

## JOINT STIPULATION AND SETTLEMENT AGREEMENT

Subject to final approval by the Court, this Settlement Agreement is between Plaintiff Gina Massenzo (“Plaintiff”), on behalf of the Class (as defined below) and Defendant Bachem Americas, Inc. (“Defendant”). Plaintiff and Defendant collectively are referred to in this Agreement as the “Parties.”

### I. DEFINITIONS

In addition to the other terms defined in this Agreement, the terms below have the following meaning:

- A. **Administration Costs**: The costs incurred by the Settlement Administrator to administer this Settlement, which is currently estimated at \$6,666, shall not exceed \$8,000 and which shall be paid from the Qualified Settlement Fund.
- B. **Agreement, Settlement Agreement, Joint Stipulation, or Settlement**: The settlement agreement reflected in this document, titled “Joint Stipulation and Settlement Agreement.”
- C. **Attorney Fee Award**: The amount, not to exceed 35% of the Gross Settlement Amount or \$280,000, finally approved by the Court and awarded to Class Counsel. The Attorney Fee Award shall be paid from the Qualified Settlement Fund and will not be opposed by Defendant.
- D. **Class**: All non-exempt employees employed by Defendant within the State of California during the Class Period.
- E. **Class Action**: The putative class action lawsuit originally filed by Plaintiff Gina Massenzo on August 20, 2020 and amended on June 29, 2021, entitled *Massenzo v. Bachem Americas, Inc.* Case No. 20TRCV00591 in the State of California, Los Angeles County Superior Court.
- F. **Class Counsel**: Douglas Han, Shunt Tatavos-Gharajeh, and Talia Lux of Justice Law Corporation.
- G. **Class Data**: The Class Data means information regarding Class Members that Defendant will compile from its available, existing, electronic records and provide to the Settlement Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall include: (i) each Class Member’s full name; (ii) each Class Member’s last-known address; (iii) each Class Member’s Social Security and Employee ID number; (iv) the Class Member’s relevant dates of employment, and (v) the number of work weeks worked by each Class Member during the Class Period and PAGA Period.

- H. **Class Member**: Each person eligible to participate in this Settlement who is a member of the Class as defined above.
- I. **Class Notice**: The Notice of Class Action Settlement, substantially similar to the form attached hereto as **Exhibit A**, subject to Court approval.
- J. **Class Period**: The time period from June 9, 2017, to the date the Court issues an order granting preliminary approval of the Settlement, or September 6, 2021, whichever occurs earlier.
- K. **Class Representative or Plaintiff**: Gina Massenzo.
- L. **Class Representative Enhancement Payment**: The amount the Court awards to Plaintiff Gina Massenzo for her service as a Class Representative, which will not exceed \$10,000. This payment shall be paid from the Qualified Settlement Fund and will not be opposed by Defendant. This enhancement is subject to approval of the Court.
- M. **Complaint**: The class action complaint filed by Plaintiff which includes the original complaint filed on August 20, 2020 and the first Amended Complaint filed on or about June 2021.
- N. **Cost Award**: The amount that the Court awards Class Counsel for payment of actual litigation costs subject to proof, which shall not exceed \$20,000. The Cost Award will be paid from the Qualified Settlement Fund and will not be opposed by Defendant.
- O. **Counsel for Defendant**: Attorneys John B. Golper and Jeffrey P. Fuchsman of Ballard Rosenberg Golper & Savitt LLP
- P. **Court**: The State of California, Los Angeles County Superior Court.
- Q. **Defendant**: Bachem Americas, Inc.
- R. **Effective Final Settlement Date**: The effective date of this Settlement will be when the Final Approval of the Settlement can no longer be appealed or, if there are no objectors and no Plaintiffs in intervention at the time the Court grants Final Approval of the Settlement, the date the court enters judgment granting Final Approval of the Settlement.
- S. **Eligible Aggrieved Employees**: The aggrieved employees eligible to recover the PAGA payment shall consist of all non-exempt employees who worked for Defendant within the State of California during the PAGA Period.

- T. **Exclusion Form**: The Election Not To Participate or Opt-out Form, substantially similar to the form attached hereto as **Exhibit B**, subject to Court approval.
- U. **Judgment or Final Approval**: The final order entered by the Court finally approving this Agreement.
- V. **Gross Settlement Amount or GSA**: The total value of the Settlement is a non-reversionary Eight Hundred Thousand and Zero Cents (\$800,000). This is the gross amount Defendant can be required to pay under this Settlement Agreement, which includes: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) Attorney Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (3) the Class Representative's Enhancement payment paid to the Class Representative, as approved by the Court; (4) Administration Costs, as approved by the Court; and (5) the PAGA Payment to the LWDA and to Eligible Aggrieved Employees, as approved by the Court. Defendant's portion of payroll taxes as the Class Members' current or former employer is not included in the GSA and will be a separate obligation of Defendant. No portion of the Gross Settlement Amount will revert to Defendant for any reason.
- W. **Individual PAGA Payment(s)**: The amount payable to each Eligible Aggrieved Employee from the portion of the PAGA Payment allocated to the Eligible Aggrieved Employee under the terms of this Settlement Agreement. Eligible Aggrieved Employees are not required to submit a claim form to receive their Individual PAGA Payment.
- X. **Individual Settlement Share(s)**: The amount payable to each Participating Class Member under the terms of this Settlement Agreement. Class Members are not required to submit a claim form to receive their Individual Settlement Shares pursuant to this Agreement.
- Y. **LWDA**: California Labor and Workforce Development Agency.
- Z. **Net Settlement Amount or NSA**: The total amount of money available from the GSA for distribution to Participating Class Members, which is the GSA less the Attorney Fee Award, Cost Award, Class Representative Enhancements, the PAGA Payment, and Administration Costs.
- AA. **PAGA**: The California Labor Code Private Attorneys General Act of 2004 (Cal. Labor Code §§ 2698 *et seq.*).
- BB. **PAGA Notice**: The PAGA Notice refers to the pre-filing notice of Labor Code violations served by Plaintiff on the LWDA on June 9, 2020.

- CC. PAGA Payment:** The PAGA Payment consists of \$50,000 of the Gross Settlement Amount allocated to satisfy the PAGA penalties claim as alleged in the Class Action. Seventy-five percent (75%) of the PAGA Payment (\$37,500) shall be paid to the LWDA, and twenty-five percent (25%) (\$12,500) of the PAGA Payment shall be distributed to Eligible Aggrieved Employees, on a pro rata basis, as set forth below.
- DD. PAGA Period:** The period between June 9, 2019 through the date the Court signs an order granting preliminary approval of this Settlement, or September 6, 2021, whichever occurs earlier.
- EE. PAGA Released Claims:** PAGA Released Claims mean all allegations and claims for civil penalties pursuant to PAGA based on any and all underlying Labor Code violations alleged or reasonably could have been alleged based on the facts and legal theories contained in the operative Complaint and the PAGA Notice served on the LWDA that arose during the PAGA Period, which includes Defendant's alleged failure to pay overtime, failure to provide employees with meal periods, failure to provide employees with rest periods, failure to pay minimum wage, failure to pay wages timely at termination, failure to provide compliant wage statements, failure to reimburse employees for business expenses, and alleged violations of California Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226, 226.3, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 2800 and 2802.
- FF. Participating Class Members:** All Class Members who do not submit a valid and timely request to exclude themselves from the class action Settlement.
- GG. Parties:** Plaintiff Gina Massenzo, as an individual and as Class Representative, and Defendant Bachem Americas, Inc.
- HH. Preliminary Approval or Preliminary Approval Order:** The Court's order preliminarily approving the proposed Settlement.
- II. Qualified Settlement Fund or QSF:** A fund within the meaning of Treasury Regulation § 1.46B-1, 26 C.F.R. § 1.468B-1 et seq., that is established by the Settlement Administrator for the benefit of Participating Class Members, Plaintiff and Class Counsel.
- JJ. Released Claims:** The released claims means all claims that were or could have been asserted based on the facts alleged in the First Amended Complaint by Plaintiff and Class Members, including, but not limited to, claims based on Defendant's alleged: (1) failure to provide employees with meal and rest periods; (2) failure to pay minimum wages and overtime; (3) failure to provide accurate wage statements; (4) failure to pay wages during employment at termination; (5) failure to reimburse business expenses; (6) civil penalties under the Private Attorneys General Act ("PAGA"); (7) unfair competition; and (8)

violation of Labor Code sections 201, 202, 203, 204, 218.5, 221, 226, 226.3, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 2800 and 2802. The period of the Release shall extend to the limits of the Covered Period. The *res judicata* effect of the Judgment will be the same as that of the Release.

