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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

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

Plaintiffs,

vs.

LUMBER CITY CORP., a California
corporation d/b/a DIY HOME CENTER;
and DOES 1 through 50, inclusive,

Defendants.

Case No.: CIVDS2010240

[Assigned for all purposes to the Hon. David
Cohn, Dept. S-26]

**DECLARATION OF MAX W. GAVRON IN
SUPPORT OF PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: November 19, 2021
Time: 10:00 a.m.
Dept.: S-26

Complaint Filed: June 2, 2020
FAC Filed: January 29, 2021
SAC Filed: July 23, 2021
Trial Date: Not Set

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I, Max W. Gavron, declare as follows:

1. I am an attorney at law duly admitted to practice before all courts in the State of California and am a member of the law firm of the Diversity Law Group, P.C., one of the attorneys of record for Plaintiffs James Pevey and Anne Peterson (together, "Plaintiffs") in the above-entitled action. I have personal knowledge of the matters set forth herein, and if called upon as a witness to testify thereto, I could and would competently do so.

CASE SUMMARY

2. On May 21, 2020, James Pevey (“Pevey”) filed a notice with the LWDA alleging that Defendant violated Labor Code § 226(a), pursuant to Labor Code § 2699 (“Pevey PAGA Notice”). The Pevey PAGA Notice alleged that Defendant failed to identify the pay period start and end dates, as well as the applicable hourly rates of pay, on wage statements issued to employees.

3. On June 2, 2020, Pevey filed an initial complaint in the Superior Court of the State of California, County of San Bernardino. Pevey's initial complaint alleges causes of action for (1) violation of Labor Code § 226(a), and (2) violation of Labor Code § 2698, *et seq.*

4. On September 1, 2020, Anne Peterson (“Peterson”) filed a notice with the LWDA alleging that Defendant violated Labor Code §§ 201-203, 226, and 226.7, pursuant to Labor Code § 2699 (“Peterson PAGA notice”). The Peterson PAGA notice alleged that Defendant failed to provide compliant rest periods and wage statements that identified accurate gross and net wages earned and pay period start and end dates to employees.

5. On September 9, 2020, Peterson filed an initial complaint in the Superior Court of the State of California, County of El Dorado. Peterson’s initial complaint alleges (1) violation of Labor Code § 226.7; (2) violation of Labor Code § 226; (3) violation of Labor Code §§ 201-203; and (4) violation of Business and Professions Code § 17200, *et seq.*

6. On or about October 2, 2020, Peterson filed a first amended complaint Superior Court of the State of California, County of El Dorado. Peterson's first amended complaint alleges violation of (1) Labor Code § 226.7; (2) violation of Labor Code § 226; (3) violation of

1 Business and Professions Code § 17200, *et seq.*; and (4) violation of the PAGA, Labor Code §
2 2698, *et seq.*

3 7. On January 29, 2021, Pevey and Peterson jointly filed a first amended complaint
4 in the Superior Court of the State of California, County of San Bernardino. The joint first
5 amended complaint adds Peterson as a plaintiff to the action and alleges, among other things,
6 (1) violation of Labor Code § 226.7; (2) violation of Labor Code § 226; (3) violation of
7 Business and Professions Code § 17200, *et seq.*; and (4) violation of the PAGA, Labor Code §
8 2698, *et seq.* The joint first amended complaint also adds individual causes of action brought
9 by Peterson under the FEHA. Separately, Peterson dismissed her action in the El Dorado
10 County Superior Court without prejudice after the filing of the First Amended Complaint.

11 8. On or about March 10, 2021, Peterson filed a supplemental PAGA notice
12 alleging that Defendant violated Labor Code §§ 201-203, 226, 226.7, 512, 1174, 1198, 1199.
13 Peterson's supplemental PAGA notice alleged that Defendant failed to provide compliant meal
14 periods and maintain accurate time records.

15 9. On April 16, 2021, Plaintiffs moved for leave to file a Second Amended
16 Complaint, which alleged additional claims premised on the California Supreme Court's holding
17 in *Donohue v AMN Services, LLC*, 2021 WL 728871 (Feb. 25, 2021). On June 17, 2021, the
18 Court granted Plaintiffs' Motion for Leave.

19 10. On July 23, 2021, Plaintiffs filed the operative Second Amended Complaint in
20 this action (the "Complaint"). The Complaint alleges (1) violation of Labor Code § 226.7; (2)
21 violation of Labor Code §§ 226.7 and 512; (3) violation of Labor Code § 226; (4) violation of
22 Business and Professions Code § 17200, *et seq.*; (5) violation of the PAGA, Labor Code §
23 2698, *et seq.*; as well as Peterson's individual claims under the FEHA. Peterson's FEHA
24 Claims have been separately settled through an Individual Settlement Agreement and Release,
25 which contains a confidentiality provision. As alleged in the Complaint, Plaintiffs seek to
26 represent the Class Members and other aggrieved employees. Plaintiffs further seek damages,
27 penalties, interest, attorneys' fees, and costs.

28 11. Following the filing of the complaint, the Parties engaged in formal and informal

1 discovery. Pevey propounded requests for production of documents and interrogatories, to which
2 Defendant responded. Defendant propounded requests for production of documents and
3 interrogatories to Plaintiffs. Defendant also produced documents including Plaintiffs' personnel
4 files, Defendant's employee handbook, its meal and rest period policies, copies of wage
5 statements issued to putative class members, schedules, and other documents. This information
6 allowed my office to conduct a full damage analysis.

7 **MEDIATION**

8 12. On December 2, 2020, the Parties engaged in an all-day mediation session with
9 neutral Steven G. Pearl, Esq. Although the Parties did not reach an agreement at the mediation,
10 they continued to engage in arm's length negotiations over the course of several months, and
11 continued litigating, including Plaintiff's Motion for Leave to file a Second Amended Complaint.
12 The Parties ultimately reached an agreement in principle with the assistance of the mediator and
13 finalized the terms of the agreement in attached the Joint Stipulation of Class Action Settlement.

14 **SUMMARY OF THE SETTLEMENT TERMS**

15 13. The terms of the class-wide settlement are set forth in the Joint Stipulation of
16 Class Action Settlement (the "Settlement Agreement"). A true and correct copy of the Settlement
17 Agreement is attached hereto as **Exhibit A**.

18 14. The proposed Class consists of "all current and former non-exempt employees of
19 Defendant in the State of California who earned wages at any time between April 6, 2016,
20 through July 31, 2021," and the proposed Exempt Class consists of "all current and former
21 exempt employees of Defendant in the State of California who earned wages at any time
22 between April 6, 2018, through July 31, 2021." *See* Settlement Agreement ¶¶ 3, 4. Class
23 Members do not need to do anything should they wish to receive their share of the settlement
24 funds. If a Class Member does not wish to take part in this settlement and be bound by the
25 release, he or she must submit an exclusion request. *Id.* ¶ 70.

26 15. The Settlement Agreement provides for One Million One Hundred Eighty
27 Thousand Dollars (\$1,180,000.00) as the Gross Settlement Amount. Settlement Agreement ¶ 19.
28 The Net Settlement Amount, calculated after deduction of attorneys' fees, costs, Class

Representative Enhancement Payment, payment to the LWDA, and Settlement Administration Costs, shall be distributed to Participating Class Members. Participating Class Members who do not opt-out of the settlement will be awarded a portion of the Net Settlement Amount on a pro-rata basis, based upon the number of pay periods each respective Participating Class Member worked during the Class Period.

16. As part of the Settlement Agreement, Defendant does not object to Plaintiffs' Counsel's request for attorney's fees up to one-third of the Gross Settlement Amount—*i.e.*, the sum of Three Hundred Ninety-Three Thousand Three Hundred Thirty-three Dollars and Thirty-Three Cents (\$393,333.33), plus up to Twenty-Five Thousand Dollars (\$25,000.00) for reimbursement of litigation costs. *Id.* ¶ 54. Also, as part of the Settlement Agreement, Defendant does not object to Plaintiffs' request for an enhancement payment of Ten Thousand Dollars (\$10,000.00) to each Plaintiff. *Id.* ¶ 55.

17. Finally, the Settlement Agreement provides for the payment of the Settlement Administrator for the administration of this current settlement. The Parties have received a quote from Phoenix Settlement Administrators for a fee of approximately Eleven Thousand Five Hundred Dollars (\$11,500.00) to administer the settlement. *Id.* ¶ 56.

18. After deducting the amounts listed above, it is estimated that the Net Settlement Amount of \$673,916.67 will be distributed to the Class.

POTENTIAL STATUTORY AND CIVIL PENALTIES

19. I was able to estimate the potential damages and penalties based on the data and documents provided by Defendant, including the number of current and former putative class members during the Class Period and the Exempt Class Period at issue, the number of wage statements at issue, the hourly rates of pay during the Class Period, and information regarding the number of former employees and shifts worked by putative class members.

20. Based on the class data provided by Defendant, Plaintiffs estimated that Defendant would face potential liability of up to approximately \$16 million for Plaintiffs' class and PAGA claims if Plaintiffs succeeded at trial. Specifically, the breakdown for the damages/penalties for each class claim is as follows:

- \$1.85 million in waiting time penalties for unpaid meal and rest period premiums, calculated based on payroll data provided by Defendant for approximately 529 former employees with an average rate of pay of approximately \$14.61;
- \$2.39 million of premium pay owed for missed or rounded meal periods, calculated based on an average pay rate of Class Members' of \$14.61, over 327,088 shifts at issue during the Class Period, and assuming 50% violation rate given Defendant's rounding policy;
- \$2.39 million of premium pay owed for missed rest periods, calculated based on an average pay rate of Class Members' of \$14.61, over 327,088 shifts during the Class Period, which assumes a 50% violation rate;
- \$4.41 million for Labor Code § 226(e) penalties for wage statement violations for non-exempt employees based on 44,130 wage statements issued during the Class Period, and \$327,300 for Labor Code § 226(e) penalties for wage statement violations for exempt employees based on 3,273 wage statements issued during the Exempt Class Period.

This amounts to a total of approximately \$11.37 million if Plaintiffs were to prevail on all the class claims, including the Court awarding waiting time penalties.

21. With respect to potential liability of Plaintiffs' PAGA claims, Plaintiffs estimated that Defendant could face civil penalties of up to \$4.7 million in PAGA penalties premised on 47,403 pay periods, assuming that the Court did not "stack" penalties.¹

22. Based on the damages and penalties above, the collective total amount of class and PAGA recovery is approximately \$16 million.

