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Attorneys for Plaintiff, GUSTAVO ROSETE HEREDIA, on
 behalf of himself and all others similarly situated or aggrieved,

SUPERIOR COURT OF THE STATE OF CALIFORNIA**FOR THE COUNTY OF ORANGE – CIVIL COMPLEX CENTER**

GUSTAVO ROSETE HEREDIA, on behalf
 of himself and all others similarly situated or
 aggrieved,

Plaintiff,

v.

ALAN SMITH POOL PLASTERING, INC., a
 California corporation; ALAN M. SMITH, an
 individual; and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 30-2020-01163609-CU-OE-
 CXC

[Assigned to the Hon. Randall Sherman in
 Dept. CX-105]

CLASS ACTION**JOINT STIPULATION RE: CLASS
 ACTION AND REPRESENTATIVE
 ACTION SETTLEMENT**

Action Filed: October 6, 2020
 Trial Date: None Set

This Joint Stipulation re: Class Action and Representative Action Settlement
 (“Settlement” or “Agreement” or “Settlement Agreement”) is made by, between and among
 plaintiff Gustavo Rosete Heredia (“Plaintiff”), individually and on behalf of the Settlement Class,
 as defined below, on the one hand; and defendants Alan Smith Pool Plastering, Inc. (“AS Pool
 Plastering”) and Alan M. Smith (“Smith” and, collectively with AS Pool Plastering,
 “Defendants”), on the other hand; in the lawsuit entitled *Heredia v. Alan Smith Pool Plastering,
 Inc., et al.*, filed in the Orange County Superior Court, Case No. 30-2020-01163609-CU-OE-
 CXC (the “Action”). Plaintiff and Defendants shall be, at times, collectively referred to as the
 “Parties” and individually as a “Party”. This Agreement is intended by the Parties to fully,
 finally, and forever resolve, discharge and settle the claims as set forth herein, based upon and

subject to the terms and conditions of this Agreement.

1. DEFINITIONS

A. “Action” means *Heredia v. Alan Smith Pool Plastering, Inc., et al.*, filed in Orange County Superior Court, Case No. 30-2020-01163609-CU-OE-CXC.

B. “Aggrieved Employees” means Class Members working for Defendants as non-exempt, employees in California during the PAGA Period.

C. “Class Counsel” means: David D. Bibiyan of Bibiyan Law Group, P.C. and Jasmin K. Gill of J. Gill Law Group, P.C. The term “Class Counsel” shall be used synonymously with the term “Plaintiff’s Counsel.”

D. “Class Period” means the period from October 6, 2016 through February 7, 2022.

E. “Court” means the Superior Court of the State of California for the County of Orange.

F. “Employer Taxes” means employer-funded taxes and contributions imposed on the wage portions of the Individual Settlement Payments under the Federal Insurance Contributions Act, the Federal Unemployment Tax Act, and any similar state and federal taxes and contributions required of employers, such as for unemployment insurance.

G. “Final Approval Date” means the latest of: (1) the date the Court signs an Order granting final approval of this Settlement (“Final Approval”) and Judgment; (2) if there is an objector, 60 days from the date the Final Approval and Judgment; or (3) to the extent any appeals have been filed, the date on which they have been resolved or exhausted.

H. “General Release” means the general release of claims by Plaintiff, which is in addition to his limited release of claims as a Participating Class Member and Aggrieved Employee.

I. “Gross Settlement Amount” means a non-reversionary fund in the sum of Eight Hundred Thousand Dollars and Zero Cents (\$800,000.00),¹ which shall be paid by Defendants, and from which all payments for the Individual Settlement Payments to Participating Class Members, Individual PAGA Payments to Aggrieved Employees and the Court-approved

¹ As the same may be increased in accordance with Paragraph 17.

1 amounts for attorneys' fees and reimbursement of litigation costs and expenses to Class Counsel,
2 Settlement Administration Costs, a Service Award to Plaintiff, and the LWDA Payment for
3 resolution of Plaintiff's cause of action for civil penalties under the Labor Code Private
4 Attorneys' General Act, codified at Labor Code Section 2698, *et seq.* ("PAGA"), interest and
5 certain taxes shall be paid. It expressly excludes Employer Taxes, which shall be paid by
6 Defendants separate and apart from the Gross Settlement Amount.

7 **J. "Individual PAGA Payment"** means a payment to an Aggrieved Employee of
8 their share of the PAGA Payment.

9 **K. "Individual Settlement Payment"** means a payment to a Participating Class
10 Member of their net share of the Net Settlement Amount, excluding any PAGA Payment to which
11 they may be entitled if they are also an Aggrieved Employee.

12 **L. "Individual Settlement Share"** means the gross amount of the Net Settlement
13 Amount that a Settlement Class Member is eligible to receive based on the number of Weekly
14 Pay Periods that they worked as a Settlement Class Member during the Class Period if they do
15 not submit a timely and valid Request for Exclusion, excluding any PAGA Payment to which
16 they may be entitled if they are also an Aggrieved Employee.

17 **M. "LWDA Payment"** means the payment to the LWDA for its seventy-five percent
18 (75%) share of the total amount allocated toward penalties under the PAGA, which is to be paid
19 from the Gross Settlement Amount. The Parties have agreed that Fifty Thousand Dollars and
20 Zero Cents (\$50,000.00) shall be allocated toward PAGA penalties, of which Thirty-Seven
21 Thousand, Five Hundred Dollars and Zero Cents (\$37,500.00) will be paid to the LWDA (*i.e.*,
22 the LWDA Payment) and Twelve Thousand, Five Hundred Dollars and Zero Cents (\$12,500.00)
23 will be paid to Aggrieved Employees on a *pro rata* basis based on the Workweeks worked in the
24 PAGA Period.

25 **N. "Net Settlement Amount"** means the portion of the Gross Settlement Amount
26 that is available for distribution to Participating Class Members after deductions for the Court-
27 approved allocations for Settlement Administration Costs, a Service Award to Plaintiff, an award
28

of attorneys' fees, reimbursement of litigation costs and expenses to Class Counsel, and the LWDA Payment. It excludes the PAGA Payment.

O. "PAGA Payment" is the \$12,500 payment payable to Aggrieved Employees in addition to their Individual Settlement Share if they do not opt out of the Settlement.

P. "PAGA Period" means the period from September 3, 2019 through February 7, 2022.

Q. "Participating Class Members" means all Settlement Class Members who do not submit a timely and valid Request for Exclusion.

R. "Participating Individual Settlement Share" means the gross amount of the Net Settlement Amount that a Participating Class Member is eligible to receive based on the number of Workweeks that they worked as a Settlement Class Member during the Class Period once all opt-outs have been factored in, excluding any Individual PAGA Payment to which they may be entitled if they are also an Aggrieved Employee.

S. "Preliminary Approval Date" means the date on which the Court enters an Order granting preliminary approval of the Settlement.

T. "Released Parties" shall mean Defendants and each of AS Pool Plastering's past, present, and future respective affiliates, parents, subsidiaries, predecessors, successors, divisions, joint ventures and assigns, and each of these entities' past or present directors, officers, employees, partners, members, principals, agents, insurers, co-insurers, re-insurers, shareholders, attorneys, and personal or legal representatives.

U. "Response Deadline" means the deadline for Settlement Class Members to mail any Requests for Exclusion, Objections, or Workweek Disputes to the Settlement Administrator, which is forty-five (45) calendar days from the date that the Class Notice is first mailed in English and Spanish by the Settlement Administrator. The date of the postmark shall be the exclusive means for determining whether a Request for Exclusion, Objection, or Workweek Dispute was submitted by the Response Deadline.

V. "Request for Exclusion" means a written request to be excluded from the Settlement Class pursuant to Section 9.C below.

1 **W. “Service Award”** means the monetary amount to be paid to Plaintiff of up to
2 Seven Thousand, Five Hundred Dollars and Zero Cents (\$7,500) which, subject to Court
3 approval, will be paid out of the Gross Settlement Amount.

