED TO RECEIVE**

**APPROXIMATELY «Est\_Set\_Amt» THROUGH THIS  
CLASS ACTION SETTLEMENT**

**YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT**

|                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|----------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>You Can DO<br/>NOTHING</b>                                                                      | <b>You will receive a payment from the settlement.</b> If you do nothing, you continue your participation in this lawsuit, and you will be impacted by the outcome of this case. You will receive a settlement payment; however, you will <b>lose</b> any rights to sue DEACON CONSTRUCTION separately for the same legal claims made in the lawsuit. The estimated amount of your settlement payment is shown above. To receive your settlement payment, all you need to do is keep the Settlement Administrator informed of your current mailing address. Once the Court grants final approval of the settlement, the Settlement Administrator will mail your check to the address on file for you. |
| <b>You Can ASK TO BE<br/>EXCLUDED FROM<br/>THE SETTLEMENT<br/>(Deadline: October 10,<br/>2024)</b> | If you ask to be excluded from the settlement, you will get no payment from the settlement, aside from a portion of the “PAGA Payment” (described below), if applicable, but you will keep any rights to sue DEACON CONSTRUCTION separately for the same legal claims made in this lawsuit other than penalty claims premised on California’s Private Attorney General Act, Labor Code § 2698, <i>et seq.</i>                                                                                                                                                                                                                                                                                         |
| <b>You Can OBJECT TO<br/>THE SETTLEMENT<br/>(Deadline: October 10,<br/>2024)</b>                   | If you do not like the settlement, you can send a written objection to the Settlement Administrator by the deadline or personally appear at the final approval hearing. If your objection is overruled by the Court, you will still be bound by the terms of the settlement and will receive a settlement payment.<br><b>Important: If you object to the settlement, you cannot also ask to be excluded.</b>                                                                                                                                                                                                                                                                                          |

**THESE RIGHTS AND OPTIONS—AND THE DEADLINES TO EXERCISE THEM—ARE EXPLAINED IN THIS NOTICE.**

The Court is in charge of this lawsuit and still has to decide whether to approve the settlement. Payments will be made if the Court approves the settlement and after appeals, if any, are resolved. **Please be patient.**

**1. Why Should You Read this Notice?**

You should read this Notice because you may be entitled to money from a class action settlement.

**2. What is this Lawsuit About?**

In the lawsuit, the Plaintiff alleges that DEACON CONSTRUCTION failed to provide timely off-duty meal periods, reimburse employees for the costs of using personal cell phones for work purposes, maintain accurate payroll records, and identify the pay period start date and legal employer name on wage statements issued to employees, in violation of California Labor Code sections 226, 226.7, 512, 1174, 1198, 1199, 2802, and 2698, *et seq.*, and engaged in unfair business practices in violation of Business and Professions Code section 17200, *et seq.* DEACON CONSTRUCTION denies the allegations in the lawsuit and denies it has engaged in any wrongdoing. DEACON CONSTRUCTION asserts that it complied with all legal requirements, but is resolving this action in order to avoid the risk and costs of further legal proceedings.

### 3. Why is this a Class Action?

This lawsuit is a class action. In a class action, one or more persons, called a class representative (in this case, James Abernathy), sues on behalf of people who allegedly have similar claims. All these people are a class or class members. One case resolves the issues for all class members, except for those who exclude themselves. The Santa Clara County Superior Court is in charge of the case. The lawsuit is known as *James Abernathy v. Deacon Construction, LLC*, Case No. 20CV367327.

### 4. Why is There a Settlement?

The Court did not decide in favor of Plaintiff or DEACON CONSTRUCTION. Plaintiff thinks he could have won at trial. DEACON CONSTRUCTION thinks that it would have won at trial. But there was no trial. Instead, both parties agreed to a settlement. That way, they avoid the risks and cost of litigation, and the individuals potentially affected will get compensation. The class representative and the attorneys think the settlement is best for Class Members.

### 5. How Do I Know If I Am Part of the Settlement?

The Court has decided that the following individuals are Class Members: all current and former non-exempt employees of Defendants who were employed in the State of California at any time during the Class Period and who worked more than five hours in any shift (the “Class”); and all current and former exempt employees of Defendants who were employed in the State of California at any time between April 6, 2019, through June 21, 2020 (the “Exempt Class”). The Class Period is the period starting on April 6, 2016, and ending December 18, 2023. The Exempt Class Period is the period starting on April 6, 2019, and ending on June 21, 2020. If you received this Notice you are a member of the Class or Exempt Class.