23. Defendant denies liability as to all of Plaintiffs' claims and it has raised several defenses that presented risk. In this regard, Defendant asserts that it has maintained lawful policies and practices in place throughout the class period in relation to Plaintiffs' claims, including that it has provided opportunities to take meal and rest periods and that its meal and

¹ Plaintiff's damages analysis, for purposes of settlement, contemplated a single penalty awarded per pay period, regardless of the number of alleged Labor Code violations, given that some of Plaintiffs' claims were premised on California Supreme Court precedent handed down during the midst of this case.

1 rest period policies and practices were facially compliant. Defendant also contends that Plaintiffs
2 cannot prove willfulness and thus it would not be subject to waiting time penalties under Labor
3 Code § 203. Defendant further maintains that it would be unjust for the Court to award
4 maximum PAGA penalties as it has made good faith efforts to comply with the Labor Code.

5 24. Defendant argued that waiting time penalties are not available in this case because
6 of the Court of Appeal's ruling in *Naranjo v. Spectrum Sec. Servs., Inc.*, 40 Cal. App. 5th 444,
7 474 (2019), *as modified on denial of reh'g* (Oct. 10, 2019), *petition for review granted*, 455 P.3d
8 704 (2020). There, the court held that waiting time penalties are not available where they are
9 derivative of another alleged violation of the Labor Code. The Court of Appeal's holding is
10 currently being reviewed by the California Supreme Court. This further impacted the evaluation
11 and increased the uncertainty surrounding the potentially available penalties. Further supporting
12 its position, Defendant argued, was the timing of the decision by the California Supreme Court in
13 *Donohue*. Because the decision came down during the pendency of this lawsuit, Defendant
14 argued that waiting time penalties were not appropriate because its alleged violations were not
15 willful or intentional, and that *Donohue* should not be applied retroactively in any event. If
16 Defendant were successful in these arguments, it would drastically reduce the potentially
17 available penalties.

18 25. Although Plaintiffs believe in the merits of the alleged claims and maintains that
19 there is no reason for reducing PAGA penalties, Plaintiffs are aware that Defendant may raise
20 defenses to the claims and further with respect to the reduction of PAGA penalties and that it
21 could be persuasive to the Court. Thus, even if Plaintiffs were to successfully prove their claims
22 at trial, there is a possibility that the Court may only award a small percentage of PAGA
23 penalties, as the Court has discretion to do so. Pursuant to Labor Code § 2699(e)(2), the Court
24 can decline to award PAGA penalties where "if, based on the facts and circumstances of the
25 particular case, to do otherwise, would result in an award that is unjust, arbitrary and oppressive,
26 or confiscatory."

27 26. Under the facts of this case, I appreciate the risk that Defendant could present a
28 persuasive argument to reduce the amount of PAGA penalties at trial. For example, in *Fleming v.*

1 *Covidien, Inc.*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. Aug. 12, 2011), while the plaintiff
2 ultimately prevailed in a PAGA trial predicated on a violation of Labor Code section 226(a), *i.e.*,
3 inaccurate wage statements, the Court assessed only 17% of the maximum penalties— and this
4 was after finding liability at trial. Similarly, Judge Carville of the Alameda Superior Court in the
5 matter of *Parr v. Golden State Overnight*, Alameda Superior Court Case No. RG12618103,
6 assessed PAGA penalties upon Defendant of approximately 7% of the total maximum
7 penalties—again, this was only after plaintiff had prevailed at trial. In one recent California
8 Court of Appeal case, a trial court’s reduction of PAGA penalties by 90% was upheld.
9 *Carrington v. Starbucks*, 30 Cal. App. 5th 504, 529 (2018).

10 27. The Gross Settlement Amount was premised with these risks above in mind,
11 associated with the possibility of the Court significantly reducing Plaintiffs’ PAGA penalties,
12 along with other attendant risks, even if Plaintiffs were to prevail at trial.

13 28. Although Plaintiffs believe that a class can be certified, Plaintiffs also believe in
14 the fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiffs
15 involved in not prevailing on one or more of the causes of action or theories alleged in the
16 operative Complaint, the possibility of non-certification, and the potential for appeals.

17 29. Assuming that the Court assessed PAGA penalties of approximately 10% of the
18 total maximum, the PAGA penalties at issue would be roughly \$440,000.

19 30. Here, the Gross Settlement Amount is fair and reasonable as it is approximately
20 7.3% of the potential recovery of Plaintiffs’ class and PAGA claims if Plaintiffs were to fully
21 succeed at trial.

22 31. Based on my own independent investigation and evaluation, I am of the opinion
23 that settlement for the consideration and on the terms set forth in the Joint Stipulation of Class
24 Action Settlement is fair, reasonable, and adequate and is in the best interests of the Class and
25 Defendant in light of all known facts and circumstances, and the uncertainty and risks to
26 Plaintiffs involved in not prevailing on one or more of the causes of action or theories alleged in
27 the operative Complaint, the possibility of non-certification, and the potential for appeals.

28 **THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE**

1 32. From the inception of the case, Class Counsel has zealously represented the
2 interests of the Class. The settlement was obtained for the benefit of the Class, as opposed to the
3 individual Class Representatives.

4 33. The Settlement Agreement calls for the Net Settlement Amount (calculated after
5 deduction of attorneys' fees, costs, Class Representative Enhancement Payment, LWDA
6 payment, and Settlement Administration Costs) to be paid to all Class Members. Based on an
7 estimated Net Settlement Amount of \$673,916.67, Class Members will be entitled to recover,
8 based on a raw average, approximately \$725.42.

9 34. The amount any Class Member will be entitled to recover will be greater or lower,
10 depending on the number of pay periods each respective Participating Class Member worked
11 during the Class Period, with some entitled to receive more, and others less. This is fair, as it
12 directly allocates greater recovery to individual Class Members who have allegedly suffered
13 greater harm. The amount may also vary depending on the number of timely Requests for
14 Exclusion received by the Settlement Administrator.

15 35. Additionally, the scope of the release is appropriately limited. As a condition of
16 participating in this settlement, Class Members release "a. All claims, including penalties, costs,
17 and attorneys' fees related thereto, that could have been brought under the factual allegations
18 made in the operative Complaint, including but not limited to violations of Labor Code §§ 201-
19 203, 226, 226.7, 512, and 2698, *et seq.* and Business and Professions Code § 17200, *et seq.*, that
20 accrued from April 6, 2016, through July 31, 2021; b. All claims for penalties under the
21 California Labor Code Private Attorneys General Act of 2004, including costs and attorneys'
22 fees related thereto, predicated on the violation of Labor Code §§ 201-203, 226, 226.7, and 512,
23 based on the facts as alleged in the operative Complaint that accrued from April 6, 2016, through
24 July 31, 2021." Settlement Agreement ¶¶ 28, 80. This release is appropriately limited, as it only
25 applies during the time period of April 6, 2016, through July 31, 2021, and only applies to the
26 claims alleged.

27 36. In addition, members of the Exempt Class shall waive and release "a. All claims,
28 including penalties, costs, and attorneys' fees related thereto, that could have been brought under

1 the factual allegations made in the operative Complaint for violations of Labor Code § 226, and
2 2698, *et seq.* that accrued from April 6, 2018, through July 31, 2021; b. All claims for penalties
3 under the California Labor Code Private Attorneys General Act of 2004, including costs and
4 attorneys' fees related thereto, predicated on the violation of Labor Code § 226, based on the
5 facts as alleged in the operative Complaint that accrued from April 6, 2018, through July 31,
6 2021." Settlement Agreement ¶¶ 29, 80.

7 37. I believe that Plaintiffs and the Class could prevail at trial. However, I also
8 believe in the fairness of the settlement, which is based on factoring in the inherent risks in
9 drawn-out litigation and the specific risks that a class might not be certified and/or that Plaintiffs
10 could fail to establish liability. Moreover, as Defendant adamantly denies that it should be liable
11 for the full extent of the penalties, there is a possibility that Plaintiffs and the Class would be
12 awarded fewer or no penalties at trial.

13 38. Thus, after taking into account sharply disputed legal issues involved in this
14 litigation, the risks associated with further prosecution, delays caused by potential appeals, and
15 the substantial benefits to be received pursuant to the Settlement Agreement, I believe that the
16 proposed settlement is fair, reasonable, and adequate and is in the best interests of the Class.

17 **ATTORNEY EXPERIENCE**

18 39. Class Counsel has a great deal of experience in wage and hour class action
19 litigation and has been approved as class counsel in a number of class actions. My co-counsel
20 and I can and will adequately represent the Class Members in this action. I have no conflicts with
21 the Class and will adequately represent the Class.

22 40. I have spent significant time researching and pursuing the claims that have been
23 alleged in this action. Based on my review of all the information, and based on my experience in
24 class action litigation, I believe this settlement to be fair, adequate, and reasonable.

25 41. Any remaining monies from uncashed settlement checks will be distributed to
26 Legal Aid at Work. Plaintiffs' counsel does not have any relationship or connection with or to
27 Legal Aid at Work.

28 42. I am one of the primary attorneys on this matter. My qualifications are as follows:

1 I received a full-tuition scholarship, and graduated from Southwestern Law School in 2013,
2 magna cum laude. I was in the top 5% of my class. During my time at Southwestern, I was a
3 Notes and Comments Editor on the Southwestern Law Review. I also received awards for
4 achieving the highest grade in my class in several courses. In 2012, I was a full-time extern, at
5 the United States District Court for the Central District. Immediately after law school, I taught
6 several courses at Southwestern, including Principles of Legal Analysis and Legal Methods. I
7 taught those courses for approximately four years.

8 43. I practiced civil litigation at Haight Brown & Bonesteel LLP from approximately
9 September 2013, through January 2016. I was third-chair in a federal court jury trial that resulted
10 in a defense verdict in our client's favor on a \$21 million commercial breach of contract dispute.
11 I also regularly litigated cases across the civil litigation spectrum, including employment matters.

12 44. From February 2016, through Fall 2017, I practiced at the international law firm
13 of Arnold & Porter, which had recently merged with Kaye Scholer, LLP. I defended Fortune 50
14 companies in Multi-District Litigation primarily in the product liability sphere. I also
15 successfully drafted an appellate brief in the Ninth Circuit resulting in the reversal of a summary
16 judgment decision regarding trade secret issues, in addition to working in several other practice
17 groups.

18 45. From September 2017, through September 2018, I served as a law clerk to a
19 Judge sitting on the United States District Court, Central District of California. I regularly
20 prepared bench memoranda, on cases involving all types of civil litigation, including regularly
21 working on wage and hour class actions.