**KK. Released Parties:** Defendant and its past or present officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents, attorneys, and any entities that may be considered joint employers.

**LL. Response Deadline:** Forty-five (45) calendar days from the initial mailing of the Class Notice.

**MM. Settlement Administrator:** The third-party administrator agreed upon by Parties to administer this Settlement is Simpluris, Inc.

## **II. RECITALS**

**A.** Prior to the mediation, the Parties conducted significant investigation and discovery of the facts and law both before and after the Class Action was filed. Prior to mediation, Defendant produced hundreds of documents relating to its policies, practices, and procedures regarding reimbursement of business expenses, paying non-exempt employees for all hours worked, overtime, meal and rest period policies, and payroll and operational policies. As part of Defendant's production, Plaintiff also reviewed time records, pay records, and information relating to the size and scope of the Class, as well as data permitting Plaintiff to understand the number of workweeks in the Class Period. Plaintiff also interviewed dozens of Class Members who worked for Defendant throughout the Class Period. The Parties agree that the above-described investigation and evaluation, as well as the information exchanged during the settlement negotiations, are more than sufficient to assess the merits of the respective Parties' positions and to compromise the issues on a fair and equitable basis.

**B. Benefits of Settlement to Class Members.** Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to continue the litigation against Defendant through class certification, trial and through any possible appeals. Plaintiff and Class Counsel also have taken into account the uncertainty and risk of further litigation, the potential impact of arbitration agreements signed by Plaintiffs and Class Members, the potential outcome, and the difficulties and delays inherent in such litigation. Plaintiff and Class Counsel have conducted extensive settlement negotiations, including a formal mediation on June 8, 2021. Based on the foregoing, Plaintiff and Class Counsel believe the Settlement set forth in this Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the Class Members.

- C. Defendant's Reasons for Settlement.** Defendant recognizes that the defense of this litigation will be protracted and expensive. Substantial amounts of time, energy, and resources of Defendant have been and, unless this Settlement is made, will continue to be devoted to the defense of the claims asserted by Plaintiff. Defendant, therefore, has agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the Released Claims.
- D. Defendant's Denial of Wrongdoing.** Defendant generally and specifically denies any and all liability or wrongdoing of any sort with regard to any of the claims alleged, makes no concessions or admissions of liability of any sort, and contends that for any purpose other than settlement, the Class Action are not appropriate for class or representative treatment. Defendant asserts a number of defenses to the claims, and has denied any wrongdoing or liability arising out of any of the alleged facts or conduct in the Class Action. Neither this Agreement, nor any document referred to or contemplated herein, nor any action taken to carry out this Agreement, is or may be construed as, or may be used as an admission, concession, or indication by or against Defendant or any of the Released Parties of any fault, wrongdoing, or liability whatsoever. Nor should the Agreement be construed as an admission that Plaintiff can serve as an adequate Class Representative. There has been no determination by any court as to the merits of the claims asserted by Plaintiff against Defendant or as to whether a class or classes should be certified, other than for settlement purposes only.
- E. Plaintiff's Claims.** Plaintiff asserts that Defendant's defenses are without merit. Neither this Agreement nor any documents referred to or contemplated herein, nor any action taken to carry out this Agreement is, may be construed as, or may be used as an admission, concession or indication by or against Plaintiff, Class Members, or Class Counsel as to the merits of any claims or defenses asserted, or lack thereof, in the Class Action. This Agreement is a compromise of disputed claims. However, in the event that this Settlement is finally approved by the Court, none of the Class Members, Plaintiff, or Class Counsel will oppose Defendant's efforts to use this Agreement to prove that Plaintiff and Class Members have resolved and are forever barred from re-litigating the Released Claims.

### **III. SETTLEMENT TERMS AND CONDITIONS**

- A. Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the maximum Gross Settlement Amount, excluding payroll taxes, that Defendant is obligated to pay under this Settlement Agreement is Eight Hundred Thousand Dollars and No Cents (\$800,000.00).
- B. Class Certification.** Solely for the purposes of this Settlement, the Parties stipulate and agree to certification of the claims asserted on behalf of Class

Members. As such, the Parties stipulate and agree that in order for this Settlement to occur, the Court must certify the Class as defined in this Agreement. Should the Settlement not become final and effective as herein provided, class certification shall immediately be set aside and the Settlement Class immediately decertified (subject to further proceedings on motion of any Party to certify or deny certification thereafter).

- C. Conditional Nature of Stipulation for Certification.** The Parties stipulate and agree to the certification of the claims asserted on behalf of Plaintiff and Class Members for purposes of this Settlement only. If the Settlement does not become effective, the fact that the Parties were willing to stipulate to certification as part of the Settlement shall not be admissible or used in any way in connection with the question of whether the Court should certify any claims in a non-settlement context in this Class Action or in any other lawsuit or venue. If the Settlement does not become effective, Defendant reserves the right to contest any issues relating to class certification, liability and damages.
- D. Appointment of Class Representative.** Solely for the purposes of this Settlement, the Parties stipulate and agree Plaintiff shall be appointed as the representative for the Class.
- E. Appointment of Class Counsel.** Solely for the purpose of this Settlement, the Parties stipulate and agree that the Court appoint Class Counsel to represent the Class.
- F. Settlement Disbursement.** Subject to the terms and conditions of this Agreement, and the approval of the Court, the Settlement Administrator will disburse the Gross Settlement Amount as follows:

  - 1. To the Plaintiff, Gina Massenzo.** In addition to her respective Individual Settlement Share, and subject to the Court's approval, Plaintiff Gina Massenzo will receive up to Ten Thousand Dollars and Zero Cents (\$10,000) as a Class Representative Enhancement Payment. The Settlement Administrator will pay the Class Representative Enhancement Payment out of the Qualified Settlement Fund. Payroll tax withholdings and deductions will not be taken from the Class Representative Enhancement Payment. An IRS Form 1099 will be issued to Plaintiff with respect to her Class Representative Enhancement Payment. Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on the Class Representative Enhancement Payment and shall hold harmless Defendant and the Released Parties from any claim or liability for taxes, penalties, or interest arising as a result of the Class Representative Enhancement Payment. In the event the Court does not approve the entirety of the application for the Class Representative Enhancement Payment, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendant nor the Settlement Administrator shall be responsible for

paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Plaintiff, the difference shall become part of the NSA and will be distributed to Participating Class Members. In the event that the Court reduces or does not approve the requested Class Representative Enhancement Payment, Plaintiff shall not have the right to revoke the Settlement, and it will remain binding, nor will Plaintiff seek, request, or demand an increase in the Gross Settlement Amount on that basis.

- 2. To Class Counsel.** Class Counsel will apply to the Court for, and Defendant agrees not to oppose, a total Attorney Fee Award not to exceed thirty-five percent (35%) or \$280,000 of the GSA and a Cost Award not to exceed \$20,000. The Settlement Administrator will pay the Court-approved amounts for the Attorney Fee Award and Cost Award out of the Gross Settlement Fund. The Settlement Administrator may purchase an annuity to utilize US treasuries and bonds or other attorney fee deferral vehicles for Class Counsel. Payroll tax withholding and deductions will not be taken from the Attorney Fee Award or the Cost Award. IRS Forms 1099 will be issued to Class Counsel with respect to these payments. Class Counsel shall be solely and legally responsible to pay all applicable taxes on the Fee and Cost Awards. In the event the Court does not approve the entirety of the application for the Attorney Fee Award and/or Cost Award, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendant nor the Settlement Administrator shall be responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Class Counsel for the Attorney Fee Award and/or Cost Award, the difference shall become part of the NSA and will be distributed to Participating Class Members. The Parties agree that, over and above the Court-approved Attorney Fee and Cost Award, each of the Parties, including all Class Members, shall bear their own fees and costs, including, but not limited to, those related to the investigation, filing, prosecution, or Settlement of the Class Actions; the negotiation, execution, or implementation of this Agreement; and/or the process of obtaining, administering, or challenging an Preliminary Approval Order and/or Final Approval Order and Judgment. In the event that the Court reduces or does not approve the requested Fee and Cost Awards, Plaintiff and Class Counsel shall not have the right to modify or revoke the Settlement, or to appeal such order, and the Settlement will remain binding, nor will Plaintiff or Class Counsel seek, request, or demand an increase in the Gross Settlement Amount on that basis.
- 3. To the Responsible Tax Authorities.** The Settlement Administrator will withhold the amount of the Participating Class Members' portion of normal payroll withholding taxes out of each person's Individual Settlement Share. The Settlement Administrator will calculate the amount of the Participating

Class Members' and Defendant's portion of payroll withholding taxes. The Settlement Administrator will submit Defendant's portion of payroll withholding tax calculation to Defendant for additional funding and forward those amounts along with each person's Individual Settlement Share withholdings to the appropriate taxing authorities.

