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Attorneys for Defendants

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

Kevin Larue, individually and on behalf of
all others similarly situated,

Plaintiff,

vs.

Diamond Environmental Services, LP;
Diamond Maintenance Services, LLC;
Diamond Power Services, Inc.; Diamond
Solid Water Services, Inc.; and DOES 1
through 20, inclusive,

Defendants.

Case No. 37-2020-00031678-CU-OE-CTL

*Assigned for all purposes to
Hon. Judge Eddie C. Sturgeon
Dept. C-67*

**JOINT STIPULATION OF CLASS ACTION
SETTLEMENT**

1 It is stipulated and agreed by and among the undersigned Parties, subject to the approval
2 of the Court pursuant to the California Rules of Court, that the Settlement of this Action shall be
3 effectuated upon and subject to the following terms and conditions. Capitalized terms used herein
4 shall have the meanings set forth in Article I or as defined elsewhere in this Joint Stipulation of
5 Class Action Settlement (the “Agreement”).

6 This Agreement is made by and between Plaintiff Kevin Larue, on the one hand, and
7 Defendants Diamond Environmental Services, LP, Diamond Maintenance Services, LLC,
8 Diamond Power Services, Inc., and Diamond Solid Water Services, Inc., on the other hand
9 (collectively, the “Parties”).

10 The Parties agree that the Action shall be, and hereby is, ended, settled, resolved, and
11 concluded pursuant to the terms and conditions of this Agreement and for the consideration set
12 forth herein, including.

13 **ARTICLE I**

14 **DEFINITIONS**

15 Unless otherwise defined herein, the following terms used in this Agreement shall have the
16 meanings ascribed to them as set forth below:

17 a. “Action” means the action described as follows: *Kevin Larue, individually and on*
18 *behalf of others similarly situated, v. Diamond Environmental Services, LP; Diamond*
19 *Maintenance Services, LLC; Diamond Power Services, Inc.; Diamond Solid Water Services, Inc.,*
20 *and Does 1 through 20,”* Case No. 37-2020-00031678-CU-OE-CTL, commenced on September
21 10, 2020, in the Superior Court of the State of California for the County of San Diego.

22 b. “Agreement” means this Joint Stipulation of Class Action Settlement, including the
23 attached Exhibit(s).

24 c. “Class” means any and all persons who have been employed by Defendants as a
25 non-exempt employee in California at any time during the Class Period.

26 d. “Class Counsel” means the attorneys for the Class and the Class Members, who
27 are:
28

1 **AEGIS LAW FIRM, PC**

2 Samuel A. Wong
3 Kashif Haque
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6 9811 Irvine Center Drive, Suite 100
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10 e. “Class List” means a list based on Defendants’ business records that identifies each
11 Class Member’s name, last known home or mailing address, Social Security number or, as
12 applicable, other taxpayer identification number, dates of employment, and the number of
13 Qualifying Workweeks worked during the Class Period.

14 f. “Class Member(s)” means all members of the Class.

15 g. “Class Period” means from April 6, 2016 through May 2, 2022.

16 h. “Court” means the Superior Court of the State of California in and for the County
17 of San Diego, where the Action is currently pending.

18 i. “Date of Finality” means the later of the following: (1) the date the Final Order is
19 signed if no objections are filed to the Settlement; (2) if objections are filed and overruled, and no
20 appeal is taken of the Final Order, sixty-five (65) days after the Final Order; or (3) if an appeal or
21 other judicial review is taken from the Court’s overruling of objections to the settlement, ten (10)
22 days after the appeal is withdrawn or after an appellate decision affirming the Final Order becomes
23 final.

24 j. “Defendants” means Diamond Environmental Services, LP, Diamond
25 Maintenance Services, LLC, Diamond Power Services, Inc., and Diamond Solid Water Services,
26 Inc.

27 k. “Defense Counsel” means the attorneys for Defendants, who are:

28 Edwin M. Boniske
 Kyle W. Nageotte
 HIGGS FLETCHER & MACK, LLP
 401 West “A” Street, Suite 2600
 San Diego, California 92101
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l. “Disposition” means the method by which the Court approves the terms of the Settlement and retains jurisdiction over its enforcement, implementation, construction, administration, and interpretation.

m. “Final Order Approving Settlement of Class Action” or “Final Order” means the final formal court order signed by the Court following the Final Fairness and Approval Hearing in accordance with the terms herein, approving this Agreement.

n. “Gross Settlement Amount” means Two Million Dollars and Zero Cents (\$2,000,000.00) to be paid by Defendants as provided by this Agreement to settle this Action. All payments to the Class, administration costs, attorney’s fees and costs, and Incentive Award, pursuant to Section 3.06(a) below, shall be paid out of the Gross Settlement Amount. The employer’s share of payroll taxes arising from the payments made under this settlement shall be paid by Defendants separate from and in addition to the Gross Settlement Amount. The Gross Settlement Amount is subject to a pro rata increase pursuant to Section 3.04(e) below. No part of the Gross Settlement Amount shall revert to Defendants.

o. “Incentive Award” means a monetary amount of up to Fifteen Thousand Dollars (\$15,000.00) for the Named Plaintiff, subject to Court approval, in recognition of his effort and work in prosecuting the Action on behalf of Class Members.

p. “Individual Settlement Payment(s)” means each Participating Class Member’s respective share of the Net Settlement Amount. Individual Settlement Payments will be determined by the calculations provided in this Agreement.

q. “LWDA” means The State of California Labor and Workforce Development Agency.

r. “LWDA Payment” means 75% of the \$50,000 allocated to the settlement of PAGA claims which, subject to Court approval, will be paid to the LWDA pursuant to Section 3.06(e) of this Agreement, as provided for below.

s. “Motion for Final Approval” means the Named Plaintiff’s submission of a written motion, including any evidence as may be required for the Court to conduct an inquiry into the

1 fairness of the Settlement as set forth in this Agreement, to conduct a Final Fairness and Approval
2 Hearing, and to enter a Final Order in this Action.