22 46. I am currently an associate at the law firm Diversity Law Group, P.C., an
23 employment law firm that has handled numerous wage and hour class and individual actions, on
24 both plaintiff and defense sides. My current practice focuses on employment matters involving
25 both class actions, and single plaintiffs. The firm currently has cases in the Los Angeles Superior
26 Courts, the Orange County Superior Courts, the San Diego County Superior Courts, and the
27 United States District Courts for the Central, Northern, and Eastern Districts of California. I am
28 currently handling numerous wage and hour class action lawsuits with the firm, including, but

1 not limited to: *Agar v. Sensient Natural Ingredients, LLC* (Case No. CV-19-001906, Stanislaus
2 County Superior Court); *Cunningham, et al. v. Diverse Business Solutions* (Case No.
3 CIVDS1817095, San Bernardino County Superior Court); *Heredia v. Eddie Bauer LLC* (Case
4 No. 16CV300475, United States District Court, Northern District of California); *Parsons v.*
5 *Estenson Logistics, LLC* (Case No. 34-2019-00252929, Sacramento County Superior Court); and
6 *Coronel v. Pinnacle Agriculture* (Case No. 18CV004287, Monterey County Superior Court).

7 47. On June 14, 2019, I argued two related cases in front of the Ninth Circuit Court of
8 Appeals. One of them was *Rodriguez v Nike Retail Service Inc.*, Case No. 17-16866. On June 28,
9 2019, the Ninth Circuit issued a published decision, reversing and remanding in favor of our
10 clients. *Rodriguez v. Nike Retail Servs., Inc.*, 928 F.3d 810 (9th Cir. 2019).

11 48. I have also assisted the firm in numerous wage and hour class action mediations.

12 49. My co-counsel and I will adequately represent the Class Members in this action.
13 Plaintiffs' counsel have and will zealously represent Plaintiffs and the Class and pursue this
14 lawsuit to its conclusion.

15 50. I have no conflicts with the Class and will adequately represent the Class.

16 51. Attached as **Exhibit A** is a true and correct copy of the signed Settlement
17 Agreement in this matter. A copy of the proposed notice to be sent to Class Members is attached
18 to the Stipulation as **Exhibit A to the Settlement Agreement**.

19 **NOTICE TO THE LWDA**

20 52. Concurrent with the filing of the Motion for Preliminary Approval of Class
21 Action Settlement, my office uploaded the Motion and Settlement Agreement to the LWDA's
22 website.

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

25 Executed on this 27th day of October 2021, at Los Angeles, California.

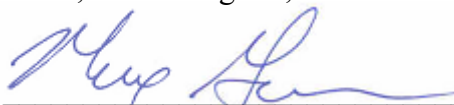
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27 _____
28 Max W. Gavron

EXHIBIT A

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

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LUMBER CITY CORP., a California
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and DOES 1 through 50, inclusive,

Defendants.

Case No.: CIVDS2010240

[Assigned for all purposes to the Hon. David
Cohn, Dept. S-26]

**JOINT STIPULATION OF CLASS
ACTION/PAGA SETTLEMENT**

Complaint Filed:	June 2, 2020
FAC Filed:	January 29, 2021
SAC Filed:	July 23, 2021
Trial Date:	Not Set

1 **JOINT STIPULATION OF CLASS ACTION/PAGA SETTLEMENT**

2 This Joint Stipulation of Class Action/PAGA Settlement is made and entered into by
3 and between Plaintiffs James Pevey and Anne Peterson (together, "Plaintiffs") as individuals and
4 on behalf of all others similarly situated and Defendant Lumber City Corp. ("Defendant")
5 (together with Plaintiffs, the "Parties").

6 **DEFINITIONS**

7 The following definitions are applicable to this Agreement. Definitions contained
8 elsewhere in this Agreement shall also be effective:

9 1. "Action" means *James Pevey v. Lumber City Corp.*, Case No. CIVDS2010240
10 (filed on June 2, 2020).

11 2. "Agreement," "Stipulation," or "Settlement Agreement" means this Joint
12 Stipulation of Class Action Settlement.

13 3. "Class"" means all current and former non-exempt employees of Defendant in the
14 State of California who earned wages at any time between April 6, 2016, through July 31, 2021.
15 Defendant has represented that the Class worked 44,130 pay periods during the Class Period.

16 4. "Exempt Class" means all current and former exempt employees of Defendant in
17 the State of California who earned wages at any time between April 6, 2018, through July 31,
18 2021. Defendant has represented that the Exempt Class Members received 3,273 wage
19 statements between April 6, 2018, through July 31, 2021.

20 5. "Class Members" means collectively the Class and Exempt Class, as defined
21 above.

22 6. "Class Counsel" means Larry W. Lee, and Max W. Gavron of Diversity Law
23 Group, P.C.; William L. Marder of Polaris Law Group; and David J. Lee of David Lee Law,
24 APC.

25 7. "Class Counsel Award" means such award of fees and costs and expenses as the
26 Court may authorize to be paid to Class Counsel for the services they have rendered and will
27 render to Plaintiffs and the Class in the Action. Defendant agrees not to oppose Class Counsel
28 Award of up to one-third (1/3) of the Gross Settlement Amount (\$1,180,000.00), i.e., the sum of

Three Hundred Ninety-Three Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$393,333.33), and costs in the amount of up to Twenty-Five Thousand Dollars (\$25,000.00), subject to the Court finally approving this Settlement. Any portion of the Class Counsel Award not awarded to Class Counsel shall be added to the Net Settlement Amount.

8. "Class List and Data" means information regarding all Class Members that Defendant will diligently and in good faith compile from its records and provide to the Settlement Administrator after Preliminary Approval of this Settlement. The Class List shall be formatted as a Microsoft Excel spreadsheet or equivalent and shall include each Class Member's: full name; employee number; most recent mailing address; Social Security Number; number of pay periods worked during the period of April 6, 2016, through July 31, 2021.

9. "Class Period" means the period from April 6, 2016, through July 31, 2021.

10. "Exempt Class Period" means the period of April 6, 2018, through July 31, 2021.

11. "Class Representatives" or "Plaintiffs" mean Plaintiffs James Pevey and Anne Peterson.

12. "Class Representative Enhancement Payment" means the amount that the Court authorizes to be paid to Plaintiffs, in recognition of their efforts and risks in assisting with the prosecution of the Action. Subject to the Court granting final approval, the Parties agree that each Plaintiff shall be paid up to Ten Thousand Dollars (\$10,000.00) from the Gross Settlement Amount. Any portion of the Class Representative Enhancement Payment not awarded to the named Plaintiffs shall be added to the Net Settlement Amount.

13. "Complaint" means the operative Second Amended Class and Representative Action Complaint filed by Plaintiffs James Pevey and Anne Peterson in this Action.

14. "Counsel for Defendant" or "Defense Counsel" means Ron S. Brand and Avi M. Attal of the law firm Kahana & Feld LLP.

15. "Court" means the Superior Court of the State of California, County of San Bernardino, or any other court taking jurisdiction of the Action.

16. "Defendant" means Defendant Lumber City Corp., doing business as DIY Home Center.

1 17. “Effective Date” means the latter of the following: (1) the date the Court grants
2 Final Approval if no valid objections have been filed; (2) if one or more valid objections have
3 been filed but no appellate proceedings have been initiated, thirty (30) days after the date the
4 Court enters an order granting final approval of the Settlement; or (3) if one or more valid
5 objections have been filed, and an appeal, writ, or other appellate proceeding has been
6 initiated, the date on which any appeal, writ, or other appellate proceedings has been finally
7 and conclusively dismissed with no right to pursue further remedies or relief.

8 18. “Final Approval” means that the Final Approval Order has been entered by the
9 Court.

10 19. “Gross Settlement Amount” means the maximum settlement amount of One
11 Million One Hundred Eighty Thousand Dollars (\$1,180,000.00) to be paid by Defendant as a
12 result of this Stipulation. The Gross Settlement Amount includes all Individual Settlement
13 Payments to Participating Class Members, the Class Representative Enhancement Payment to
14 Plaintiffs, Settlement Administration Costs to the Settlement Administrator, the PAGA
15 Payment (including LWDA payment), interest, and Class Counsel Award. Employer-owned
16 taxes on the wage portion of the Settlement shall be funded by Defendant separately from the
17 Gross Settlement Amount, and calculated and distributed by the Settlement Administrator.

18 20. “Individual Settlement Payment” means the amount payable from the Net
19 Settlement Amount to each Participating Class Member.

20 21. “Net Settlement Amount” means the balance of the Gross Settlement Amount
21 remaining after deduction of the approved Class Representative Enhancement Payment,
22 Settlement Administration Costs, the LWDA portion of the PAGA Payment, and Class Counsel
23 Award. The entire Net Settlement Amount is the maximum amount that will be available for
24 distribution to Participating Class Members.

25 22. “Notice of Objection” means a Class Member’s written objection to the
26 Settlement. A valid Notice of Objection should include: (a) the objector’s full name, signature,
27 address, and telephone number; (b) a written statement of basis for the objection; and (c) any
28 copies of papers, briefs, or documents upon which the objection is based. The Notice of

1 Objection must be returned by mail to the Settlement Administrator at the specified address
2 indicated in the Notice Packet and should be postmarked on or before the Response Deadline.

3 23. "Notice Packet" means the Notice of Class Action Settlement, substantially in the
4 form attached as **Exhibit A**.

5 24. "PAGA Payment" means the portion of the Gross Settlement Amount that the
6 Parties have agreed will be allocated to resolve all claims, penalties, and remedies under the
7 Private Attorneys General Act of 2004 (Cal. Lab. Code section 2698, *et seq.*, "PAGA"). The
8 amount of the PAGA Payment is subject to Court approval pursuant to California Labor Code
9 section 2699(l). The Parties have agreed that Seventy-Five Thousand Dollars (\$75,000.00) of the
10 Gross Settlement Amount shall be allocated to the resolution of any Class Members' claims
11 arising under PAGA. Pursuant to the PAGA, seventy-five percent (75%), i.e., the sum of Fifty-
12 Six Thousand Two Hundred and Fifty Dollars (\$56,250.00), of the PAGA Payment shall be paid
13 to the California Labor and Workforce Development Agency ("LWDA"), and 25%, i.e., the sum
14 of Eighteen Thousand Seven Hundred Fifty Dollars (\$18,750.00), of the PAGA Payment shall be
15 part of the Net Settlement Amount to be distributed to Participating Class Members. This
16 settlement will be forwarded to the LWDA by Class Counsel or the Settlement Administrator
17 and any reallocation of settlement proceeds to increase the PAGA payment will not constitute
18 grounds by either party to void this Agreement, so long as the Gross Settlement Amount remains
19 the same.

20 25. "Parties" means Plaintiffs, on behalf of themselves and Participating Class
21 Members, and Defendant collectively.