- 4. To the Settlement Administrator.** The Settlement Administrator will pay to itself Administration Costs (reasonable fees and expenses) approved by the Court not to exceed \$8,000. This will be paid out of the Qualified Settlement Fund. If the actual amount of Administration Costs is less than the amount estimated and/or requested, the difference shall become part of the NSA and will be distributed to Participating Class Members. If the actual amount of Administration Costs approved by the Court are more than \$8,000, the total Administration Costs will be paid out of the Qualified Settlement Fund.
- 5. To Participating Class Members.** The Settlement Administrator will pay each Participating Class Member the Individual Settlement Share from the NSA.
  - a. Individual Settlement Share Calculation.** The Individual Settlement Share is calculated based on each Participating Class Member's pro rata share of the Net Settlement Amount based on workweeks during the Class Period as follows: (i) the number of weeks he or she worked as a non-exempt employee during the Class Period, divided by (ii) the total number of weeks worked by all Participating Class Members collectively during the Class Period, which is then multiplied by the Net Settlement Amount. Defendant will include the number of work weeks worked by Class Members in the Class Data which will be used by the Settlement Administrator to calculate the number of workweeks worked by each Class Member.
  - b. Tax Treatment for Individual Settlement Shares.** Each Participating Class Member's Individual Settlement Share will be apportioned as follows: 20% wages and 80% non-wages. The portion paid as wages shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported by W-2 forms. Payment of all amounts will be made subject to backup withholding unless a duly executed W-4 form is received from the payee(s). The amounts paid as non-wages shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms. The employees' share of payroll tax withholdings shall be withheld from each persons'

Individual Settlement Share. Participating Class Members will be responsible for the payment of any taxes and penalties assessed on the Individual Settlement Shares and will be solely responsible for any penalties or other obligations resulting from their personal tax reporting of Individual Settlement Shares.

**6. To Eligible Aggrieved Employees.** The Settlement Administrator shall pay each Eligible Aggrieved Employee according to their proportional share, which will be based upon the total number of work weeks he or she worked during the PAGA Period.

**a. Individual PAGA Payment Calculation.** The Individual PAGA Payment is calculated based on each Eligible Aggrieved Employee's pro rata share of the PAGA Payment allocated to the Eligible Aggrieved Employees based on work weeks during the PAGA Period as follows: (i) the number of work weeks he or she worked as a non-exempt employee during the PAGA Period, divided by (ii) the total number of work weeks worked by all Eligible Aggrieved Employees collectively during the PAGA Period, which is then multiplied by the PAGA Payment allocated to the Eligible Aggrieved Employees. Defendant will include the number of workweeks worked by Class Members in the Class Data which will be used by the Settlement Administrator to calculate the number of work weeks worked by each Eligible Aggrieved Employee.

**b. Tax Treatment for Individual PAGA Payments.** Each Eligible Aggrieved Employee's Individual PAGA Payments will be apportioned as 100% penalties and shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms. Eligible Aggrieved Employees will be responsible for the payment of any taxes and penalties assessed on the Individual PAGA Payments and will be solely responsible for any penalties or other obligations resulting from their personal tax reporting of Individual PAGA Payments.

**G. Appointment of Settlement Administrator.** The Settlement Administrator shall be responsible for preparing, printing, and mailing the Class Notice to the Class Members; keeping track of any objections or requests for exclusion from Class Members; performing skip traces and remailing Class Notices and Individual Settlement Shares to Class Members; calculating any and all payroll tax deductions as required by law; calculating each Class Member's Individual Settlement Share; calculating Eligible Aggrieved Employees' Individual PAGA Payment; providing weekly status reports to Defendant's Counsel and Class Counsel, which is to include updates on any objections or requests for exclusion that have been received;

providing a due diligence declaration for submission to the Court prior to the Final Approval hearing; mailing Individual Settlement Shares to Participating Class Members; mailing Individual PAGA Payments to Eligible Aggrieved Employees; mailing the portion of the PAGA Payment due to the LWDA to the LWDA; distributing the Attorney Fee Award and Cost Award to Class Counsel; printing and providing Class Members, Eligible Aggrieved Employees and Plaintiff with W-2s and 1099 forms as required under this Agreement and applicable law; providing a due diligence declaration for submission to the Superior Court upon the completion of the Settlement; providing any funds remaining in the QSF as a result of uncashed checks to the California State Controller in accordance with California Unclaimed Property Law, including the administration of related tax reimbursements; and for such other tasks as the Parties mutually agree. The Parties each represent that they do not have any financial interest in Simpluris, Inc. or otherwise have a relationship with Simpluris, Inc. that could create a conflict of interest.

**H. CIRCULAR 230 DISCLAIMER.** Each Party to this Agreement (for purposes of this section, the “Acknowledging Party” and each Party to this Agreement other than the Acknowledging Party, an “Other Party”) acknowledges and agrees that:

- (1) No provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisors, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of U.S. Treasury Dept. Circular 230 (31 C.F.R. Part 10, as amended);
- (2) The Acknowledging Party (a) has relied exclusively upon his, her or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Agreement, (b) has not entered into this Agreement based upon the recommendation of any Other Party or any attorney or advisor to any Other Party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or advisor to any Other Party to avoid any tax penalty that may be imposed on the Acknowledging Party; and
- (3) No attorney or advisor to any Other Party has imposed any limitation that protects the confidentiality of any such attorney’s or adviser’s tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the Acknowledging Party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

**I. Procedure for Approving Settlement.**

**1. Motion for Preliminary Approval and Conditional Certification.**

- a. Plaintiff will move for an order conditionally certifying the Class for settlement purposes only, giving Preliminary Approval of the Settlement, setting a date for the Final Approval hearing, and approving the Class Notice and Exclusion Form.

- b. At the Preliminary Approval hearing, Plaintiff will appear, support the granting of the motion, and submit a proposed order granting conditional certification of the Class and Preliminary Approval of the Settlement; appointing the Class Representative, Class Counsel, and Settlement Administrator; approving the Class Notice; and setting the Final Approval hearing.
- c. Should the Court decline to conditionally certify the Class or to Preliminarily Approve all material aspects of the Settlement with prejudice, the Settlement will be null and void, and the Parties will have no further obligations under it. Provided, however, that the amounts of the Attorney Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement shall be determined by the Court, and the Court's determination on these amounts shall be final and binding, and that the Court's approval or denial of any amount requested for these items are not conditions of this Settlement Agreement, and are to be considered separate and apart from the fairness, reasonableness, and adequacy of the Settlement. Any order or proceeding relating to an application for the Attorney Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement shall not operate to terminate or cancel this Settlement Agreement.

**2. Notice to Class Members.** After the Court enters its Preliminary Approval Order, every Class Member will be provided with the Class Notice in accordance with the following procedure:

- a. Within fifteen (15) business days after entry of the Preliminary Approval Order, Defendant shall deliver to the Class Data to the Settlement Administrator.
- b. Upon receipt of the Class Data, the Settlement Administrator will perform a search based on the National Change of Address Database to update and correct any known or identifiable address changes. The Settlement Administrator shall maintain the Class Data as private and confidential and take reasonable and necessary precautions to maintain the confidentiality of the Class Data. The Settlement Administrator shall not distribute or use the Class Data or any information contained therein for any purpose other than to administer this Settlement.
- c. Within fourteen days calendar days after Defendant's deadline to provide the Class Data to the Settlement Administrator, the Settlement Administrator will mail the Class Notice to all identified Class Members via first-class U.S. Mail.

