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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 COUNTY OF SAN DIEGO-CENTRAL DIVISION

16 JUAN LIMON, individually and on behalf)
17 of all others similarly situated,)

18 Plaintiffs,

19 vs.

20 ROMAN BERNAL PAINTING)
21 CORPORATION DBA PRO-TECH)
22 PAINTING COMPANY, *et al.*,)

23 Defendants.

Case No.: 37-2021-00002171-CU-OE-CTL

**PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES ISO
MOTION FOR APPROVAL OF A
PRIVATE ATTORNEY GENERAL
ACT SETTLEMENT AND RELEASE**

Hearing Date: Sept. 8, 2023

Hearing Time: 1:30 p.m.

Hearing Location: C-72

Judge: Hon. Timothy Taylor

[Not. of Mot., Prop. Ord., and Decs. of
Thomas D. Rutledge, Rory K. Pendergast,
and Chris Taylor filed concurrently
herewith]

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1 **I. INTRODUCTION.**

2 Plaintiff Juan Limon (Representative Plaintiff) on behalf of himself, the “Aggrieved
3 Employees” as defined herein, and the Representative Plaintiff as a proxy for the State of
4 California, hereby moves for Court approval of the Private Attorney General Act (PAGA)
5 Settlement and Release, a signed copy of which is attached as **Exhibit 1** to the Declaration
6 of Thomas D. Rutledge filed concurrently herewith, pursuant to Labor Code § 2699(l)(2),
7 that the settlement of this action shall be effectuated subject to the terms and conditions
8 discussed below.

9 **II. STANDARD OF REVIEW.**

10 Pursuant to Labor Code § 2699(l), “[t]he superior court shall review and approve any
11 penalties sought as part of a proposed settlement agreement.” Pursuant to Labor Code §
12 2699(e) the court has discretion as it pertains to the amount of the penalty and "may award a
13 lesser amount than the maximum civil penalty amount specified ... based on the facts and
14 circumstances of the particular case" because "to do otherwise would result in an award that
15 is unjust, arbitrary and oppressive, or confiscatory." (Labor Code § 2699(e).)

16 **III. SUMMARY OF SETTLEMENT TERMS.**

17 Defendants Roman Bernal Painting Corporation DBA Pro-Tech Painting Company,
18 Roman E. Bernal, and Lisa M. Bernal (Defendants) agree to pay the Gross Settlement
19 Amount of \$500,000, a non-reversionary sum, in exchange for the full and final settlement
20 and release of any and all claims, known or unknown, by the Representative Plaintiff
21 individually, and on behalf of the Aggrieved Employees and the State of California that
22 were made, or that could have been made pursuant to the PAGA based on the same or
23 similar facts alleged in the operative Complaint in this action Action, and subject to the
24 terms and conditions outlined in this Motion.

25 Subject to Court approval, \$50,000 of the Gross Settlement Amount is payable to the
26 named Plaintiff to resolve his individual and representative claims against the Defendants.
27 Per the PAGA and subject to Court approval, 75% of the “Net Settlement Amount,” as
28 defined herein, is payable to the Labor Workforce Development Agency (LWDA), 25% of

1 the Net Settlement Amount is payable to the Aggrieved Employees, up to 1/3 of the Gross
2 Settlement Amount is payable to Plaintiffs' Counsel, up to \$4,711 is payable to Plaintiffs'
3 Counsel for costs, and up to \$6,000 is payable to the Settlement Administrator.

4 **IV. DEFINITIONS.**

5 As used in this Motion, the following terms shall have the meanings specified below:

6 1. "Action" means this lawsuit and the operative Complaint in the matter entitled
7 *Limon v. Roman Bernal Painting Corporation dba Pro-Tech Painting Company, et al.*
8 SDSC Case No.: 37-2021-00002171-CU-OE-CTL LWDA Case No. LWDA-CM-807889-
9 20.