22 26. "Participating Class Members" means all Class Members who do not submit a
23 valid and timely Request for Exclusion.

24 27. "Preliminary Approval" means the Court's order granting preliminary approval of
25 the Settlement.

26 28. "Released Claims" means the following:

- 27 a. All claims, including penalties, costs, and attorneys' fees related thereto,
28 that could have been brought under the factual allegations made in the

operative Complaint, including but not limited to violations of Labor Code §§ 201-203, 226, 226.7, 512, and 2698, *et seq.* and Business and Professions Code § 17200, *et seq.*, that accrued from April 6, 2016, through July 31, 2021.

- b. All claims for penalties under the California Labor Code Private Attorneys General Act of 2004, including costs and attorneys' fees related thereto, predicated on the violation of Labor Code §§ 201-203, 226, 226.7, and 512, based on the facts as alleged in the operative Complaint that accrued from April 6, 2016, through July 31, 2021.

29. "Exempt Released Claims" means the following:

- a. All claims, including penalties, costs, and attorneys' fees related thereto, that could have been brought under the factual allegations made in the operative Complaint for violations of Labor Code § 226, and 2698, *et seq.* that accrued from April 6, 2018, through July 31, 2021.
- b. All claims for penalties under the California Labor Code Private Attorneys General Act of 2004, including costs and attorneys' fees related thereto, predicated on the violation of Labor Code § 226, based on the facts as alleged in the operative Complaint that accrued from April 6, 2018, through July 31, 2021.

30. "Released Parties" means Defendant and any of its former, future, and present parents, subsidiaries, affiliates, divisions, corporations in common control, predecessors, successors, and assigns, as well as all past and present officers, directors, employees, partners, shareholders and agents, attorneys, insurers, and any other successors, assigns, or legal representatives.

31. "Request for Exclusion" means a valid, timely, written request by a Class Member indicating a request to be excluded from the Settlement. The Request for Exclusion must: (a) clearly state that the Class Member does not wish to be included in the Settlement; (b) set forth the name, address, telephone number and last four digits of the Social Security Number

1 of the Class Member requesting exclusion; (c) be signed by the Class Member; (d) be returned
2 by mail to the Settlement Administrator at the specified address indicated in the Notice Packet;
3 and (e) be postmarked on or before the Response Deadline.

4 32. "Response Deadline" means forty-five (45) days after the Settlement
5 Administrator initially mails the Notice Packet to Class Members, and the last date on which
6 Class Members may submit a Request for Exclusion.

7 33. "Settlement" means the agreement among the Parties to resolve the Action, as set
8 forth in this Stipulation.

9 34. "Settlement Administrator" means Phoenix Settlement Administrators. The
10 Parties each represent that they do not have any financial interest in the Settlement Administrator
11 or otherwise have a relationship with the Settlement Administrator that could create a conflict of
12 interest.

13 35. "Settlement Administration Costs" means the fees and expenses reasonably
14 incurred by the Settlement Administrator as a result of the procedures and processes expressly
15 required by this Agreement, which are estimated at Eleven Thousand Five-Hundred Dollars
16 (\$11,500.00). Any portion of the Settlement Administration Costs not used or approved by the
17 Court shall be added to the Net Settlement Amount.

18 36. "Settlement Payment Check" means the payment to Participating Class Members
19 pursuant to this Settlement who do not submit a valid Request for Exclusion from the Settlement,
20 which shall be mailed seven (7) calendar days after receipt of funds from Defendant as set forth
21 in Paragraph 75.

22 RECITALS

23 37. This Settlement is made and entered into by and between Plaintiffs and
24 Defendant, and is subject to the terms and conditions hereof, and to the Court's approval. The
25 Parties expressly acknowledge that this Agreement is entered into solely for the purpose of
26 compromising significantly disputed claims and that nothing herein is an admission of liability or
27 wrongdoing by Defendant. Defendant denies that it is liable to Plaintiffs or the Class Members
28 and denies that it has violated any law.

1 38. On May 21, 2020, James Pevey ("Pevey") filed a notice with the LWDA
2 alleging that Defendant violated Labor Code § 226(a), pursuant to Labor Code § 2699 ("Pevey
3 PAGA notice"). The Pevey PAGA notice alleged that Defendant failed to identify the pay
4 period start and end dates, as well as the applicable hourly rates of pay, on wage statements
5 issued to employees.

6 39. On June 2, 2020, Pevey filed an initial complaint in the Superior Court of the
7 State of California, County of San Bernardino. Pevey's initial complaint alleges causes of action
8 for (1) violation of Labor Code § 226(a), and (2) violation of Labor Code § 2698, *et seq.*

9 40. On September 1, 2020, Anne Peterson ("Peterson") filed a notice with the
10 LWDA alleging that Defendant violated Labor Code §§ 201-203, 226, and 226.7, pursuant to
11 Labor Code § 2699 ("Peterson PAGA notice"). The Peterson PAGA notice alleged that
12 Defendant failed to provide compliant rest periods and wage statements that identified accurate
13 gross and net wages earned and pay period start and end dates to employees.

14 41. On September 9, 2020, Peterson filed an initial complaint in the Superior Court of
15 the State of California, County of El Dorado. Peterson's initial complaint alleges (1) violation of
16 Labor Code § 226.7; (2) violation of Labor Code § 226; (3) violation of Labor Code §§ 201-
17 203; and (4) violation of Business and Professions Code § 17200, *et seq.*

18 42. On September 18, 2020, Peterson filed a charge with the Department of Fair
19 Employment and Housing ("DFEH"), alleging claims for disability discrimination, failure to
20 accommodate, harassment, retaliation, wrongful termination, and other violations of the Fair
21 Employment and Housing Act ("FEHA").

22 43. On or about October 2, 2020, Peterson filed a first amended complaint Superior
23 Court of the State of California, County of El Dorado. Peterson's first amended complaint
24 alleges violation of (1) Labor Code § 226.7; (2) violation of Labor Code § 226; (3) violation of
25 Business and Professions Code § 17200, *et seq.*; and (4) violation of the PAGA, Labor Code §
26 2698, *et seq.*

27 44. On January 29, 2021, Pevey and Peterson jointly filed a First Amended
28 Complaint in the Superior Court of the State of California, County of San Bernardino. The Joint

1 First Amended Complaint adds Peterson as a plaintiff to the action and alleges (1) violation of
2 Labor Code § 226.7; (2) violation of Labor Code § 226; (3) violation of Business and
3 Professions Code § 17200, *et seq.*; and (4) violation of the PAGA, Labor Code § 2698, *et seq.*
4 The Joint First Amended Complaint also adds individual causes of action brought by Peterson
5 under the FEHA. Separately, Peterson dismissed her action in the El Dorado County Superior
6 Court without prejudice after the filing of the First Amended Complaint.

7 45. On or about March 10, 2021, Peterson filed a supplemental PAGA notice
8 alleging that Defendant violated Labor Code §§ 201-203, 226, 226.7, 512, 1174, 1198, 1199.
9 Peterson's supplemental PAGA notice alleged that Defendant failed to provide compliant meal
10 periods and maintain accurate time records.

11 46. On July 23, 2021, Plaintiffs filed the Complaint in this action. The Complaint
12 alleges (1) violation of Labor Code § 226.7; (2) violation of Labor Code §§ 226.7 and 512; (3)
13 violation of Labor Code § 226; (4) violation of Business and Professions Code § 17200, *et*
14 *seq.*; (5) violation of the PAGA, Labor Code § 2698, *et seq.*; as well as Peterson's individual
15 claims under the FEHA. Peterson's FEHA Claims have been separately settled through an
16 Individual Settlement Agreement and Release, which contains a confidentiality provision. As
17 alleged in the Complaint, Plaintiffs seek to represent the Class Members and other aggrieved
18 employees. Plaintiffs further seek damages, penalties, interest, attorneys' fees, and costs.

19 47. Plaintiffs' counsel diligently investigated the proposed Class Members' claims
20 against Defendant, including any and all applicable defenses and the applicable law, through
21 the exchange of formal and informal discovery. Shortly after Plaintiffs filed their respective
22 initial complaints, the Parties agreed to participate in private mediation.

23 48. In connection with the mediation and through formal discovery responses,
24 Defendant produced documents for Plaintiffs' review, including Plaintiffs' personnel files,
25 employee handbook, meal and rest period policies, and copies of wage statements to putative
26 Class Members. Defendant also produced data relating to the number of Class Members and
27 wage statements issued to each Class Member, which allowed Plaintiffs to conduct a full damage
28 analysis.

51. The Parties recognize the risk, expense, and delay in continuing the Action, and therefore believe the Settlement to be fair, reasonable, and adequate. Accordingly, the Parties desire to settle, compromise, and discharge all disputes and claims arising from or relating to the Action.

52. Settlement Consideration. Defendant shall pay the sum of the Gross Settlement Amount of One Million One Hundred Eighty Thousand Dollars (\$1,180,000.00) as specified in this Agreement in full satisfaction of all claims arising from the Action, which shall be used to pay: (1) Individual Settlement Payments; (2) Class Counsel Award; (3) Class Representative Enhancement Payment; (4) Settlement Administration Costs to the Settlement Administrator; and (5) the PAGA Payment (including LWDA payment). The Parties agree that this is a non-reversionary Settlement and that no portion of the Gross Settlement Amount shall revert to Defendant, except in the event of rescission pursuant to Paragraph 73 of this Agreement.

JOINT STIPULATION OF CLASS ACTION/PAGA SETTLEMENT

1.468B-1, 26 C.F.R. § 1.468B-1, *et seq.*, and will be administered by the Settlement Administrator as such. The Parties agree to cooperate with the Settlement Administrator and one another to the extent reasonably necessary to carry out the provisions of this paragraph

54. Class Counsel Award. Defendant agrees not to oppose or impede any application or motion by Class Counsel for attorneys' fees of up to one-third (1/3) of the Gross Settlement Amount, i.e., the sum of Three Hundred Ninety-Three Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$393,333.33), and costs in the amount of up to Twenty-Five Thousand Dollars (\$25,000.00), which shall be paid from the Gross Settlement Amount. The Settlement Administrator shall issue an IRS Form 1099 to Class Counsel reflecting the awarded attorneys' fees, costs, and expenses. Any portion of the Class Counsel Award not awarded to Class Counsel shall be added to the Net Settlement Amount and shall be distributed to Class Members as provided in this Agreement.