3 t. “Motion for Preliminary Approval” means the Named Plaintiff’s submission of a
4 written motion, including any evidence as may be required for the Court to grant preliminary
5 approval of the Settlement as required by Rule 3.769 of the California Rules of Court.

6 u. “Named Plaintiff” means Kevin Larue.

7 v. “Net Settlement Amount” means the Gross Settlement Amount less Court-
8 approved administration costs, Class Counsels’ attorney’s fees and costs, Incentive Award, and
9 LWDA Payment, pursuant to Section 3.06(a)-(f) below.

10 w. “Non-Participating Class Member(s)” means any Class Member(s) who submit to
11 the Settlement Administrator a valid and timely written request to be excluded from the Class
12 pursuant to Section 3.04(b) below.

13 x. “Notice Packet” means the Notice of Proposed Class Action Settlement in a form
14 substantially similar to the Notice Packet attached hereto as **Exhibit A**, subject to Court approval.

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

17 z. “PAGA Group Members” means all Class Members employed by Defendants at
18 any time during the PAGA Period.

19 aa. “PAGA Period” means from April 6, 2019 through May 2, 2022.

20 bb. “PAGA Settlement Amount” means the portion of the Gross Settlement Amount
21 allocated to the resolution of PAGA Group Members’ claims arising under PAGA. The Parties
22 have agreed that the PAGA Settlement Amount is Fifty Thousand Dollars (\$50,000), subject to
23 Court approval. Of the PAGA Settlement Amount, 75% will be considered the LWDA Payment,
24 and the remaining 25% will be added to the Net Settlement Amount and distributed to PAGA
25 Group Members.

26 cc. “Participating Class Member(s)” is defined as a Class Member who does not timely
27 exclude himself or herself from the Settlement and will therefore receive his or her share of the
28

1 Net Settlement Amount automatically without the need to return a claim form. Each Participating
2 Class Member will be paid his/her Individual Settlement Payment.

3 dd. “Preliminary Approval Date” means the date the Court preliminarily approves the
4 Settlement embodied in this Agreement.

5 ee. “Qualified Settlement Fund” means a fund within the meaning of Treasury
6 Regulation § 1.468B-1, 26 CFR § 1.468B-1 *et seq.*, that is established by the Settlement
7 Administrator for the benefit of Participating Class Members.

8 ff. “Qualifying Workweeks” means the number of weeks that Class Members worked
9 for Defendants as non-exempt employees during the Class Period.

10 gg. “Released Parties” means Defendants and their subsidiaries, affiliates, parents,
11 predecessors, all employee benefit plans sponsored or maintained by them, their attorneys and
12 accountants, and their respective successors and assigns, all of their past, present, and future
13 respective officers, directors, board members, shareholders, partners, employees, members,
14 administrators, fiduciaries, trustees, principals, heirs, representatives, accountants, auditors,
15 consultants, insurers and reinsurers, beneficiaries and agents, and other persons acting for or on
16 their behalf.

17 hh. “Response Deadline” means the deadline by which Class Members must postmark
18 or fax to the Settlement Administrator requests for exclusion or written notices of objection. The
19 Response Deadline will be forty-five (45) calendar days after the initial mailing of the Notice
20 Packet by the Settlement Administrator, unless the forty-fifth (45th) calendar day falls on a Sunday
21 or federal holiday, in which case the Response Deadline will be extended to the next day on which
22 the U.S. Postal Service is open. The Response Deadline will be extended as set forth herein if there
23 is a re-mailing.

24 ii. “Settlement Administration Costs” means all costs incurred by the Settlement
25 Administrator in administration of the Settlement, including, but not limited to, mailing of notice
26 to the class, calculation of Individual Settlement Payments, generation of Individual Settlement
27 Payment checks and related tax reporting forms, administration of unclaimed checks, and
28 generation of checks to Class Counsel for attorneys’ fees and costs, to Named Plaintiff for his

1 Incentive Award, and to the LWDA. The Settlement Administration Costs shall be paid from the
2 Gross Settlement Amount, in an amount not to exceed \$15,000.

3 jj. “Settlement Administrator” means ILYM Group, Inc., which the Parties have
4 agreed will be responsible for the administration of the Individual Settlement Payments to be made
5 by Defendants from the Gross Settlement Amount and related matters under this Agreement.

6 **ARTICLE II**

7 **CONTINGENT NATURE OF THE AGREEMENT**

8 **Section 2.01: Stipulation of Class Certification for Settlement Purposes**

9 Because the Parties have stipulated to the certification of the Class with respect to all causes
10 of action alleged in the Action for settlement purposes only, this Agreement requires preliminary
11 and final approval by the Court. Accordingly, the Parties enter into this Agreement on a conditional
12 basis. This Agreement is contingent upon the approval and certification by the Court. If the Date
13 of Finality does not occur, the fact that the Parties were willing to stipulate for the purposes of this
14 Agreement to a Class shall have no bearing on, nor be admissible in connection with, the issue of
15 certification of the Class with respect to all causes of action alleged in the Action. Defendants do
16 not consent to certification of the Class for any purpose other than to effectuate settlement of the
17 Action. If the Date of Finality does not occur, or if Disposition of this Action is not effectuated,
18 any certification of the Class as to Defendants will be vacated and Named Plaintiff, Defendants,
19 and the Class will be returned to their positions with respect to the Action as if the Agreement had
20 not been entered into. In the event that the Date of Finality does not occur: (a) any Court orders
21 preliminarily or finally approving certification of any class contemplated by this Agreement shall
22 be null, void, and vacated, and shall not be used or cited thereafter by any person or entity; and (b)
23 the fact of the settlement reflected in this Agreement, the fact that Defendants did not oppose the
24 certification of a Class under this Agreement, or that the Court preliminarily approved the
25 certification of the Class, shall not be used or cited thereafter by any person or entity, including in
26 any manner whatsoever, including without limitation any contested proceeding relating to the
27 certification of any class. If the Date of Finality does not occur, this Agreement shall be deemed
28 null and void, shall be of no force or effect whatsoever, and shall not be referred to or used for any

1 purpose whatsoever. Defendants expressly reserve the right to challenge the propriety of class
2 certification in the Action for any purpose, if the Date of Finality does not occur.