4 **X. “Settlement Administration Costs”** means all costs incurred by the Settlement
5 Administrator in administration of the Settlement, including, but not limited to, translating the
6 Class Notice to Spanish, the distribution of the Class Notice to the Settlement Class in English
7 and Spanish, calculating Individual Settlement Shares and Individual Settlement Payments and
8 associated taxes and withholdings, providing declarations, generating Individual Settlement
9 Payment checks and related tax reporting forms, doing administrative work related to unclaimed
10 checks, transmitting payment to Class Counsel for the Court-approved amounts for attorneys’
11 fees and reimbursement of litigation costs and expenses, to Plaintiff for his Service Award, and
12 to the LWDA from the LWDA Payment, providing weekly reports of opt-outs, objections and
13 related information, and any other actions of the Settlement Administrator as set forth in this
14 Agreement, all pursuant to the terms of this Agreement. The Settlement Administration Costs
15 are estimated not to exceed \$9,000. If the actual amount of the Settlement Administration Costs
16 is less than \$9,000, the difference between \$9,000 and the actual Settlement Administration Costs
17 shall be a part of the Net Settlement Amount. If the Settlement Administration Costs exceed
18 \$9,000, then such excess will be paid solely from the Gross Settlement Amount and Defendants
19 will not be responsible for paying any additional funds in order to pay these additional costs.

20 **Y. “Settlement Administrator”** means the Third-Party Administrator chosen to be
21 responsible for the administration of the Settlement including, without limitation, translating the
22 Class Notice in Spanish, the distribution of the Individual Settlement Payments from the Gross
23 Settlement Amount to be made by Defendants and related matters under this Agreement.

24 **Z. “Settlement Class”, “Settlement Class Members” or “Class Members”** means
25 all current and former non-exempt employees who worked in California for Alan Smith Pool
26 Plastering, Inc. at any time during the Class Period.

27 **AA. “Workweek”** means the number of workweeks that a Settlement Class Member
28 was employed by Defendants, using hire dates, re-hire dates and termination dates, in a non-

1 exempt position during the Class Period. If a Settlement Class Member disputes their Individual
2 Settlement Share, it shall be termed a “Workweek Dispute.”

3 **2. BACKGROUND**

4 A. On October 6, 2020, Plaintiff filed a putative wage-and-hour Class Action
5 Complaint in the Superior Court of California for the County of Orange, Case Number 30-2020-
6 01163609-CU-OE-CXC (the “Action”). Plaintiff alleges that during the Class Period, with
7 respect to Plaintiff and the Settlement Class Members’, Defendants, *inter alia*, failed to pay
8 overtime and minimum wages; failed to provide complaint meal and rest periods or compensation
9 in lieu thereof; owe waiting time penalties; committed wage statement violations; violated Labor
10 Code section 2802; violated Labor Code section 204; and engaged in unfair competition based
11 on the alleged Labor Code Violations.

12 B. On September 3, 2020, Plaintiff filed with the Labor and Workforce Development
13 Agency (“LWDA”) and served on Defendants a notice under Labor Code section 2699.3 (the
14 “PAGA Notice”) stating Plaintiff intended to serve as a proxy of the LWDA to recover civil
15 penalties for Aggrieved Employees. The PAGA Notice includes violations of law pled in the
16 Class Action, in addition to a request for penalties for failure to comply with and/or otherwise
17 available under Labor Code sections 201, 202, 203, 204, 226, 226.7, 246 *et seq.*, 432, 510, 512,
18 558.1 1174, 1194, 1194.2, 1197, 1198.5, 2802, and 2810.5 and pertinent portions of the
19 applicable Wage Order. A true and correct copy of the PAGA Notice is attached hereto as
20 **Exhibit “A”**.

21 C. On November 30, 2020, after 65 days passed without any communication from
22 the LWDA, Plaintiff filed a First Amended Complaint (“FAC”) adding causes of action for civil
23 penalties under PAGA, Labor Code sections 210, 226.3, 558, 1197.1 and 2699 for the Labor
24 Code violations set out in the PAGA Notice for himself and other Aggrieved Employees.

25 D. Shortly after the filing of this Action, the Parties agreed to exchange informal
26 discovery and attend an early mediation. Prior to mediation, Class Counsel was provided with,
27 among other things: (1) a representative sampling of time and payroll records for a twenty-five
28 percent (25%) sampling of all work crews, including forty-seven (47) Class Members; (2) the

1 approximate number of workweeks worked by Class Members during the Class Period; (3) the
2 approximate number of Class Members that worked from October 6, 2016 through mediation;
3 (4) the approximate number of Class Members that worked from September 3, 2019 through
4 mediation; (5) the approximate number of Class Members and Aggrieved Employees who
5 worked during the PAGA Period; (6) information indicating whether any employee signed a
6 purported meal period waiver, release and/or arbitration agreement; (7) hire dates, separation
7 dates (as applicable), and final rates of pay for the estimated two-hundred and five (205) Class
8 Members working for Defendants during the Class Period along with a list of employee positions
9 by job title; and (8) all relevant policy documents and employee handbooks.

10 **E.** On February 7, 2022, the Parties participated in a full-day mediation before Eve
11 Wagner, Esq., a well-regarded mediator experienced in mediating complex civil disputes,
12 including wage and hour class actions and PAGA claims. With the aid of the mediator's
13 evaluation, the Parties reached the Settlement to resolve the Action shortly after mediation.

14 **F.** Class Counsel has conducted significant investigation of the law and facts relating
15 to the claims asserted in the Action and has concluded that that the Settlement set forth herein is
16 fair, reasonable, adequate, and in the best interests of the Settlement Class, taking into account
17 the sharply contested issues involved, the expense and time necessary to litigate the Action
18 through trial and any appeals, the risks and costs of further litigation of the Action, the risk of an
19 adverse outcome, the uncertainties of complex litigation, the information learned through
20 informal discovery regarding Plaintiff's allegations, and the substantial benefits to be received
21 by the Settlement Class Members.

22 **G.** Defendants have concluded that, because of the substantial expense of defending
23 against the Action, the length of time necessary to resolve the issues presented herein, and the
24 inconvenience involved, and the concomitant disruption to their business operations, it is in their
25 best interest to accept the terms of this Agreement. Defendants deny each of the allegations and
26 claims asserted against them in the Action. However, Defendants nevertheless desires to settle
27 the Action for the purpose of avoiding the burden, expense and uncertainty of continuing
28 litigation and for the purpose of putting to rest the controversies engendered by the Action.

1 **H.** This Agreement is intended to and does effectuate the full, final, and complete
2 resolution of all Class Released Claims of Plaintiff and Participating Class Members, and all
3 PAGA Released Claims of Plaintiff and, to the greatest extent permitted by law, of the State of
4 California and Aggrieved Employees.

5 **3. JURISDICTION**

6 The Court has jurisdiction over the Parties and the subject matter of the Action. The
7 Action includes claims that, if proven, would authorize the Court to grant relief pursuant to the
8 applicable statutes. After the Court has granted Final Approval of the Settlement and entered
9 judgment, the Court shall retain jurisdiction over the Parties to enforce the terms of the judgment
10 pursuant to California Rule of Court, rule 3.769, subdivision (h).

11 **4. STIPULATION OF CLASS CERTIFICATION**

12 The Parties stipulate to the certification of the Settlement Class under this Agreement for
13 purposes of settlement only.

14 **5. MOTION FOR PRELIMINARY APPROVAL**

15 Plaintiff will move for an order granting preliminary approval of the Settlement,
16 approving and directing the mailing of the proposed Notice of Class Action Settlement (“Class
17 Notice”) attached hereto as **Exhibit “B”**, conditionally certifying the Settlement Class for
18 settlement purposes only, and approving the deadlines proposed by the Parties for the submission
19 of Requests for Exclusion, Workweek Disputes, and Objections, the papers in support of Final
20 Approval of the Settlement, and any responses to Objections or opposition papers to the Motion
21 for Final Approval.