### 6. What Does the Settlement Provide?

The proposed settlement provides for a cash payment by DEACON CONSTRUCTION in the amount of \$650,000.00 to fully and finally resolve all claims in the lawsuit (referred to as the “Gross Settlement Amount”). The total amount to be distributed to class members who can be located, and who do not exclude themselves from the settlement, will be the Gross Settlement Amount minus the following (the “Net Settlement Amount”): (a) settlement administration costs not to exceed \$8,250.00; (b) class representative incentive payment to Plaintiff not to exceed \$10,000.00 for his work and efforts in prosecuting this cases, and for undertaking the risks of costs (in the event the outcome was not favorable); (c) Class Counsel’s attorneys’ fees not to exceed \$216,666.67; (d) Class Counsel’s actual litigation costs and expenses as supported by declaration not to exceed \$35,000.00; and (e) PAGA Payment of \$60,000.00 for alleged civil penalties owed pursuant to the California Private Attorneys General Act. **Class Counsel’s attorneys’ fees and costs remain subject to Court approval.**

By statute, the California Labor and Workforce Development Agency (“LWDA”) will receive seventy-five percent (75%) of the PAGA Payment – i.e., the amount of \$45,000.00. PAGA Members and Exempt PAGA Members will receive an equal share of the remaining twenty-five percent (25%) of the PAGA Payment – i.e., the amount of \$15,000.00.

PAGA Members are “all current and former non-exempt employees of Defendants who were employed in the State of California at any time during the PAGA Period and who worked more than five hours in any shift PAGA Period.” The PAGA Period is defined as the period starting on April 6, 2019, ending December 18, 2023.

Exempt PAGA Members are “all current and former exempt employees of Defendants who were employed in the State of California at any time between April 6, 2019, through June 21, 2020.”

No portion of the Net Settlement Amount will be returned to DEACON CONSTRUCTION under any circumstances. Instead any unclaimed portions will be transferred the California State Controller’s Unclaimed Property Fund under the unclaimed property laws in the name of the individuals who did not cash their checks.

### 7. How Much Will My Payment Be?

Your estimated share of the settlement is shown on the first page of this notice. The amount you are to receive is based on the number of applicable workweeks you worked during the period of April 6, 2016, through December 18, 2023, if you are part of the Class, and the period of April 6, 2019, through June 21, 2020, if you a part of the Exempt Class. If you are also a PAGA Member or Exempt PAGA Member, your share of the PAGA Payment is included in the amount shown.

Based upon DEACON CONSTRUCTION’s records, you are a member of the «User\_3». Based thereon, the number of workweek you worked during the relevant time period is determined to be «Total\_Weeks». If this information appears correct, you do not need to do anything further to receive your settlement payment. If you disagree with the number of workweeks, see below (Question 9).

### 8. How Do I Receive a Payment?

To qualify for payment, you need not do anything. The Settlement Administrator will mail you a check after the Court enters a judgment based on this settlement, but possibly later depending on whether there is any appeal of the judgment entered by the Court.

### 9. What If I Believe the Information is Inaccurate?

If you believe the number of workweeks you worked is inaccurate, you may dispute it by sending a letter to Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863 no later than **October 10, 2024**. Be sure to include your name, address, telephone number, last four digits of your Social Security Number, and a statement as to what and why you are disputing. Also attach a copy of any documentation you want to include to support your dispute.

### 10. What Am I Giving Up to Receive a Settlement Payment?

Unless you request to be excluded from the settlement, you remain a Class Member, and that means you cannot sue, continue to sue, or be part of any other lawsuit against DEACON CONSTRUCTION or the other Released Parties for any legal claims based on the subject matter of this settlement. Specifically, you will be giving up or “releasing” the claims summarized below, as fully defined within the Parties’ Settlement Agreement.

#### Class

- All claims pled or which could have reasonably been pled based on the factual allegations contained in the operative complaint or any amendments thereto, including claims for: (i) violation of Labor Code §§ 226.7 and 512; (ii) violation of Labor Code §§ 201, 202, 203; (iii) violation of Labor Code § 226; (iv) violation of Labor Code § 2802; and (vi) violation of Business & Professions Code §§ 17200, which are premised on the violations described above, that accrued during the period of April 6, 2016, through December 18, 2023 (the “Released Claims”).