3 The Parties and their respective counsel shall take all steps that may be requested by the
4 Court relating to the approval and implementation of this Agreement and shall otherwise use their
5 respective best efforts to obtain Court approval and implement this Agreement. If the Court does
6 not grant the Motion for Preliminary Approval and/or the Motion for Final Approval, the Parties
7 agree to meet and confer to address the Court's concerns. If the Parties are unable to agree upon a
8 resolution, the Parties agree to seek the assistance of mediator Jeff Ross to resolve the dispute.

9 **ARTICLE III**

10 **PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF THE SETTLEMENT**

11 The procedure for obtaining Court approval of and implementing this Agreement shall be
12 as follows:

13 **Section 3.01: Motion for Conditional Class Certification and Preliminary Approval**

14 Named Plaintiff will bring a motion before the Court for an order conditionally certifying
15 the Class to include all claims pled in the Action based on the preliminary approval of this
16 Agreement. The date that the Court grants preliminary approval of this Agreement will be the
17 "Preliminary Approval Date."

18 **Section 3.02: The Settlement Administrator**

19 The Parties have chosen ILYM Group, Inc. to administer this Settlement and to act as the
20 Settlement Administrator, including but not limited to distributing and responding to inquiries
21 about the Notice Packet, determining the validity of exclusions/opt-outs, calculating the Net
22 Settlement Amount and the Individual Settlement Payments, issuing the Individual Settlement
23 Payment checks and distributing them to Participating Class Members, establishing and
24 maintaining the Qualified Settlement Fund, and issuing the payment to Class Counsel for
25 attorneys' fees and costs, the Incentive Award check to Named Plaintiff, and payroll taxes to the
26 appropriate taxing authorities. The Settlement Administrator shall expressly agree to all of the
27 terms and conditions of this Agreement.
28

1 The Settlement Administration Costs, including but not limited to all costs and fees
2 associated with preparing, issuing and mailing any and all notices to Class Members and/or
3 Participating Class Members, all costs and fees associated with computing, processing, reviewing,
4 and mailing the Individual Settlement Payments, all costs and fees associated with preparing any
5 tax returns and any other filings required by any governmental taxing authority or agency, all costs
6 and fees associated with preparing any other checks, notices, reports, or filings to be prepared in
7 the course of administering disbursements from the Net Settlement Amount, and any other costs
8 and fees incurred and/or charged by the Settlement Administrator in connection with the execution
9 of its duties under this Agreement, in an amount not to exceed \$15,000, shall be paid to the
10 Settlement Administrator from the Gross Settlement Amount.

11 **Section 3.03: Notice to Class Members**

12 No later than ten (10) business days after the Preliminary Approval Date, Defendants will
13 provide the Settlement Administrator with a “Class List” in electronic format based on its business
14 records, identifying the names of the Class Members, their last known home addresses, Social
15 Security numbers or, as applicable, other taxpayer identification number, their dates of
16 employment and weeks worked during the Class Period.

17 Within ten (10) business days of receiving a Class List from Defendants, the Settlement
18 Administrator will send Class Members, by first-class mail, at their last known address, the Court
19 approved Notice Packet, including notice of this Settlement and of the opportunity to opt out of
20 the Settlement Class. The Notice Packet will include a calculation of the Class Member’s
21 approximate share of the Net Settlement Amount. Class Members will have forty-five (45) days
22 from the date of mailing in which to postmark objections or requests for exclusion. Prior to the
23 initial mailing, the Settlement Administrator will check all Class Member addresses against the
24 National Change of Address database and shall update any addresses before mailing. The
25 Settlement Administrator will skip trace and re-mail all returned, undelivered mail within five (5)
26 days of receiving notice that a Notice Packet was undeliverable. If a Class Member’s notice is re-
27 mailed, the Class Member shall have fifteen (15) calendar days from the re-mailing, or forty-five
28 (45) calendar days from the date of the initial mailing, whichever is later, in which to postmark

1 objections or requests for exclusion. Class Members shall not be required to submit claim forms
2 in order to receive a proportional share of the Net Settlement Amount.

3 If the Notice Packet is returned with a forwarding address, the Settlement Administrator
4 shall re-mail the Notice Packet to the forwarding address. With respect to those Class Members
5 whose Notice Packet is returned to the Settlement Administrator as undeliverable, the Settlement
6 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace
7 or mass search on LexisNexis or comparable databases based on set criteria and, if another address
8 is identified, shall mail the Notice Packet to the newly identified address. It is the intent of the
9 parties that reasonable means be used to locate Class Members and that the Settlement
10 Administrator be given discretion to take steps in order to facilitate notice of the Settlement and
11 delivery of the Individual Settlement Payments to all Participating Class Members.

12 If the Notice Packet is re-mailed, the Settlement Administrator will note for its own records
13 and notify Class Counsel and Defense Counsel of the date of each such re-mailing as part of a
14 weekly status report provided to the Parties.

15 In the event a Class Member's Notice Packet remains undeliverable forty-five (45)
16 calendar days after the Notice Packet was initially mailed, the Settlement Administrator will not
17 mail the Class Member's Individual Settlement Payment. The Settlement Administrator will hold
18 the Class Member's Individual Settlement Payment during the check cashing period on behalf of
19 the Class Member. If at the conclusion of the check cashing period the Class Member's Notice
20 Packet and Individual Settlement Payment remain undeliverable and/or unclaimed and uncashed,
21 the Settlement Administrator will distribute the funds from unclaimed/uncashed checks in
22 accordance with the procedures set forth in Section 3.06(g) below.