22 **6. STATEMENT OF NO ADMISSION**

23 Defendants deny any wrongdoing of any sort and further deny any liability to Plaintiff,
24 the Settlement Class and Aggrieved Employees with respect to any claims or allegations asserted
25 in the Action or otherwise. This Agreement shall not be deemed an admission by Defendants of
26 any wrongdoing or of any claims or allegations asserted in the Action. In particular, but without
27 limiting the generality of the foregoing, nothing about this Settlement shall be offered or
28 construed as an admission that Defendants violated any obligations under the California Labor

1 Code, applicable Industrial Welfare Commission Wage Orders, or Business and Professions
2 Code, or of liability in general, or any wrongdoing, impropriety, responsibility, or fault
3 whatsoever.

4 Except as set forth elsewhere herein, in the event that this Agreement is not approved by
5 the Court, or any appellate court, is terminated, or otherwise fails to be enforceable, Plaintiff will
6 not be deemed to have waived, limited or affected in any way any claims, rights or remedies, or
7 defenses in the Action, and Defendants will not be deemed to have waived, limited, or affected
8 in any way any of their objections or defenses in the Action. In such event, the Parties shall be
9 restored to their respective positions in the Action immediately prior to the entry of this
10 Settlement.

11 **7. RELEASE OF CLAIMS**

12 **A. Release by All Participating Class Members.**

13 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
14 of Judgment, and payment by Defendants to the Settlement Administrator of the full Gross
15 Settlement Amount and Employer's Taxes necessary to effectuate the Settlement, Plaintiff and
16 all Participating Class Members release the Released Parties of all claims against the Released
17 Parties asserted in the First Amended Complaint filed in the Action, or any and all claims that
18 may be asserted against the Released Parties based on the factual allegations in the, First
19 Amended Complaint filed in the Action. For Participating Class Members, the release includes,
20 but is not limited to, for the duration of the Class Period: (a) all claims for failure to pay minimum
21 wages; (b) all claims for failure to pay overtime wages; (c) all claims for failure to provide
22 compliant meal and/or rest periods or compensation in lieu thereof; (d) all claims for failure to
23 timely pay all wages due upon termination, resignation, or other separation of employment; (e)
24 all claims for non-compliant wage statements; (f) all claims for failure to reimburse business
25 expenses; (g) all claims for violation of Labor Code section 226, subdivision (c); and (h) all
26 claims asserted through California Business & Professions Code § 17200 *et seq.* arising out of
27 the Labor Code violations referenced in the Action (the "Class Released Claims"). For
28 Aggrieved Employees, the release includes, for the duration of the PAGA Period, all claims

1 released during the Class Period, as well as all claims for civil penalties under PAGA arising out
2 of Labor Code Sections 210, 226.3, 558, 1197.1, and 2699 based on the factual allegations and
3 Labor Code sections alleged to have been violated in the PAGA Notice and/or First Amended
4 Complaint, which includes, without limitation, Labor Code sections 200, 201, 202, 203, 204,
5 226, 246, 432, 510, 512, 1174, 1194, 1197, 1198.5, 2802 and 2810.5 (the “PAGA Released
6 Claims”).

7 **B. Plaintiff’s General Release.**

8 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
9 of Judgment, and payment by Defendants to the Settlement Administrator of the full Gross
10 Settlement Amount and Employers’ Taxes necessary to effectuate the Settlement, in addition to
11 the Released Claims, Plaintiff makes the additional following General Release: Plaintiff, on his
12 own behalf and on behalf of his descendants, dependents, heirs, executors, administrators, agents,
13 assigns, and successors, releases the Released Parties from all claims, demands, rights, liabilities
14 and causes of action of every nature and description whatsoever, known or unknown, asserted or
15 that might have been asserted, whether in tort, contract, or for violation of any state or federal
16 statute, rule, law or regulation arising out of, relating to, or in connection with any act or omission
17 of the Released Parties through the date of full execution of this Agreement in connection with
18 his employment or the termination thereof including but not limited to those claims arising out
19 of or relating to (i) Plaintiff’s performance and reputation, (ii) harassment, (iii) discrimination,
20 (iv) retaliation, (v) rights arising out of alleged violations of any contracts, express or implied;
21 (vi) any covenant of good faith and fair dealing, express or implied; (vii) any tort; (viii) any legal
22 restrictions on Defendants’ right to terminate employees; and (ix) any Claims arising under any
23 federal, state or other governmental statute, regulation or ordinance, including, without
24 limitation: Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Americans
25 with Disabilities Act, the Age Discrimination in Employment Act, the Federal Rehabilitation
26 Act, the Employee Retirement Income Security Act, the Family and Medical Leave Act, the Fair
27 Labor Standards Act, the California Fair Employment and Housing Act, the California Family
28 Rights Act, the California Labor Code, and any other applicable state or federal law.

1 With respect to the General Release, Plaintiff stipulates and agrees that, through the Final
2 Approval Date, Plaintiff shall be deemed to have, and by operation of the Final Judgment and
3 payment to the Settlement Administrator shall have, expressly waived and relinquished, to the
4 fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the
5 California Civil Code, or any other similar provision under federal or state law, which provides:

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

10 **8. SETTLEMENT ADMINISTRATOR**

11 Plaintiff and Defendants, through their respective counsel, have selected The ILYM
12 Group to administer the Settlement, which includes but is not limited to translating the Class
13 Notice to Spanish, distributing and responding to inquiries about the Class Notice and calculating
14 all amounts to be paid from the Gross Settlement Amount. Charges and expenses of the
15 Settlement Administrator, currently estimated to be \$9,000 will be paid from the Gross
16 Settlement Amount. If the actual amount of the Settlement Administration Costs is less than
17 \$9,000, the difference between \$9,000 and the actual Settlement Administration Costs shall be a
18 part of the Net Settlement Amount. If the Settlement Administration Costs exceed \$9,000, then
19 such excess will be paid solely from the Gross Settlement Amount and Defendants will not be
20 responsible for paying any additional funds in order to pay these additional costs.

21 **9. NOTICE, WEEKLY PAY PERIOD DISPUTE, OBJECTION, AND EXCLUSION**
22 **PROCESS**

23 **A. Notice to the Settlement Class Members.**

24 (1) Within fourteen (14) calendar days after the Preliminary Approval Date,
25 Defendants' Counsel shall provide the Settlement Administrator with information with respect
26 to each Settlement Class Member, including their: (1) name, last known address(es) and last
27 known telephone number(s) currently in Defendants' possession, custody, or control; (2) Social
28 Security Number in Defendants' possession, custody, or control; and (3) the hire dates and
termination dates (if applicable) ("Class List"). The Settlement Administrator shall perform an

1 address search using the United States Postal Service National Change of Address (“NCOA”)
2 database and update the addresses contained on the Class List with the newly found addresses, if
3 any. Within seven (7) calendar days of receiving the Class List from Defendants, the Settlement
4 Administrator shall mail the Class Notice in English and Spanish to the Settlement Class
5 Members via first-class regular U.S. Mail using the most current mailing address information
6 available. The Settlement Administrator shall maintain a list with names and all addresses to
7 which notice was given, and digital copies of all the Settlement Administrator’s records
8 evidencing the giving of notice to any Settlement Class Member, for at least four (4) years from
9 the Final Approval Date. Such information shall be available to Class Counsel and Defendants’
10 Counsel upon request.

11 (2) The Class Notice will set forth:

- 12 (a) the Settlement Class Member’s estimated Individual Settlement
13 Payment and Individual PAGA Payment, and the basis for each;
- 14 (b) the information required by California Rule of Court, rule 3.766,
15 subdivision (d);
- 16 (c) the material terms of the Settlement;
- 17 (d) the proposed Settlement Administration Costs;
- 18 (e) the definition of the Settlement Class;
- 19 (f) a statement that the Court has preliminarily approved the
20 Settlement;
- 21 (g) how the Settlement Class Member can obtain additional
22 information, including contact information for Class Counsel;
- 23 (h) information regarding opt-out and objection procedures;
- 24 (i) the date and location then set for the Final Approval Hearing; and
- 25 (j) that the Settlement Class Member must notify the Settlement
26 Administrator no later than the Response Deadline if the
27 Settlement Class Member disputes the accuracy of the number of
28 Weekly Pay Periods as set forth on their Class Notice (“Workweek

Dispute”). If a Settlement Class Member fails to timely dispute the number of Workweeks attributed to them in conformity with the instructions in the Class Notice, then they shall be deemed to have waived any objection to its accuracy and any claim to any additional settlement payment based on different data.

