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Balfour Beatty Construction, LLC and
Balfour Beatty Construction Company, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

DANIEL TORRES, on behalf of himself and all
others similarly situated;

Plaintiff,

vs.

BALFOUR BEATTY CONSTRUCTION,
LLC, a Delaware Limited Liability Company,
BALFOUR BEATTY CONSTRUCTION
COMPANY, INC., a Nevada Corporation, and,
DOES 1 through 50 inclusive,

Defendants.

Case No.: 20STCV46969

[Assigned for all purposes to
Hon. Carolyn B. Kuhl, Department 12]

**AMENDED JOINT STIPULATION OF
CLASS ACTION SETTLEMENT**

Complaint filed: December 9, 2020

1 **JOINT STIPULATION OF CLASS ACTION SETTLEMENT**

2 This Amended Joint Stipulation of Class Action Settlement (“Joint Stipulation,”
3 “Settlement,” or “Settlement Agreement”) is made and entered into by and between Plaintiff Daniel
4 Torres (“Plaintiff” or “Class Representative”) and Defendants Balfour Beatty Construction, LLC and
5 Balfour Beatty Construction Company, Inc. (“Defendants”). The Parties expressly acknowledge that
6 this Joint Stipulation amends and supersedes the “Joint Stipulation of Class Action Settlement”
7 previously entered into and executed by Plaintiff on March 29, 2022, by Defendant Balfour Beatty
8 Construction, LLC on April 14, 2022, and by Defendant Balfour Beatty Construction Company, Inc.
9 on April 12, 2022. Subject to the approval of the Court, the above-referenced action is being settled
10 under the terms and conditions set forth herein.

11 **I. RECITALS**

12 A. On December 9, 2020, Plaintiff commenced the above-captioned putative class action
13 against Defendants (“Action”). Through the Action, Plaintiff asserted, on behalf of all current and
14 former hourly or non-exempt employees who worked for Defendants in the State of California at any
15 time during the period of December 9, 2016 to final judgment, the following causes of action: 1)
16 failure to pay all wages owed including minimum and overtime wages, 2) failure to provide legally
17 compliant meal breaks, 3) failure to provide legally compliant rest periods, 4) failure to reimburse
18 all necessary business expenses, 5) failure to provide accurate wage statements, 6) failure to pay all
19 wages due at the end of employment, 7) Unfair Competition and 8) Private Attorney General Act
20 claims (“PAGA”), including, but not limited to, claims for injunctive relief; punitive damages;
21 liquidated damages, penalties of any nature; interest; fees; costs; and all other claims and allegations
22 made or which could have been made in the Action, from December 9, 2016 through Preliminary
23 Approval (“Released Claims”).

24 B. Defendants deny all material allegations set forth in the Action, defined below, and
25 has asserted numerous affirmative defenses. Notwithstanding, in the interest of avoiding further
26 litigation, Defendants desire to fully and finally settle the Action and Released Claims.

27 C. Class Counsel diligently investigated the proposed Class Members’ claims against
28 Defendants in the Action, including any and all applicable defenses and the applicable law, and

undertook review and analysis of a volume of documents and data obtained from Defendants and other sources.

D. On September 6, 2021, the Parties participated in mediation before third-party mediator Steve Serratore, a respected mediator of complex wage and hour actions. The settlement discussions were conducted at arm's-length, and the Settlement is the result of an informed and detailed analysis of Defendants' potential liability of total exposure in relation to the costs and risks associated with continued litigation. Based on the documents produced, as well as Class Counsel's own independent investigation and evaluation, and the Mediator's efforts, Class Counsel believes that the Settlement with Defendants for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the Class Members in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation and various defenses asserted by Defendants.

E. This Settlement Agreement is made and entered into by and between Plaintiff, individually, and on behalf of all others similarly situated, and Defendants, and is subject to the terms and conditions hereof, and to the Court's approval. The Parties expressly acknowledge that this Settlement Agreement is entered into solely for the purpose of compromising significantly disputed claims and that nothing herein is an admission of liability or wrongdoing by Defendants. If for any reason the Settlement Agreement is not approved, it will be of no force or effect, and the Parties shall be returned to their original respective positions.

II. DEFINITIONS

To the extent terms or phrases used in this Joint Stipulation are not specifically defined below, but are defined elsewhere in this Joint Stipulation, they are incorporated herein by reference.

A. "Action" or "Lawsuit" means the action entitled *Daniel Torres v. Balfour Beatty Construction, LLC*, LASC Case No. 20STCV46969.

B. "Class" or "Class Member(s)" means all hourly-paid or non-exempt employees who worked for Defendants in the State of California during the Class Period, or each of them.

C. "Class Counsel" means Jake D. Finkel and Joshua Park of The Law Office of Jake D. Finkel.

1 D. “Defendants’ Counsel” means Michael D. Thomas and Jade M. Brewster of Jackson
2 Lewis, P.C.

3 E. “Class Period” means the period of time from December 9, 2016, through Preliminary
4 Approval.

5 F. “Class Settlement” means the settlement and resolution of the Released Claims,
6 except for those arising under the Private Attorneys General Act, California Labor Code section
7 2698, *et seq.*

8 G. “Complaint” means the Class Action Complaint for Damages and Enforcement Under
9 the Private Attorneys General Act, Cal. Labor Code § 2698, Et Seq. filed in the Action on December
10 9, 2020.

11 H. “Court” means the Superior Court of the State of California for the County of Los
12 Angeles.

13 I. “Effective Date” means the date when all of the following events have occurred: (1)
14 the Settlement Agreement has been executed by all Parties, Class Counsel, and Defendants’ Counsel;
15 (2) the Court has granted preliminary approval to the Settlement; (3) the Notice of Class Action
16 Settlement has been mailed to the Class, providing them with an opportunity to object to or opt out
17 of the Class Settlement; (4) the Court has held a Final Approval Hearing and entered a Final Approval
18 Order and Judgment; (5) sixty-five (65) calendar days have passed since the Court has entered the
19 Final Approval Order and Judgment; and (6) in the event there are written objections filed prior to
20 the Final Approval Hearing that are not later withdrawn or denied, the later of the following events:
21 (a) five (5) business days after the period for filing any appeal, writ, or other appellate proceeding in
22 connection with the Final Approval Order and Judgment has elapsed without any appeal, writ, or
23 other appellate proceeding having been filed; or (b) if any appeal, writ, or other appellate proceeding
24 in connection with the Final Approval Order and Judgment has been filed, five (5) business days
25 after any appeal, writ, or other appellate proceedings in connection with the Final Approval Order
26 and Judgment has been finally and conclusively dismissed with no right to pursue further remedies
27 or relief. “Final Approval” means the Court’s entry of the Final Approval Order and Judgment.

28 J. “Final Approval Hearing” means the final hearing held to ascertain the fairness,

1 reasonableness, and adequacy of the Joint Stipulation, at which time the Court will enter its order
2 granting final approval of the Joint Stipulation.

3 K. "Final Approval Order and Judgment" means the order certifying the Settlement
4 Class, granting final approval of the Settlement, and entering judgment based thereon, after the Court
5 has determined that the Settlement is fair, adequate, and reasonable to the Settlement Class, following
6 notice to the Class and a hearing on the fairness of the Settlement.