- d. If a Class Notice is returned because of an incorrect address, within ten (10) days from receipt of the returned Class Notice, the Settlement Administrator will conduct a search for a more current address for the Class Member and re-mail the Class Notice to the Class Member. The Settlement Administrator will use the National Change of Address Database and skip traces to attempt to find the current address. The Settlement Administrator will be responsible for taking reasonable steps to trace the mailing address of any Class Member for whom a Class Notice is returned by U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to Class Members for whom new addresses are found. If the Settlement Administrator is unable to locate a better address, the Class Notice shall be re-mailed to the original address. If the Class Notice is re-mailed, the Settlement Administrator will note for its own records the date and address of each re-mailing. Those Class Members who receive a re-mailed Class Notice, whether by skip-trace or forwarded mail, will have an additional ten (10) days to postmark an Exclusion Form, or file and serve an objection to the Settlement. The Settlement Administrator shall mark on the envelope whether the Class Notice is a re-mailed notice.
- e. Class Members may dispute the information provided in their Class Notice, but must do so in writing, via first class mail, and it must be postmarked by the Response Deadline. To the extent Class Members dispute the number of weeks to which they have been credited or the amount of their Individual Settlement Share, Class Members must produce evidence to the Settlement Administrator showing that such information is inaccurate. Absent evidence rebutting Defendant's records, Defendant's records will be presumed determinative. However, if a Class Member produces evidence to the contrary, the Parties will evaluate the evidence submitted by the Class Member and will make the final decision as to the number of eligible weeks that should be applied and/or the Individual Settlement Share to which the Class Member may be entitled.
- f. The Settlement Administrator shall provide a weekly status report to the Parties. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defendant's Counsel of the number of Notice Packets mailed, the number of Notice Packets returned as undeliverable, the number of Notice Packets re-mailed, and the number of Exclusion Forms received.

- g.** No later than fourteen (14) calendar days after the Response Deadline, the Settlement Administrator will serve on the Parties a declaration of due diligence setting forth its compliance with its obligations under this Agreement. The declaration from the Settlement Administrator shall also be filed with the Court by Class Counsel no later than ten (10) calendar days before the Final Approval hearing. Before the Final Approval hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

### **3. Objections to Settlement.**

- a. Class Notice.** The Class Notice will provide that the Class Members who wish to object to the Settlement may do so in writing, signed, dated, and mailed to the Settlement Administrator postmarked no later than the Response Deadline.
- b. Format.** Any written objections shall state: (a) the objecting person's full name, address, and telephone number; (b) the words "Notice of Objection" or "Formal Objection;" (c) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (d) list identifying witness(es) the objector may call to testify at the Final Approval hearing; and (e) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval hearing.
- c. Objector Appearances.** Participating Class Members may (though are not required to) appear at the Final Approval hearing, either in person or through the objector's own counsel. The failure to file and serve a written objection does not waive a Participating Class Member's right to appear at and make an oral objection at the Final Approval hearing.
- d. Fees.** Defendant shall not be responsible for the fees, costs, or expenses incurred by Plaintiff, Class Counsel or Participating Class Members arising from or related to any objection to the Settlement Agreement or related to any appeals thereof.

### **4. Request for Exclusion from the Settlement ("Opt-Out").**

- a. Class Notice.** The Class Notice will provide that Class Members who wish to exclude themselves from the class action Settlement must mail to the Settlement Administrator an Exclusion Form. The written request for exclusion must: (a) include the Class Member's name, address, and last four digits of the social security

number; (b) be addressed to the Settlement Administrator; (c) be signed by the Class Member; and (d) be postmarked no later than the Response Deadline.

- b. No Opt Out From PAGA.** Eligible Aggrieved Employees will not be able to exclude themselves from receiving their portion of the PAGA Payment. The Class Notice will inform Eligible Aggrieved Employees that they cannot opt out of the PAGA portion of the settlement and explain that they will not be permitted to pursue any action under PAGA against the Released Parties for any claim that arose during the PAGA Period, even if they elect to Opt-Out of the class action Settlement.
  - c. Validity and Effect.** Any Class Member who returns a timely, valid, and executed Exclusion Form will not participate in or be bound by the Settlement and Judgment and will not receive an Individual Settlement Share. A Class Member who does not complete and mail a timely Exclusion Form will be included in the Settlement, will receive an Individual Settlement Share, and be bound by all terms and conditions of the Settlement, if the Settlement is approved by the Court, and by the Judgment, regardless of whether he or she has objected to the Settlement.
  - d. Report.** No later than seven (7) calendar days after the Response Deadline, the Settlement Administrator will provide the Parties with a complete and accurate accounting of the number of Notices mailed to Class Members, the number of Notices returned as undeliverable, the number of Notices re-mailed to Class Members, the number of re-mailed Notices returned as undeliverable, the number of Class Members who objected to the Settlement and copies of their submitted objections, the number of Class Members who returned valid requests for exclusion, and the number of Class Members who returned invalid requests for exclusion.
  - e. Defendant's Option to Terminate.** If more than five percent (5%) of the Class Members submit Exclusion Forms, Defendant, at its sole option, may withdraw from the Settlement and this Agreement is null and void.
- 5. No Solicitation of Objection or Requests for Exclusion.** Neither the Parties nor their respective counsel or agents will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, request exclusion from the Settlement, or appeal from the Judgment.

## **6. Motion for Final Approval.**

- a. Class Counsel will file unopposed motions and memoranda in support thereof for Final Approval of the Settlement and the following payments in accord with the terms of the Settlement: (1) the Attorney Fee Award; (2) the Cost Award; (3) Administrative Costs; (4) the Class Representative Enhancement; and (5) PAGA Payment. Class Counsel will also move the Court for and order of Final Approval (and associated entry of Judgment) releasing and barring any Released Claims of the Participating Class Members and the PAGA Released Claims of the Eligible Aggrieved Employees.
- b. If the Court denies Final Approval of the Settlement with prejudice, or if the Court's Final Approval of the Settlement is reversed or materially modified on appellate review, then this Settlement will become null and void. If that occurs, the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount or any amounts that otherwise would have been owed under this Agreement. Further, should this occur, the Parties agree they shall be equally responsible for the Settlement Administrator's Administration Costs through that date. An award by the Court of a lesser amount than sought by Plaintiff and Class Counsel for the Class Representative Enhancement, the Attorney Fee Award, and/or the Cost Award, will not constitute a material modification to the Settlement within the meaning of this paragraph.
- c. Upon Final Approval of the Settlement, the Parties shall present to the Court a proposed Final Approval Order, approving the Settlement and entering Judgment in accordance therewith. After entry of Judgment, the Court shall have continuing jurisdiction over the Class Action for purposes of: (1) enforcing this Settlement Agreement; (2) addressing settlement administration matters, and (3) addressing such post-Judgment matters as may be appropriate under Court rules and applicable law.

- 7. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms and conditions of this Agreement, if Class Members do not timely object to the Settlement, then the Parties and their respective counsel waive any and all rights to appeal from the Judgment, including, but not limited to, all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate or set aside judgment, and any extraordinary writ, and the Judgment will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceeding, or post-judgment proceeding.

8. **Vacating, Reversing, or Modifying Judgment on Appeal.** If, after a notice of appeal, the reviewing court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement, and that court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher court, then this Settlement will become null and void and the Parties will have no further obligations under it. A material modification would include, but not necessarily be limited to, any alteration of the Gross Settlement Amount.