(3) If a Class Notice from the initial notice mailing is returned as undeliverable, the Settlement Administrator will attempt to obtain a current address for the Settlement Class Member to whom the returned Class Notice had been mailed, within five (5) calendar days of receipt of the returned Class Notice, by: (1) contacting the Settlement Class Member by phone, if possible, and (2) undertaking skip tracing. If the Settlement Administrator is successful in obtaining a new address, it will promptly re-mail the Class Notice to the Settlement Class Member. Further, any Class Notices that are returned to the Settlement Administrator with a forwarding address before the Response Deadline shall be promptly re-mailed to the forwarding address affixed thereto.

(4) No later than seven (7) calendar days from the Response Deadline, the Settlement Administrator shall provide counsel for the Parties with a declaration attesting to the completion of the notice process, including the number of attempts to obtain valid mailing addresses for and re-sending of any returned Class Notices, as well as the identities, number of, and copies of all Requests for Exclusion and objections/comments received by the Settlement Administrator.

B. Objections.

Only Participating Class Members may object or comment regarding the Settlement. In order for any Settlement Class Member to object to this Settlement in writing, or any term of it, they must do so by mailing a written objection to the Settlement Administrator at the address or phone number provided on the Class Notice no later than the Response Deadline. The Settlement Administrator shall email a copy of the objection forthwith to Class Counsel and Defendants’ counsel and attach each objection, if any, to the declaration that Class Counsel files with the Court in support of the Motion for Final Approval. The objection should set forth in writing: (1)

1 the objector's name and address, and (2) the reason(s) for the objection, along with whatever
2 legal authority, if any, the objector asserts in support of the Objection. If a Settlement Class
3 Member objects to the Settlement, the Settlement Class Member will remain a member of the
4 Settlement Class and if the Court approves this Agreement, the Settlement Class Member will be
5 bound by the terms of the Settlement in the same way and to the same extent as a Settlement
6 Class Member who does not object. The date of mailing of the Class Notice to the objecting
7 Settlement Class Member shall be conclusively determined according to the records of the
8 Settlement Administrator. Settlement Class Members need not object in writing to be heard at
9 the Final Approval Hearing; they may object or comment in person at the hearing at their own
10 expense. Class Counsel and Defendants' Counsel may respond to any objection lodged with the
11 Court up to five (5) court days before the Final Approval Hearing.

12 **C. Requesting Exclusion.**

13 Any Settlement Class Member may request exclusion from (i.e., "opt out" of) the
14 Settlement by mailing a written request to be excluded from the Settlement ("Request for
15 Exclusion") to the Settlement Administrator, postmarked on or before the Response Deadline.
16 To be valid, a Request for Exclusion must include the Class Member's name, social security
17 number and signature and the following statement or something to its effect: "Please exclude me
18 from the Settlement Class in the *Gustavo Rosete Heredia v. Alan Smith Pool Plastering, Inc., et*
19 *al.* matter I understand that as a result of this request for exclusion, I will not receive any payment
20 or other benefit from the Settlement, except as may be otherwise due to me if I am also an
21 Aggrieved Employee." or a statement of similar meaning. The Settlement Administrator shall
22 immediately provide copies of all Requests for Exclusion to Class Counsel and Defendants'
23 Counsel and shall report the Requests for Exclusions that it receives, to the Court, in its
24 declaration to be provided in advance of the Final Approval Hearing. Any Settlement Class
25 Member who requests exclusion using this procedure will not be entitled to receive any payment
26 from the Settlement and will not be bound by the Settlement Agreement (other than, if applicable,
27 the release encompassed in the PAGA Released Claims) or have any right to object to, appeal,
28 or comment on the Settlement. Any Settlement Class Member who does not opt out of the

1 Settlement by submitting a timely and valid Request for Exclusion will be bound by all terms of
2 the Settlement, including those pertaining to the Released Claims, as well as any Judgment that
3 may be entered by the Court if Final Approval of the Settlement is granted. A Settlement Class
4 Member cannot submit both a Request for Exclusion and an objection. If a Settlement Class
5 Member submits an objection and a Request for Exclusion, the Request for Exclusion will control
6 and the Objection will be void. Settlement Class Members who worked during the PAGA Period
7 that submit a valid Request for Exclusion will still be deemed Aggrieved Employees, will still
8 receive their Individual PAGA Payment, and will be bound by the release encompassed in the
9 PAGA Released Claims.

10 **D. Disputes Regarding Settlement Class Members' Weekly Pay Period Data.**

11 Class Members will have an opportunity to dispute the information provided in their Class
12 Notice. To the extent Class Members dispute the number of Workweeks to which they have been
13 credited, Class Members may produce evidence to the Settlement Administrator showing that
14 such information is inaccurate. Absent evidence rebutting Defendants' records, Defendants'
15 records will be presumed determinative. However, if a Class Member produces evidence to the
16 contrary, the Settlement Administrator will evaluate the evidence submitted by the Class Member
17 and will make the final decision as to the number of Workweeks that should be applied. All such
18 disputes are to be resolved not later than ten (10) calendar days after the Response Deadline.

19 **E. Extension of Response Deadline for Remailing**

20 If a Class Member's notice is re-mailed, the Class Member shall have fifteen (15) days
21 from the re-mailing, or forty-five (45) days from the date of the initial mailing, whichever is later,
22 in which to postmark a Request for Exclusion, written Objection or to dispute their attributed
23 Workweek count in the Class Period and/or PAGA Period.

24 **10. INDIVIDUAL SETTLEMENT PAYMENTS AND INDIVIDUAL PAGA**
25 **PAYMENTS TO PARTICIPATING CLASS MEMBERS**

26 Individual Settlement Payments will be calculated and distributed to Participating Class
27 Members from the Net Settlement Amount on a *pro rata* basis, based on the Participating Class
28 Members' respective number of Workweeks during the Class Period. Individual PAGA

1 Payments to Aggrieved Employees will be calculated and distributed to Aggrieved Employees
 2 from the PAGA Payment on a *pro rata* basis based on Aggrieved Employees' respective
 3 number of Workweeks during the PAGA Period. Specific calculations of the Individual
 4 Settlement Shares and Individual PAGA Payments to Aggrieved Employees will be made as
 5 follows:

6 **A.** The Settlement Administrator will determine the total number of Workweeks
 7 worked by each Settlement Class Member during the Class Period ("Class Member's
 8 Workweeks"), as well as the aggregate number of Workweeks worked by all Settlement Class
 9 Members during the Class Period ("Class Workweeks"). Additionally, the Settlement
 10 Administrator will determine the total number of Workweeks worked by each Aggrieved
 11 Employee during the PAGA Period ("Aggrieved Employee's Workweeks"), as well as the
 12 aggregate number of Workweeks worked by all Aggrieved Employees during the PAGA Period
 13 ("PAGA Workweeks").

14 **B.** To determine each Settlement Class Member's Individual Settlement Share, the
 15 Settlement Administrator will use the following formula: *Individual Settlement Share =*
 16 *(Settlement Class Member's Workweeks ÷ Class Workweeks) ×*
 17 *Net Settlement Amount.*

18 **C.** To determine each Participating Class Member's Participating Individual
 19 Settlement Share, the Settlement Administrator will determine the aggregate number of
 20 Workweeks worked by all Participating Class Members during the Class Period ("Participating
 21 Class Workweeks") and use the following formula: *Individual Settlement Share =*
 22 *(Participating Class Member's Workweeks ÷ Participating Class Workweeks) ×*
 23 *Net Settlement Amount.*

24 **D.** The net amount of the Participating Individual Settlement Share is to be paid out
 25 to Participating Class Members by way of check and is referred to as "Individual Settlement
 26 Payment(s)".

27 ///

28 ///

1 E. To determine each Aggrieved Employee's Individual PAGA Payment, the
2 Settlement Administrator will use the following formula:

3 *Aggrieved Employee's Individual PAGA Payment* =

4 *(Aggrieved Employee's Workweeks ÷ PAGA Workweeks) x the PAGA Payment.*

5 F. Individual Settlement Payments and Individual PAGA Payments shall be paid
6 to Participating Class Members and/or Aggrieved Employees by way of check. When a
7 Participating Class Member is also an Aggrieved Employee, one check may be issued that
8 aggregates both the Individual Settlement Payment and the Individual PAGA Payment.