55. Class Representative Enhancement Payment. Defendant agrees not to oppose or impede any application or motion by Plaintiffs for a Class Representative Enhancement Payment of up to Ten Thousand Dollars (\$10,000.00) to each Plaintiff. The Class Representative Enhancement Payment shall be paid from the Gross Settlement Amount and shall be paid in addition to Plaintiffs' Individual Settlement Payments as Participating Class Members. The Settlement Administrator shall issue an IRS Form 1099 to Plaintiffs reflecting the Class Representative Enhancement Payment. Plaintiffs shall be solely and legally responsible to pay any and all applicable taxes on their Class Representative Enhancement Payment and shall hold harmless Defendant from any claim or liability for taxes, penalties, or interest arising as a result of the Class Representative Enhancement Payment. Any portion of the Class Representative Enhancement Payment not awarded to Plaintiffs shall be added to the Net Settlement Amount and shall be distributed to Class Members as provided in this Agreement.

56. Settlement Administration Costs. The Settlement Administrator shall be paid for the reasonable costs of administration of the Settlement from the Gross Settlement Amount, currently estimated at Eleven Thousand Five-Hundred Dollars (\$11,500.00). These costs, which shall be paid from the Gross Settlement Amount, shall include, *inter alia*, the required tax

reporting on the Individual Settlement Payments, the issuing of 1099 IRS Forms, establishing a Qualified Settlement Fund, administering and distributing the Gross Settlement Amount and Class Counsel Award, and providing necessary reports and declarations. Any portion of the Settlement Administration Costs not allowed shall be added to the Net Settlement Amount and shall be distributed to Class Members as provided in this Agreement.

57. PAGA Payment. Subject to Court approval, the Parties agree that the amount of Seventy-Five Thousand Dollars (\$75,000.00) of the Gross Settlement Amount shall be designated for satisfaction of claims for civil penalties under the PAGA. The Settlement Administration shall pay seventy-five percent (75%) of the PAGA payment, i.e., the sum of Fifty-Six Thousand Two Hundred and Fifty Dollars (\$56,250.00), to the LWDA. The remaining twenty-five percent (25%), i.e., the sum of Eighteen Thousand Seven Hundred Fifty Dollars (\$18,750.00), shall be part of the Net Settlement Amount to be distributed to Class Members as per this Agreement.

58. Calculation of Individual Settlement Payments. The Net Settlement Amount shall be used to satisfy Individual Settlement Payments to Participating Class Members from the Settlement Class in accordance with the terms of this Agreement. The Settlement Administrator will allocate the Individual Settlement Payments by distributing the Net Settlement Amount to the Class and Exempt Class on a pro-rata basis from two funds. The Net Settlement Amount will be divided into a Net Settlement Class Amount, a Net Settlement Exempt Class Amount and a PAGA Amount. The PAGA Amount will be 25% of the total amount allocated for the satisfaction of claims for civil penalties under the PAGA, currently estimated to total Eighteen Thousand Seven Hundred Fifty Dollars (\$18,750.00). The Net Settlement Class amount will be 97% of the remaining Net Settlement Amount after deduction of the PAGA Amount. The Net Settlement Exempt Class Amount will be 3% of the remaining Net Settlement Amount after deduction of the PAGA Amount.

- a. The Net Settlement Class Amount will be divided by the total number of pay periods for the Participating Class Members during the Class Period, which will result in the "Pay Period Value." The Pay Period Value will be

multiplied by the number of pay periods each Participating Class Member worked during the Class Period.

- b. The Net Settlement Exempt Class Amount will be divided by the total number of pay periods for the Participating Exempt Class during the Exempt Class Period, which will result in the "Exempt Class Pay Period Value." The Exempt Class Pay Period Value will be multiplied by the number of pay periods each Participating Exempt Class Member worked during the Exempt Class Period.
- c. The PAGA Amount will be divided by the total number of pay periods for all Class Members from April 16, 2019 through July 31, 2021 which will result in the "PAGA Class Pay Period Value." The PAGA Amount Pay Period Value will be multiplied by the number of pay periods each Class Member worked during from April 16, 2019 through July 31, 2021.
- d. Participating Class Members are entitled to 100% of the Net Settlement Amount. Defendant maintains no reversionary right to any portion of the Net Settlement Amount. If there are any timely submitted Requests for Exclusion, the Settlement Administrator shall proportionately increase the Individual Settlement Payments for each Participating Class Member so that the amount actually distributed to Participating Class Members equals 100% of the Net Settlement Amount.

59. Tax Treatment. Twenty percent (20%) of each Individual Settlement Payment other than amounts allocated under the PAGA Amount shall be allocated as payment for alleged unpaid wages to be paid as a separate check and reported on an IRS W-2 Form. Eighty percent (80%) of each Individual Settlement Payment shall be allocated as payment for civil and statutory penalties. One hundred percent (100%) of the Individual Settlement Payment allocated under the PAGA Amount shall be allocated as payment for civil penalties. The portions allocated to interest and penalties shall be reported on an IRS Form 1099. The

Enhancement Payment shall be reported on an IRS Form 1099. Defendant makes no representation as to the tax treatment or legal effect of the payments called for in this Agreement, and Plaintiffs and Participating Class Members are not relying on any statement, representation, or calculation by Defendant. Plaintiffs and Participating Class Members understand and agree that they will be solely responsible for the payment of any taxes and penalties assessed on the payments described herein. Plaintiffs, Class Counsel, and Participating Class Members shall be solely and legally responsible for correctly characterizing the payments they receive pursuant to this Agreement for tax purposes and for paying any taxes on the amounts received. Employer-owed taxes on the wage portion of the Settlement shall be funded by Defendant separately from the Gross Settlement Amount, and calculated and distributed by the Settlement Administrator.

60. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS OR HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE

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

8 61. Issuance of Tax Forms. The Settlement Administrator shall be responsible for
9 issuing to Plaintiffs, Participating Class Members, and Class Counsel any 1099, W2, or other
10 tax forms as may be required by law for all amounts paid pursuant to this Agreement. All
11 expenses and costs incurred by, or at the direction of, the Settlement Administrator in connection
12 with the operation and implementation of this Settlement Agreement (including, without
13 limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and
14 expenses relating to filing or failing to file the informational and other tax returns described in
15 this Agreement) shall be treated as, and considered to be, costs of administration of this
16 Settlement and thus part of the Administration Costs.

17 62. Calculation of Gross Settlement Amount. The Gross Settlement Amount was
18 calculated with, and is premised on, Defendant's representation that Class worked 44,130 pay
19 periods during the Class Period and that the number of pay periods worked by the Exempt
20 Class totals encompasses 3,273 pay periods during the Exempt Class Period. If the total
21 number of pay periods for the Class during the Class Period is revealed to be more than 2%
22 higher than the estimated amount or the total number of pay periods for the Exempt Class
23 during the Exempt Class Period is revealed to be more than 2% higher than the estimated
24 amount, the Gross Settlement Amount shall be proportionally increased by the same
25 percentage over 2%. For example, if the number of pay periods worked during the Class Period
26 is in fact 3% higher than 44,130, the Gross Settlement amount increase by 1%.

27 63. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
28 Participating Class Members under this Agreement, the Enhancement Payment made to

1 Plaintiffs, as well as any other payments made pursuant to this Agreement, shall not be utilized
2 to calculate any additional benefits under any benefit plans to which Plaintiffs or any Class
3 Members may be eligible, including, but not limited to: profit-sharing plans, bonus plans, 401(k)
4 plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit
5 plans. Rather, it is the Parties' intention that this Settlement will not affect any rights,
6 contributions, or amounts to which any Class Members may be entitled under any benefit plans.
7 The Parties agree that any Individual Settlement Payment or the Class Representative
8 Enhancement Payment paid to Participating Class Members or Plaintiffs under the terms of this
9 Agreement do not represent any modification of Participating Class Members' or Plaintiffs'
10 previously credited hours of service or other eligibility criteria under any employee pension
11 benefit plan, employee welfare benefit plan, or any other plan or program, sponsored by
12 Defendant. Further, any Individual Settlement Payments or the Class Representative
13 Enhancement Payment paid hereunder shall not be considered "compensation" in any year for
14 purposes of determining eligibility for, or benefit accrual within, an employee pension benefit
15 plan, employee welfare benefit plan, or any other plan or program sponsored by Defendant.

16 64. Settlement Administration Process. The Parties agree to cooperate in the
17 administration of the Settlement and to make all reasonable efforts to control and minimize the
18 costs and expenses incurred in the administration of the Settlement. The Settlement
19 Administrator shall provide the following services: (a) calculate each Class Member's potential
20 Individual Settlement Payment from the Net Settlement Amount and applicable withholdings;
21 (b) prepare and mail the Notice of Settlement; (c) take appropriate steps to trace, update and
22 locate any Class Member whose address or contact information as provided to the Settlement
23 Administrator is inaccurate or outdated; (d) provide to Class Counsel and Defendant's counsel
24 a weekly report of the progress and completion of tasks identified in this Agreement; (e)
25 establish and maintain prior to disbursement all settlement funds in a qualified settlement fund;
26 (f) issue and distribute all payments provided for in this Agreement, including the Individual
27 Settlement Payments; (g) report the payments made pursuant to this Agreement as required on
28 a Form 1099 or other applicable forms; (h) calculate the employer-owed taxes on the wage

1 portion of the settlement, which shall be funded by Defendant separately from the Gross
2 Settlement Amount, and distributed by the Settlement Administrator.

3 65. Delivery of the Class List and Data. Within seven (7) calendar days of
4 Preliminary Approval, Defendant shall provide the Class List and Data to the Settlement
5 Administrator.

6 66. Notice by First-Class U.S. Mail. Within ten (10) business days after receiving the
7 Class List and Data from Defendant, the Settlement Administrator shall mail a Notice Packet to
8 all Class Members via regular First-Class U.S. Mail, using the most current, known mailing
9 addresses identified in the Class List.

10 67. Confirmation of Contact Information in the Class List. Prior to mailing, the
11 Settlement Administrator shall perform a search based on the National Change of Address
12 Database for information to update and correct for any known or identifiable address changes.

13 68. Notice Packets. All Class Members will be mailed a Notice Packet. Each Notice
14 Packet will provide: (1) information regarding the nature of the Action; (2) a summary of the
15 Settlement's principal terms; (3) the Class definition; (4) each Class Member's estimated
16 Individual Settlement Payment and the formula for calculating Individual Settlement Payments,
17 if they do not request to be excluded; and if they do request to be excluded (5) the dates that
18 comprise the Class Period and Exempt Class Period; (6) instructions on how to submit valid
19 Requests for Exclusion or objections; (7) the deadlines by which the Class Member must submit
20 a Request for Exclusion or Notice of Objection to the Settlement; (8) the date for the final
21 approval hearing; and (9) the claims to be released. The Notice Packet will also inform Class
22 Members that, in order to receive the Individual Settlement Payment, they do not need to do
23 anything except keep the Settlement Administrator apprised of their current mailing addresses.