10 2. "Aggrieved Employees" means all nonexempt employees Defendants
11 employed (former and current) in the State of California during the "PAGA Period," as
12 defined below.

13 3. "Complaint" means the operative Complaint in the Action.

14 4. "Counsel for Defendants" or "Defense Counsel" means Messrs. Alexis S.
15 Gutierrez, Esquire and Geoffrey M. Thorne, Esquire, Higgs Fletcher & Mack LLP, 401 W
16 "A" Street, Suite 2600, San Diego, CA 92101.

17 5. "Court" means the Superior Court of California, San Diego County in which
18 the Action is currently pending.

19 6. "Current Aggrieved Employee" means an employee who is currently
20 employed by Defendant Roman Bernal Painting Corporation DBA Pro-Tech Painting
21 Company.

22 7. "Distributable Amount" or "Net Settlement Amount" means the amount that is
23 distributable to the Aggrieved Employees and the LWDA after the following amounts, if
24 approved by the Court, are subtracted from the Gross Settlement Amount: (a) a \$50,000
25 Civil Code § 1542 payment to the named Plaintiff; (b) Plaintiffs' Counsel's attorneys' fees
26 of one third of the Gross Settlement Amount; (c) Plaintiffs' Counsel's costs of \$4,711; and
27 (d) settlement administration costs of \$6,000.

28 8. "Effective Date" means the date of entry of Order granting approval of this

1 Settlement Agreement.

2 9. "Former Aggrieved Employee" means an employee no longer working for the
3 Defendant Roman Bernal Painting Corporation DBA Pro-Tech Painting Company but who
4 worked for Defendant Roman Bernal Painting Corporation DBA Pro-Tech Painting
5 Company at some point during the PAGA period.

6 10. "Gross Settlement Amount" means the total amount of \$500,000 Defendants
7 shall pay pursuant to the terms of this Settlement Agreement.

8 11. "Notice of Settlement" means the form to be prepared by the parties and sent
9 to the Aggrieved Employees after the Court approves the terms contained in the Settlement
10 Agreement and attached as **Exhibit 6** to the Declaration of Thomas D. Rutledge filed
11 concurrently herewith.

12 12. "Notice Returns" means envelopes containing the Notice of Settlement to
13 Aggrieved Employees that were mailed to Aggrieved Employees but were undelivered and
14 returned by the U.S. Postal Service.

15 13. "Order" means the order entered by the Court pursuant to the terms set forth in
16 this Settlement Agreement finally and fully giving effect to the terms contained in this
17 Settlement Agreement and dismissing the Action with prejudice.

18 14. "PAGA Period" means from September 26, 2019 to the date of the approval of
19 this settlement.

20 15. "Plaintiffs' Counsel" means Messrs. Thomas D. Rutledge, Esquire and Rory
21 K. Pendergast, Esquire.

22 16. "Plaintiffs' Counsel's Costs" means the amount Plaintiffs' Counsel incurred in
23 the Action.

24 17. "Plaintiffs' Counsel's Fees" means the amount payable from the Gross
25 Settlement Amount to Plaintiffs' Counsel for all past and future attorneys' fees incurred by
26 Plaintiffs' Counsel in the Action on behalf of the Representative Plaintiff and the Aggrieved
27 Employees including, but not limited to, future attorneys' fees incurred in securing approval
28 of this Settlement Agreement equal to 1/3 of the Gross Settlement. One or both of Plaintiffs'

Counsel may elect to have the Settlement Administrator, directly or indirectly, disperse all or part of their attorneys' fees award paid to him/them in periodic payments, through a structured settlement. Plaintiffs' Counsel will bear any and all costs, fees, and expenses of administration for any periodic payments of such award and shall be fully responsible for any taxes, costs, liabilities, attorneys' fees, and/or penalties resulting from any issues, claims, and/or disputes arising out of, related to, or incurred in connection with any such periodic payments, including without limitation, any such issues, claims, and/or disputes brought by the state or federal government concerning the payment of taxes thereon. Plaintiffs' Counsel shall indemnify, defend, and hold Defendants harmless for any and all taxes, costs, liabilities, attorneys' fees, and/or penalties resulting from any issues, claims, and/or disputes arising out of, related to, or incurred in connection with any such periodic payments.