9 G. None of the payments called for by this Settlement are to be treated as earnings,
10 wages, pay, or compensation for the purpose of any applicable benefit or retirement plan, unless
11 expressly required by such plans.

12 **11. DISTRIBUTION OF PAYMENTS**

13 **A. Distribution of Individual Settlement Payments.**

14 Participating Class Members will receive an Individual Settlement Payment. All
15 Aggrieved Employees, regardless of whether they submit a valid Request for Exclusion or not,
16 will receive their Individual PAGA Payment. Individual Settlement Payment checks and
17 Individual PAGA Payment checks shall remain valid and negotiable for one hundred and eighty
18 (180) calendar days after the date of their issuance. Within seven (7) calendar days after
19 expiration of the 180-day period, checks for such payments shall be canceled and funds
20 associated with such checks shall be considered unpaid, unclaimed or abandoned cash residue
21 pursuant to Code of Civil Procedure section 384 ("Unpaid Residue"). The Unpaid Residue
22 plus accrued interest, if any, as provided in Code of Civil Procedure section 384, shall be
23 transmitted as follows: to Legal Aid at Work, 180 Montgomery St., Suite 600 San Francisco,
24 California 94104 for use in the County of Orange, State of California. The Settlement
25 Administrator shall prepare a report regarding the distribution plan pursuant to Code of Civil
26 Procedure section 384 and the report shall be presented to the Court by Class Counsel along
27 with a proposed amended judgment that is consistent with the provisions of Code of Civil
28 Procedure section 384. Defendants shall be deemed to fully discharge their obligations to Class

1 Members and/or Aggrieved Employees to whom a check is mailed, regardless of whether such
2 checks are actually received and/or negotiated by the recipient.

3 Neither Plaintiff nor Defendants, nor their respective counsel, shall bear any liability
4 for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks.
5 Unless responsible by its own acts of omission or commission, the same is true for the
6 Settlement Administrator.

7 **B. Funding of Settlement.**

8 Defendants shall, by February 11, 2023 or within thirty (30) days after Final Approval of
9 the Settlement, whichever is later, pay the Gross Settlement Amount of Eight Hundred Thousand
10 Dollars and Zero Cents (\$800,000.00) unless the same is escalated pursuant to Paragraph 17
11 below (and in such event, the escalated amount) to the Settlement Administrator in addition to
12 Employer's Taxes. All amounts must be paid to the Settlement Administrator pursuant to Internal
13 Revenue Code section 1.468B-1 for deposit in an interest-bearing qualified settlement account
14 ("QSA") with an FDIC insured banking institution, for distribution in accordance with this
15 Agreement and the Court's Orders and subject to the conditions described herein. Individual
16 Settlement Payments and Individual PAGA Payments shall be paid exclusively from the QSA,
17 pursuant to the settlement formula set forth herein.

18 Payments from the QSA shall be made for (1) the Service Award to Plaintiff as specified
19 in this Agreement and approved by the Court; (2) the Attorneys' Fees and Cost Award to be paid
20 to Class Counsel, as specified in this Agreement and approved by the Court; (3) the Settlement
21 Administrator Costs, as specified in this Agreement and approved by the Court; and (4) the
22 LWDA Payment, as specified in this Agreement. The amount remaining after deducting the
23 LWDA Payment from the PAGA Payment shall be allocated to payment to Aggrieved
24 Employees of Individual PAGA Payments as set forth herein. The balance and any accrued
25 interest thereon remaining shall constitute the Net Settlement Amount from which Individual
26 Settlement Payments shall be made to Participating Class Members, less applicable taxes and
27 withholdings. All interest accrued shall be for the benefit of Participating Class Members and
28 distributed on a *pro rata* basis.

1 **C. Time for Distribution.**

2 No more than seven (7) calendar days after payment of the full Gross Settlement Amount
3 (as the same may be increased to in accordance with Paragraph 17) by Defendants, as well as
4 Employer Taxes, or after the Final Order and Judgment following a Final Fairness and Approval
5 hearing, whichever is later, the Settlement Administrator shall distribute all payments due under
6 the Settlement, including the Individual Settlement Payments to Participating Class Members
7 and Individual PAGA Payments to Aggrieved Employees, as well as the Court-approved
8 payments for the Service Award to Plaintiff, attorneys' fees and litigation costs and expenses to
9 Class Counsel, administration costs to the Settlement Administrator, and the LWDA Payment to
10 the LWDA.

11 **12. ATTORNEYS' FEES AND LITIGATION COSTS**

12 Class Counsel shall apply for, and Defendants shall not oppose, an award of attorneys'
13 fees of up to thirty-five percent (35%) of the Gross Settlement Amount, which, unless increased
14 pursuant to Paragraph 17, shall amount to Two Hundred and Eighty Thousand Dollars and Zero
15 Cents (\$280,000.00). Class Counsel shall further apply for, and Defendants shall not oppose, an
16 application or motion by Class Counsel for reimbursement of actual costs associated with Class
17 Counsel's prosecution of this matter as set forth by declaration testimony in an amount up to
18 Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00). Awards of attorneys' fees and
19 costs shall be paid out of the Gross Settlement Amount, for all past and future attorneys' fees and
20 costs necessary to prosecute, settle, and obtain Final Approval of the settlement in the Action.
21 The "future" aspect of the amounts stated herein includes, without limitation, all time and
22 expenses expended by Class Counsel (including any appeals therein), except for any matters that
23 arise from Defendants' failure to materially comply with the terms of this Agreement. There will
24 be no additional charge of any kind to either the Settlement Class Members or request for
25 additional consideration from Defendants for such work unless, in the event of a material breach
26 of this Agreement by Defendants, Plaintiff is required to move the Court for enforcement of this
27 Agreement. Even in the event that the Court reduces or does not approve a payment of attorneys'
28 fees and/or costs, Plaintiff shall not have the right to revoke this Settlement. Should the Court

1 approve attorneys' fees and/or litigation costs and expenses in amounts that are less than the
2 amounts provided for herein, then the unapproved portion(s) shall be a part of the Net Settlement
3 Amount.

4 **13. SERVICE AWARD TO PLAINTIFF**

5 Plaintiff shall seek, and Defendants shall not oppose, a Service Award in an amount not
6 to exceed Seven Thousand, Five Hundred Dollars and Zero Cents (\$7,500.00) for participation
7 in and assistance with the Action. Any Service Award awarded to Plaintiff shall be paid from
8 the Gross Settlement Amount and shall be reported on an IRS Form 1099. This Settlement is not
9 contingent upon the Court awarding Plaintiff any amount, or any particular amount, as a Service
10 Award. Even in the event the Court reduces or does not approve a Service Award, Plaintiff shall
11 not have the right to revoke this Settlement. If the Court approves a Service Award to Plaintiff
12 in less than the amount sought herein, then the unapproved portion(s) shall be a part of the Net
13 Settlement Amount.

14 **14. TAXATION AND ALLOCATION**

15 A. Each Individual Settlement Share shall be allocated as follows: 20% as wages
16 (to be reported on an IRS Form W2); and 80% as interest and penalties (to be reported on an
17 IRS Form 1099). The Individual PAGA Payments to the Aggrieved Employees shall be
18 allocated entirely as penalties (to be reported on an IRS Form 1099). The Parties agree that the
19 employee's share of taxes and withholdings with respect to the wage-portion of the Individual
20 Settlement Share will be withheld from the Individual Settlement Share in order to yield the
21 Individual Settlement Payment. The amount of federal income tax withholding will be based
22 upon a flat withholding rate for supplemental wage payments in accordance with Treas. Reg.
23 § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also be made
24 pursuant to applicable state and/or local withholding codes or regulations.