7 L. "Gross Settlement Amount" means the amount of two-hundred and seventy-five
8 thousand dollars (\$275,000.00), that Defendants will pay to resolve this Action. The Gross
9 Settlement Amount includes Individual Settlement Shares to Settlement Class Members; Incentive
10 Payment to Class Representative; Attorneys' Fees and Litigation Costs to Class Counsel; PAGA
11 Settlement Amount (which includes Individual PAGA Shares to PAGA Group Members and LWDA
12 Payment to the LWDA); and Settlement Administration Costs to the Settlement Administrator. The
13 Gross Settlement Amount shall be the maximum amount that Defendants will be required to pay
14 under this Settlement. Notwithstanding the foregoing, Defendants will pay employer's share of
15 taxes, contributions, and withholdings with respect to the wages portion of Individual Settlement
16 Shares separately and in addition to the Gross Settlement Amount.

17 M. "Individual PAGA Share" means the *pro-rata* share of 25% of the PAGA Settlement
18 Amount to each PAGA Group Member.

19 N. "Individual Settlement Share" means the *pro rata* share of the Net Settlement Amount
20 to each Settlement Class Member.

21 O. "Individual Settlement Payment" means the net payment of each Settlement Class
22 Member's Individual Settlement Share (after reduction for the employee's share of taxes on the wage
23 portion) and PAGA Group Member's Individual PAGA Share (if applicable).

24 P. "LWDA" means The State of California Labor and Workforce Development Agency.

25 Q. "LWDA Payment" means 75% of the \$20,000 allocated to the PAGA Settlement
26 Amount (i.e., \$15,000) which, subject to Court approval, will be paid to the LWDA.

27 R. "Net Settlement Amount" means the Gross Settlement Amount less the Settlement
28 Administration Costs to the Settlement Administrator, Attorneys' Fees and Litigation Costs to Class

Counsel, Incentive Payments to Class Representative, and PAGA Settlement Amount.

S. “Notice of Class Action Settlement” or “Class Notice” means the proposed notice to be mailed to the Class, in substantially the same form as attached “**Exhibit A**,” as set forth in Section IV.C of this Joint Stipulation and as mutually agreed upon by the Parties and approved by the Court.

T. “Objection” means a Class Member’s written objection to the Class Settlement, per the procedures set forth in Section IV.E of this Joint Stipulation. Class Members shall not be permitted to object to the PAGA Settlement.

U. “Opt Out Request” means a written request by a Class Member to opt out of the Class Settlement, and by which a Class Member excludes himself or herself from participating in, receiving any payment from, and being bound by, the terms of the Class Settlement through the procedures set forth in Section IV.D of this Joint Stipulation. Class Members shall not be permitted to opt out of the PAGA Settlement.

V. “PAGA” means the California Private Attorneys General Act of 2004, which is codified in California Labor Code §§ 2698, *et seq.*

W. “PAGA Group Members” means all Settlement Class Members who worked for Defendants any time from June 3, 2019 through Preliminary Approval.

X. “PAGA Period” means the period from June 3, 2019, through Preliminary Approval.

Y. “PAGA Settlement” means the settlement and resolution of the Released Claims arising under the Private Attorneys General Act, California Labor Code Section 2698, *et seq.*

Z. “PAGA Settlement Amount” means the portion of the Gross Settlement Amount allocated to the resolution of Class Members’ claims arising under PAGA. The Parties have agreed that the PAGA Settlement Amount is twenty-thousand dollars (\$20,000), subject to Court approval. Of the PAGA Settlement Amount, 75% (i.e., \$15,000) will be paid to the LWDA, and the remaining 25% (i.e., \$5,000) will be distributed to PAGA Group Members.

AA. “Parties” means Plaintiff and Defendants, who are individually referred to as “Party.”

BB. “Preliminary Approval” means the order by the Court preliminarily approving this Joint Stipulation.

CC. “Preliminary Approval Hearing” means the hearing held on the motion for

1 preliminary approval of the Joint Stipulation.

2 DD. “Released Claims” means any and all claims for wages, damages, unpaid costs,
3 penalties, liquidated damages, interest, attorney fees, litigation costs, restitution, or equitable relief,
4 which Plaintiffs and Settlement Class Member had, or may claim to have, against any of the Released
5 Parties, arising during the Class Period, that were pled or that could have been pled based on the
6 factual allegations set forth in the Operative Complaint, including all claims for failure to pay wages
7 (including overtime wages and minimum wages under California Labor Code §§ 510, 1194, 1197,
8 1197.1 and 1198), failure to provide meal and/or rest periods and associated premium payments under
9 California Labor Code §§ 226.7 512(a), failure to pay wages timely during employment and upon
10 termination and associated claims for waiting time penalties under California Labor Code §§ 203 and
11 204, failure to provide compliant wage statements under California Labor Code § 226(a), failure to
12 maintain requisite payroll records under California Labor Code § 1174(d), failure to reimburse
13 business expenses under Labor Code §§ 2800 and 2802, claims under California Labor Code § 2699,
14 *et seq.* (“PAGA”) claims based on the California Labor Code sections alleged or could have been
15 alleged in the Complaint based on the factual allegations set forth in the Complaint, and unfair
16 business practices in violation of California Business and Professions Code § 17200 *et seq.*

17 EE. “Released Parties” means Defendants and all of their officers, directors, shareholders,
18 investors, employees, agents, insurers, parent companies, affiliates, subsidiaries, sureties, successors,
19 and assigns.

20 FF. “Response Deadline” means the date that is forty-five (45) calendar days after the
21 date the Class Notice is mailed to the Class Members, which will be the deadline for Class Members
22 to submit Opt Out Requests, Workweeks Disputes, or Objections to the Class Settlement. However,
23 said Response Deadline shall be extended by 14 days for those Class Member(s), whose prior to the
24 Response Deadline, a Class Notice mailed to them is returned as having been undelivered by the
25 U.S. Postal Service, and a Second Class Notice is resent to an updated address obtained by the
26 Settlement Administrator after the Settlement Administrator performs a skip-trace search and finds
27 an updated address for such Class Member(s).

28 GG. “Settlement Class Members” means Class Members who do not timely and validly

request exclusion from (i.e., opt out of) the Class Settlement.

HH. “Settlement Administrator” means Phoenix Settlement Administrators.

II. “Settlement Administration Costs” means all fees, costs, and expenses relating to the administration of the settlement in this Action, including without limitation, printing and mailing the Class Notice, calculating and determining Individual Settlement Shares, Individual PAGA Shares, and Individual Class Payments, regularly updating counsel for the Parties on the status of administration of the Settlement, and the accounting and maintenance of the Settlement Fund Account.

JJ. “Settlement Fund Account” means the bank account established under this Joint Stipulation from which all monies payable under this Joint Stipulation will be paid, as set forth herein.

KK. “Workweeks” means the number of weeks worked by a Class Member during the Class Period according to Defendants’ payroll records, with any partial weeks rounded up to the nearest full week. Workweeks will be calculated by the Settlement Administrator for each Class Member, using each Class Member’s start and end dates of employment to determine the number of days the Class Member was employed by Defendants within the Class Period, and dividing the total days by seven (7), rounded to the nearest whole number. Defendants’ Workweek data will be presumed to be correct, unless a particular Class Member proves otherwise to the Settlement Administrator by credible, written evidence. All Workweek Disputes will be resolved and decided by the Settlement Administrator and the Settlement Administrator’s decision on all Workweeks Disputes will be final and non-appealable.