18. "Qualifying Workweeks" means an approximation of the number of weeks worked by any Aggrieved Employee during and within the PAGA Period, calculated as set forth below.

19. "Redirected Notice" means a second Notice of Settlement to Current or Former Aggrieved Employees mailed to a new or different address for an Aggrieved Employee that was obtained because of a Notice Return.

20. "Released Claims" means any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages or causes of action that could have been asserted individually by the Representative Plaintiff, either pursuant to the PAGA or otherwise, which were alleged or could have been alleged, based on the facts in the Complaint filed by the Representative Plaintiff, on behalf of himself for all claims within the applicable statutes of limitations and, as to the Aggrieved Employees in this Action, during the PAGA Period, and shall specifically include all civil penalties that are recoverable under the PAGA based on the facts alleged in the operative Complaint, including any of the penalties which are or may be available under the California Labor Code for failure to pay overtime wages, failure to pay minimum wages, failure to make

1 payments within the required time, failure to provide accurate wage statements, failure to
2 provide meal breaks, failure to provide rest breaks, failure to pay waiting time penalties,
3 failure to reimburse business expenses, violations of California Labor Code §§ 558, 558.1,
4 or similar statutes, violations of the Industrial Welfare Commission Wage Orders, and any
5 other claims pertaining to the Aggrieved Employees which were alleged, or could have been
6 alleged based on the facts in the operative Complaint, and is inclusive of all Representative
7 Plaintiff's and the Aggrieved Employees' attorneys' fees and costs.

8 21. "Released Parties" include Defendants, and their past, present, and future
9 parents, affiliates, subsidiaries, successors in interest, merged parties, divisions,
10 predecessors, successors, partners, joint venturers, affiliated organizations, shareholders,
11 insurers, reinsurers and assigns, and each of their past, present and future officers, directors,
12 trustees, agents, employees, attorneys, contractors, representatives, benefits plans sponsored
13 or administered by Defendants, divisions, units, and branches, and any other persons or
14 entities acting on behalf of or in concert with any of the foregoing.

15 22. "Representative Plaintiff" means Juan Limon and his representative(s), heir(s),
16 assign(s), attorney(s), and/or insurer(s).

17 23. "Settlement Administrator" means Phoenix Settlement Administration.

18 24. "Settlement" means the settlement reached by the Parties, as memorialized by
19 the *Stipulation for Settlement* the Parties signed on July 7, 2023.

20 25. "Settlement Payment(s)" refers to the payment(s) to any Aggrieved Employee
21 pursuant to the terms of the Settlement.

22 **V. BACKGROUND AND REASONS FOR SETTLEMENT.**

23 On September 25, 2020, Plaintiffs filed a "PAGA notice" (notice alleging violations
24 of the California Labor Code subject to civil penalties) with the LWDA concerning the
25 Defendants. On January 19, 2021, upon the expiration of the statutory waiting period under
26 the PAGA, Plaintiffs via counsel filed a Complaint asserting wage and hour individual,
27 representative PAGA, and class action claims. The operative Complaint alleged individual,
28 class, and representative action civil penalties pursuant to the PAGA, interest, costs, and

1 attorneys' fees based on their PAGA allegations that, among other things, allege Defendants
2 failed to pay Aggrieved Employees for all overtime wages, minimum wages, regular wages,
3 meal and rest break premiums, failed to provide accurate wage statements, failed to timely
4 pay all wages upon discharge, failed to reimburse work related expenses, and violated
5 miscellaneous provisions of the Labor Code. (Compl., ¶¶ 1-50)

6 During all times relevant, Plaintiffs maintain that Plaintiffs have kept the LWDA
7 informed and have exhausted all their administrative remedies. The LWDA has given no
8 notice to the parties of their intent to take this case over and prosecute the claims alleged
9 herein. (Rutledge Decl. ¶¶ 32-35.)