9. **Disbursement of Settlement Shares and Payments.** Subject to the Court finally approving the Settlement, the Settlement Administrator shall distribute funds pursuant to the terms of this Agreement and the Superior Court's Final Approval Order and Judgment. The maximum amount Defendant can be required to pay under this Settlement for any purpose is the Gross Settlement Amount. The Settlement Administrator shall keep Defendant's Counsel and Class Counsel apprised of all distributions from the Gross Settlement Amount. The Settlement Administrator shall respond to questions from Defendant's Counsel and Class Counsel. No person shall have any claim against Defendant, Defendant's Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on the distributions and payments made in accordance with this Agreement.

a. **Funding the Settlement:** No later than ten (10) calendar days after the Effective Final Settlement Date, Defendant shall deposit the Gross Settlement Amount of Eight Hundred Thousand Dollars and No Cents (\$800,000.00) needed to pay the entire GSA and the employer's share of pay roll taxes by wiring the funds to the Settlement Administrator. Defendant shall also at this time provide any tax information that the Settlement Administrator may need to calculate each Participating Class Members' Individual Settlement Shares.

b. **Disbursement:** After sixty-one (61) calendar days from the deadline to Fund of the Settlement, the Settlement Administrator shall calculate and disburse all payments due under the Settlement Agreement, including all Individual Settlement Shares, Individual PAGA Payments, the Attorney Fee Award, the Cost Award, the Class Representative Enhancements, the PAGA Payment, and the Administration Costs. The Settlement Administrator will forward a check for 75% of the PAGA Payment to the LWDA for settlement of the PAGA claim. After such payment, Defendant shall have no liability for PAGA claims by or on behalf of Eligible Aggrieved Employees during the PAGA Time Period, which are released under this Agreement.

- c. **QSF:** The Parties agree that the QSF is intended to be a “Qualified Settlement Fund” under Section 468B of the Code and Treasury Regulations § 1.468B-1, 26 C.F.R. § 1.468B-1 *et seq.*, and will be administered by the Settlement Administrator as such. The Parties and Settlement Administrator shall treat the QSF as coming into existence as a Qualified Settlement Fund on the earliest date permitted as set forth in 26 C.F.R. § 1.468B-1, and such election statement shall be attached to the appropriate returns as required by law.

**10. Uncashed Checks.** Participating Class Members and Eligible Aggrieved Employees must cash or deposit their Individual Settlement Share and Individual PAGA Payment checks within one hundred eighty (180) calendar days after the checks are mailed to them. If any checks are not redeemed or deposited within ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard indicating that unless the check is redeemed or deposited in the next ninety (90) calendar days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced. If any checks remain uncashed or not deposited by the expiration of the 90-day period after mailing the reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after the checks are mailed, pay the amount of the Individual Settlement Share or Individual PAGA Payment (as applicable) to the California State Controller’s Unclaimed Property Division in accordance with California Unclaimed Property Law so that the Participating Class Member and/or Eligible Aggrieved Employee will have his or her Individual Settlement Share and/or Individual PAGA Payment available to him or her per the applicable claim procedure to request that money from the State of California.

**11. Final Report by Settlement Administrator.** Within ten (10) calendar days after the disbursement of all funds, the Settlement Administrator will serve on the Parties a declaration providing a final report on the disbursements of all funds.

**12. Defendant’s Legal Fees.** Defendant is responsible for paying for all of Defendant’s own legal fees, costs, and expenses incurred in this Class Action outside of the Gross Settlement Fund.

**J. Release of Claims.** As of the Effective Final Settlement Date, in exchange for the consideration set forth in this Agreement, Plaintiff and the Participating Class Members release the Released Parties from the Released Claims for the Class Period.

**K. PAGA Release.** As of the Effective Final Settlement Date and upon Defendant’s fully funding of the Settlement, all Eligible Aggrieved Employees and the State of

California shall be deemed to have fully, finally, and forever released, relinquished and will release all claims for civil penalties pursuant to PAGA for the PAGA Released Claims during the PAGA Period.

**L. Plaintiff's Release of Claims and General Release.** As of the Effective Final Settlement Date, and in exchange for the Class Representative Enhancement Payment to the Plaintiff in an amount not to exceed Ten Thousand Dollars and No Cents (\$10,000), in recognition of her work and effort in obtaining the benefits for the Class, and undertaking the risk for the payment of costs in the event this matter had not successfully resolved, Plaintiff hereby provides a general release of claims for herself and her spouse, heirs, successors and assigns, and forever releases, remises, and discharges the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties and expenses of any nature whatsoever, arising from the beginning of time through the date of the Court grants Preliminary Approval, known or unknown, suspected or unsuspected, whether in tort, contract, equity, or otherwise, for violation of any federal, state or local statute, rule, ordinance or regulation, including but not limited to all claims arising out of, based upon, or relating to their employment with Defendant or the remuneration for, or termination of, such employment. Plaintiff's Release of Claims also includes a waiver of California Civil Code section 1542, which provides as follows:

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

Plaintiff may hereafter discover claims or facts in addition to, or different from, those which she now knows or believes to exist, but she expressly agrees to fully, finally and forever settle and release any and all claims against the Released Parties, known or unknown, suspected or unsuspected, which exist or may exist on behalf of or against the other at the time of execution of this Agreement, including, but not limited to, any and all claims relating to or arising from Plaintiff's employment with Defendant.

#### **M. Miscellaneous Terms**

- 1. No Admission of Liability.** Defendant makes no admission of liability or wrongdoing by virtue of entering into this Agreement. Additionally, Defendant reserves the right to contest any issues relating to class certification and liability if the Settlement is not approved. Defendant denies that it has engaged in any unlawful activity, has failed to comply with the law in any respect, has any liability to anyone under the claims asserted in the Class Action, or that but for the Settlement, a Class should

be certified in the Class Action or that the PAGA claim could proceed on a representative basis. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant of liability or wrongdoing. This Settlement and Plaintiff's and Defendant's willingness to settle the Class Action will have no bearing on, and will not be admissible in connection with, any litigation, administrative proceeding or other special proceeding (other than solely in connection with this Settlement).

- 2. No Effect on Employee Benefits.** The Class Representative Enhancement Payment, Individual Settlement Shares and/or Individual PAGA Payments paid to Plaintiff, Participating Class Members and/or the Eligible Aggrieved Employees shall not be deemed to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (*e.g.*, vacation, holiday pay, retirement plans, etc.) of Plaintiff, Participating Class Members or Eligible Aggrieved Employees. The Parties agree that any Class Representative Enhancement, Individual Settlement Shares and/or Individual PAGA Payments paid to Plaintiff, Participating Class Members and/or the Eligible Aggrieved Employees under the terms of this Agreement do not represent any modification of Plaintiff's, Participating Class Members' or Eligible Aggrieved Employees' previously credited hours of service or other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by Defendant.
- 3. Publicity.** Class Counsel and Plaintiff agree to discuss the terms of this Settlement only in declarations submitted to a court to establish Class Counsel's adequacy to serve as class counsel, in declarations submitted to a court in support of motions for preliminary approval, Final Approval, for attorneys' fees/costs, and any other pleading filed with the Court in conjunction with the Settlement, and in discussions with Class Members in the context of administering this Settlement until the Preliminary Approval Order is issued. Class Counsel and Plaintiff agree to decline to respond to any media inquiries concerning the Settlement.
- 4. Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire Agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any party concerning this Agreement or its exhibits, other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.
- 5. Authorization to Enter Into Settlement Agreement.** Class Counsel and Defendant's Counsel warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required

or permitted to be taken by such Parties under this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement this Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court, and in all cases, all such documents, supplemental provisions, and assistance of the Court will be consistent with this Agreement.

- 6. Exhibits and Headings.** The terms of this Agreement include the terms set forth in the attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibits to this Agreement are an integral part of the Settlement and must be approved substantially as written. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.
- 7. Interim Stay of Proceedings.** The Parties agree to stay and hold all proceedings in the Class Actions in abeyance, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the Court.
- 8. Amendment or Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by counsel for all Parties or their successors-in-interest.
- 9. Agreement Binding on Successors and Assigns.** This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Parties, as previously defined.
- 10. No Prior Assignment.** Plaintiff hereby represents, covenants, and warrants that she has not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged.
- 11. Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.
- 12. Fair, Adequate, and Reasonable Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair,

reasonable, and adequate settlement of the Class Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.

- 13. No Tax or Legal Advice.** The Parties understand and agree that the Parties are neither providing tax or legal advice, nor making representations regarding tax obligations or consequences, if any, related to this Agreement, and that Plaintiff, Class Counsel, Eligible Aggrieved Employees and Participating Class Members will assume any such tax obligations or consequences that may arise from any disbursements made under this Agreement, and that Plaintiff, Class Counsel, Eligible Aggrieved Employees and Participating Class Members shall not seek any indemnification from the Parties or any of the Released Parties in this regard. The Parties agree that, in the event that any taxing body determines that additional taxes are due from any recipient of a disbursement under this agreement, such recipient assumes all responsibility for the payment of such taxes.
- 14. Jurisdiction of the Superior Court.** The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgment entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Superior Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all orders and judgments in connection therewith.
- 15. Invalidity of Any Provision; Severability.** Before declaring any provision of this Agreement invalid, the Parties request that the Court first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. In the event any provision of this Agreement shall be found unenforceable, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.
- 16. Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 17. Execution in Counterpart.** This Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile or PDF signatures will be accepted. Any executed counterpart

will be admissible in evidence to prove the existence and contents of this Agreement.

#### IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.

Dated: 06/27/2021, 2021

**GINA MASSENZO**



Dated: June 29, 2021

**BACHEM AMERICAS, INC.**



On behalf of Bachem Americas, Inc.  
**Michael Brenk, VP, Finance/HR**

Dated: 6/28, 2021

**JUSTICE LAW CORPORATION**



Douglas Han, Esq.  
Attorneys for Plaintiff Gina Massenzo, on behalf of  
herself and all others similarly situated

Dated: 6/29, 2021

**Ballard Rosenberg Golper & Savitt LLP**



John B. Golper, Esq.  
Jeffrey P. Fuchsman, Esq.  
Attorneys for Bachem Americas, Inc.

# **EXHIBIT A**

CALIFORNIA SUPERIOR COURT, COUNTY OF LOS ANGELES  
Gina Massenzo v. Bachem Americas, Inc.  
Case No. 20TRCV00591

**NOTICE OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT**

*A court authorized this notice. This is not a solicitation.  
This is not a lawsuit against you, and you are not being sued.  
However, your legal rights are affected by whether you act or don't act.*

**TO: All non-exempt employees employed by Bachem Americas, Inc. ("Defendant") within the State of California from June 9, 2017 through [Insert Date].**

The California Superior Court, County of Los Angeles, has granted preliminary approval of a proposed settlement ("Settlement") of the above-captioned class action (referred to in this Notice as the "Class Action"). Because your rights may be affected by this Settlement, it is important that you read this Notice of Class and Representative Action Settlement ("Notice") carefully.

The Court has certified the following class for settlement purposes ("Class" or "Class Members"):

All non-exempt employees employed by Defendant within the State of California from June 9, 2017, through [INSERT DATE].

The purpose of this Notice is to provide a brief description of the claims alleged in the Class Action, the key terms of the Settlement, and your rights and options with respect to the Settlement.

**YOU MAY BE ENTITLED TO MONEY UNDER THE PROPOSED CLASS AND REPRESENTATIVE ACTION SETTLEMENT. PLEASE READ THIS NOTICE CAREFULLY; IT INFORMS YOU ABOUT YOUR LEGAL RIGHTS.**

**WHAT INFORMATION IS IN THIS NOTICE**

|                                                                                      |        |
|--------------------------------------------------------------------------------------|--------|
| 1. Why Have I Received This Notice?.....                                             | Page 2 |
| 2. What Is This Case About? .....                                                    | Page 2 |
| 3. Am I a Class Member? .....                                                        | Page 2 |
| 4. How Does This Class Action Settlement Work?.....                                  | Page 3 |
| 5. Who Are the Attorneys Representing the Parties? .....                             | Page 3 |
| 6. What Are My Options?.....                                                         | Page 4 |
| 7. How Do I Opt-Out or Exclude Myself From This Settlement?.....                     | Page 4 |
| 8. How Do I Object to the Settlement? .....                                          | Page 4 |
| 9. How Does This Settlement Affect My Rights? .....                                  | Page 5 |
| 10. How Much Can I Expect to Receive From This Settlement?.....                      | Page 6 |
| 11. How Will the Attorneys for the Class and the Class Representative Be Paid? ..... | Page 7 |

## **1. *Why Have I Received This Notice?***

The personnel records of Bachem Americas, Inc. (“Defendant”) indicate that you may be a Class Member. The Settlement will resolve all Class Members’ Released Claims, as described below, from June 9, 2017 through [Insert Date] (the “Class Period”).

A Preliminary Approval Hearing was held on [the date of Preliminary Approval], in the California Superior Court, County of Los Angeles. The Court conditionally certified the Class for settlement purposes only and directed that you receive this Notice.

The Court has determined that there is sufficient evidence to suggest that the proposed settlement may be fair, adequate, and reasonable and that any final determination of those issues will be made at the Final Approval Hearing.

The Court will hold a Final Approval Hearing concerning the proposed settlement on [the date of final approval hearing], 2021 at [time a.m./p.m.], before the Honorable Gary Y. Tanaka, at the Superior Court for the County of Los Angeles, located at 825 Maple Avenue, Torrance, California 90503.

## **2. *What Is This Case About?***

Plaintiff Gina Massenzo commenced a class action in the Los Angeles County Superior Court, Case Number 20TRCV00591.

Plaintiff Gina Massenzo is referred to in this Notice as “Plaintiff.” Plaintiff’s actions against Defendant sought damages, restitution, statutory penalties, civil penalties interest, costs, attorney’s fees and other relief based on the following alleged causes of action: 1) failure to pay overtime; 2) failure to provide meal period premiums; 3) failure to provide rest break premiums; 4) failure to pay minimum wages; 5) failure to timely pay final wages to terminated employees; 6) failure to comply with employee wage statement provisions of the California Labor Code; 7) failure to reimburse business expenses; 8) violations of the Labor Code Private Attorneys General Act of 2004; and 9) a violation of the Unfair Competition Law.

The Court has not made any determination as to whether the claims advanced by Plaintiff has any merit. Nor has it decided whether this case could proceed as a class or representative action. Instead, both sides agreed to resolve the Action with no decision or admission of who is right or wrong.

In other words, the Court has not determined that Defendant violated any laws, nor has it decided in favor of Plaintiff or Defendant; instead, both sides have agreed to resolve the Class Action with no decision or admission of who is right or wrong. By agreeing to resolve the Class Action, the parties avoid the risks and costs of a trial.

Defendant denies all allegations made by Plaintiff, individually and on behalf of Class Members, in the Class Action and denies liability for any wrongdoing with respect to the alleged facts or causes of action asserted in the Class Action. The settlement is not an admission by Defendant of any wrongdoing or an indication that any law was violated.

### **3. *Am I A Class Member?***

You are a Class Member if you are currently or were formerly employed by Defendant as a non-exempt employee in California at any time from June 9, 2017, through **[Insert Date]** (the “Class Period”). If you qualify as a Class Member, you could receive money from the Class Action Settlement.

If you qualify as an Eligible Aggrieved Employee, meaning you were employed as an employee at any time from June 9, 2019, through **[INSERT DATE]**, you will receive money from the Settlement of the PAGA claim.

### **4. *How Does The Class Action Settlement Work?***

In the Class Action, Plaintiff sued on behalf of herself and all other similarly situated employees who were employed by Defendant as non-exempt employees in California at any time during the Class Period. Plaintiff and other current and former employees comprise a “Class” and are “Class Members.” The settlement of this Action resolves the Released Claims of all Class Members, except for those who exclude themselves from the Class by requesting to be excluded in the manner set forth below.

Plaintiff and Class Counsel believe the Settlement is fair and reasonable. The Court must also review the terms of the Settlement and determine if it is fair and reasonable to the Class. The Court file has the Settlement documents, which explain the Settlement in greater detail. If you would like copies of the Settlement documents, you can contact Class Counsel, whose contact information is below, and they will provide you with a copy free of charge.

### **5. *Who Are the Attorneys Representing the Parties?***

| <b>Attorneys for Plaintiff and the Class</b>                                                                                                                                                                       | <b>Attorneys for Defendant</b>                                                                                                                                                           |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>JUSTICE LAW CORPORATION</b><br>Douglas Han<br>Shunt Tatavos-Gharajeh<br>Talia Lux<br>751 N. Fair Oaks Avenue, Suite 101<br>Pasadena, California 91103<br>Telephone: (818) 230-7502<br>Facsimile: (818) 230-7259 | <b>BALLARD ROSENBERG GOLPER &amp; SAVITT LLP</b><br>John B. Golper<br>Jeffery P. Fuchsman<br>15760 Ventura Blvd. 18 <sup>th</sup> Floor<br>Encino, CA 91436<br>Telephone: (818) 508-3700 |

The Court has decided that Justice Law Corporation is qualified to represent the Class Members simultaneously for the purposes of this Settlement.