#### Exempt Class

- All claims pled or which could have reasonably been pled based on the factual allegations contained in the operative complaint or any amendments thereto, including claims for: (i) violation of Labor Code § 226, that accrued during the period of April 6, 2019, through June 21, 2020 (the “Exempt Released Claims”).

In light of the binding nature of a PAGA judgment on non-party employees, if you are a PAGA Member or an Exempt PAGA Member, you will receive your portion of the PAGA Payment and be bound by the PAGA Released Claims and/or Exempt PAGA Released Claims, as applicable, regardless of whether you submit a timely Request for Exclusion.

#### PAGA Members

- All claims pled or which could have reasonably been pled based on the factual allegations contained in the operative complaint or any amendments thereto, for civil penalties under the PAGA including claims premised on alleged violations of Labor Code §§ 201, 202, 203, 226.7, 512, 1174, 1198, 1199, and 2802, that accrued during the period of April 6, 2019, through December 18, 2023 (the “PAGA Released Claims”).

#### Exempt PAGA Members

- All claims pled or which could have reasonably been pled based on the factual allegations contained in the operative complaint or any amendments thereto, for civil penalties under the PAGA including claims premised on alleged violations of Labor Code §§ 226, 226.3, that accrued during the period of April 6, 2019, through June 21, 2020 (the “Exempt PAGA Released Claims”).

### 11. How Do I Exclude Myself from the Settlement?

To exclude yourself from the settlement (also referred to as “opt-out”), you must mail a letter to the Settlement Administrator saying that you want to be excluded from the *James Abernathy v. Deacon Construction, LLC* settlement.

Be sure to include your name, address, telephone number, last four digits of your Social Security Number, and your signature. You must mail your exclusion letter postmarked no later than **October 10, 2024**, to the Settlement Administrator at Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863.

If you submit a timely and valid “opt-out” request, you will no longer be a member of the Class or Exempt Class and you will not receive any money from the settlement (except for the portion of the PAGA Payment, if applicable), or be able to object to the settlement, but you will not be legally bound by anything that happens in this lawsuit. You will keep any rights to sue (or continue to sue) DEACON CONSTRUCTION in the future for the same legal claims made in this lawsuit, at your own expense, with the exception of the PAGA Released Claims and Exempt PAGA Released Claims.

### 12. How Do I Tell the Court that I Don’t Believe that the Settlement is Fair?

As a Class Member, you can object to the settlement if you believe that the settlement is unfair or inadequate. You can give reasons why you think the Court should not approve the settlement. If you object and follow the procedures set out in this section, your objection will be considered.

If you decide to object to the proposed settlement, you may do so in writing to the Settlement Administrator. Upon the submission of your objection, you may then also appear at the final approval hearing for the settlement, either in person or through an attorney at your own expense. (See Question 14.) Regardless of whether you submitted a timely written objection to the Settlement Administrator, you may appear in person at the final approval hearing in order to object.

All written objections should be signed by you and should include: (1) your full name, address, and telephone number; (2) a written statement of the basis for your objection; and (3) any copies of papers, briefs, or documents upon which the objection is based. You must mail your objection postmarked no later than **October 10, 2024**, to the Settlement Administrator at Settlement Administrator at Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863.

### 13. What is the Difference Between Objecting and Excluding?

Objecting is simply telling the Court that you don’t like something about the settlement. You can object only if you stay in the Class or Exempt Class. Excluding yourself, on the other hand, is telling the Court that you don’t want to be part of the Class or Exempt Class. If you exclude yourself, you have no basis to object because the case no longer affects you. However, if you file an objection, you will still receive settlement benefits under the settlement if it is approved by the Court. If the Court approves the settlement and you are a PAGA Member or Exempt PAGA Member, you will receive your portion of the PAGA Payment regardless of whether you object or exclude yourself.

**14. Do I Have a Lawyer in this Case?**

The Court decided that the law firm of Diversity Law Group, P.C., which represents the Plaintiff, is also qualified to represent you and all Class Members. You will not be charged for these lawyers. This law firm is referred to as “Class Counsel.” If you want to be represented by your own lawyer, you may hire one at your own expense.