23 No later than twenty (20) court days prior to the Final Fairness and Approval Hearing, the
24 Settlement Administrator shall provide Defense Counsel and Class Counsel with a declaration
25 attesting to completion of the notice process, including any attempts to obtain valid mailing
26 addresses for and re-sending of any returned Notice Packets, as well as the number of valid
27 requests for exclusion and objections that the Settlement Administrator received.
28

1 **Section 3.04: Responses to Notice**

2 **a. Class Member Disputes**

3 If any Class Member disagrees with Defendants' records as to his or her Qualifying
4 Workweeks during the Class Period as reflected in the Notice Packet, the Class Member shall set
5 forth in writing the Qualifying Workweeks he/she claims to have worked during the Class Period
6 and submit such writing to the Settlement Administrator by the Response Deadline, along with
7 any supporting documentation. The Notice will also provide a method for the Class Member to
8 challenge the employment data on which his or her Individual Settlement Payment is based. The
9 Settlement Administrator shall contact the Parties regarding the dispute and the Parties will work
10 in good faith to resolve it. If the Parties are unable to resolve the dispute, the Settlement
11 Administrator will be the final arbiter of the Qualifying Workweeks for each Class Member during
12 the Class Period based on the information provided to it.

13 **b. Requests for Exclusion from Class**

14 In order for any Class Member to validly exclude himself or herself from the Class and this
15 Settlement (*i.e.*, to validly opt out), a written request for exclusion must be signed and dated by
16 the Class Member or his or her authorized representative, and must be sent to the Settlement
17 Administrator, postmarked no later than the Response Deadline (or fifteen (15) days after the
18 Settlement Administrator re-mails the Notice to the Class Member, whichever is later). The Notice
19 Packet shall contain instructions on how to validly exclude himself or herself from the Class and
20 this Settlement (*i.e.*, opt out), including the language to be used in a request for exclusion. The date
21 of the initial mailing of the Notice Packet, and the date the signed request for exclusion was
22 postmarked, shall be conclusively determined according to the records of the Settlement
23 Administrator. Any Class Member who timely and validly requests exclusion from the Class and
24 this Settlement will not be entitled to any Individual Settlement Payment, will not be bound by the
25 terms and conditions of this Agreement, and will not have any right to object, appeal, or comment
26 thereon.

27 Any Class Member who fails to timely submit a request for exclusion shall automatically
28 be deemed a Class Member whose rights and claims with respect to the issues raised in the Action

are determined by the Court's Final Order Approving Settlement of Class Action, and by the other rulings in the Action. Thus, said Class Member's rights to pursue any claims covered by the Action and/or released in this Agreement will be extinguished.

c. Objections to Settlement

For any Class Member to object to this Agreement, or any term of it, the person making the objection must not submit a request for exclusion (*i.e.*, must not opt out), and should send to the Settlement Administrator, postmarked or faxed no later than the Response Deadline (or fifteen (15) days after the Settlement Administrator re-mails the Notice to the Class Member, whichever is later), a written statement of the grounds of objection, signed by the objecting Class Member or his or her attorney, along with all supporting papers. The date of the initial mailing of the Notice Packet, and the date the signed objection was postmarked, shall be conclusively determined according to the records of the Settlement Administrator. The Settlement Administrator shall send any objections it receives to Defense Counsel and Class Counsel within three (3) business days of receipt. Class Members who submit a timely written objection may also appear and be heard at the final approval hearing. The Court retains final authority with respect to the consideration and admissibility of any Class Member objections.

d. Encouragement of Class Members

The Parties to this Agreement and the counsel representing such Parties shall not, directly or indirectly, encourage or solicit any Class Member to exclude him or herself from this Settlement (opt out), or to object to it. However, Class Counsel may respond to inquiries from Class Members.

e. Right of Plaintiff to Adjust Gross Settlement Amount

Defendants have estimated the number of Class Members as 1,353 and has estimated there to be 106,193 weeks worked by Class Members during the Class Period. If the actual number of Class Members exceeds ten percent (10%) of 1,353 or the actual total workweeks exceeds ten percent (10%) of 106,193 during the Class Period, the Gross Settlement Amount shall increase proportionally by the increase above ten percent (10%) in the class size or workweeks, whichever is greater.

1 **Section 3.05: Final Fairness and Approval Hearing**

2 On the date set forth in the Order for Preliminary Approval and Notice Packet, a Final
3 Fairness and Approval Hearing shall be held before the Court in order to (1) review this Agreement
4 and determine whether the Court should give it final approval, and (2) consider any objections
5 made and all responses by the Parties to such objections. At the Final Fairness and Approval
6 Hearing, the Parties shall ask the Court to grant final approval to this Agreement and shall submit
7 to the Court a Proposed Final Order Approving Settlement of Class Action.

8 **Section 3.06: Settlement Payment Procedures**

9 **a. Settlement Amount**

10 In exchange for the Released Claims set forth in this Agreement, Defendants agree to pay
11 the Gross Settlement Amount in the amount of Two Million Dollars and Zero Cents
12 (\$2,000,000.00), subject to a pro rata increase under the condition set forth in Section 3.04(e). The
13 Gross Settlement Amount includes all Individual Settlement Amounts to Participating Class
14 Members, all administration costs, Class Counsel's attorney's fees and costs, PAGA Settlement
15 Amount, and the Incentive Payments.

16 Within sixty (60) days after the Final Order, or thirty (30) days after the deadline for any
17 objectors to appeal the Final Order, whichever is later, Defendants shall transfer the Gross
18 Settlement Amount plus Defendants' share of employer-side payroll taxes, as set forth herein, into
19 a Qualified Settlement Fund established by the Settlement Administrator either directly or by
20 sending the funds to the Settlement Administer to be deposited and distributed. The Settlement
21 Administrator will use these funds to fund payment of the Individual Settlement Payments to
22 Participating Class Members, Class Counsel's attorneys' fees and costs, the Incentive Award, the
23 LWDA Payment, and the Settlement Administration Costs.