10 From the outset of this litigation, Plaintiffs actively sought discovery, documents, and
11 contact information for the putative class from the Defendants. Defense Counsel moved in
12 lockstep with every stage of Plaintiffs' prosecution. After meeting and conferring, the parties
13 entered a stipulated protective order and agreed to a *Belaire West* notice process before
14 Defendants agreed to provide Plaintiffs contact information for the putative class (i.e., the
15 Class List). Before the Plaintiffs obtained the Class List, Defendants engaged in a *Pick-up*
16 *Stix* campaign procuring release agreements from most of the putative class in exchange for
17 payment. (Rutledge Decl. ¶¶ 36-39.)

18 Upon receipt of the Class List, Plaintiffs conducted a survey of the putative class.
19 Over the course of about a year, Plaintiffs via counsel and their staff, interviewed many of
20 the current and former putative class members. Some putative class members gave
21 Plaintiffs' permission to procure their personnel file and payroll records. Plaintiffs maintain
22 this survey provided valuable insight to Plaintiffs' Counsel as to the strengths and
23 weaknesses of their case. (Rutledge Decl. ¶¶ 40-43.)

24 Notwithstanding Plaintiffs' receipt of the Class List, Plaintiffs sought more discovery
25 from Defendants. Defendants rebuffed Plaintiffs' discovery requests contending that
26 Plaintiffs were overstepping. The parties met and conferred over their discovery dispute but
27 with no success. In June 2022, Plaintiffs filed a Motion to Compel Further Production of
28 Documents and Defendants filed a Motion for a Protective Order. (Rutledge Decl. ¶¶ 44-47.)

1 On September 29, 2022, the parties appeared before the Honorable John Meyer for a
2 Case Management Conference (CMC) and a hearing on the foregoing motions. The Court
3 granted Plaintiffs' motion ordering Defendants to pay monetary sanctions and produce
4 further documents and denied Defendant's motion. During the CMC, Plaintiffs via counsel
5 voluntarily dismissed their class claims in large part because the Defendants managed to
6 substantially reduce the size of the Class via their *Pick-up Stix* campaign. (SDSC ROA #90.)

7 Shortly after the CMC, the parties engaged in meaningful settlement discussions and
8 agreed to appear at a Mandatory Settlement Conference (MSC) before the Honorable Kevin
9 Enright. Before the MSC, Defendants provided Plaintiffs with more important data
10 concerning the Aggrieved Employees who worked during the PAGA Period, such as the
11 total number of workweeks the Aggrieved Employees worked, the total number of
12 Aggrieved Employees who worked, the number of Aggrieved Employees who worked
13 weekends and workweeks Monday through Friday, among other important details.
14 Plaintiffs' Counsel also analyzed a significant number of Aggrieved Employees' payroll
15 records accumulated during the litigation, the Defendants' workplace policies, among other
16 things. Considering all this information, Plaintiffs' Counsel maintain they were able to
17 determine the value of the case despite Defendants' vehement claims they did nothing
18 wrong. (Rutledge Decl. ¶¶ 48-51.)

19 At the MSC, with help from Judge Enright, the parties engaged in extensive and
20 meaningful discussions about the factual and legal strengths and weaknesses of the claims
21 and defenses. Before the MSC's conclusion, the parties entered into an agreement to settle.
22 This agreement was reduced to writing (the Settlement). (Rutledge Decl. ¶¶ 52, 53 and Ex.
23 1.)