24 69. Re-Mailing of Returned Notices. Any Notice Packets returned to the Settlement
25 Administrator as non-deliverable on or before the Response Deadline shall be re-sent promptly
26 via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement
27 Administrator shall indicate the date of such re-mailing on the Notice Packet. If no forwarding
28 address is provided, the Settlement Administrator shall promptly attempt to determine the correct

1 address using a skip-trace, or other search using the name, address and/or Social Security
2 Number of the Class Member involved, and shall then perform a re-mailing. Those Class
3 Members who receive a re-mailed Notice Packet shall have their Response Deadline extended by
4 up to fifteen (15) days from the original Response Deadline.

5 70. Request for Exclusion Procedures. Any Class Member may opt-out from the
6 Settlement by submitting a written Request for Exclusion to the Settlement Administrator
7 postmarked by the Response Deadline. A Request for Exclusion must: (1) contain the name,
8 address, telephone number, and the last four digits of the Social Security Number of the person
9 requesting exclusion; (2) clearly state that the Class Member does not wish to be included in the
10 Settlement; (3) be signed by the Class Member; (4) be returned by mail to the Settlement
11 Administrator at the specified address; and (5) be postmarked on or before the Response
12 Deadline. The date of the postmark shall be the exclusive means to determine whether a Request
13 for Exclusion is timely. By submitting such a Request for Exclusion, a Class Member shall be
14 deemed to have exercised his or her option to opt out of the Action and not be bound by this
15 Agreement. Accordingly, a Class Member that timely submits a valid Request for Exclusion will
16 not be entitled to any payments under this Settlement and will not be bound by the terms of the
17 Settlement. Any Class Member who fails to submit a valid and timely Request for Exclusion on
18 or before the Response Deadline shall be deemed a Participating Class Member and will be
19 bound by all terms of the Settlement to the fullest possible extent, if the Settlement is granted
20 final approval by the Court. Upon request, the Settlement Administrator shall provide counsel
21 with a complete list of all Class Members who have timely submitted a Request for Exclusion.

22 71. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class
23 Member who does not affirmatively opt-out of the Settlement by submitting a valid and timely
24 Request for Exclusion shall be bound by all terms of the Settlement to the fullest possible extent,
25 including those pertaining to the Released Claims and Exempt Released Claims, as well as any
26 Judgment that may be entered by the Court.

27 72. Objection Procedures. Any Class Member who does not opt-out of this
28 Settlement shall be entitled to object to the Settlement. To object to the Settlement, a Class

1 Member should return by mail a written statement of objection to the Settlement Administrator at
2 the specified address by the Response Deadline. The Notice of Objection should include: (a) the
3 objector's full name, signature, address, and telephone number; (b) a written statement of the
4 basis for the objection; and (c) any copies of papers, briefs, or documents upon which the
5 objection is based. Class Members who submit a timely Notice of Objection will have the right
6 to appear at the final approval hearing to have their objections heard by the Court, at their own
7 expense. Any Class Member who does not submit a Notice of Objection in compliance with this
8 paragraph, or who does not appear at the final approval hearing and present an oral objection to
9 the Settlement, shall be deemed to have waived any objection(s), shall be conclusively deemed a
10 Participating Class Member, and shall be precluded from making any objection (including by
11 appeal or otherwise) to the Settlement. At no time shall any of the Parties or their counsel seek to
12 solicit or otherwise encourage Class Members to submit written objections to the Settlement or
13 appeal from the Order and Judgment. Class Counsel shall not represent any Class Members with
14 respect to any such objections to this Settlement. Any Class Member who submits a valid
15 Request for Exclusion shall not be allowed to object to this Settlement.

16 73. Defendant's Right to Rescind. If more than two percent (2%) of the Class
17 Members opt out of the settlement by submitting valid and timely Requests for Exclusion,
18 Defendant has the unilateral right in its sole discretion to rescind the Settlement Agreement. The
19 Parties agree that they will not encourage any Class Member to object to the Settlement or to opt
20 out. If Defendant exercises its option to rescind, Defendant shall: (a) provide written notice to
21 Class Counsel at least twenty-one (21) calendar days prior to the final approval hearing, provided
22 Defendant has been provided notice of all such opt outs, and (b) pay all Settlement
23 Administration Costs incurred by the Settlement Administrator up to the date of Defendant's
24 notice to rescind. In the event the Settlement is terminated, the Parties shall proceed in all
25 respects as if this Agreement had not been executed.

26 74. Settlement Administrator's Reports of Information. The Settlement Administrator
27 shall provide Defense Counsel and Class Counsel a weekly report which certifies the number of
28 Class Members who have submitted valid Requests for Exclusion. Additionally, the Settlement

1 Administrator will provide to counsel for both Parties any updated reports regarding the
2 administration of the Settlement as needed or requested. The Settlement Administrator shall also
3 forward to Parties' counsel and file with the Court any Notices of Objection received
4 immediately upon receipt. Further, if requested by Parties' counsel, the Settlement Administrator
5 shall forward any Request for Exclusion to the Parties' counsel so that they can determine
6 whether the Request for Exclusion is valid and timely.

7 75. Distribution Timing of Individual Settlement Payments. Within seven (7)
8 calendar days of Defendant completing its funding the Gross Settlement Amount, the Settlement
9 Administrator shall issue payments to (1) Participating Class Members; (2) the Labor and
10 Workforce Development Agency; (3) Plaintiffs; and (4) Class Counsel. The Settlement
11 Administrator shall also issue a payment to itself for services performed in connection with the
12 Settlement.

13 76. Uncashed Settlement Payment Checks. Any checks issued by the Settlement
14 Administrator to Class Members shall be negotiable for not less than one hundred and eighty
15 (180) days from the date of their issuance. This is a non-reversionary settlement. All Individual
16 Settlement Payments to Class Members that remain un-cashed within one hundred eighty (180)
17 days of the mailing of Settlement Payment Checks by the Settlement Administrator shall be paid
18 out pursuant to California Code of Civil Procedure section 384 to the following *cy pres*
19 recipient: Legal Aid at Work.

20 77. Certification of Completion. Upon completion of administration of the
21 Settlement, the Settlement Administrator shall provide a written declaration under oath to certify
22 such completion to the Court and counsel for all Parties.

23 78. Administration Costs if Settlement Fails or is Delayed. If an objection to the
24 Settlement is filed with the Court, regardless of the ultimate outcome of any appeals taken, or if
25 the Settlement is voided or rescinded, any costs incurred by the Settlement Administrator shall
26 be borne equally by Defendant and Plaintiffs, unless otherwise specified in this Agreement.

27 79. No Prior Assignments. The Parties and their counsel represent, covenant, and
28 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported

1 to assign, transfer, or encumber to any person or entity any portion of any liability, claim,
2 demand, action, cause of action or right herein released and discharged.

3 80. Release of Claims by Participating Class Members. Upon the Effective Date and
4 complete funding of the Gross Settlement Amount, for and in consideration of the mutual
5 promises, terms, and conditions by and between the Participating Class Members and
6 Defendant set forth herein, the sufficiency of which consideration is expressly acknowledged,
7 the Participating Class Members do hereby fully, finally and forever release and discharge the
8 Released Parties, as follows:

- 9 a. The members of the Class who do not submit a valid and timely Request
10 for Exclusion release the Released Parties from any and all Released
11 Claims.
12 b. The members of the Exempt Class who do not submit a valid and timely
13 Request for Exclusion release the Released Parties from any and all
14 Exempt Released Claims.
15 c. Nothing in this Agreement shall be construed to require Participating
16 Class Members to waive or release rights which may not be waived or
17 released as a matter of applicable law. This release is final and binding on
18 all Participating Class Members.

19 81. Nullification of Settlement. In the event that the Settlement does not become final
20 for any reason, then this Agreement, and any documents generated to bring it into effect, shall be
21 null and void. Any order or judgment entered by the Court in furtherance of this Agreement shall
22 likewise be treated as void from the beginning.

23 82. Disputes Regarding Individual Settlement Payments. In the event that Class
24 Members have a dispute as to the data provided by the Defendant, Class Members will have the
25 opportunity to provide documentation and/or an explanation. If there is a dispute, the Settlement
26 Administrator will consult with the Parties to determine whether an adjustment is warranted. The
27 Settlement Administrator shall determine the eligibility for, and the amounts of, any Individual
28 Settlement Payments under the terms of this Agreement, and that determination shall be binding.

83. Disputes Regarding Administration of Settlement. Any disputes not resolved by the Settlement Administrator concerning the administration of the Settlement will be resolved by the Court under the laws of the State of California. Prior to any such involvement of the Court, counsel for the Parties will confer in good faith to resolve the disputes without the necessity of involving the Court.

84. Preliminary Approval Hearing. Plaintiffs shall obtain a hearing before the Court to request the Preliminary Approval of the Settlement, and the entry of a Preliminary Approval Order: (i) approving of the proposed Settlement, and (ii) setting a date for a Final Approval/Settlement Fairness Hearing. Class Counsel shall be responsible for drafting all documents necessary to obtain Preliminary Approval, and will notify the LWDA of the Settlement. The Preliminary Approval Order shall provide for the Notice Packet to be sent to all Class Members as specified herein. In conjunction with the Preliminary Approval hearing, Plaintiffs shall submit this Agreement, which sets forth the terms of this Settlement, and will include the proposed Notice Packet, attached to this Agreement as **Exhibit A**. If the Court declines to approve the Settlement or approves it conditional on modifications to the settlement terms, the Parties shall work in good faith to modify the settlement terms to obtain approval, provided that the material terms of the Settlement are not affected.

85. Final Settlement Approval Hearing. Upon expiration of the deadlines to submit Requests for Exclusion or Notices of Objections to the Settlement, and with the Court's permission, a Final Approval/Settlement Fairness Hearing shall be conducted to determine the Final Approval of the Settlement along with the amounts properly payable for: (i) Individual Settlement Payments; (ii) the PAGA (including LWDA) Payment; (ii) the Class Counsel Award; (iii) the Class Representative Enhancement Payment; and (iv) Settlement Administration Costs. Class Counsel will be responsible for drafting all documents necessary to obtain final approval. Class Counsel will also be responsible for drafting the attorneys' fees and costs application to be heard at the Final Approval Hearing.

86. Entry of Judgment and Continued Jurisdiction of the Court. Concurrent with the Motion for Final Approval, the Parties shall also jointly seek the entry of Judgment consistent

1 with the terms of this Agreement. After entry of the Judgment, the Court shall have continuing
2 jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms
3 of the Settlement, (ii) Settlement administration matters, and (iii) such post-Judgment matters as
4 may be appropriate under court rules or as set forth in this Agreement.