Class Counsel is working on your behalf. If you want your own attorney, you may hire one at your own cost.

## **6. What Are My Options?**

The purpose of this Notice is to inform you of the proposed Settlement and your options. Each option has its consequences, which you should understand before making your decision. Your rights regarding each option, and the steps you must take to select each option, are summarized below and explained in more detail in this Notice.

**Important Note: Defendant will not retaliate against you in any way for either participating or not participating in this Settlement.**

• **DO NOTHING:**      **You do not have to do anything in order to receive payment under this Settlement.**

If you do nothing and the Court grants final approval of the Settlement, you will become part of the Class Action Settlement and will receive an Individual Settlement Payment (explained below) based on the total number of workweeks you worked for Defendant as a non-exempt employee in California during the Class Period. You will release all of the Released Claims, as defined in Section No. 9 below, and you will give up your right to pursue the Released Claims, as defined in Section No. 9 below.

• **OPT-OUT:**      If you do not want to participate as a Class Member **and do not want to receive a class action settlement payment**, you may “opt-out,” which means you will not be part of this Class Action Settlement. If the Court grants final approval of the Settlement, you will not receive an Individual Settlement Share payment, and you will not give up the right to sue the Released Parties, including Defendant, for any the Released Claims as defined in Section No. 9 below. Please note, if you are eligible to receive an Individual PAGA Payment (explained below) and you do “opt-out” of the Class Action Settlement you will still receive an Individual PAGA Payment. Your right to pursue a claim pursuant to PAGA will be extinguished regardless of whether you opt-out.

• **OBJECT:**      You can ask the Court to deny approval of this Settlement by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. You cannot both object to the Settlement and opt out of the case.

The procedures for opting out and objecting are set forth below in the sections entitled “How Do I Opt-Out or Exclude Myself From This Settlement” and “How Do I Object To The Settlement?”

## **7. *How Do I Opt Out Or Exclude Myself From This Class Action Settlement?***

If you do not wish to participate in the Class Action Settlement, **and do not want to receive a an Individual Settlement Sharepayment**, you can exclude yourself from the Settlement (*i.e.*, “opt-out”) by sending an opt-out form by the date and to the address stated below. A form (“ELECTION NOT TO PARTICIPATE IN (‘OPT-OUT’ FROM) CLASS ACTION SETTLEMENT”) (the “Exclusion Form”) has been provided to you along with this Notice, which can be used for this purpose; alternatively, you can submit your own written document that includes all of the same information. If you opt-out of the Settlement, you will not be bound by the Class Action Settlement and therefore you will not release the claims set forth in Section No. 9. The Exclusion Form must be complete, signed, dated, and mailed by First-Class U.S. Mail, **postmarked no later than \_\_\_\_\_, 2021 to: Gina Massenzo v. Bachem Americas, Inc., C/O SIMPLURIS, INC., [INSERT ADDRESS]**.

If you received a re-mailed Class Notice, whether, by skip-trace or forwarded mail, you will have an additional ten (10) days to postmark an Exclusion Form, until \_\_\_\_\_, 2021. The envelope that you received with this Class Notice should indicate whether the Class Notice has been forwarded or re-mailed. We encourage you to keep copies of all documents, including the envelope, in the event your compliance with the deadline is challenged.

The Court will exclude from the Class Action Settlement any Class Member who submits a complete and timely Exclusion Form as described in the paragraph above. Exclusion Forms that do not include all required information and/or that are not timely submitted will be deemed null, void, and ineffective. Any Class Member who fails to submit a valid and timely Exclusion Form on or before the above-specified deadline shall be bound by all terms of the Settlement, release, and any Judgment entered in the Action if the Settlement receives final approval from the Court.

## **8. *How Do I Object To The Settlement?***

If you are a Class Member who does not opt-out of the Settlement, you may object to the Settlement, personally or through an attorney.

You may mail a written objection to the Settlement Administrator at [address] by [the Response Deadline]. If you received a re-mailed Class Notice, whether, by skip-trace or forwarded mail, you will have an additional ten (10) days to postmark a written objection, until \_\_\_\_\_, 2021. If you choose to object in writing your objection must state: (a) the objecting person’s full name, address, and telephone number; (b) the words “Notice of Objection” or “Formal Objection;” (c) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (d) list identifying witness(es) the objector may call to testify at the Final Approval hearing; and (e) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval hearing.

Class Members may appear at the Final Approval Hearing, either in person or through the objector’s own counsel even if they did not submit a written objection. Class Members’ timely and valid objections to the Settlement will be considered even if the objector does not appear at the Final Approval Hearing.

If the Court approves the settlement over objections, objecting Class Members will receive an Individual Settlement Share payment and will be bound by the terms of the Settlement.

Due to the COVID-19 pandemic the Court may not be open to the public for the Final Approval Hearing. If you wish to appear remotely to object, you should contact the Clerk of the Court two days in advance of the hearing for instruction on how to log into the Court's videoconferencing system. The Court's clerk may be reached by phone at (310) 787-3722.

#### **9. *How Does This Class Action Settlement Affect My Rights? What are the Released Claims?***

If the proposed Settlement is approved by the Court, a Final Judgment will be entered by the Court. All Class Members who do not opt-out of the Settlement will be bound by the Court's Final Judgment and will fully release and discharge Defendant and its past or present officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and its respective successors and predecessors in interest, subsidiaries, affiliates, parents, any entities that may be considered joint employers attorneys ("Released Parties"). The Released Claims are as follows:

##### **A. Released Claims.**

The claims that Plaintiff and the other Participating Class Members are releasing in exchange for the consideration provided for by the Settlement are all claims that were or could have been asserted based on the facts alleged in the First Amended Complaint by Plaintiff and Class Members, including, but not limited to, claims based on Defendant's alleged: (1) failure to provide employees with meal and rest periods; (2) failure to pay minimum wages and overtime; (3) failure to provide accurate wage statements; (4) failure to pay wages during employment at termination; (5) failure to reimburse business expenses; (6) civil penalties under the Private Attorneys General Act ("PAGA"); (7) unfair competition; and (8) violation of Labor Code sections 201, 202, 203, 204, 218.5, 221, 226, 226.3, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 2800 and 2802. (collectively, the "Released Claims").

Furthermore, as of the Effective Final Settlement Date and upon Defendant's fully funding of the Settlement, all Eligible Aggrieved Employees and the State of California shall be deemed to have fully, finally, and forever released, relinquished and will release all claims for civil penalties pursuant to PAGA for the PAGA Released Claims during the PAGA Period. The PAGA Released Claims means all allegations and claims for civil penalties pursuant to PAGA based on any and all underlying Labor Code violations alleged or reasonably could have been alleged based on the facts and legal theories contained in the operative Complaint and the PAGA Notice served on the LWDA that arose during the PAGA Period, which includes Defendant's alleged failure to pay overtime, failure to provide employees with meal periods, failure to provide employees with rest periods, failure to pay minimum wage, failure to pay wages timely at termination, failure to provide compliant wage statements, failure to reimburse employees for business expenses, and alleged violations of California Labor Code sections 201, 202, 203, 204, 218.5, 221, 226, 226.3, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 2800 and 2802.

#### **10. *How Much Can I Expect to Receive From This Settlement?***

Defendant will pay, subject to Court approval, a Maximum Settlement Amount of \$800,000 to cover: (1) the Individual Settlement Payments to all Settlement Class Members; (2) the Class Representative Enhancement Payment to Plaintiff in an amount up to \$10,000; (3) the Administration Costs to the Settlement Administrator in an amount estimated to be up to \$25,000; (4) the Class Counsel Award for attorneys' fees of \$280,000.00 and costs of up to \$20,000 supported by declaration; (5) a PAGA Payment for settlement of claims under PAGA for \$50,000, with 75% of that portion (\$37,500) to be paid to the Labor Workforce and Development Agency ("LWDA"), and the remaining 25% to be distributed to Eligible Aggrieved Employees as Individual PAGA Payments.