LL. “Workweeks Dispute(s)” means a written letter submitted by a Class Member to the Settlement Administrator to dispute the number of Workweeks credited to the Class Member, per the procedures set forth in Section IV.F of this Joint Stipulation.

III. PRE-TRIAL PROCEEDINGS AND NEGOTIATIONS

A. **Discovery, Investigation and Research.** The Parties engaged in extensive investigation of the facts and law during the prosecution of the Action. The investigation included the exchange of information through formal and informal discovery. Specifically, it included, among

1 other things, the exchange of a volume of documents including Defendants' employment policies,
2 practices, and procedures and a sampling of Class Members' time and pay records. The Parties also
3 prepared for and attended a full-day mediation with Steve Serratore a well-regarded mediator
4 experienced in mediating complex wage-and-hour matters. Counsel for the Parties also investigated
5 applicable law as applied to the facts in the case and potential defenses and conducted their own
6 evaluations of the potential recoveries based on the claims in the Action.

7 B. **Allegations of Plaintiff and Benefits of Settlement.**

8 1. This Joint Stipulation was reached after arm's-length bargaining between the
9 Parties with the assistance of an experienced mediator, and after Class Counsel thoroughly reviewed
10 all available information. The information exchanged between the Parties allowed them to assess the
11 merits and to compromise the issues on a fair and equitable basis.

12 2. Plaintiff and Class Counsel contend the claims asserted in the Action have
13 merit. But, they acknowledge the expense and delay of continued litigation to prosecute the Action
14 through class certification, trial, and appeal. Plaintiff and Class Counsel have considered the
15 uncertain outcome and risk of litigation, and the difficulties and delays inherent in such litigation,
16 including, and not limited to, considering the risks associated with class certification, trial, and/or
17 appeals. Plaintiff and Class Counsel determined this Joint Stipulation confers substantial benefit to
18 the Class and is in the best interests of Plaintiff and Class Members.

19 C. **Defendants' Denials of Wrongdoing and Benefits of Settlement.** Defendants
20 generally deny all claims alleged in the Action and further deny class treatment is appropriate for
21 any purpose other than this Settlement. Defendants contend it complied with California and other
22 applicable law. It is Defendants' position that, if litigation continued, class certification would be
23 denied on all claims. Defendants concluded further litigation of the Action would be protracted and
24 expensive. Defendants further determined it is desirable that the Action be fully and finally settled
25 in the manner and upon the terms and conditions in this Joint Stipulation.

26 **IV. ISSUES**

27 A. **Preliminary Approval.** Class Counsel will submit this Joint Stipulation to the Court
28 with a motion for preliminary approval of this Settlement. Defendants will not oppose the motion.

1 B. **Settlement Administrator.**

2 1. The third-party company known as Phoenix Settlement Administrators will
3 act as Settlement Administrator. The Settlement Administrator will be responsible for: (1) preparing,
4 translating, printing and mailing simultaneously the Class Notice in substantially the same form as
5 attached “**Exhibit A,**” in English and Spanish; (2) receiving and reviewing Opt Out Requests; (3)
6 calculating Workweeks and Individual Settlement Payments under the Settlement; (4) handling
7 inquiries from Class Members concerning the Class Notice, including attempting to resolve
8 Workweek Disputes; (5) providing weekly status reports to Defendants’ Counsel and Class
9 Counsel regarding the number of mailings and number of Opt Out Requests; (6) distributing all
10 payments under the Settlement, as well as payments to taxing authorities as appropriate; (7)
11 providing due diligence declarations for submission to the Court, as needed; (8) printing and
12 providing Settlement Class Members and Plaintiffs with tax forms as required under this
13 Settlement Agreement and applicable law, and providing copies of same to Defendants; (9)
14 receiving and promptly forwarding to Class Counsel and Defendants’ Counsel any Objections;
15 and (10) such other tasks as the Parties mutually agree or the Court orders the Settlement
16 Administrator to perform.

17 2. The Parties and their counsel each represent they do not have a financial
18 interest in the Settlement Administrator or otherwise have a relationship with the Settlement
19 Administrator that creates or could create a conflict of interest. Settlement Administration Costs
20 are estimated not to exceed \$10,000 and are to be paid from the Gross Settlement Amount subject to
21 approval by the Court.

22 C. **Notice to Class Members.** Class Members will be provided notice of the Settlement
23 in the following manner:

24 1. Within twenty-one (21) calendar days of Preliminary Approval, Defendants
25 will provide the Settlement Administrator with the following information for each Class Member:
26 (1) full name; (2) last known mailing address and telephone number; (3) full Social Security number;
27 and (4) start and end dates of employment during the Class Period (“Class List”).

28 2. Within twenty-one (21) calendar days after the Settlement Administrator’s

1 receipt of the Class List, the Settlement Administrator will format and mail the Class Notice to the
2 Class Members via first-class U.S. mail.

3 3. Prior to mailing the Class Notice to the Class, the Settlement Administrator
4 will perform a search based on the National Change of Address Database to update and correct the
5 Class Members' addresses, contained in the Class List, for any known or identifiable address
6 changes. It will be conclusively presumed that if the Class Notice has not been returned within thirty
7 (30) calendar days of mailing, that the Class Member received the Class Notice and all of its contents.

8 4. The Settlement Administrator will perform a skip-trace search and re-mail all
9 Class Notices that are returned as undelivered on or before the Response Deadline, within seven (7)
10 calendar days of receiving the returned Class Notice. If a new address is obtained after a Class Notice
11 is returned as undeliverable, the Settlement Administrator shall promptly send a Second Class Notice
12 to the updated address via first-class U.S. mail, indicating the date of such re-mailing. Upon
13 completion of these steps by the Settlement Administrator, Defendants shall be deemed to have
14 satisfied its obligation to provide notice of the Settlement to Class Members. Such Class Members
15 shall be bound by all terms of the Joint Stipulation (including the release of Released Claims) and
16 the Court's order granting final approval of the Settlement and judgment based thereon, unless they
17 validly request exclusion from the Class Settlement.

18 5. Class Members shall have forty-five (45) calendar days from the date the
19 Class Notice is first mailed (*i.e.*, the Response Deadline) to submitting an Opt Out Request,
20 Workweeks Dispute, or Objection to the Class Settlement. However, said Response Deadline shall
21 be extended by 14 days for those Class Member(s), whose prior to the Response Deadline, a Class
22 Notice mailed to them is returned as having been undelivered by the U.S. Postal Service, and a
23 Second Class Notice is resent to an updated address obtained by the Settlement Administrator after
24 the Settlement Administrator performs a skip-trace search and finds an updated address for such
25 Class Member(s). Unless a Class Member validly opts out of the Class Settlement, the Class Member
26 will be deemed a Settlement Class Member and will be bound by all terms of the Settlement
27 Agreement (including the release of Released Claims) and the Court's order granting final approval
28 of the Settlement and judgment based thereon. Class Members shall not be permitted to opt out of

1 the PAGA Settlement.