25 B. Forms W-2 and/or Forms 1099 will be distributed by the Settlement
26 Administrator at times and in the manner required by the Internal Revenue Code of 1986 (the
27 "Code") and consistent with this Agreement. If the Code, the regulations promulgated
28 thereunder, or other applicable tax law, is changed after the date of this Agreement, the

processes set forth in this Section may be modified in a manner to bring Defendants into compliance with any such changes.

C. All Employer Taxes shall be paid by Defendants separate, apart and above from the Gross Settlement Amount. Defendants shall remain liable to pay the Employer Taxes as described above.

D. Neither Counsel for Plaintiff nor Defendants intend anything contained in this Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Agreement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended) or otherwise.

15. PRIVATE ATTORNEYS' GENERAL ACT ALLOCATION

The Parties agree to allocate Fifty Thousand Dollars and Zero Cents (\$50,000.00) of the Gross Settlement Amount toward PAGA penalties. Pursuant to the PAGA, seventy-five percent (75%) of the amount allocated toward PAGA (\$37,500.00) will be paid to the LWDA (*i.e.*, the LWDA Payment), and twenty-five percent (25%) of the amount allocated toward PAGA (\$12,500.00) shall be deemed the "PAGA Payment" and distributed to Aggrieved Employees on a *pro rata* basis based upon their respective Workweeks worked during the PAGA Period (*i.e.*, the Individual PAGA Payments).

16. COURT APPROVAL

This Agreement is contingent upon an order by the Court granting Final Approval of the Settlement, and that the LWDA does not intervene and/or object to the Settlement. In the event it becomes impossible to secure approval of the Settlement by the Court and the LWDA, the Parties shall be restored to their respective positions in the Action immediately prior to entry of this Settlement. If this Settlement Agreement is voided, not approved by the Court or approval is reversed on appeal, it shall have no force or effect and no Party shall be bound by its terms except to the extent: (a) the Court reserves any authority to issue any appropriate orders when denying approval; and/or (b) there are any terms and conditions in this Settlement Agreement specifically stated to survive the Settlement Agreement being voided or not approved, and which control in such an event.

1 **17. INCREASE IN WORKWEEKS**

2 As of February 7, 2022, Defendants represent that there are no more than 16,900
3 Workweeks worked by Class Members during the Class Period. In the event the number of
4 Workweeks worked by Class Members during the Class Period increases by more than 10%,
5 or 1,690 Workweeks worked, then Defendants shall increase the Gross Settlement Amount
6 proportionally over the 10% increase, or 18,590 Workweeks, (16,900 Workweeks + 1,690
7 Workweeks).

8 To calculate the increase in the Gross Settlement Amount by the proportional
9 percentage, the applicable percentage will be multiplied by the original Gross Settlement
10 Amount (\$800,000). For example, if the number of Workweeks worked by Class Members
11 during the Class Period increases by 11%, the Gross Settlement Amount would increase by 1%
12 (or \$8,000) to an escalated total Gross Settlement Amount of \$808,000. Likewise, if the number
13 of Workweeks worked by Class Members during the Class Period increases by 12%, the Gross
14 Settlement Amount would increase by 2% (or \$16,000) to an escalated total Gross Settlement
15 Amount of \$816,000.

16 **18. VOIDING OF SETTLEMENT AND RETURN OF GROSS SETTLEMENT**
17 **AMOUNT AND EMPLOYERS' TAXES**

18 Defendants have the option of voiding this Agreement within seven (7) calendar days of
19 receiving the Settlement Administrator's Declaration if the Settlement Administrator's
20 Declaration indicates that the number of Settlement Class Members who have timely submitted
21 valid Requests for Exclusion (*i.e.*, opt out) is ten percent (10%) or more of all Class Members,
22 which option shall be exercised by providing written notice to Class Counsel and the Settlement
23 Administrator. If the foregoing occurs, this Agreement shall be null and void *ab initio*, no Party
24 shall be bound by the terms thereof, and this Agreement shall not be admissible or offered into
25 evidence in the litigation or any other action for any purpose whatsoever, and any order or
26 judgment entered by the Court in furtherance of this Agreement shall be treated as withdrawn or
27 vacated by stipulation of the Parties. In such case, the Parties shall be returned to their respective
28 positions as of the date immediately prior to the execution of this Agreement, the Parties shall

1 proceed in all respects as if this Agreement had not been executed, Defendants shall have no
2 obligation to make any payments to Plaintiff, Counsel for Plaintiff, the LWDA, or any Class
3 Member, and the Settlement Administrator shall return the entirety of the Gross Settlement
4 Amount and Employers' Taxes to Defendants within seven (7) calendar days of receipt of
5 Defendants' written notice exercising the option to void this Agreement. In the event either Party
6 voids the Settlement pursuant to the terms of this Agreement, any amounts owed to the Settlement
7 Administrator for services actually rendered before receipt of notice of intent to void the
8 Agreement shall be paid by the voiding Party.

9 **19. NOTICE OF JUDGMENT**

10 In addition to any duties set out herein, the Settlement Administrator shall provide
11 notice of the Final Judgment entered in the Action by posting the same on its website for at
12 least four (4) years after the Judgment becomes final.

13 **20. MISCELLANEOUS PROVISIONS**

14 **A. Interpretation of the Agreement.**

15 This Agreement constitutes the entire agreement between Plaintiff and Defendants with
16 respect to its subject matter. Except as expressly provided herein, this Agreement has not been
17 executed in reliance upon any other written or oral representations or terms, and no such extrinsic
18 oral or written representations or terms shall modify, vary or contradict its terms. In entering
19 into this Agreement, the Parties agree that this Agreement is to be construed according to its
20 terms and may not be varied or contradicted by extrinsic evidence. The Agreement will be
21 interpreted and enforced under the laws of the State of California, both in its procedural and
22 substantive aspects, without regard to its conflict of law provisions. Any claim arising out of or
23 relating to the Agreement, or the subject matter hereof, will be resolved solely and exclusively
24 in the Superior Court of the State of California for the County of Orange, and Plaintiff and
25 Defendants hereby consent to the personal jurisdiction of the Court in the Action over it solely
26 in connection therewith. Plaintiff, on Plaintiff's own behalf and on behalf of the Settlement
27 Class, and Defendants participated in the negotiation and drafting of this Agreement and had
28 available to them the advice and assistance of independent counsel. As such, neither Plaintiff

1 nor Defendants may claim that any ambiguity in this Agreement should be construed against the
2 other. The Agreement may be modified only by a writing signed by counsel for the Parties and
3 approved by the Court.

4 **B. Further Cooperation.**

5 Plaintiff, Defendants, and their respective attorneys shall proceed diligently to prepare
6 and execute all documents, to seek the necessary approvals from the Court, and to do all things
7 reasonably necessary to consummate the Settlement as expeditiously as possible.

8 **C. Counterparts.**

9 The Agreement may be executed in one or more actual or non-original counterparts, all
10 of which will be considered one and the same instrument and all of which will be considered
11 duplicate originals.

12 **D. Authority.**

13 Each individual signing below warrants that they have the authority to execute this
14 Agreement on behalf of the party for whom or which that individual signs.

15 **E. No Third-Party Beneficiaries.**

16 Plaintiff, Participating Class Members, Aggrieved Employees, Class Counsel, and
17 Defendants are direct beneficiaries of this Agreement, but there are no third-party beneficiaries.

18 **F. Deadlines Falling on Weekends or Holidays.**

19 To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday,
20 or legal holiday, that deadline shall be continued until the following business day.

21 **G. Severability.**

22 In the event that one or more of the provisions contained in this Agreement shall for any
23 reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
24 unenforceability shall in no way effect any other provision if Defendants' Counsel and Class
25 Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed
26 as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

27 ///

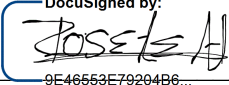
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H. Publication.

Plaintiff and Class Counsel agree not to disclose or publicize the Settlement, its terms or contents, or the negotiations underlying the same, in any manner or form, directly or indirectly, to any person or entity, except as otherwise required by law, ordered by the Court, or contractually necessary to effectuate the terms of the Settlement as set forth herein.