24 Plaintiffs' Counsel's review of the evidence demonstrates the presence of many
25 obstacles to obtaining favorable adjudication on many of Plaintiffs' claims. The prevailing
26 wage/overtime claims, for example, lacked evidence because Defendants are in the painting
27 business, not construction on public works projects. Defendants opposed Plaintiffs' meal
28 and rest break claims arguing there are too many individual inquiries that make trial

1 unmanageable and that regardless Defendants maintain all Aggrieved Employees received
2 compliant meal and rest breaks. There is virtually no evidence demonstrating that
3 Defendants failed to maintain records because Plaintiffs later learned that Defendants kept
4 careful records of Aggrieved Employees' working hours. Defendants further maintain that
5 Plaintiffs' reimbursement claim is dubious because of Defendants' alleged reimbursement
6 policy allowed its employees to obtain expense reimbursements. (Rutledge Decl. ¶¶ 55-59.)

7 Representative Plaintiff and Plaintiffs' Counsel, however, maintain their Labor Code
8 § 226 and unpaid overtime claims are viable. This is because Plaintiff alleges that during
9 many weekends Defendants paid its employees with a company check that did not include
10 any overtime their workers performed. Defendants assert they are no longer doing this, and
11 maintain Defendants are a small company that make it difficult for Defendants to pay a large
12 judgment regardless. (Rutledge Decl. ¶¶ 60-62.)

13 Notwithstanding the foregoing, the Representative Plaintiff and Plaintiffs' Counsel
14 believe the Settlement is fair and reasonable. This belief is based on a variety of factors,
15 such as the disputed factual and legal issues involved in the Action, the risks and substantial
16 expenses involved in the further prosecution of this case, and the benefits Aggrieved
17 Employees will receive via the Settlement. (Rutledge Decl. ¶¶ 63, 64.)

18 Defendants deny each and every one of Plaintiffs' allegations asserted in the
19 operative Complaint and assert they have no liability. Nonetheless, Defendants similarly
20 believe there are benefits associated with settling the Action. After taking into account the
21 disputed factual and legal issues involved in the Action, the expense and burden of
22 protracted litigation, and their desire to put the controversy to rest, Defendants believe the
23 Settlement is in Defendants' best interests and is fair and reasonable. (Rutledge Decl. ¶¶ 65-
24 67.)

25 Plaintiffs are informed and believe that Defendants employed about 184 Aggrieved
26 Employees who worked approximately 7129 workweeks during the PAGA Period. By this
27 Agreement and based on Defendants' representations, Plaintiffs estimate the gross payout
28 before expenses is about \$63 per workweek (\$450,000/7129) per Aggrieved Employee.

(Rutledge Decl. ¶¶ 68-70.)

VI. SETTLEMENT APPROVAL AND IMPLEMENTATION PROCEDURE.

A. Approval of the PAGA Settlement.

By this Motion, Plaintiffs' Counsel very respectfully requests Court approval of the Settlement. The Settlement contemplates (1) entry of an Order granting approval of the Settlement and dismissing the Action with Prejudice and (2) the mailing of a Notice of Settlement and Settlement Payments to all Aggrieved Employees and the LWDA. This Motion also includes a Notice of Settlement for the Court's approval, a copy of which is attached hereto as **Exhibit 6** to the Declaration of Thomas D. Rutledge filed concurrently herewith (an identical Spanish version will also be sent).

B. Notice of Settlement by Mail.

Within seven days from the Effective Date of the approval of the Motion, Defendants shall provide the Settlement Administrator with the last known addresses of the Current and Former Aggrieved Employees and their payroll information (e.g., social security numbers, beginning and end date of their employment during the PAGA Period, the total number of workweeks worked during the PAGA Period, etc.) Within 45 days from the Effective Date, the Settlement Administrator will mail the Notice of Settlement and Settlement Payments via First-Class Mail using the U.S. Postal Service to the most recent address known for each Current and Former Aggrieved Employee. If any Notices of Settlement are returned with a forwarding address, the Settlement Administrator will re-mail the Notice of Settlement and/or Settlement Payment to the Aggrieved Employee whose notice was returned.