5 87. Exhibits Incorporated by Reference. The terms of this Agreement include the
6 terms set forth in any attached Exhibits, which are incorporated by this reference as though fully
7 set forth herein. Any Exhibits to this Agreement are an integral part of the Settlement.

8 88. Confidentiality. The Parties and their counsel agree that they will not issue any
9 press releases, initiate any contact with the press, respond to any press inquiry or have any
10 communication with the press about the fact, amount, or terms of the Settlement. In addition, the
11 Parties and their counsel agree that they will not engage in any advertising or distribute any
12 marketing materials relating to the Settlement of this case prior to final approval, including, but
13 not limited to, any postings on any websites maintained by Class Counsel. Notwithstanding
14 anything to the contrary in this paragraph or elsewhere in this Agreement, Defendant shall be
15 permitted to make such disclosures regarding this case and settlement as it deems necessary or
16 appropriate for purposes of corporate reporting, and/or complying with applicable securities laws
17 or as otherwise required by law.

18 89. Entire Agreement. This Agreement and any attached Exhibits and the Individual
19 Settlement Agreement and Release constitute the entirety of the Parties' Settlement terms. No
20 other prior or contemporaneous written or oral negotiations or agreements may be deemed
21 binding on the Parties.

22 90. Disputes Regarding Language of Final Settlement Agreement. If the Parties have
23 a dispute with regard to the language of the Agreement, the Parties agree to first informally
24 resolve the dispute by engaging Steven G. Pearl, Esq. to mediate such dispute. The Parties also
25 intend this Agreement to be binding and enforceable, pursuant to Code of Civil Procedure
26 § 664.6.

27 91. Amendment or Modification. This Agreement may be amended or modified only
28 by a written instrument signed by the Parties, the Parties counsel, or their successors-in-interest.

1 92. Authorization to Enter Into Agreement. Counsel for all Parties warrant and
2 represent they are expressly authorized by the Parties whom they represent to negotiate this
3 Agreement and to take all appropriate actions required or permitted to be taken by the Parties
4 pursuant to this Agreement to effectuate its terms and to execute any other documents required to
5 effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each
6 other and use their best and good-faith efforts to effect the implementation of the Settlement. If
7 the Parties are unable to reach agreement on the form or content of any document needed to
8 implement the Settlement, or on any supplemental provisions that may become necessary to
9 effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve
10 such disagreement.

11 93. Binding on Successors and Assigns. This Agreement shall be binding upon, and
12 inure to the benefit of, the successors, heirs, or assigns of the Parties hereto, as previously
13 defined.

14 94. California Law Governs. All terms of this Agreement and Exhibits hereto shall
15 be governed by and interpreted according to the laws of the State of California.

16 95. Execution and Counterparts. This Agreement is subject only to the execution of
17 all Parties. However, the Agreement may be executed in one or more counterparts. All executed
18 counterparts and each of them, including facsimile and scanned copies of the signature page,
19 shall be deemed to be one and the same instrument provided that counsel for the Parties shall
20 exchange among themselves original signed counterparts.

21 96. Acknowledgement that the Settlement is Fair and Reasonable. The Parties
22 believe this Agreement is a fair, adequate, and reasonable settlement of the Action and have
23 arrived at this Settlement after arm's-length negotiations, mediation, and in the context of
24 adversarial litigation, taking into account all relevant factors, present and potential. The Parties
25 further acknowledge that they are each represented by competent counsel and that they have had
26 an opportunity to consult with their counsel regarding the fairness and reasonableness of this
27 Agreement.

28 97. Invalidity of Any Provision. Before declaring any provision of this Agreement

1 invalid, the Court shall first attempt to construe the provision as valid to the fullest extent
2 possible consistent with applicable precedents so as to define all provisions of this Agreement
3 valid and enforceable. Any invalid, illegal, or unenforceable provision determined by the Court
4 shall in no way affect any other provision if Defendant and Class Counsel, on behalf of the
5 Parties and the Settlement Class, mutually elect in writing to proceed as if such invalid, illegal,
6 or unenforceable provision had never been included in this Agreement.

7 98. Waiver of Certain Appeals. The Parties agree to waive appeals; except, however,
8 that Plaintiffs or Class Counsel may appeal any reduction in the Class Counsel's Award below
9 the amount Class Counsel requests, and either Party may appeal any order that materially alters
10 the Agreement's terms.

11 99. Plaintiffs' Waiver of Right to Be Excluded. Plaintiffs agree to sign this
12 Settlement Agreement and, by signing this Settlement Agreement, are hereby bound by the terms
13 herein. For good and valuable consideration, Plaintiffs further agrees that they shall not request
14 to be excluded from the Settlement Agreement. Any such request for exclusion by Plaintiffs shall
15 be void and of no force or effect. Efforts by Plaintiffs to circumvent the terms of this paragraph
16 shall be void and of no force or effect.

17 100. Class Action Certification for Settlement Purposes Only. The Parties are agreeing
18 to class certification for settlement purposes only. This Agreement shall not constitute, in this or
19 any other proceeding, an admission of any kind by Defendant, including without limitation, that
20 certification of a class for trial or any other purpose is appropriate or proper or that Plaintiffs or
21 any Class Member can establish any of the requisite elements for class treatment of any of the
22 claims in this Action. If, for any reason, the Settlement is not finally approved, this Agreement
23 will be void and the Parties will be restored to their respective positions in the lawsuit as if they
24 had not entered into this Agreement. The Parties further agree that this Agreement, the final
25 stipulation of Settlement, or any documents or orders issued related to this Settlement will not be
26 admissible, other than according to the Settlement's terms, in this or any other proceeding as
27 evidence that either: (i) a class action should be certified, or (ii) Defendant is liable to Plaintiffs
28 or any Class Member.

1 101. Non-Admission of Liability. The Parties enter into this Agreement to resolve the
2 dispute that has arisen between them and to avoid the burden, expense, and risk of continued
3 litigation. In entering into this Agreement, Defendant does not admit, and specifically denies, it
4 has violated any federal, state, or local law; violated any regulations or guidelines promulgated
5 pursuant to any statute or any other applicable laws, regulations, or legal requirements; breached
6 any contract; violated or breached any duty; engaged in any misrepresentation or deception; or
7 engaged in any other unlawful conduct with respect to its employees. Neither this Agreement,
8 nor any of its terms or provisions, nor any of the negotiations connected with it, shall be
9 construed as an admission or concession by Defendant of any such violations or failures to
10 comply with any applicable law, regulation, or legal requirement. Except as necessary in a
11 proceeding to enforce the terms of this Agreement, this Agreement and its terms and provisions
12 shall not be offered or received as evidence in any action or proceeding to establish any liability
13 or admission of any nature on the part of Defendant, or to establish the existence of any
14 condition constituting a violation of, or a non-compliance with, federal, state, local or other
15 applicable law.

16 102. Captions. The captions and paragraph and section numbers in this Agreement are
17 inserted for the reader's convenience, and in no way define, limit, construe, or describe the scope
18 or intent of the provisions of this Agreement.

19 103. Waiver. No waiver of any condition or covenant contained in this Agreement or
20 failure to exercise a right or remedy by any of the Parties hereto shall be considered to imply or
21 constitute a further waiver by such party of the same or any other condition, covenant, right, or
22 remedy.

23 104. Enforcement Actions. In the event that one or more of the Parties institutes any
24 legal action or other proceeding against any other Party or Parties to enforce the provisions of
25 this Settlement, or to declare rights and/or obligations under this Settlement, the prevailing Party
26 or Parties shall be entitled to recover from the non-prevailing Party or Parties reasonable
27 attorneys' fees and costs, including expert witness fees incurred in connection with any
28 enforcement actions.

105. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and conditions of this Agreement. Accordingly, this Agreement shall not be construed more strictly against one Party than another merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Agreement.

106. Representation by Counsel. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Agreement, and that this Agreement has been executed with the consent and advice of counsel. Further, Plaintiffs and Class Counsel warrant and represent that there are no liens on the Agreement.

107. Cooperation and Execution of Necessary Documents. All Parties shall cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Agreement.

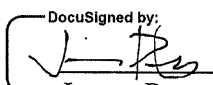
108. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Agreement, and further intend that this Agreement shall be fully enforceable and binding on all Parties and agree that it shall be admissible and subject to disclosure in any proceeding to enforce its terms.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Class Action Settlement and Release between Plaintiffs and Defendant as of the date(s) set forth below:

READ CAREFULLY BEFORE SIGNING

Dated: 10/28/2021

PLAINTIFF

DocuSigned by:

James Pevey

PLAINTIFF

1
2 Dated: October 28,
3 2021

DocuSigned by:

Anne Peterson

FC98EB961EE34D0...

Anne Peterson

DEFENDANT

Lumber City Corp.

4
5
6
7
8 Dated: _____

By: _____

Its: _____

PLAINTIFF

Dated: _____

Anne Peterson

DEFENDANT

Lumber City Corp.

Dated: _____

By: John Lyons
Its: CFO

EXHIBIT A

James Pevey v. Lumber City Corp.
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO
(CASE NO. CIVDS2010240)

NOTICE OF CLASS ACTION SETTLEMENT (“NOTICE”)

IF YOU ARE A:

- CURRENT OR FORMER CALIFORNIA NON-EXEMPT EMPLOYEE OF LUMBER CITY CORP. (“LUMBER CITY”) AND YOU EARNED WAGES AT ANY TIME FROM APRIL 6, 2016, THROUGH JULY 31, 2021 (the “Class”); or
- CURRENT OR FORMER EXEMPT EMPLOYEE OF LUMBER CITY WHO EARNED WAGES AT ANY TIME BETWEEN APRIL 6, 2018, THROUGH JULY 31, 2021 (the “Exempt Class”);

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

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

«BarcodeString»
SIMID «SIMID»

ATTN: «FirstName» «LastName»
«Address1» «Address2»
«City» «Abbrev» «Zip»

**YOU ARE ESTIMATED TO RECEIVE
APPROXIMATELY
\$«MERGED_EstSettAmnt_CALC»
THROUGH THIS CLASS ACTION
SETTLEMENT**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT

You Can DO NOTHING	You will receive a payment from the settlement. If you do nothing, you continue your participation in this lawsuit, and you will be impacted by the outcome of this case. You will receive a settlement payment; however, you will lose any rights to sue LUMBER CITY separately for the same legal claims made in the lawsuit. The estimated amount of your settlement payment is shown above. To receive your settlement payment, all you need to do is keep the Settlement Administrator informed of your current mailing address. Once the Court grants final approval of the settlement, the Settlement Administrator will mail your check to the address on file for you.
You Can ASK TO BE EXCLUDED FROM THE SETTLEMENT (Deadline: _____, 2021)	If you ask to be excluded from the settlement, you will get no payment from the settlement, aside from the “PAGA Amount” (described below), but you will keep any rights to sue LUMBER CITY separately for the same legal claims made in this lawsuit other than penalty claims premised on California’s Private Attorney General Act, Labor Code § 2698, et seq.
You Can OBJECT TO THE SETTLEMENT (Deadline: _____, 2021)	If you do not like the settlement, you can send a written objection to the Settlement Administrator by the deadline or personally appear at the final approval hearing. If your objection is overruled by the Court, you will still be bound by the terms of the settlement and will receive a settlement

	payment. Important: If you object to the settlement, you cannot also ask to be excluded.
--	---

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

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

1. Why Should You Read this Notice?

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

2. What is this Lawsuit About?

In the lawsuit, the Plaintiffs allege that LUMBER CITY failed to provide full and complete meal and rest periods, provide accurate wage statements, and pay all wages owed upon separation of employment in violation of California Labor Code sections 201-203, 226(a), 226.7, 512, and 2698, *et seq.*, and engaged in unfair business practices in violation of Business and Professions Code section 17200, *et seq.* LUMBER CITY denies the allegations in the lawsuit and denies it has engaged in any wrongdoing. LUMBER CITY asserts that it complied with all legal requirements, but is resolving this action in order to avoid the risk and costs of further legal proceedings.