IT IS SO AGREED:

Dated: 6/10/2022, 2022

DocuSigned by:

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GUSTAVO ROSETE HEREDIA
Plaintiff and Class Representative

Dated: _____, 2022

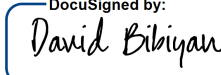
ALAN SMITH POOL PLASTERING, INC.
Defendant
By:
Its:

Dated: _____, 2022

ALAN M. SMITH
Defendant

AGREED AS TO FORM ONLY:

Dated: 6/8/2022, 2022

DocuSigned by:

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DAVID D. BIBIYAN
JEFFREY D. KLEIN
VEDANG J. PATEL
Bibiyan Law Group, P.C.
Counsel for Plaintiff Gustavo Rosete Heredia

1 **H. Publication.**

2 Plaintiff and Class Counsel agree not to disclose or publicize the Settlement, its terms or
3 contents, or the negotiations underlying the same, in any manner or form, directly or indirectly,
4 to any person or entity, except as otherwise required by law, ordered by the Court, or
5 contractually necessary to effectuate the terms of the Settlement as set forth herein.

6 **IT IS SO AGREED:**

7
8
9 Dated: _____, 2022

GUSTAVO ROSETE HEREDIA
Plaintiff and Class Representative

10
11 Dated: June 10, 2022

ALAN SMITH POOL PLASTERING, INC.

Defendant

By:

Its:

13
14
15 Dated: June 10, 2022

ALAN M. SMITH

Defendant

16
17
18 **AGREED AS TO FORM ONLY:**

19
20 Dated: _____, 2022

DAVID D. BIBIYAN

JEFFREY D. KLEIN

VEDANG J. PATEL

Bibiyon Law Group, P.C.

Counsel for Plaintiff Gustavo Rosete Heredia

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Dated: 6/8/2022, 2022

DocuSigned by:

Jasmin Gill

SD-320840458A402...

JASMIN K. GILL

J. Gill Law Group, P.C.

Counsel for Plaintiff Gustavo Rosete Heredia

Dated: June 10, 2022

Kyle Kring

KYLE KRING

KERRI N. POLIZZI

Kring & Chung LLP

**Counsel for Defendants Alan Smith Pool
Plastering, Inc. and Alan M. Smith**

EXHIBIT A

J. GILL LAW GROUP
ATTORNEYS AT LAW

Jasmin K. Gill
Attorney at Law
J. Gill Law Group, P.C.
515 S. Flower St., Suite 1800
Los Angeles, CA 90071

Writer's Direct: 310.728.2137
Writer's Email: jasmin@jkgilllaw.com

September 3, 2020

PAGA NOTICE FILED ELECTRONICALLY
PAGA FILING FEE BY U.S. MAIL

Department of Industrial Relations
Accounting Unit
455 Golden Gate Avenue, 10th Floor
San Francisco, California 94102
<https://dir.tfaforms.net/128>

Re: *Notice Letter of Gustavo Rosete Heredia on Behalf of Himself and Aggrieved Employees Under California Labor Section 2699.3*

Employer:	Alan Smith Pool Plastering, Inc. Attn: Agent for Service of Process Alan M. Smith 227 W. Carleton Ave. Orange, California 90807	Alan M. Smith 227 W. Carleton Ave. Orange, California 90807
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To Whom It May Concern:

This letter shall constitute notice under Labor Code section 2699.3 (hereinafter "PAGA Notice"). The \$75 filing fee made payable to the California Labor and Workforce Development Agency for the PAGA Notice was mailed along with a copy of this PAGA Notice to the Department of Industrial Relations at the above-listed mailing address.

This PAGA Notice concerns Gustavo Rosete Heredia's ("Mr. Heredia") employment with his former employers: Alan Smith Pool Plastering, Inc. and Alan M. Smith (collectively, "Employers"). Mr. Heredia was an employee of Employers from approximately July of 2016 through approximately April of 2019. Mr. Heredia and other aggrieved employees of Employers

California Labor and Workforce Development Agency

September 3, 2020

Page 2

are and were non-exempt employees holding various responsibilities in connection with hydroblasting, pool resurfacing and replastering, pool crack repairs, pool tiling and coping, paving, pool decking, painting, and other construction-related tasks as well as office-related tasks in connection with customers' swimming pools. In return, Employers paid (or purported to pay) Mr. Heredia and other aggrieved employees an hourly wage for their services.

Mr. Heredia and other aggrieved employees are covered by Labor Code section 510 and applicable Wage Orders. Mr. Heredia is informed and believes, and based thereon alleges, that Employers had and have a policy or practice of requiring their employees to work more than eight (8) hours per day, twelve (12) hours per day, forty (40) hours per week, and/or seven (7) straight work days in a work week without paying them proper overtime wages, as a result of, without limitation, routinely failing to pay Plaintiff or other similarly aggrieved employees' wages for all time worked, including overtime wages, as a result of, without limitation, failing to accurately track and/or pay for all hours worked; failing to pay overtime for hours worked above eight (8) in a workday; failing to pay double time for hours worked above twelve (12) in a workday or greater than eight (8) on the seventh straight day of work; failing to pay overtime for the first eight (8) hours of work on the seventh straight workday; detrimental rounding or auto-deduction of time worked; engaging, suffering, or permitting employees to work off the clock; failing to accurately track and/or pay for all travel time hours; failing to pay all reporting time pay; editing time worked to reflect lesser hours worked by employees than actually worked; and paying employees at the regular rate or otherwise improper rate(s) of pay, all to the detriment of Mr. Heredia and other similarly aggrieved employees. Consequently, Mr. Heredia is informed and believes, and based thereon alleges that Employers violated Labor Code sections 510, 1194, and applicable Wage Orders based on their practice of providing total compensation that is less than the required legal overtime compensation, entitling Mr. Heredia and other aggrieved employees to damages under these sections, and Labor Code section 558.1. Employers would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

In addition, Mr. Heredia is informed and believes, and based thereon alleges that Employers failed and continue to fail to compensate Mr. Heredia and other similarly aggrieved employees with minimum wages for all hours worked or otherwise under Employers' control due to, without limitation, failing to accurately track and/or pay for all hours actually worked; detrimental rounding or auto-deduction of time worked; engaging, suffering, or permitting employees to work off the clock; failing to accurately track and/or pay for all travel time hours; failing to pay all reporting time pay; and by editing time worked to reflect lesser hours worked by employees than actually worked to the detriment of Mr. Heredia and other aggrieved employees. As such, Mr. Heredia is informed and believes, and based thereon alleges that Employers violated, without limitation, Labor Code section 1197 and applicable Wage Orders based on their continued failure to pay minimum wages for all hours worked, entitling Mr. Heredia and other aggrieved employees to relief under, without limitation, Labor Code sections 558.1, 1194 and 1194.2.

California Labor and Workforce Development Agency

September 3, 2020

Page 3

Employers would also be liable for civil penalties pursuant to Labor Code sections 558, 1197.1 and 2699.

Mr. Heredia is informed and believes that Employers maintain a policy or practice of compelling their employees to work in excess of five (5) and ten (10) hours per day without being afforded uninterrupted, timely and complete 30-minute meal periods or compensation in lieu thereof. Consequently, Mr. Heredia is informed and believes, and based thereon alleges that Employers violated Labor Code section 512, entitling Mr. Heredia and other aggrieved employees to premium payments under Labor Code sections 226.7 and 558.1. Employers would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

Moreover, Mr. Heredia is informed and believes, and based thereon alleges that Employers maintain a policy or practice of compelling their non-exempt employees, including, without limitation, Mr. Heredia, to work over four-hour periods (or major fractions thereof) without authorizing and permitting their employees to take timely, paid, uninterrupted and complete ten-minute rest periods in which the employees are completely relieved of all of their duties. As such, Mr. Heredia is informed and believes, and based thereon alleges that Mr. Heredia and other aggrieved employees are entitled to relief under, without limitation, Labor Code sections 226.7 and 558.1. Employers would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

In addition to the above, Mr. Heredia is informed and believes, and based thereon alleges, that Employers failed and continue to fail to keep adequate and/or accurate time records, including wage statements and similar payroll documents under Labor Code section 226, documents signed to obtain or hold employment under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records under Labor Code section 1174, making it difficult for Mr. Heredia and other aggrieved employees to calculate their unpaid wages and/or premium payments. This would entitle Mr. Heredia and other aggrieved employees to penalties prescribed by Labor Code sections 226 and 1198.5. Employers would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

As a result of, among other things, Employers' herein-described practice or procedure of failing to accurately record time, pay overtime and minimum wages for the reasons stated above, provide meal periods or compensation in lieu thereof, and failing to provide rest periods or compensation in lieu thereof, as described above, Mr. Heredia is informed and believes, and based thereon alleges, that Employers also intentionally failed and continue to fail to furnish employees, including, without limitation, Mr. Heredia, with itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, the correct name and legal address of Mr. Heredia's employment, and other such information, as

California Labor and Workforce Development Agency

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Page 4

required by Labor Code section 226, subdivision (a). Consequently, since Employers have failed to comply with Labor Code section 226, subdivision (a), Mr. Heredia and other employees are entitled to recover penalties under, without limitation, Labor Code sections 226, subdivision (e) and 558.1. Employers would also be liable for civil penalties pursuant to Labor Code sections 226.3, 558, and 2699.