2 D. **Procedure to Opt Out of Class Settlement.**

3 1. Class Members who wish to exclude themselves from the Class Settlement
4 must submit a timely and valid Opt Out Request (as directed by the Class Notice) to the Settlement
5 Administrator. The Opt Out Request must: (a) contain the full name, address, telephone number,
6 last four (4) digits of the Social Security Number, and signature of the Class Member requesting
7 exclusion; (b) contain a clear statement indicating that the Class Member wishes to exclude himself
8 or herself from the Class Settlement which references the Action by name and/or case number; and
9 (c) be mailed to the Settlement Administrator, postmarked no later than the Response Deadline. The
10 date of the postmark on the Opt Out Request to the Settlement Administrator shall be the exclusive
11 means used to determine whether a Class Member has timely submitted his or her Opt Out Request
12 to the Settlement Administrator. Any Class Member who properly opts out of the Class Settlement
13 using this procedure will not be a member of the Settlement Class, will be barred from participating
14 in this Class Settlement, will lack standing to object to the Class Settlement, and will receive no
15 benefit from the Class Settlement. Class Members shall not be permitted to opt out of the PAGA
16 Settlement.

17 2. Class Members who do not submit a timely and valid Opt Out Request (i.e.,
18 Settlement Class Members) shall be bound by all terms of the Settlement and the order granting final
19 approval of the Settlement and judgment based thereon. Any Class Member who submits a timely
20 and valid Opt Out Request will not be a Settlement Class Member, will not be entitled to recovery
21 under the Class Settlement, and will not be bound by the Class Settlement or the order granting final
22 approval of the Settlement and judgment based thereon; however, if the Class Member worked
23 during the PAGA Period, he or she will remain a PAGA Group Member, will receive an Individual
24 PAGA Payment, and will be bound by the PAGA Settlement. A Class Member who opts out of the
25 Class Settlement does not have the right to object, appeal, or comment on the Settlement.

26 3. The Settlement Administrator shall provide Defendants' Counsel and Class
27 Counsel with weekly updates about Class Members who submit Opt Out Requests.

28 E. **Procedure to Object to Class Settlement.**

1 1. Any Settlement Class Member who seeks to object to the Class Settlement
2 may do so by mailing a timely and valid Objection to the Settlement Administrator. The Objection
3 must: (a) contain the objecting Settlement Class Member's full name, address, telephone number,
4 last four digits of his or her Social Security number, and signature; (b) contain the words "Notice of
5 Objection" or "Formal Objection"; (c) contain the case name and number of the Action; (d) contain
6 a clear and concise statement, including factual and legal arguments, explaining his or her
7 objection(s) to the Class Settlement; (e) contain a statement indicating whether or not the Settlement
8 Class Member is represented by counsel and identifying any such legal counsel; (f) contain a
9 statement indicating whether the Settlement Class Member intends to appear at the Final Approval
10 Hearing to present his or her objection(s); (g) list any witnesses the objecting Settlement Class
11 Member may call to testify at the Final Approval Hearing; and (h) be mailed to the Settlement
12 Administrator, postmarked no later than the Response Deadline. The date of the postmark on the
13 Objection to the Settlement Administrator shall be the exclusive means used to determine whether a
14 Settlement Class Member has timely submitted his or her Objection to the Settlement Administrator.
15 Within three (3) business days of receiving any objection to the Class Settlement, the Settlement
16 Administrator shall provide copies of such Objections to Class Counsel and Defendants' Counsel.
17 The Settlement Administrator shall also attach copies of such Objections to its declaration that is
18 filed with the Court in advance of the Final Approval Hearing. Class Members shall not be permitted
19 to object to the PAGA Settlement.

20 2. Plaintiff and/or Defendants may file a response to any Objection(s) no later
21 than five (5) court days before the Final Approval Hearing.

22 F. **Workweeks Disputes.** A Class Member may dispute the accuracy of the Workweeks
23 credited to him or her by submitting a timely and valid Workweeks Dispute to the Settlement
24 Administrator in conformity with the instructions in the Class Notice and as set forth herein. Any
25 such Workweeks Dispute must: (a) contain the Class Member's full name, address, telephone
26 number, last four digits of his or her Social Security number, and signature; (b) contain the case name
27 and number of the Action; (c) contain a clear statement explaining that he or she disputes the number
28 of Workweeks credited to him or her and what he or she contends is the correct number of

1 Workweeks that should be credited to him or her; (d) include any documentation that he or she has
2 to support the dispute; and (e) be mailed to the Settlement Administrator, postmarked on or before
3 the Response Deadline. The Settlement Administrator shall provide copies of all Workweek Disputes
4 to Class Counsel and Defendants' Counsel within three (3) business days of receipt and shall
5 immediately attempt to resolve all such disputes with the assistance of Defendants' Counsel and
6 Class Counsel. In the event of a dispute, Defendants' records regarding the number of Workweeks
7 of the Class Member shall be presumed to be correct and the Class Member will bear the burden of
8 proof (*i.e.* a Class Member who fails to provide written proof will have his or her challenge denied).
9 The Settlement Administrator shall investigate the challenge, requesting information from
10 Defendants as necessary and make the final determination of whether any additional amount is owed.
11 All Workweek Disputes will be resolved and decided by the Settlement Administrator and the
12 Settlement Administrator's decision on all Workweeks Disputes will be final and non-appealable.

13 G. **Final Approval.**

14 1. At the Final Approval Hearing, Class Counsel will move the Court for an order
15 granting final approval of the Settlement and entry of judgment in accordance with the California Rule
16 of Court 3.769(h). Class Counsel will seek approval of the Settlement as being fair, reasonable, and
17 adequate to the Class Members. Class Counsel and Defendants' Counsel will submit to the Court such
18 pleading and/or evidence as required for the Court's determination. Class Counsel will also submit a
19 fee and cost application to be determined at the Final Approval Hearing.

20 2. The Final Approval Order and Judgment will, among other things: (a) find
21 that the dissemination of the Class Notice in the form and manner ordered by the Court was
22 accomplished as directed, met the requirements of due process, was the best notice practicable under
23 the circumstances, and constituted due and sufficient notice to all persons entitled thereto; (b) find
24 that the Class Representative and Class Counsel herein have fairly and adequately represented and
25 protected the interests of the Class at all times in the Action; (c) grant Final Approval to the
26 Settlement as fair, reasonable, adequate, in good faith, and in the best interests of the Class as a
27 whole, and order the Parties to carry out the provisions of this Settlement Agreement; (d) certify the
28 Settlement Class; (e) direct the Parties to implement the terms of the Settlement Agreement,

1 including, without limitation, the provisions regarding payments under the Settlement; (f) enter
2 judgment, adjudging that the Settlement Class Members are conclusively deemed to have released
3 the Released Parties from the Released Claims and that Class Members are conclusively deemed to
4 have released the Released Parties from the Released Claims arising under PAGA and that the *res*
5 *judicata* effect shall take place with respect to the release; (g) award Attorneys' Fees and Litigation
6 Costs to Class Counsel and an Incentive Payments to Class Representative in accordance with this
7 Joint Stipulation; and (h) reserving continuing jurisdiction as provided herein.

8 3. After entry of the Final Approval Order and Judgment, the Court shall have
9 continuing and exclusive jurisdiction over the Action for purposes of: (i) administration and
10 consummation of the terms of this Settlement Agreement; (ii) enforcing, constructing, and
11 interpreting this Settlement Agreement; (iii) addressing such post-judgment matters as may be
12 appropriate under Court rules or applicable law; and (iv) enforcing, constructing, and interpreting
13 the Final Approval Order and Judgment, including, but not limited to, the provisions therein
14 enjoining any further litigation of Released Claims, and over Plaintiff and all Settlement Class
15 Members (and their attorneys and law firms) in connection therewith.