If any Notice of Settlement mailed to Aggrieved Employees is returned by the U.S. Postal Service as undeliverable, the Settlement Administrator, with the assistance of the Defendants, shall use reasonable efforts to locate an address correction from such Aggrieved Employee(s) and send a Redirected Notice to the new or different address within seven days. The Settlement Administrator shall provide the parties with weekly updates as to the status of mailing and distribution of settlement proceeds until the completion of the settlement administration process.

1 **C. Declaration of Compliance.**

2 As soon as practicable, the Settlement Administrator shall provide the parties with a
3 report attesting to the completion of the notice and payment process set forth above,
4 including an explanation of efforts to resend Notice Returns, a summary of checks paid,
5 checks cashed, and checks uncashed.

6 **D. Formulas to Determine Payment and Distribution of Funds.**

7 **1. General Terms of Settlement.**

8 Within 30 days of the Effective Date, Defendants shall tender payment of the Gross
9 Settlement Amount of \$500,000 to the Settlement Administrator. For tax purposes, the
10 parties agree that all payments are penalties and no employment taxes are due and payable.
11 The Settlement Administrator shall issue Aggrieved Employees 1099s for their amount
12 received for the applicable tax year. From the Gross Settlement Amount, the Settlement
13 Administrator shall pay the following amounts to the parties listed below:

14 Gross Settlement Amount:	\$500,000
15 The named Plaintiff (minus):	(\$50,000)
16 Plaintiffs' Counsel Fees (minus):	(\$166,700)
17 (one half to Mr. Rutledge; one half to The Pendergast Law Firm, PC)	
18 Plaintiffs' Counsel Costs (minus):	(\$4,711)
19 Settlement Administrator (minus):	(\$6,000)
20 Net Settlement Amount:	\$272,589
21 The LWDA (minus)(i.e., 75% of the NSA):	(\$204,442)
22 Estimated Distributable Amount to Aggrieved	
23 Employees (minus) (i.e., 25% of the NSA):	(\$68,147)
24 Amount Left After Distribution:	\$0

25 No funds will revert to Defendants from the Gross Settlement Amount. The Settlement
26 Administrator shall pay any remaining proceeds from uncashed checks after the expiration of
27 180 days to the LWDA.
28

2. **Formula for Determining the Value of the Claims for the Aggrieved Employees.**

To fairly distribute the Settlement Payments to Aggrieved Employees, the parties mutually arrived at a formula designed to fairly determine each Aggrieved Employee's *pro rata* payment from the Distributable Amount, as allowed by PAGA, based on their length of service. The Distributable Amount will be divided amongst Aggrieved Employees pro-rata based on the number of a particular Aggrieved Employee's Qualifying Workweeks worked as compared to the total Qualifying Workweeks worked by the Aggrieved Employees as a whole. Each Aggrieved Employee's pro-rata Settlement Payment is calculated by dividing the Distributable Amount by the total number of Qualifying Workweeks of the Aggrieved Employees as a whole, to determine the monetary value of each Qualifying Workweek. To determine each Aggrieved Employee's Settlement Payment, the Settlement Administrator, with cooperation from Defendants if needed, will then multiply the number of each Aggrieved Employee's Qualifying Workweeks, as calculated above, times the value of each Qualifying Workweek, as calculated above.

Mathematically, each Aggrieved Employee's payment is calculated as follows:
Aggrieved Employee's Settlement Payment = (Distributable Amount) ÷ (total Qualifying Workweeks of all Aggrieved Employees as a whole) x (individual Aggrieved Employees Employee's Qualifying Workweeks). Payments from the Distributable Amount shall be made only to Aggrieved Employees, pursuant to the manner provided in this Agreement and this section.

E. **Administration of the Settlement.**

1. **Settlement Administrator.** Phoenix Settlement Administrators shall serve as the Settlement Administrator to administer the Settlement.