24 Within ten (10) court days after receiving Defendants' final payment, funding the Gross
25 Settlement Amount in full, the Settlement Administrator will pay the Individual Settlement
26 Payments to Participating Class Members, Class Counsel's attorneys' fees and costs, LWDA
27 Payment, the Incentive Award, and employer and employee tax withholdings applicable to the Net
28 Settlement Amount allocated to wages. Prior to this distribution, the Settlement Administrator will

1 perform a search based on the National Change of Address Database to update and correct for any
2 known or identifiable address changes.

3 **b. Payment of Attorneys' Fees and Costs**

4 Class Counsel shall submit an application for an award of attorneys' fees of up to one-third
5 of the Gross Settlement Amount, which, based on the current Gross Settlement Amount, is Six
6 Hundred Sixty-Six Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents
7 (\$666,666.67). Class Counsel shall submit an application for an award of costs not to exceed
8 Twenty Two Thousand Dollars (\$22,000.00). Such application for attorneys' fees and costs shall
9 be heard by the Court at the Final Fairness and Approval Hearing. Defendants shall not object to
10 or oppose any such application in these amounts. Class Counsel shall serve Defendants with copies
11 of all documents submitted in support of their application for an award of attorneys' fees and costs.

12 Any attorneys' fees and costs awarded to Class Counsel by the Court shall be paid from
13 the Gross Settlement Amount and shall not constitute payment to any Class Member(s). The
14 attorneys' fees and costs for Class Counsel approved by the Court shall encompass all work
15 performed, costs, and expenses related to the investigation, prosecution, and settlement of the
16 Action incurred through the Date of Finality. To the extent that the Court approves less than the
17 amount of attorney's fees and/or costs that Class Counsel requests, the difference between the
18 requested and awarded amounts will be reallocated to the Net Settlement Amount.

19 **c. Payment of Settlement Administration Costs**

20 The Settlement Administration Costs shall be paid out of the Gross Settlement Amount and
21 shall not constitute payment to any Participating Class Member(s). The amount shall not exceed
22 Fifteen Thousand Dollars and Zero Cents (\$15,000.00).

23 **d. Payment of Incentive Award to Named Plaintiff**

24 Subject to Court approval, the Named Plaintiff shall receive an Incentive Award of up to
25 Fifteen Thousand Dollars (\$15,000.00), the request for which Defendants will not object to or
26 oppose. The Incentive Award shall be paid out of the Gross Settlement Amount and shall not
27 constitute payment to any Participating Class Member(s) other than Named Plaintiff. To the extent
28 that the Court approves less than the amount of incentive award that Class Counsel request, the

1 difference between the requested and awarded amounts will be reallocated to the Net Settlement
2 Amount.

3 Because it is the intent of the Parties that the Incentive Award represent payment to Named
4 Plaintiff for his service to the Class Members, and not wages, the Settlement Administrator will
5 not withhold any taxes from the Incentive Award. The Incentive Award will be reported on a Form
6 1099, which the Settlement Administrator will provide to Named Plaintiff and to the pertinent
7 taxing authorities as required by law.

8 **e. Payment to the Labor and Workforce Development Agency**

9 In consideration of claims made under PAGA, Class Counsel will request that the Court
10 approve allocation of Fifty Thousand Dollars (\$50,000) of the Gross Settlement Amount to these
11 claims. Seventy-five percent (75%) of this payment will be paid to the California Labor and
12 Workforce Development Agency, and twenty-five percent (25%) will be paid to the Net Settlement
13 Amount for distribution to PAGA Group Members. Defendants will not oppose this request. The
14 entire PAGA Settlement Amount will be paid out of the Gross Settlement Amount. The Court's
15 adjustment, if any, of the amount allocated to Named Plaintiff's PAGA claim in the Action, will
16 not invalidate this Agreement, provided that such adjustment does not increase the Gross
17 Settlement Amount.

18 **f. Payment of Individual Settlement Payments to Participating Class**
19 **Members**

20 The Parties agree that the Net Settlement Amount shall be used to fund Individual
21 Settlement Payments. The Parties agree that the Net Settlement Amount shall be divided between
22 all Participating Class Members in proportion to the number of individual Qualifying Workweeks
23 for each Class Member. To calculate the amount each Class Member will receive based on their
24 individual Qualifying Workweeks, the Net Settlement Amount will be divided by the total number
25 of Qualifying Workweeks by all Class Members during the Class Period and then allocated on a
26 pro rata basis. Qualifying Workweeks will be rounded up to the next whole integer. Each Class
27 Member's approximate Individual Settlement Payment amount will be included in his or her
28 Notice Packet. After final approval by the Court, the Net Settlement Amount will be dispersed to

1 Participating Class Members (those who did not exclude themselves) on a pro rata basis based on
2 the individual Qualifying Workweeks worked during the Class Period by each Participating Class
3 Member.

4 Each Individual Settlement Payment will represent wages and penalties allocated using the
5 following formula: 15% allocated to wages; 85% allocated to penalties and interest. The amounts
6 paid as wages shall be subject to all tax withholdings customarily made from an employee's wages
7 and all other authorized and required withholdings and shall be reported by W-2 forms. The
8 employer-side taxes will be paid separate from and in addition to the Gross Settlement Amount.
9 The amounts paid as penalties and interest shall be subject to all authorized and required
10 withholdings other than the tax withholdings customarily made from employees' wages and shall
11 be reported by IRS 1099 forms.