3. Why is this a Class Action?

This lawsuit is a class action. In a class action, one or more persons, called a class representative (in this case, James Pevey and Anne Peterson), sue on behalf of people who allegedly have similar claims. All these people are a class or class members. One case resolves the issues for all class members, except for those who exclude themselves from the class. The San Bernardino County Superior Court is in charge of the case. The lawsuit is known as *James Pevey v. Lumber City Corp.*, Case No. CIVDS2010240.

4. Why is There a Settlement?

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

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

The Court has decided that the following individuals are class members: all current and former non-exempt employees of Defendant in the State of California who earned wages at any time between April 6, 2016, through July 31, 2021 (the “Class”), and all current and former exempt employees of Defendant in the State of California who earned wages at any time between April 6, 2018, through July 31, 2021 (the “Exempt Class”). If you received this Notice you are a member of the Class or Exempt Class.

6. What Does the Settlement Provide?

The proposed settlement provides for a cash payment by LUMBER CITY in the amount of \$1,180,000.00 to fully and finally resolve all claims in the lawsuit (referred to as the “Gross Settlement Amount”). The total amount to be distributed to class members who can be located, and who do not exclude themselves from the settlement, will be the Gross Settlement Amount minus the following (the “Net Settlement Amount”): (a) settlement administration costs not to exceed \$11,500.00; (b) class representative enhancement award to Plaintiffs not to exceed \$10,000.00 each (\$20,000.00 total) for their work and efforts in prosecuting this cases, and for undertaking the risks of costs (in the event the outcome was not favorable); (c) Class Counsel’s attorneys’ fees not to exceed \$393,333.33; (d) Class Counsel’s actual litigation costs and expenses as supported by declaration not to exceed \$25,000.00; and (e) payment of \$56,250.00 to the Labor and Workforce Development Agency. **Class Counsel’s attorneys’ fees and costs remain subject to Court approval.**

The proposed settlement also provides that a portion of the penalties allocated to the claims brought under the Private Attorneys General Act (“PAGA”), Cal. Labor Code § 2698, et seq., will be distributed to class members even if they request exclusion. The “PAGA Amount” will be 25% of the total amount allocated for the satisfaction of claims for civil penalties under the PAGA, currently estimated to total Eighteen Thousand Seven Hundred Fifty Dollars (\$18,750.00).

Part of the proposed settlement permits LUMBER CITY to pay the the Gross Settlement Amount over six months in six equal payments of One Hundred and Ninety-Six Thousand Six Hundred and Sixty-Six Dollars and Sixty-Seven Cents (\$196,666.67).

No portion of the Net Settlement Amount will be returned to LUMBER CITY under any circumstances. Instead any unclaimed portions will be distributed to a charitable organization.

7. How Much Will My Payment Be?

Your estimated share of the settlement is shown on the first page of this notice. The amount you are to receive is based on the number of applicable pay periods you worked during the period of April 6, 2016, through July 31, 2021 if you are part of the Class, and between April 6, 2018, through July 31, 2021, if you a part of the Exempt Class.

Based upon LUMBER CITY’s records, you are a member of the [Class/Exempt Class]. Based thereon, the number of pay periods you worked during the relevant time period for your class is determined to be **. If this information appears correct, you do not need to do anything further to receive your settlement payment. If you disagree with the number of pay periods, see below (Question 9).]

8. How Do I Receive a Payment?

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

9. What If I Believe the Information is Inaccurate?

If you believe the number of pay periods you worked is inaccurate, you may dispute it by sending a letter to [Settlement Administrator] [ADMINISTRATOR’S ADDRESS] no later than , 2021. Be sure to include your name, address, telephone number, last four digits of your Social

Security Number, and a statement as to what and why you are disputing. Also attach a copy of any documentation you want to include to support your dispute.

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

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

[Class

- All claims, including penalties, costs, and attorneys’ fees related thereto, that could have been brought under the factual allegations made in the operative Complaint, including but not limited to violations of Labor Code §§ 201-203, 226, 226.7, 512, and 2698, et seq. and Business and Professions Code § 17200, et seq., that accrued from April 6, 2016, through July 31, 2021.
- All claims for penalties under the California Labor Code Private Attorneys General Act of 2004, including costs and attorneys’ fees related thereto, predicated on the violation of Labor Code §§ 201-203, 226, 226.7, and 512, based on the facts as alleged in the operative Complaint that accrued from April 6, 2016, through July 31, 2021.] **OR**

[Exempt Class

- All claims, including penalties, costs, and attorneys’ fees related thereto, that could have been brought under the factual allegations made in the operative Complaint for violations of Labor Code § 226, and 2698, et seq. that accrued from April 6, 2018, through July 31, 2021.
- All claims for penalties under the California Labor Code Private Attorneys General Act of 2004, including costs and attorneys’ fees related thereto, predicated on the violation of Labor Code § 226, based on the facts as alleged in the operative Complaint that accrued from April 6, 2018, through July 31, 2021.]

11. How Do I Exclude Myself from the Settlement?

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

Be sure to include your name, address, telephone number, last four digits of your Social Security Number, and your signature. You must mail your exclusion letter postmarked no later than [REDACTED], 2021, to the Settlement Administrator at [REDACTED].

If you submit a timely and valid “opt-out” request, you will no longer be a member of the class and you will not receive any money from the settlement (except for that portion of the settlement allocated to PAGA penalty payments – *i.e.*, the PAGA Amount), or be able to object to the settlement, but you will not be legally bound by anything that happens in this lawsuit. You will keep any rights to sue (or continue to sue) LUMBER CITY in the future for the same legal claims made in this lawsuit, at your own expense, and with the exception of .

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

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

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

All written objections should be signed by you and should include: (1) your full name, address, and telephone number; (2) a written statement of the basis for your objection; and (3) any copies of papers, briefs, or documents upon which the objection is based. You must mail your objection postmarked no later than [REDACTED], 2021, to the Settlement Administrator at Settlement Administrator at [REDACTED].

13. What is the Difference Between Objecting and Excluding?

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

14. Do I Have a Lawyer in this Case?

The Court decided that the law firms of Diversity Law Group, Polaris Law Group, and David Lee LAW, all of which represent the Plaintiffs, are also qualified to represent you and all class members. You will not be charged for these lawyers. These law firms are referred to as "Class Counsel." If you want to be represented by your own lawyer, you may hire one at your own expense.

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

The attorneys for the Plaintiffs and the class will be paid from the Gross Settlement Amount. Class Counsel will ask for up to \$393,333.33 in attorneys' fees and for actual litigation costs incurred up to a maximum of \$25,000.00, the actual amount of which will be determined by the Court at the final approval hearing (see Question 16 below for details as to when this hearing will take place). Class members (like you) do not have to pay the fees and costs of Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

If approved by the Court, a service payment for the Plaintiffs of an amount up to \$20,000.00, collectively, will be paid from the Gross Settlement Amount for their work and efforts in prosecuting this case, and for undertaking the risks of costs (in the event the outcome of this lawsuit was not favorable).

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

The Court has preliminarily approved the settlement and will hold a final approval hearing to decide whether to give final approval to the settlement. This hearing will be held before the Honorable David Cohn on [REDACTED], 2021, at [REDACTED] a.m., in Department S-26 of the Superior Court of California for the County of San Bernardino,

located at 247 West 3rd Street, San Bernardino, CA 92415, to determine whether the proposed settlement is fair, reasonable, and adequate, and whether it should be finally approved by the Court. If there are objections, the Court will consider them. After the hearing, the Court will decide whether to approve the settlement. We do not know how long this decision will take. The final approval hearing may be continued without further notice. The Court may adjourn or continue the hearing from time to time, without further notification, as the Court may direct.

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

17. How Do I Receive More Information?

This Notice summarizes the proposed settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement by contacting Class Counsel.

18. What is the Contact Information for Class Counsel?

The addresses for Class Counsel are as follows:

DIVERSITY LAW GROUP, P.C.
Larry W. Lee
Max W. Gavron
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
Telephone: (213) 488-6555
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WHAT IF I HAVE QUESTIONS?

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

James Pevey v. Lumber City Corp.

c/o Phoenix Settlement Administrators
Address
City, CA, Zip
Toll-Free Phone Number: [insert]

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

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

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STATE OF CALIFORNIA]
]ss.
COUNTY OF LOS ANGELES]

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite 1250, Los Angeles, California 90071.

On November 1, 2021, I served the following document(s) described as:
**DECLARATION OF MAX W. GAVRON IN SUPPORT OF PLAINTIFFS' MOTION
 FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** on the interested
 parties in this action as follows:

Ron S. Brand
rbrand@kahanafeld.com
Avi Attal
aattal@kahanafeld.com
Benjamin Smith
bsmith@kahanafeld.com
KAHANA & FELD LLP
2603 Main Street, Suite 350
Irvine, California 92614
Attorneys for Defendant

 X BY ELECTRONIC MAIL: by personally sending a true and correct copy of the above-described document(s) to the party(ies) listed above or on the attached mailing list from the e-mail server diversitylaw.com, to the electronic transmission address of the recipient(s) indicated above or on the attached mailing list. I certify that said electronic transmission was completed and that all pages were received by the party(ies) identified herein or on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on November 1, 2021, at Los Angeles, California.


Olympia Pena