2. **Distribution of Settlement Payments.**

The Settlement Administrator will be responsible for distributing the Notice of Settlement and Settlement Payments. The Settlement Administrator shall prepare, file, and send IRS Forms 1099s for Settlement Payments made to Aggrieved Employees and for all

1 other payments issued out of the Net Settlement Amount. The Defendants and/or Settlement
2 Administrator shall not disburse the settlement funds except as provided herein, as ordered
3 by the Court, or as agreed upon, in writing, by Counsel for Defendants and Plaintiffs'
4 Counsel.

5 **3. Time for Disbursement.**

6 Within 45 days of the later of: (a) the Settlement being fully funded and (b) the Court
7 enters an order granting approval of the Settlement (the Effective Date), the Settlement
8 Administrator shall issue payments to (1) the Aggrieved Employees; (2) the LWDA; (3)
9 Plaintiffs' Counsel for Plaintiffs' Counsel's Court-approved attorneys' fees and costs, and
10 (4) the Settlement Administrator for its Court-approved settlement administration costs
11 incurred in connection with the Settlement. The Settlement Administrator shall issue
12 Payment to Aggrieved Employees in the form of a check issued for an amount calculated
13 using the formulas discussed above.

14 **VII. LIMITATIONS ON USE OF THIS SETTLEMENT.**

15 **A. No Admission.**

16 Neither the acceptance nor the performance by Defendants of the terms contained in
17 the Settlement or any of the related negotiations or proceedings is or shall be claimed to be,
18 construed as, or deemed a precedent or an admission by Defendants of the truth of any
19 allegations in the Complaint or any amended complaint, which are explicitly denied.

20 **B. Non-Evidentiary Use.**

21 Neither this Motion, nor the Settlement, shall be offered or used as evidence by the
22 Representative Plaintiff, any Aggrieved Employees, Defendants, or its or their respective
23 counsel, in the Action, except as is reasonably necessary to effectuate its purpose and terms,
24 including enforcement of the Settlement in the event of breach by any party as provided
25 herein. The Court's Order granting this Motion, and the Settlement, may be used by
26 Defendants and/or the Released Persons to prove or defend against any claim released herein
27 by any Aggrieved Employee in any judicial, quasi-judicial, administrative or governmental
28 proceeding.

1 **VIII. RELEASE.**

2 **A. Aggrieved Employees.**

3 Upon the approval by the Court of this Motion and by operation of the Settlement,
4 and except as to such rights or claims as may be created by this Motion, all Aggrieved
5 Employees, fully release and discharge the Released Persons from all Released Claims,
6 whether known or unknown during the PAGA Period regardless of whether that Aggrieved
7 Employee receives and cashes his or her check for Settlement Payment.

8 **B. The Representative Plaintiff.**

9 For the purpose of implementing a full and complete release of his claims against
10 Released Parties, Representative Plaintiff Juan Limon expressly acknowledges that the
11 releases given in the Settlement and this Motion are intended to include, without limitation,
12 any and all claims the Representative Plaintiff may have against Released Parties, including
13 but not limited to those claims Plaintiff did not know or suspect to exist in his favor at the
14 time of the effective date of the Settlement, regardless of whether the knowledge of such
15 claims, or the facts upon which they might be based, would materially have affected the
16 settlement of this matter. Plaintiff further acknowledges that the consideration given under
17 the Settlement and this Motion is also for the release of those claims and contemplates the
18 extinguishment of all known, and any unknown, claims. Plaintiff makes this complete
19 release of claims, waiving any rights provided to the Representative Plaintiff under
20 California Code of Civil Procedure § 1542, which provides as follows:

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

25 This release of unknown claims is not made on behalf of the LWDA and applies only to the
26 Representative Plaintiff.
27
28

IX. MISCELLANEOUS PROVISIONS.

A. Amendments.

Material terms (i.e., terms affecting payment amounts) of the Settlement may be amended only by a written agreement signed by the parties and approved by the Court. Nonmaterial amendments or modifications to the Settlement, however, may be made in writing between Plaintiffs' Counsel and Defendants' Counsel without the need to obtain signatures from the represented parties.