12 No later than ten (10) business days after receiving the Gross Settlement Amount from
13 Defendants, the Settlement Administrator shall prepare and mail the checks for the Individual
14 Settlement Payments to Participating Class Members. Individual Settlement Payments paid from
15 the Net Settlement Amount allocated to wages will be reduced by applicable employer and
16 employee tax withholdings, and the Settlement Administrator will issue a Form W-2 for the wage
17 portion of the Individual Settlement Payments. The Settlement Administrator will issue a Form
18 1099 to the extent required by law for the interest and penalty portions of the Individual Settlement
19 Payments. Participating Class Members shall have 180 days from the date their Individual
20 Settlement Payment checks are dated to cash their Settlement checks. Any checks that are not
21 cashed upon the expiration of that 180-day time period will be void, and the Settlement
22 Administrator will tender the funds from undeliverable checks to the State Controller Unclaimed
23 Property Fund in the name of the Class Member for whom the funds are designated.

24 Any interest that accrues from the Gross Settlement Amount, from the time that the
25 Qualified Settlement Fund is established until all funds have been paid out and distributed pursuant
26 to this Agreement, shall be paid to the Friends of Dolores Mission Church as a *cy pres* beneficiary
27 pursuant to Cal. Code Civ. Proc. § 384. If a check is returned to the Settlement Administrator as
28 undeliverable, the Settlement Administrator shall promptly attempt to obtain a valid mailing

1 address by performing a skip trace or a mass search on LexisNexis or comparable databases based
2 on set criteria and, if another address is identified, the Settlement Administrator shall mail the
3 check to the newly identified address. If the Settlement Administrator is unable to obtain a valid
4 mailing address through this process, the Settlement Administrator will tender the funds from the
5 undeliverable checks to the State Controller Unclaimed Property Fund in the name of the Class
6 Member for whom the funds are designated.

7 **g. No Credit Toward Benefit Plans.**

8 The Individual Settlement Payments made to Participating Class Members under this
9 Agreement, as well as any other payments made pursuant to this Agreement, will not be utilized
10 to calculate any additional benefits under any benefit plans to which any Class Members may be
11 eligible, including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock
12 purchase plans, vacation plans, sick leave plans, PTO or vacation plans, and any other benefit plan.
13 Rather, it is the Parties' intention that this Agreement will not affect any rights, contributions, or
14 amounts to which any Class Members may be entitled under any benefit plans.

15 **ARTICLE IV**

16 **LIMITATIONS ON USE OF THIS SETTLEMENT**

17 **Section 4.01: No Admission**

18 Defendants dispute the allegations in the Action and disputes that, but for this Settlement,
19 a Class should not have been certified in the Action. This Agreement is entered into solely for the
20 purpose of settling highly disputed claims. Nothing in this Agreement is intended nor will be
21 construed as an admission of liability or wrongdoing by Defendants.

22
23 **Section 4.02: Non-Evidentiary Use**

24 Whether or not the Date of Finality occurs, neither this Agreement, nor any of its terms,
25 nor the Settlement itself, will be: (a) construed as, offered, or admitted in evidence as, received as,
26 or deemed to be evidence for any purpose adverse to Defendants or any other of the Released
27 Parties, including but not limited to, evidence of a presumption, concession, indication, or
28 admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession,

1 or damage, or (b) disclosed, referred to, or offered in evidence against any of the Released Parties
2 in any further proceeding in the Action, except for the purposes of effectuating the Settlement
3 pursuant to this Agreement or for Defendants to establish that a Class Member has resolved any
4 of his or her claims released through this Agreement.

5 **Section 4.03: Nullification**

6 The Parties have agreed to the certification of the Class encompassing all claims alleged in
7 the Action for the sole purpose of effectuating this Agreement. If (a) the Court should for any
8 reason fail to certify this Class for settlement, or (b) the Court should for any reason fail to approve
9 this Settlement, or (c) the Court should for any reason fail to enter the Final Order, or (d) the Final
10 Order is reversed, or declared or rendered void, or (e) the Court should for any reason fail to
11 dispose of the Action in its entirety, then (i) this Agreement shall be considered null and void;
12 (ii) neither this Agreement nor any of the related negotiations or proceedings shall be of any force
13 or effect; (iii) all Parties to this Agreement shall stand in the same position, without prejudice, as
14 if the Agreement had been neither entered into nor filed with the Court; and (iv) the fact that the
15 Parties were willing to stipulate to class certification of all causes of action pled in the Action as
16 part of the Settlement will have no bearing on, and will not be admissible in connection with, the
17 issue of whether the Class should be certified by the Court in a non-settlement context in this
18 Action or any other action, and in any of those events, Defendants expressly reserve the right to
19 oppose certification of the Class.

20 In the event of a timely appeal from the Final Order, the Final Order shall be stayed and
21 the Gross Settlement Amount shall not be distributed pending the completion of the appeal.

22 **ARTICLE V**

23 **RELEASES**

24 **Section 5.01: Released Class Claims by Class Members**

25 Upon the date Defendants transfer the Gross Settlement Amount, Named Plaintiff and all
26 Participating Class Members shall and do release the Released Parties from all claims that were
27 actually asserted or which could have been asserted based on the factual allegations in the operative
28 complaint, which arose during the Class Period, including without limitation, (1) Failure to Pay

1 Minimum Wages in Violation of Labor Code §§ 1182.12, 1194, 1194.2, 1197 and IWC Wage
2 Order; (2) Failure to Pay Overtime Wages in Violation of Labor Code §§ 510, 1194, 1198 and IWC
3 Wage Order § 3; (3) Failure to Provide Meal Periods in Violation of Labor Code §§ 226.7, 512, and
4 IWC Wage Order § 11; (4) Failure to Provide Rest Breaks in Violation of Labor Code § 226.7,
5 IWC Wage Order § 12; (5) Failure to Provide Accurate Itemized Wage Statements in Violation of
6 Labor Code § 226; (6) Failure to Pay All Wages Due Upon Separation of Employment in Violation
7 of Labor Code §§ 201, 202, and 203; (7) Failure to Reimburse Necessary Business Expenses in
8 Violation of Labor Code §§ 2800 and 2802; and (8) Violation of Business & Professions Code §§
9 17200, *et seq.* based on the above-described allegations.