16 **V. SETTLEMENT TERMS**

17 A. **Gross Settlement Amount.** To settle the Action and the Released Claims under the
18 terms of this Settlement Agreement, Defendants will pay the maximum amount of \$275,000 (*i.e.*, the
19 Gross Settlement Amount) as set forth above. Defendants will not be required to contribute
20 additional sums to fund the Settlement or otherwise resolve this Action and the Released Claims.
21 Notwithstanding the terms set forth in Section V.C, Defendants will not be required to pay any
22 amount exceeding the Gross Settlement Amount subject to Section VI.C. However, Defendants will
23 pay employer's share of taxes separately and in addition to the Gross Settlement Amount. The Gross
24 Settlement Amount is non-reversionary and distribution will be on a non-claims-made (*i.e.*, on an
25 auto-pay) basis. Defendants will pay the Gross Settlement Amount within thirty (30) calendar days
26 of the Effective Date.

27 B. **Establishment of Settlement Fund.** Within fifteen (15) calendar days of the
28 Effective Date, the Settlement Administrator will establish a Settlement Fund Account in a non-

interest bearing transaction account at a FDIC-insured institution.

C. **Allocation of Settlement Proceeds.**

The Gross Settlement Amount is inclusive of and will be allocated as follows:

1. Class Counsel's attorneys' fees, as approved by the Court, in an amount not to exceed a third of the Gross Settlement Amount, or \$91,666.666, to The Law Office of Jake D. Finkel ("Attorneys' Fees"). The fees shall be detailed in Class Counsel's application for Attorneys' Fees and Litigation Costs in this Action, to be heard at the time of Final Approval;

2. Reimbursement of Class Counsel's litigation costs and expenses, as approved by the Court, in an amount not to exceed \$15,000 ("Litigation Costs"). The costs shall be detailed in Class Counsel's application for Attorneys' Fees and Litigation Costs in this Action, to be heard at the time of Final Approval;

3. Payment to Class Representative, as approved by the Court, for his services on behalf of the Class, in an amount not to exceed \$8,000 ("Incentive Payment");

4. In consideration of claims made under PAGA, Class Counsel will request that the Court approve allocation of twenty-thousand dollars (\$20,000) of the Gross Settlement Amount to these claims. Seventy-five percent (75%) of this payment, or \$15,000, will be paid to the California Labor and Workforce Development Agency ("LWDA Payment"), and twenty-five percent (25%), or \$5,000, will be paid to PAGA Group Members on *pro rata* basis. Defendants will not oppose this request. The entire PAGA Settlement Amount will be paid out of the Gross Settlement Amount. The Court's adjustment, if any, of the amount allocated to the PAGA Settlement Amount, will not invalidate this Agreement.

5. The Settlement Administration Costs, as approved by the Court, in an amount estimated not to exceed \$10,000; and

6. The Net Settlement Amount, which is available for distribution to Settlement Class Members, after deducting the amounts stated in subparagraph 1-5 of this Section.

D. **Distribution of Settlement Proceeds.**

1. The Settlement Administrator shall keep Defendants' Counsel and Class Counsel apprised of all distributions from the Settlement Fund Account. No person shall have any

claim against Defendants, Defendants' Counsel, Plaintiffs, Class Counsel, or the Settlement Administrator based on distributions and payments made in accordance with this Settlement Agreement.

2. Within forty-five (45) calendar days after the Effective Date, the Settlement Administrator shall pay all Individual Settlement Payments to Settlement Class Members and PAGA Group Members, Attorneys' Fees and Litigation Costs to Class Counsel, Incentive Payments to Class Representatives, LWDA Payment to the LWDA, and Settlement Administration Costs to itself, all as awarded by the Court at the Final Approval Hearing.

3. The Settlement Administrator will be responsible for calculating each Settlement Class Member's gross share of the Net Settlement Amount (i.e., Individual Settlement Share), as follows: the Net Settlement Amount will be divided by the total number of Workweeks worked by all of the Settlement Class Members during the Class Period to yield a "Class Weekly Rate." Each Settlement Class Member's respective number of Workweeks during the Class Period will be multiplied by the Class Weekly Rate, to yield his or her respective Individual Settlement Share. Each Individual Settlement Share shall be allocated thirty percent (30%) to wages (to be reported on IRS Form W-2), and seventy percent (70%) allocated to penalties and interest (to be reported on IRS Form 1099, if applicable). Each Individual Settlement Share will be subject to reduction for the employee's withholdings with respect to the wages portion of each Individual Settlement Share. Employer's share of taxes with respect to the wages portion of each Individual Settlement Share shall be remitted by Defendants to the Settlement Administrator separately and in addition to the Gross Settlement Amount.

4. The Settlement Administrator will be responsible for calculating each PAGA Group Member's *pro rata* share of the 25% of the PAGA Settlement Amount (i.e., Individual PAGA Share), as follows: the 25% of the PAGA Settlement Amount will be divided by the total number of Workweeks worked by all of the PAGA Group Members during the PAGA Period to yield a "PAGA Weekly Rate." Each PAGA Group Member's respective number of Workweeks during the PAGA Period will be multiplied by the PAGA Weekly Rate, to yield his or her respective Individual PAGA Share. Individual PAGA Payments will be allocated as one hundred percent (100%) penalties (to be

1 reported on IRS Form 1099).

2 5. The Settlement Administrator's determination of eligibility for, and the
3 amounts of, any settlement payments under this Settlement Agreement shall be conclusive, final, and
4 binding on all parties, including all Class Members.

5 6. The net payment of each Settlement Class Member's Individual Settlement
6 Share (after reduction for the employee's share of payroll taxes, contributions, and withholdings on
7 the wage portion) and/or PAGA Group Member's Individual PAGA Share (if applicable) is referred
8 to as his or her "Individual Settlement Payment." The Settlement Administrator shall distribute the
9 Individual Settlement Payments by way of a single check that combines both payments (if
10 applicable). Each Individual Settlement Payment check will remain valid and negotiable for one
11 hundred eighty (180) calendar days from the date of their issuance after which it will become stale
12 ("Check Stale Date") and shall automatically be cancelled if not cashed or deposited by the
13 Settlement Class Member or PAGA Group Member within that time. Any funds remaining in the
14 Settlement Fund Account as a result of Settlement Class Members' or PAGA Group Members'
15 failure to cash or deposit their checks by the Check Stale Date, shall be transmitted in the names and
16 respective amounts of the checks that are cancelled, to the Controller of the State of California to be
17 held pursuant to the Unclaimed Property Law, California Civil Code section 1500 *et seq.*, for the
18 benefit of those Settlement Class Members or PAGA Group Members whose checks were cancelled,
19 until such time that they claim their property. Defendants will not be required to pay any interest on
20 said amount. The Parties agree that this disposition results in no "unpaid residue" under California
21 Code of Civil Procedure section 384, as the entire Net Settlement Amount will be paid out to
22 Settlement Class Members and the entire 25% share of the PAGA Settlement Amount will be paid
23 out to PAGA Group Members, whether or not they cash or deposit their Individual Settlement
24 Payment checks.