**15. How Will the Attorneys for the Class and the Class Representative be Paid?**

The attorneys for the Plaintiff and Class Members will be paid from the Gross Settlement Amount. Class Counsel will ask for up to \$216,666.67 in attorneys’ fees and for actual litigation costs incurred up to a maximum of \$35,000.00, the actual amount of which will be determined by the Court at the final approval hearing (see Question 16 below for details as to when this hearing will take place). Class Members (like you) do not have to pay the fees and costs of Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

If approved by the Court, an incentive payment for the Plaintiff of an amount up to \$10,000.00, will be paid from the Gross Settlement Amount for his work and efforts in prosecuting this case, and for undertaking the risks of costs (in the event the outcome of this lawsuit was not favorable).

**16. Notice of Hearing on Final Approval and Objections to Class Action Settlement.**

The Court has preliminarily approved the settlement and will hold a final approval hearing to decide whether to give final approval to the settlement. This hearing will be held before the Honorable Charles F. Adams on January 16, 2025, at 1:30 p.m., in Department 7 of the Superior Court of California for the County of Santa Clara, located at 191 N. First Street, San Jose, CA 95113, to determine whether the proposed settlement is fair, reasonable, and adequate, and whether it should be finally approved by the Court. If there are objections, the Court will consider them. After the hearing, the Court will decide whether to approve the settlement. We do not know how long this decision will take. The final approval hearing may be continued without further notice. The Court may adjourn or continue the hearing from time to time, without further notification, as the Court may direct.

Although Class Members may appear in person, the Judge overseeing this case encourages remote appearances. (As of August 15, 2022, the Court’s remote platform is Microsoft Teams.) Class Members who wish to appear remotely should contact Class Counsel at least three days before the hearing if possible. Instructions for appearing remotely are provided at

[https://www.scscourt.org/general\\_info/ra\\_teams/video\\_hearings\\_teams.shtml](https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml)

and should be reviewed in advance. Class Members may appear remotely using the Microsoft Teams link for Department 7 (Afternoon Session) or by calling the toll-free conference call number for Department 7.

Once final approval is granted by the Court, the Court will enter a Joint Stipulation of Class Action and PAGA Settlement, and all Class Members who have not requested exclusion will be deemed to have waived the Released Claims and/or Exempt Released Claims set forth above.

**17. How Do I Receive 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 contacting Class Counsel.

**18. What is the Contact Information for Class Counsel?**

The addresses for Class Counsel are as follows:

DIVERSITY LAW GROUP, P.C.  
Larry W. Lee  
Max W. Gavron  
515 S. Figueroa Street, Suite 1250  
Los Angeles, CA 90071  
Telephone: (213) 488-6555  
Fax: (213) 488-6554

**WHAT IF I HAVE QUESTIONS?**

**If you have any questions about the settlement, you may contact the Settlement Administrator:**

*James Abernathy v. Deacon Construction, LLC*  
c/o Phoenix Settlement Administrators  
P.O. Box 7208  
Orange, CA 92863  
Telephone: (800) 523-5773

PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE COURT CLERK FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS.

PLEASE DO NOT CONTACT DEACON CONSTRUCTION, ITS MANAGERS, OR ATTORNEYS FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS.

## **Exhibit B**



# PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

## CASE ASSUMPTIONS

|                       |            |
|-----------------------|------------|
| Class Members         | 256        |
| Opt Out Rate          | 0%         |
| Opt Outs Received     | 0          |
| Total Class Claimants | 256        |
| Subtotal Admin Only   | \$8,275.38 |

|                    |                   |
|--------------------|-------------------|
| <b>TOTAL COSTS</b> | <b>\$8,250.00</b> |
|--------------------|-------------------|

|                  |
|------------------|
| <b>Fixed Fee</b> |
|------------------|

January 9, 2025

Case: Abernathy v. Deacon Construction, LLC

### Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

| Administrative Tasks:        | Rate     | Hours/Units  | Line Item Estimate |
|------------------------------|----------|--------------|--------------------|
| Programming Manager          | \$100.00 | 3            | \$300.00           |
| Programming Database & Setup | \$100.00 | 3            | \$300.00           |
| Toll Free Setup*             | \$140.00 | 1            | \$140.00           |
| Call Center & Long Distance  | \$2.00   | 26           | \$51.20            |
| NCOA (USPS)                  | \$150.00 | 1            | \$150.00           |
|                              |          | <b>Total</b> | <b>\$941.20</b>    |

### Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage /Translation

| Project Action                 | Rate     | Hours/Units  | Line Item Estimate |
|--------------------------------|----------|--------------|--------------------|
| Notice Packet Formatting       | \$105.00 | 3            | \$315.00           |
| Data Merge & Duplication Scrub | \$0.15   | 256          | \$38.40            |
| Notice Packet & Opt-Out Form   | \$1.50   | 256          | \$384.00           |
| Postage (up to 1 oz.)          | \$0.67   | 256          | \$171.52           |
|                                |          | <b>Total</b> | <b>\$908.92</b>    |

### Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

| Project Action:             | Rate    | Hours/Units  | Line Item Estimate |
|-----------------------------|---------|--------------|--------------------|
| Case Associate              | \$55.00 | 3            | \$165.00           |
| Skip Tracing Undeliverables | \$1.00  | 22           | \$22.00            |
| Remail Notice Packets       | \$1.50  | 22           | \$33.00            |
| Postage                     | \$0.67  | 22           | \$14.74            |
| Programing Undeliverables   | \$50.00 | 1            | \$50.00            |
|                             |         | <b>Total</b> | <b>\$284.74</b>    |

### Database Programming / Processing Opt-Outs, Deficiencies or Disputes

| Project Action:                     | Rate     | Hours/Units  | Line Item Estimate |
|-------------------------------------|----------|--------------|--------------------|
| Programming Claims Database         | \$100.00 | 2            | \$200.00           |
| Non Opt-Out Processing              | \$200.00 | 2            | \$400.00           |
| Case Associate                      | \$55.00  | 3            | \$165.00           |
| Opt-Outs/Deficiency/Dispute Letters | \$5.00   | 0            | \$0.00             |
| Case Manager                        | \$85.00  | 3            | \$255.00           |
|                                     |          | <b>Total</b> | <b>\$1,020.00</b>  |

| Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks |          |             |                    |
|--------------------------------------------------------------------------|----------|-------------|--------------------|
| Project Action:                                                          | Rate     | Hours/Units | Line Item Estimate |
| Programming Calculations                                                 | \$100.00 | 3           | \$300.00           |
| Disbursement Review                                                      | \$100.00 | 3           | \$300.00           |
| Programming Manager                                                      | \$95.00  | 2           | \$190.00           |
| QSF Fees, Bank Account & EIN                                             | \$75.00  | 3           | \$225.00           |
| Check Run Setup & Printing                                               | \$100.00 | 3           | \$300.00           |
| Mail Class Checks, W2 and 1099 *                                         | \$1.50   | 256         | \$384.00           |
| Estimated Postage Checks, W2 and 1099                                    | \$0.67   | 256         | \$171.52           |
| Total                                                                    |          |             | \$1,870.52         |

\* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing

| Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations |            |             |                    |
|----------------------------------------------------------------------------------------------|------------|-------------|--------------------|
| Project Action:                                                                              | Rate       | Hours/Units | Line Item Estimate |
| Case Supervisor                                                                              | \$100.00   | 3           | \$300.00           |
| Remail Undeliverable Checks<br>(Postage Included)                                            | \$1.50     | 40          | \$60.00            |
| Case Associate                                                                               | \$55.00    | 2           | \$110.00           |
| Reconcile Uncashed Checks                                                                    | \$85.00    | 3           | \$255.00           |
| Conclusion Reports                                                                           | \$115.00   | 2           | \$230.00           |
| Case Manager Conclusion                                                                      | \$85.00    | 2           | \$170.00           |
| Final Reporting & Declarations                                                               | \$115.00   | 1           | \$115.00           |
| Uncashed Check Notice Postcard<br>(Postage Included)                                         | \$1.50     | 40          | \$60.00            |
| Uncashed Check QSF Tax Filing                                                                | \$150.00   | 3           | \$450.00           |
| IRS & QSF Annual Tax Reporting *<br>(State Tax Reporting Included)                           | \$1,500.00 | 1           | \$1,500.00         |
| Total                                                                                        |            |             | \$3,250.00         |

\* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

**Total: \$8,275.38**