10 **Section 5.02: Released PAGA Claims by PAGA Group Members**

11 Upon the date of funding the Gross Settlement Amount, the State of California and all
12 PAGA Group Members shall and do release the Released Parties from any and all claims for civil
13 penalties under California Labor Code Sections 2698, *et seq.* based on alleged violations during
14 the PAGA Period of California Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7,
15 510, 512, 558, 1174, 1174.5, 1175, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802,
16 regardless of whether such PAGA Group Members become Participating Class Members or opt
17 out of the Class Settlement.

18 **Section 5.03: Named Plaintiff's Release of Unknown Claims**

19 Upon the date of funding the Gross Settlement Amount, Named Plaintiff, waives, releases,
20 acquits, and forever discharges the Released Parties from any and all claims, actions, charges,
21 complaints, grievances, and causes of action, of any nature arising from Named Plaintiff's
22 employment with Defendants, whether known or unknown, which exist or may exist as of the
23 Parties' execution of this Agreement.

24 Section 1542 of the California Civil Code provides as follows:

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

1 Plaintiff's general release provided herein is made with an express waiver and
2 relinquishment of any claim, right, or benefit under California Civil Code § 1542.

3 **ARTICLE VI**

4 **MISCELLANEOUS PROVISIONS**

5 **Section 6.01: Amendments or Modification**

6 The terms and provisions of this Agreement may be amended or modified only by an
7 express written agreement that is signed by all the Parties (or their successors-in-interest) and their
8 counsel.

9 **Section 6.02: Assignment**

10 None of the rights, commitments, or obligations recognized under this Agreement may be
11 assigned by any Party, Class Member, Class Counsel, or Defense Counsel without the express
12 written consent of each other Party and their respective counsel. The representations, warranties,
13 covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under
14 this Agreement and shall not be construed to confer any right or to avail any remedy to any other
15 person.

16 **Section 6.03: Governing Law**

17 This Agreement shall be governed, construed, and interpreted, and the rights of the Parties
18 shall be determined, in accordance with the laws of the State of California, without regard to
19 conflicts of laws.

20 **Section 6.04: Entire Agreement**

21 This Agreement, including the Exhibits referred to herein, which form an integral part
22 hereof, contains the entire understanding of the Parties with respect to the subject matter contained
23 herein. In case of any conflict between text contained in Articles I through VI of this Agreement
24 and text contained in the Exhibits to this Agreement, the former (*i.e.*, Articles I through VI) shall
25 be controlling, unless the Exhibits are changed by or in response to a Court order. There are no
26 restrictions, promises, representations, warranties, covenants, or undertakings governing the
27 subject matter of this Agreement other than those expressly set forth or referred to herein. This
28 Agreement supersedes all prior agreements and understandings among the Parties with respect to

1 the settlement of the Action, including correspondence between Class Counsel and Defense
2 Counsel and drafts of prior agreements or proposals.

3 **Section 6.05: Waiver of Compliance**

4 Any failure of any Party, Defense Counsel, or Class Counsel hereto to comply with any
5 obligation, covenant, agreement, or condition set forth in this Agreement may be expressly waived
6 in writing, to the extent permitted under applicable law, by the Party or Parties and their respective
7 counsel entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or
8 failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or
9 condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other
10 failure.

11 **Section 6.06: Counterparts and Fax/PDF Signatures**

12 This Agreement, and any amendments hereto, may be executed in any number of
13 counterparts and any Party and/or their respective counsel may execute any such counterpart, each
14 of which when executed and delivered shall be deemed to be an original. All counterparts taken
15 together shall constitute one instrument. A fax or PDF signature on this Agreement shall be as
16 valid as an original signature.

17 **Section 6.07: Meet and Confer Regarding Disputes**

18 Should any dispute arise among the Parties or their respective counsel regarding the
19 implementation or interpretation of this Agreement, a representative of Class Counsel and a
20 representative of Defense Counsel shall meet and confer in an attempt to resolve such disputes
21 prior to submitting such disputes to the Court.

22 **Section 6.08: Agreement Binding on Successors**

23 This Agreement will be binding upon, and inure to the benefit of, the successors in interest
24 of each of the Parties.

25 **Section 6.09: Cooperation in Drafting**

26 The Parties have cooperated in the negotiation and preparation of this Agreement. This
27 Agreement will not be construed against any Party on the basis that the Party, or the Party's
28 counsel, was the drafter or participated in the drafting of this Agreement.

1 **Section 6.10: Fair and Reasonable Settlement**

2 The Parties believe that this Agreement reflects a fair, reasonable, and adequate settlement
3 of the Action and have arrived at this Agreement through arm's-length negotiation and in the
4 context of adversarial litigation, taking into account all relevant factors, current and potential. The
5 Parties further believe that the Settlement is and is consistent with public policy, and fully complies
6 with applicable law.

7 **Section 6.11: Headings**

8 The descriptive heading of any section or paragraph of this Agreement is inserted for
9 convenience of reference only and does not constitute a part of this Agreement and shall not be
10 considered in interpreting this Agreement.