25 7. The Settlement Administrator shall prepare any and all reports and/or declarations
26 regarding the distribution of funds under the Settlement, as ordered by the Court. The Settlement
27 Administrator shall also undertake amended and/or supplemental tax filings and reporting, required
28 under applicable local, state, and federal tax laws, that are necessitated due to the cancellation of any

1 settlement checks. To the extent that the Settlement Administrator is able to obtain or receive the
2 return or refund of the amounts that were transmitted to taxing authorities for the employer's and
3 employee's share of payroll taxes, contributions, and withholding associated with cancelled
4 Individual Settlement Payments, these amounts shall be transmitted to the Controller of the State of
5 California identified in this Paragraph, along with the funds associated with cancelled settlement
6 checks.

7 8. Notwithstanding the above, within fourteen (14) calendar days after the disbursement
8 of all funds as set forth in section V.D.2, the Settlement Administrator will serve on the Parties a
9 declaration providing a final report on the disbursements of all funds.

10 9. Plaintiff, PAGA Group Members, and Settlement Class Members will be solely
11 responsible for the reporting and payment of any state, local, and/or federal income tax, if any, on
12 the amounts paid to them under the Settlement. If it is determined that any taxes are due in connection
13 with any amount paid under the Settlement, Plaintiff, PAGA Group Members, and Settlement Class
14 Members will be solely responsible for all liability for taxes and any costs, fees, interest, assessments,
15 penalties, damages, or other losses due to such a determination. No payments made under this
16 Settlement Agreement will have an effect on any employee pension benefit plan or employee welfare
17 benefit plan sponsored by Defendants.

18 E. **Class Counsel's Attorney's Fees.** Defendants will not oppose Class Counsel's
19 application for Attorneys' Fees of up to a third (\$91,666.66) of the Gross Settlement Amount.
20 Defendants will not be obligated to pay any attorney's fees of Class Counsel, Plaintiff, or Class
21 Members above this amount. Class Counsel's fee application must be submitted with supporting
22 documentation and heard at the time of the Final Approval Hearing. No part of the Gross Settlement
23 Amount will be used to pay any attorney's fees of Class Counsel, Plaintiff, or Class Members above
24 this amount. Attorneys' Fees to Class Counsel are subject to court approval.

25 F. **Class Counsel's Litigation Costs.** Defendants will not oppose Class Counsel's
26 application for Litigation Costs of up to \$15,000. Defendants will not be obligated to pay any costs
27 of Class Counsel, Plaintiff, or Class Members above this amount. No part of the Gross Settlement
28 Amount will be used to pay any costs of Class Counsel, Plaintiff, or Class Members above this

amount. Class Counsel's request for Litigation Costs must be submitted with its Attorneys' Fee application and with supporting documentation, and heard at the time of the Final Approval Hearing. Litigation Costs to Class Counsel are subject to approval by the Court.

G. **Incentive Payment to Plaintiff.** In exchange for a general release of all claims, and in recognition of Plaintiff's effort and work in prosecuting the Action on behalf of the Class Members and negotiating the Settlement, Defendants will not oppose Plaintiff's application for an Incentive Payment to Plaintiff of up to \$8,000. This Incentive Payment is subject to approval by the Court. Defendants will not be obligated to pay any incentive payment above this amount. This Incentive Payment shall be considered miscellaneous income, and the Settlement Administrator will be responsible for issuing a Form 1099, and any other tax forms, to Plaintiff relating to Incentive Payment. No part of the Gross Settlement Amount will be used to pay any Incentive Payment above this amount.

H. **Settlement Administration Costs.** The Parties agree the Settlement Administration Costs shall be deducted from the Gross Settlement Amount, subject to approval by the Court. Settlement Administration Costs are estimated not to exceed \$10,000.

I. **Tax Treatment.**

1. Plaintiff, PAGA Group Members, and Settlement Class Members shall be exclusively liable for any and all of their respective tax liability, if any. Plaintiff, PAGA Group Members, and Settlement Class Members should consult with their tax advisors concerning the tax consequences of the payments they receive under the Settlement Agreement. Each PAGA Group Member and Settlement Class Member will be responsible for paying all applicable state, local, and federal income taxes on all amounts they receive pursuant to this Settlement Agreement. Plaintiff, PAGA Group Members, and Settlement Class Members shall cooperate with Defendants and provide documentation as requested to demonstrate such payment should any taxing authority challenge the tax treatment of any such payment made under the Settlement.

2. Each Party to this Settlement Agreement acknowledges and agrees that:

a. No provision of this Settlement Agreement and no written communication or disclosure between or among the Parties or their attorneys and other advisers, is

1 or was intended to be, nor shall any such communication or disclosure constitute or be construed or
2 be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230
3 (31 CFR Part 10, as amended);

4 b. He, she, or it: (a) has relied exclusively upon his, her, or its own,
5 independent legal and tax advisers for advice (including tax advice) in connection with this
6 Settlement Agreement; (b) has not entered into this Settlement Agreement based upon the
7 recommendation of any other Party or any attorney or advisor to any other Party; and (c) is not
8 entitled to rely upon any communication or disclosure by any attorney or advisor to any other Party
9 to avoid any tax penalty that may be imposed on him or her; and

10 c. No attorney or adviser to any other Party has imposed any limitation
11 that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of
12 whether such limitation is legally binding) upon disclosure by him or her of the tax treatment or tax
13 structure of any transaction, including any transaction contemplated by this Settlement Agreement.

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

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

9 J. **Release of Claims by Plaintiff and Settlement Class Members.**

10 1. Upon the Effective Date and Defendants fully funding the Gross Settlement
11 Amount pursuant to Section V(A), Plaintiff, and all Class Members who do not submit a timely and
12 valid opt Out Request (i.e., Settlement Class Members) will be deemed to have fully released and
13 discharged the Released Parties of and from all of the Released Claims that do not arise under PAGA
14 and that all PAGA Group Members will be deemed to have fully released and discharged the Released
15 Parties of and from all of the Released Claims that do arise under PAGA.

16 2. **Release by Plaintiff.** Upon the Effective Date and Defendants fully funding
17 the Gross Settlement Amount pursuant to Section V(A), in addition to the claims being released by
18 all Settlement Class Members, Plaintiff releases and forever discharges the Released Parties, to the
19 fullest extent permitted by law, of and from any and all claims, known and unknown, asserted and
20 not asserted, which Plaintiff has or may have against the Released Parties as of the date of execution
21 of this Settlement Agreement ("Plaintiff's Released Claims"). Plaintiff's Released Claims include,
22 but are not limited to, all of the Released Claims and any other claims arising under the California
23 Labor Code; any claim arising out of the California common law of contract; the Fair Labor Standards
24 Act, 29 U.S.C. § 201 *et seq.*, and federal common law; all claims for lost wages and benefits, emotional
25 distress, retaliation, punitive damages, and attorneys' fees and costs arising under federal, state, or local
26 laws for discrimination, harassment, and wrongful termination, including but not limited to, 42 U.S.C.
27 section 1981, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age
28 Discrimination in Employment Act, the California Fair Employment and Housing Act, the California

1 Labor Code, and the law of contract and tort. This release excludes the release of claims not permitted
2 by law.

3 Plaintiff's Released Claims include all claims, whether known or unknown. Even if Plaintiff
4 discovers facts in addition to or different from those that they now know or believe to be true with respect to
5 the subject matter of Plaintiff's Released Claims, those claims will remain released and forever barred. To
6 effect a full and complete general release as described above, Plaintiff expressly waives any and all rights and
7 benefits conferred upon Plaintiff by the provisions of Section 1542 of the California Civil Code or similar
8 provisions of applicable law which are as follows:

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

14 Thus, notwithstanding the provisions of section 1542, and to implement a full and complete
15 release and discharge of the Released Parties, Plaintiff expressly acknowledges this Settlement is
16 intended to include in its effect, without limitation, all claims Plaintiff does not know or suspect to exist
17 in Plaintiff's favor at the time of signing this Settlement, and that this Settlement contemplates the
18 extinguishment of any such claims. Plaintiff warrants that Plaintiff has read this Settlement, including
19 this waiver of California Civil Code section 1542, and that Plaintiff has consulted with or had the
20 opportunity to consult with counsel of Plaintiff's choosing about this Settlement and specifically about
21 the waiver of section 1542, and that Plaintiff understands this Settlement and the section 1542 waiver,
22 and so Plaintiff freely and knowingly enters into this Settlement. Plaintiff further acknowledges that
23 Plaintiff later may discover facts different from or in addition to those Plaintiff now know or believe
24 to be true regarding the matters released or described in this Settlement, and even so Plaintiff agrees
25 that the releases and agreements contained in this Settlement shall remain effective in all respects
26 notwithstanding any later discovery of any different or additional facts. Plaintiff expressly assumes any
27 and all risks of any mistake in connection with the true facts involved in the matters, disputes, or
28 controversies released or described in this Settlement or with regard to any facts now unknown to

1 Plaintiff relating thereto.

2 **VI. NULLIFICATION OF THE JOINT STIPULATION**

3 A. This Joint Stipulation will be null and void, if: (a) the Court unconditionally refuses to
4 grant approval of this Joint Stipulation; (b) the Court refuses to enter a judgment in the Action; (c) the
5 judgment is reversed, modified, or declared or rendered void; and/or (d) if any material portion of this
6 Joint Stipulation is invalidated, unless the Parties subsequently agree in writing that the remaining
7 provisions of the Joint Stipulation are to remain in full force and effect.

8 B. If the number of Class Members who submit timely and valid Opt Out Requests
9 reaches five percent (5%), Defendants may rescind this Joint Stipulation. If Defendants rescind, it will
10 be responsible for the Settlement Administration Costs incurred up to the date of rescission. This
11 option to rescind the Settlement must be exercised by way of written notice sent to Class Counsel by
12 certified mail to Jake D. Finkel. At The Law Office of Jake D. Finkel, 3470 Wilshire Blvd., Suite 830
13 Los Angeles, CA 90010, within thirty (30) calendar days of receiving notice from the Settlement
14 Administrator that it has received Opt Out Requests from ten percent (5%) or more of the Class
15 Members.

16 C. If this Joint Stipulation is rendered null and void in conformity with this Section, then,
17 neither this Joint Stipulation, nor any of the related negotiations or proceedings, will be of any force
18 or effect, and all Parties will stand in the same position, without prejudice, as if the Joint Stipulation
19 had not been entered or filed.

20 **VII. DUTIES OF THE PARTIES**

21 A. **Mutual Cooperation.** The Parties agree to cooperate to accomplish and implement
22 the terms of this Joint Stipulation. Such cooperation will include, but not be limited to, execution of
23 such other documents and taking such other actions as may reasonably be necessary to fulfill the
24 terms of this Joint Stipulation. The Parties will use their reasonable best efforts, including all efforts
25 contemplated by this Joint Stipulation and any other efforts that may become necessary by court
26 order, or otherwise, to effectuate this Joint Stipulation and the terms set forth herein. As soon as
27 practicable after execution of this Joint Stipulation, Class Counsel, with the cooperation of
28 Defendants and its counsel, will try to secure Preliminary Approval and Final Approval. Defendants

1 understand that in the course of applying for settlement approval, Plaintiff will be required to submit
2 sufficient evidence to support the fairness of the proposed settlement terms. Defendants
3 affirmatively agree to provide reasonable assistance and support of Plaintiff in providing such
4 evidence, including but not limited to confirming the number of Plaintiff Class members (former and
5 current), average pay rates, gross wages paid, and workweeks/pay periods by Class Members during
6 the Class Period.

7 B. **Duty to Support and Defend the Settlement.** The Parties agree the settlement is fair
8 and reasonable and will so represent to the Court. In addition, the mediator (Steve Serratore) may
9 execute a declaration supporting the settlement, and the Court may contact the mediator to discuss
10 the settlement and whether or not it is fair and reasonable. The Parties agree to abide by all terms of
11 the Joint Stipulation in good faith and to support the Joint Stipulation fully, and to use their best
12 efforts to defend this Settlement from any legal challenge, whether by appeal or collateral attack.
13 Plaintiffs agree to take all steps necessary to implement and effectuate the Settlement.

14 **VIII. MISCELLANEOUS PROVISIONS**

15 A. **No Comments to Press or Media.** If contacted by the media or members of the press,
16 the Parties, Defendants' Counsel, and Class Counsel will merely inform them that the case has been
17 resolved, and refer them to the public filings. The terms of the Settlement shall remain confidential
18 until the Parties submit the motion for preliminary approval to the Court. Notwithstanding the
19 foregoing, nothing in this Settlement Agreement shall restrict Class Counsel from disclosing and
20 including all publicly available information regarding this case and the settlement in any documents
21 filed with any court and/or judicial submissions (e.g., CV's, declarations regarding adequacy or
22 experience, etc.). Furthermore, Plaintiffs and Class Counsel will undertake any and all disclosures
23 required to be made to the LWDA in conformity with PAGA.

24 B. **No Admission of Liability.**

25 1. This Joint Stipulation is not an admission of liability by Defendants or any of
26 the Released Parties. Defendants and the Released Parties deny that they have engaged in any
27 unlawful activity, have failed to comply with the law in any respect, have any liability to anyone
28 under the claims asserted in the Action, or that, but for the Settlement, a class could be certified in

1 the Action. This Settlement Agreement is entered into solely for the purpose of compromising highly
2 disputed claims. Nothing in this Settlement Agreement is intended or will be construed as an
3 admission by Defendants or the Released Parties of liability or wrongdoing, or an admission by
4 Plaintiffs that any of their claims were non-meritorious or any defenses to his claims were
5 meritorious. This Settlement and the fact that Plaintiff and Defendants were willing to settle the
6 Action will have no bearing on, and will not be admissible in connection with, any litigation (other
7 than solely in connection with the Settlement).

8 2. The Parties have agreed to class certification for the sole purpose of
9 effectuating this Settlement. Should the Settlement not be approved by the Court, or should the
10 Judgment regarding the Settlement not become final, the fact that the Parties were willing to stipulate
11 to class certification as part of the Settlement will have no bearing on, and will not be admissible in
12 connection with, the issue of whether a class should be certified in a non-settlement context in the
13 Action, or any other action, and in any of those events Defendants and the Released Parties expressly
14 reserve the right to oppose class certification.

15 3. Whether or not the Settlement set forth in this Settlement Agreement becomes
16 final, neither the Settlement, this Settlement Agreement, any document, statement, proceeding, or
17 conduct related to the Settlement or the Settlement Agreement, nor any reports or accounting of those
18 matters, will be offered as evidence for any purpose adverse to Defendants or any of the Released
19 Parties, including, but not limited to, evidence of a presumption, concession, indication, or admission
20 by any of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage;
21 or (ii) disclosed, referred to, or offered in evidence against any of the Released Parties, in any further
22 proceeding in the Action, or any other civil, criminal, or administrative action or proceeding except
23 for purposes of effectuating the Settlement pursuant to this Settlement Agreement.