After deducting the Enhancement Payment to Plaintiff, Settlement Administration Costs, Class Counsel Award and PAGA Payment the remaining sum, estimated at \$[REDACTED] is the "Net Settlement Fund", which shall be distributed to all Participating Class Members. The Settlement Administrator will calculate the Individual Settlement Payments for Participating Class Members. Each Participating Class Member will receive a proportionate share of the Net Settlement Amount that is equal to (i) the number of weeks he or she worked in a non-exempt capacity based on the Class data provided by Defendant, divided by (ii) the total number of weeks worked by all Participating Class Members based on the same Class data, which is then multiplied by the Net Settlement Amount. One day worked in a given week will be credited as a week for purposes of this calculation. Therefore, the value of each Participating Class Member's Individual Settlement Share ties directly to the number of weeks that he or she worked.

Although your exact share of the Net Settlement Amount cannot be precisely calculated until after the time during which individuals may object or seek exclusion from the Settlement concludes, based upon the calculation above, your approximate share of the Net Settlement Amount, is as follows: \$[REDACTED], less taxes. This is based on Defendant's records, which show you worked [REDACTED] workweeks during the Class Period.

If you believe the number of eligible workweeks records are incorrect, you may provide documentation and/or an explanation to show contrary information to the Settlement Administrator at [address] on or before [the Response Deadline]. Any evidence submitted will be carefully weighed, and the Class Counsel and Defendant's Counsel will make a final determination.

Twenty percent (20%) of your Individual Settlement Share payment will be treated as unpaid wages. Applicable taxes will be withheld from the wages portion of your Individual Settlement Share payment only and reported on an IRS Form W-2. The remaining eighty percent (80%) of your Individual Settlement Payment will be treated as non-wages and will be paid pursuant to an IRS Form 1099.

Defendant is expected to fund the Gross Settlement Amount within ten (10) days after the Settlement becomes final. Your Individual Settlement share payment will be distributed after approximately 61 days of the funding of the entire Gross Settlement Amount.

It is strongly recommended that upon receipt of your Individual Settlement Share check, you immediately cash it or cash it before the 180-day void date shown on each check. If any checks remain uncashed or not deposited by the expiration of the 180-day period after mailing, the Settlement Administrator will, within two hundred (200) calendar days after the checks are mailed, pay the amount of the Individual Settlement Share to the California State Controller in accordance with California Unclaimed Property Law.

### **11. What is the PAGA Payment, and Am I Eligible for it?**

Under the terms of the Settlement, \$50,000 has been set aside as the PAGA Payment. This portion is the total amount of civil penalties collected on behalf of the State of California. \$37,500 will be sent to the State of California. Aggrieved employees will share \$12,500 based on the number of pay periods they worked during the PAGA Period.

You are an “aggrieved employee” eligible (“Eligible Aggrieved Employee”) to share the PAGA payment under the settlement if you are a current or former non-exempt employee who worked for Defendant within the State of California between June 9, 2019, and [INSERT DATE](“PAGA Period”).

The individual share will be calculated by determining the total number of work weeks the Eligible Aggrieved Employees were employed during the PAGA Period (i.e., the sum of all work weeks of employment for each eligible aggrieved employee), and dividing that number into the \$12,500 amount allocated to Eligible Aggrieved Employees to determine the monetary value assigned to each work week. That number will then be multiplied by the individual Eligible Aggrieved Employee’s total number of work weeks employed during the PAGA Period to determine that individual’s Individual PAGA Payment. Individual PAGA Payments shall be designated as 100% penalties, for which an IRS Form 1099 will issue.

Based on your total number of work weeks during the PAGA Time Period, your Individual PAGA Payment is \$ [REDACTED]. You are responsible for paying any federal, state, or local taxes owed as a result of this Individual PAGA Payment.

Because these penalties can only be sought by the State of California, you cannot exclude yourself from the PAGA portion of the settlement if the Court gives final approval. Even if you exclude yourself from the class action portion of the settlement, you will still be paid your portion of the civil penalties described above, and will be bound by the PAGA Released Claims provision.

If you are not an Eligible Aggrieved Employee, this Section does not apply to you.

### **12. How Will the Attorneys for the Class and the Class Representative Be Paid?**

Class Counsel will be paid from the Gross Settlement Amount. Subject to Court approval, Class Counsel shall be paid an amount not to exceed 35% of the Gross Settlement Amount (or \$280,000) for attorneys’ fees, and up to \$20,000 for litigation costs.

Defendant has paid all of its own attorneys’ fees and costs.

As set forth in Section No. 10 above, the Plaintiff will also be paid a Class Representative Enhancement Payment, subject to Court approval.

### **13. How Do I Get More Information?**

**IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS OR WOULD LIKE ELECTRONIC COPIES OF DOCUMENTS RELATING TO THE CLASS ACTION OR THE**

**SETTLEMENT**, you may contact Class Counsel listed above, or the Settlement Administrator at the telephone number listed below, toll-free. Please refer to the “Bachem Americas, Inc. class action settlement.”

This Notice does not contain all of the terms of the proposed Settlement or all of the details of these proceedings. For more detailed information, you may refer to the underlying documents and papers on file with the Court at 825 Maple Avenue, Torrance, CA 90503, between 8:30 a.m. and 4:00 p.m.

The pleadings and other records in this litigation may be examined online on the Los Angeles County Superior Court's website at <http://www.lacourt.org/casesummary/ui/index.aspx?> After arriving at the website, enter 20TRCV00591 as the case number and click 'SEARCH.' Under “Case Information” it states, “click here to access document images for this case.” Click “Continue as Guest” under Guest, re-enter the case number, 20TRCV00591, and images of every document filed in the case may be viewed at a minimal charge.

You may also view images of every document filed in the case free of charge by using one of the computer terminal kiosks available at each court location that has a facility for civil filings

**PLEASE DO NOT TELEPHONE THE COURT OR COURT’S CLERK FOR INFORMATION ABOUT THIS SETTLEMENT.**

# **EXHIBIT B**

**ELECTION NOT TO PARTICIPATE IN (“OPT OUT” FROM) CLASS ACTION SETTLEMENT**

Superior Court of the State of California, County of Los Angeles

*Gina Massenzo v. Bachem Americas, Inc.*

Case No. 20TRCV00591

**ONLY SIGN AND MAIL THIS DOCUMENT IF YOU WISH TO EXCLUDE YOURSELF FROM THE CLASS ACTION SETTLEMENT. IF YOU EXCLUDE YOURSELF, YOU WILL NOT RECEIVE A PAYMENT FROM THE CLASS ACTION SETTLEMENT.**

**This document must be postmarked no later than \_\_\_\_\_, 2021 and sent via U.S. Mail to:**

Bachem Americas, Inc. Settlement Administrator, C/O **SIMPLURIS, INC.**

[Insert Administrator Address]

[City, State ZIP]

**By signing and mailing this form to exclude yourself from the class action settlement, you are agreeing to and confirming the following:**

It is my decision not to participate in the class action settlement in *Gina Massenzo v. Bachem Americas, Inc.* I understand that by excluding myself I will not receive a settlement payment from the class action settlement. However, if I qualify for an “Individual PAGA Payment,” I will receive that payment regardless of whether I exclude myself from the class action settlement.

I confirm that I am and/or was employed by Bachem Americas, Inc. as a non-exempt employee of Bachem Americas, Inc. in California during any part of the period of June 9, 2017 and [INSERT DATE]. I confirm that I have received and reviewed the Notice of Class Action Settlement in this action. I have decided to be excluded from the class, and I have decided **not** to participate in the proposed settlement.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Last Four Digits of Social Security Number)

\_\_\_\_\_  
(Type or print name and former name(s))

\_\_\_\_\_  
(Telephone Number)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address continued)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**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 [arivera@justicelawcorp.com](mailto:arivera@justicelawcorp.com)

On June 30, 2021, I served the foregoing document described as

**JOINT STIPULATION AND SETTLEMENT AGREEMENT**

for the following case: **Massenzo v. Bachem Americas, Inc.**  
LWDA/Court Case No.: **LWDA Case No.: CM-792886-20**  
**Court Case No.: 20TRCV00591**  
**Los Angeles 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

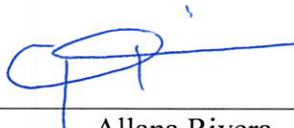
**[X] BY ELECTRONIC SUBMISSION**

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 June 30, 2021, at Pasadena, California.

  
\_\_\_\_\_  
Allana Rivera