11 **Section 6.12: Notice**

12 Except as otherwise expressly provided in the Agreement, all notices, demands, and other
13 communications under this Agreement must be in writing and addressed as follows:

14 *To Named Plaintiff and the Class:*

15 Samuel A. Wong
16 Kashif Haque
17 Jessica L. Campbell
18 Joseph M. Szilagyi
19 AEGIS LAW FIRM, PC
20 9811 Irvine Center Drive, Suite 100
21 Irvine, California 92618
22 Telephone: (949) 379-6250
23 Facsimile: (949) 379-6251

24 And

25 *To Defendants:*

26 Edwin M. Boniske
27 Kyle W. Nageotte
28 HIGGS FLETCHER & MACK, LLP
 401 West A Street, Suite 2600
 San Diego, California 92101
 Telephone: (619) 236-1551
 Facsimile: (619) 696-1410

1 **Section 6.13: Enforcement of Settlement and Continuing Court Jurisdiction**

2 To the extent consistent with class action procedure, this Agreement shall be enforceable
3 by the Court pursuant to California Code of Civil Procedure section 664.6 and California Rule of
4 Court 3.769(h). The Final Order entered by the Court will not adjudicate the merits of the Action
5 or the liability of the Parties resulting from the allegations of the Action. Its sole purpose is to
6 adopt the terms of the Settlement and to retain jurisdiction over its enforcement. To that end, the
7 Court shall retain continuing jurisdiction over this Action and over all Parties and Class Members,
8 to the fullest extent to enforce and effectuate the terms and intent of this Agreement. In the event
9 that one or more of the Parties institutes any legal action or other proceeding against any other
10 Party or Parties to enforce the provisions of this Settlement, the successful Party or Parties will be
11 entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs,
12 including expert witness fees incurred in connection with any enforcement actions.

13 **Section 6.14: Mutual Full Cooperation**

14 The Parties agree fully to cooperate with each other to accomplish the terms of this
15 Agreement, including but not limited to the execution of such documents, and the taking of such
16 other action, as may reasonably be necessary to implement the terms of this Agreement. The
17 Parties to this Agreement shall use their best efforts, to effectuate and implement this Agreement
18 and its terms. In the event the Parties are unable to reach agreement on the form or content of any
19 document needed to implement the Settlement, or on any supplemental provisions that may
20 become necessary to effectuate the terms of the Settlement, the Parties agree to seek the assistance
21 of the Court.

22 **Section 6.15: Authorization to Act**

23 Class Counsel warrants and represents that they are authorized by Named Plaintiff, and
24 Defense Counsel warrants that they are authorized by Defendants, to take all appropriate action
25 required to effectuate the terms of this Agreement, except for signing documents, including but
26 not limited to this Agreement, that are required to be signed by the Parties themselves. Defendants
27 represent and warrant that the individual executing this Agreement on its behalf has the full right,
28

1 power, and authority to enter into this Agreement and to carry out the transactions contemplated
2 herein.

3 **Section 6.16: No Reliance on Representations**

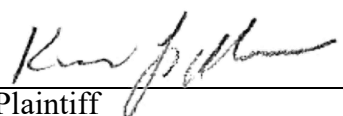
4 The Parties have made such investigation of the facts and the law pertaining to the matters
5 described herein and to this Agreement as they deem necessary, and have not relied, and do not
6 rely, on any statement, promise, or representation of fact or law, made by any of the other parties,
7 or any of their agents, employees, attorneys, or representatives, with regard to any of their rights
8 or asserted rights, or with regard to the advisability of entering into and executing this Agreement,
9 or with respect to any other matters. No representations, warranties, or inducements, except as
10 expressly set forth herein, have been made to any party concerning this Agreement.

11 **EXECUTION BY PARTIES AND COUNSEL**

12 The Parties and their counsel hereby execute this Agreement.

13
14
15 Dated: April 18, 2022

KEVIN LARUE

16 By: 
17 _____

Named Plaintiff

18
19
20 Dated: _____
21 _____

DIAMOND ENVIRONMENTAL SERVICES,
LP

22 By: _____

(Signature)

23 _____
(Printed Name)

24 _____
(Title)
25
26
27
28

1 Dated: 4/19/22

DIAMOND MAINTENANCE SERVICES, LLC

2 By: [Signature]
(Signature)

3 Eric de Jong
(Printed Name)

4 owner
(Title)

5
6
7
8 Dated: 4/19/22

DIAMOND POWER SERVICES, INC.

9 By: [Signature]
(Signature)

10 Eric de Jong
(Printed Name)

11 owner
(Title)

12
13
14 Dated: 4/19/22

DIAMOND SOLID WATER SERVICES, INC.

15 By: [Signature]
(Signature)

16 Eric de Jong
(Printed Name)

17 owner
(Title)

18
19
20
21 **APPROVED AS TO FORM ONLY:**

22
23 Dated: _____

AEGIS LAW FIRM, PC

24 By: _____

25 Samuel A. Wong
26 Jessica L. Campbell
27 Joseph M. Szilagyi
28 Attorneys for Plaintiff Kevin Larue

1 Dated: _____

DIAMOND MAINTENANCE SERVICES,
LLC

2 By: _____
3 (Signature)

4 _____
(Printed Name)

5 _____
6 (Title)

7
8 Dated: _____

DIAMOND POWER SERVICES, INC.

9
10 By: _____
(Signature)

11 _____
12 (Printed Name)

13 _____
14 (Title)

15 Dated: _____

DIAMOND SOLID WATER SERVICES, INC.

16 By: _____
17 (Signature)

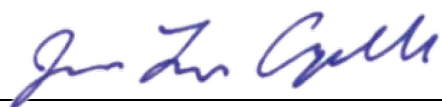
18 _____
19 (Printed Name)

20 _____
(Title)

21 **APPROVED AS TO FORM ONLY:**

22
23 Dated: April 18, 2022

AEGIS LAW FIRM, PC

24
25 By:  _____

26 Samuel A. Wong

27 Jessica L. Campbell

28 Joseph M. Szilagyi

Attorneys for Plaintiff Kevin Larue

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Dated: April 19, 2022

HIGGS FLETCHER & MACK, LLP

By:  _____

Edwin M. Boniske
Kyle W. Nageotte
Attorneys for Defendants
Diamond Environmental Services, LP;
Diamond Maintenance Services, LLC;
Diamond Power Services, Inc.; and
Diamond Solid Water Services, Inc.