24 4. This Section and all other provisions of this Settlement Agreement
25 notwithstanding, any and all provisions of this Settlement Agreement, may be admitted in evidence
26 and otherwise used in any and all proceedings to enforce any or all terms of this Settlement
27 Agreement or in defense of any claims released or barred by this Settlement Agreement.

28 C. **No Impact on Benefit Plans.** It is expressly understood and agreed that the receipt

1 of any payment under the Settlement will not entitle Plaintiff, PAGA Group Members, or any
2 Settlement Class Member to additional compensation or benefits under any company bonus,
3 contract, incentive plan, contest, or other compensation or benefit plan or agreement in place during
4 the Class Period, nor will it entitle any Settlement Class Member to any increased retirement, 401(k)
5 or matching benefits, or deferred compensation benefits. It is also expressly understood and agreed
6 that any payments made to Plaintiff, PAGA Group Members, and Settlement Class Members under
7 the terms of this Settlement Agreement do not represent any modification of previously credited
8 length of service or other eligibility criteria under any bonus plan, incentive plan, contract, employee
9 pension benefit plan, or employee welfare plan sponsored by any of the Released Parties or to which
10 any of the Released Parties are required to make contributions. All payments under the Settlement
11 shall be deemed to be paid to Plaintiff, PAGA Group Members, and Settlement Class Members solely
12 in the year in which such payments actually are received by them. Further, any payments made under
13 this Settlement Agreement shall not be considered compensation in any year for purposes of
14 determining eligibility for, or benefit accrual within, any employee pension benefit plan or employee
15 welfare benefit plan sponsored by any of the Released Parties or to which any of the Released Parties
16 are required to make contributions. It is the Parties' intent that the Individual Settlement Payments
17 provided for in this Settlement Agreement are the sole payments to be made by Defendants to the
18 Settlement Class Members and PAGA Group Members, and that neither the Settlement Class
19 Members nor the PAGA Group Members are entitled to any new or additional compensation or
20 benefits as a result of having received the Individual Settlement Shares (notwithstanding any contrary
21 language or agreement in any benefit or compensation plan document that might have been in effect
22 during the Class Period) and/or Individual PAGA Shares.

23 D. **Construction.** The Parties agree this Joint Stipulation resulted from lengthy,
24 intensive, arm's-length negotiations, and it is not to be construed for or against any Party for any
25 reason.

26 E. **Choice of Law.** This Joint Stipulation is intended to and will be governed by the laws
27 of California, without regard to conflicts of law principles.

28 F. **Interim Stay of Proceedings.** The Parties agree to hold in abeyance all proceedings

1 in the Action (including with respect to California Code of Civil Procedure section 583.310),
2 except such proceedings necessary to implement and complete the Settlement Agreement, pending
3 the Final Approval Hearing to be conducted by the Court.

4 G. **Continuing Jurisdiction.** Even after entry of judgment in the Action based on the
5 Settlement, the Court will retain continuing jurisdiction to enforce the Settlement pursuant to
6 California Rules of Court 3.769 and California Code of Civil Procedure section 664.6.

7 H. **Captions and Interpretations.** Section headings, paragraph headings, titles, or
8 captions contained herein are inserted as a matter of convenience and for reference only, and in no
9 way define, limit, extend, or describe the scope of this Joint Stipulation or any provision thereof.

10 I. **Modification.** This Joint Stipulation may not be changed, altered, or modified, except
11 in writing signed by counsel for the Parties and approved by the Court.

12 J. **Integration Clause.** All prior or contemporaneous agreements, understandings,
13 representations, and statements, whether oral or written, between the Parties are merged herein. No
14 rights under this Joint Stipulation may be waived except in writing.

15 K. **No Inducements.** Plaintiff and Defendants acknowledge that they are entering into
16 this Settlement Agreement as a free and voluntary act without duress or undue pressure or influence
17 of any kind or nature whatsoever, and that neither Plaintiff nor Defendants have relied on any
18 promises, representations, or warranties regarding the subject matter hereof other than as set forth in
19 this Settlement Agreement.

20 L. **Successors and Assigns.** This Joint Stipulation will be binding upon and inure to the
21 benefit of the Parties and their respective heirs, trustees, executors, administrators, predecessors,
22 successors, affiliates, agents, and assigns.

23 M. **Class Counsel Signatories.** Because the Class Members are so numerous, the Parties
24 agree it is impossible or impractical to have each Class Member sign this Joint Stipulation. This Joint
25 Stipulation may be executed on behalf of the Class by Class Counsel and Plaintiff.

26 N. **Attorney Authorization.** Class Counsel and Defendants' Counsel warrant and
27 represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate
28 action required or permitted to be taken by such Parties under this Settlement Agreement to effectuate

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

9 O. **Dates.** If any of the dates in the Joint Stipulation fall on a weekend, bank holiday, or
10 court holiday, the time to act shall be extended to the next business day.

11 P. **Execution in Counterparts.** This Joint Stipulation will become effective upon its
12 execution by all of the undersigned. The Parties may execute this Joint Stipulation in counterparts,
13 and execution of counterparts will have the same force and effect as had all Parties signed the same
14 instrument. Facsimile or pdf copies of any such signed counterparts may be used in lieu of the
15 original for any purpose. Pursuant to California Civil Code section 1633.7, the Parties agree they
16 may use DocuSign or similar electronic signature technology to expedite the execution of this
17 Settlement Agreement.

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19
20 **IT IS SO AGREED.**

21 DATED: Jun 20, 2022, 2022

22 By: *Daniel Torres*
23 DANIEL TORRES
24 Plaintiff

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BALFOUR BEATTY CONSTRUCTION, LLC

By: _____

DATED: _____, 2022

Name:

Title: _____

BALFOUR BEATTY CONSTRUCTION
COMPANY, INC.

By: _____

DATED: _____, 2022

Name:

Title: _____

APPROVED AS TO FORM:

DATED: June 21, 2022

THE LAW OFFICES OF JAKE D. FINKEL

By: Joshua Park
Jake D. Finkel
Joshua Park
Attorneys for Plaintiff

DATED: _____, 2022

JACKSON LEWIS, P.C.

By: _____
Michael D. Thomas
Jade M. Brewster
Attorneys for Defendants

Balfour Beatty Construction, LLC and
Balfour Beatty Construction Company, Inc.

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BALFOUR BEATTY CONSTRUCTION, LLC

By: 

DATED: 06/21/2022, 2022

Name: Brian Cahill, Division President
Title:

BALFOUR BEATTY CONSTRUCTION
COMPANY, INC.

By: 

DATED: 06/21/2022, 2022

Name: Eric G. Stenman
Title:

APPROVED AS TO FORM:

DATED: , 2022

THE LAW OFFICES OF JAKE D. FINKEL

By: _____
Jake D. Finkel
Joshua Park
Attorneys for Plaintiff

DATED: June 23, , 2022

JACKSON LEWIS, P.C.

By: *Michael D. Thomas*
Michael D. Thomas
Jade M. Brewster
Attorneys for Defendants

Balfour Beatty Construction, LLC and
Balfour Beatty Construction Company, Inc.