B. Jurisdiction of the Court to Enforce Terms of Agreement.

The Court will retain jurisdiction to enforce the terms of the Settlement following approval of the Motion pursuant to California Code of Civil Procedure § 664.6. The Court shall have exclusive jurisdiction to enforce the terms and conditions contained herein.

C. Costs and Fees.

Plaintiffs' Counsel seeks, and Defendants do not oppose, an award of fees not to exceed 33.33% of the Gross Settlement Amount in the amount of \$166,700 and actual costs in the amount of \$4,711. Class Counsel's fees are based on a percentage of the overall settlement and can be crosschecked against Plaintiffs Counsel's lodestar. (See *Laffitte v. Robert Half International Inc.* (2016) 1 Cal.5th 480 [California Supreme Court holding that an attorneys' fee award based on a percentage of the overall settlement amount of 33% is reasonable]; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 49 [lodestar approach to fees is a reasonable method in assessing the reasonableness of fees.]

The nature of work performed by Plaintiffs' Counsel is documented in Declarations filed concurrently herewith. The time records reflect billing practices on a minimum of one tenth of the hour. This time is summarized as follows:

Names of Attorney	YEAR OF LAW SCHOOL GRADUATION	RATE	HOURS	LODESTAR
Thomas D. Rutledge, Partner	1995	\$997	144	\$143,568
Rory Pendergast, Partner	2009	\$625	83	\$51,875
Chris Taylor, Of	1997	\$625	75	\$46,875

Counsel				
Total Hours and Lodestar on Merits:				\$242,318

(Rutledge Decl., Exs. 3-5; Pendergast Decl.; Taylor Decl.)

D. Collection.

If Defendants fail to make payment pursuant to this Agreement, they are in default and Plaintiffs, via Plaintiffs' Counsel, may collect thereon and shall have the right to recover collection costs including attorneys' fees.

X. CONCLUSION.

For the foregoing reasons, the Plaintiffs very respectfully request this Court to approve the PAGA Settlement pursuant to Labor Code §§ 2699, *et seq.*

Very Respectfully,

Dated: August 15, 2023

Law Office of
Thomas D. Rutledge

By: Thomas D. Rutledge
/s/Thomas D. Rutledge
Attorneys for the Plaintiffs

PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

I, THOMAS D. RUTLEDGE, the undersigned, am employed in the County of San Diego, State of California; I am over the age of 18 and not a party to the within action; my business address is 16956 Via de Santa Fe, Suite 1847, Rancho Santa Fe, California 92091-4606.

On August 15, 2023, I served the foregoing document(s) described as:

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES ISO MOTION FOR APPROVAL OF A PRIVATE ATTORNEY GENERAL ACT SETTLEMENT AND RELEASE

on the interested parties to this action by placing a copy thereof enclosed in a sealed envelope addressed as follows: **See Attached List.**

☒ **(BY MAIL)** I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. This correspondence was deposited with the United States Postal Service this same day in the ordinary course of business at our Firm's office address in San Diego, California. Service made pursuant to this paragraph, upon motion of a party served, shall be presumed invalid if the postal cancellation date of postage meter date on the envelope is more than one day after the date of deposit for mailing contained in this affidavit.

☒ **(BY E-MAIL via E-file)** I am readily familiar with the business practice for collection and processing of correspondence for emailing with the Court authorized third-party vendor. This correspondence was sent via email via this third-party vendor pursuant to the vendor's policies and practices.

☐ **(BY PERSONAL SERVICE)** I caused such envelope to be delivered by hand to the offices of the above named addressee(s).

Executed August 15, 2023, at San Diego, California.

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

THOMAS D. RUTLEDGE
/s/THOMAS D. RUTLEDGE

SERVICE LIST

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Attorneys for Defendants

Attorneys for Defendants