Mr. Heredia is informed and believes and based thereon alleges that Employers also failed and refused, and continue to fail and refuse, to timely pay compensation to Mr. Heredia and other terminated or resigned employees, including but not limited to, all wages owed as a result of Employers' practice or policy of failing to pay, among other wages, minimum wages, overtime wages, and premium wages. Consequently, Employers would be liable for waiting time penalties for having violated California Labor Code sections 201, 202, 203 and 558.1. Employers would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

Mr. Heredia is informed and believes, and based thereon alleges that Employers also failed and refused, and continue to fail and refuse, to reimburse employees, including, without limitation, Mr. Heredia and other aggrieved employees, with their costs incurred in direct consequence of the discharge of their duties, or of their obedience to the directions of Employers, as required by Labor Code 2802, and other statutory and common law offenses, including, without limitation, for purchase and use of a personal cell-phone as well as laundering mandatory work uniforms separately from their other clothes as necessitated by the construction and industrial tasks that resulted in cement, dirt and debris on their uniforms, as known by Employers. Among other relief that Mr. Heredia and aggrieved employees may collect from Employers in connection with these violations are civil penalties pursuant to Labor Code sections 558, 558.1, and 2699.

Mr. Heredia is informed and believes, and based thereon alleges, that Employers have, and at all times relevant hereto had, a policy or practice of failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft Protection Act of 2011) by, among other things, failing to provide Mr. Heredia and other aggrieved employees with the various rates of pay applicable to their employment; allowances claimed as part of the minimum wage; the name, address and telephone number of the workers' compensation insurance carrier; and other pertinent information required under Labor Code section 2810.5. As such, Mr. Heredia is informed and believes, and based thereon alleges, that failure to provide such information, including rates of pay that are in effect, has permitted Employers to pay employees at rates of pay that were not agreed upon, in violation of overtime wage and minimum wage laws in California. Among other relief, employees may collect from Employers civil penalties pursuant to Labor Code sections 558 and 2699.

Mr. Heredia is further informed and believes, and based thereon alleges, that Employers have or had a policy or practice of failing to provide Mr. Heredia and other aggrieved employees

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with the amount of paid sick leave required to be provided pursuant to California law (including, without limitation, Labor Code section 246, *et seq.*), and also did not permit its use upon request as contemplated under California law. As such, Employers would be liable for civil penalties for violation of the paid sick leave regulations under Labor Code sections 558 and 2699.

Mr. Heredia and similarly aggrieved employees are covered by Labor Code section 204. Mr. Heredias is informed and believes, and based thereon alleges that Employers had and have a policy or practice of failing to pay employees their wages in accordance with Labor Code Section 204, which requires that: “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive of any calendar month, shall be paid for between the 1st and 10th day of the following month.” Mr. Heredia is informed and believes, and based thereon alleges that Employers did not and do not pay their employees in accordance with Labor Code Section 204. As such, Mr. Heredia is informed and believes, and based thereon alleges that Employers violated Labor Code section 204. Employers would be liable for civil penalties pursuant to Labor Code sections 210, 558 and 2699.

Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), please advise within sixty-five (65) calendar days of the postmarked date of this notice whether the LWDA intends to investigate the violations alleged above. Our office understands that if we do not receive a response within sixty-five (65) calendar days of the postmark date of this PAGA Notice that the LWDA intends to investigate these allegations, Mr. Heredia may immediately thereafter file a civil complaint against Employers, or some of them, to allege causes of action for civil penalties under the Private Attorney General Act for the herein-described alleged violations of the Labor Code.

Thank you for your consideration of the foregoing.

Very truly yours,

J. GILL LAW GROUP, P.C.



Jasmin K. Gill

cc: Alan Smith Pool Plastering, Inc. (via U.S. Certified Mail, Return Receipt Requested)
Alan M. Smith (via U.S. Certified Mail, Return Receipt Requested)

EXHIBIT B

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL APPROVAL

Gustavo Rosete Heredia v. Alan Smith Pool Plastering, Inc., et al.
 (County of Orange, California Superior Court Case No. 30-2020-01163609-CU-OE-CXC)

As a current or former non-exempt California employee for Alan Smith Pool Plastering, Inc., you are entitled to receive money from a class action settlement.

Please read this Notice carefully. This Notice relates to a proposed settlement of class action litigation. If you are a Class Member, it contains important information about your right to receive a payment from the Settlement fund.

You have received this Notice of Class Action Settlement because the records of Alan Smith Pool Plastering, Inc. ("AS Pool Plastering") and/or Alan M. Smith (together, "Defendants") show you are a "Class Member," and therefore entitled to a payment from this class action Settlement. Class Members are all persons currently or formerly employed by AS Pool Plastering as non-exempt employees in the State of California any time from October 6, 2016 through February 7, 2022.

- The settlement resolves a class action lawsuit, *Heredia v. Alan Smith Pool Plastering, Inc., et al.* (the "Lawsuit"), which alleges Defendants: (1) failed to pay Class Members overtime wages, (2) failed to pay Class Members minimum wages, (3) failed to provide Class Members legally-compliant meal and rest breaks under California law, (4) failed to provide Class Members with legally compliant wage statements, (5) failed to timely pay all wages due upon termination or resignation, (6) failed to reimburse employees for business expenses, and (7) as a result, engaged in unfair business practices. Based on these and other alleged Labor Code violations, Plaintiff also seeks penalties under the California Labor Code Private Attorney Generals Act ("PAGA") pursuant to Labor Code sections 210, 226.3, 558, 1197.1, and 2699.
- On [REDACTED], the Orange County Superior Court granted preliminary approval of this class action Settlement and ordered that all Class Members be notified of the Settlement. **The Court has not made any determination of the validity of the claims in the Lawsuit.** Defendants vigorously deny the claims in the Lawsuit and contend that they fully complied with all applicable laws.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE PAYMENT	Get a payment, and give up your legal rights to pursue claims released by the settlement of the Lawsuit.
OPT OUT OF THE SETTLEMENT	Exclude yourself from the Settlement, get no payment for settlement of the class claims, and retain your legal rights to individually pursue the class claims that would otherwise be released by the settlement of the Lawsuit. If you worked from September 3, 2019 through and including February 7, 2022 ("PAGA Period") as a non-exempt employee of Defendants, as well, then you will be deemed an "Aggrieved Employee" and you will still receive your share of the proceeds available from, and be bound by, the settlement of the PAGA Released Claims, defined below, (your "Individual PAGA Payment") regardless of whether you opt out of the class settlement.

Questions? Contact the Settlement Claims Administrator toll free at [PHONE NUMBER]

OBJECT TO THE SETTLEMENT	If you do not opt out, you may write to the Settlement Administrator, ILYM Group Settlement Administration Experts, about why you object to the settlement and they will forward your concerns to counsel which will then be provided to the Court. If the Court approves the Settlement despite your objection, you will still be bound by the Settlement. If you timely object, you or your attorney may also address the Court during the Final Approval hearing scheduled for [DATE AND TIME] in the Civil Complex Center of Orange County Superior Court, located at 751 W. Santa Ana Blvd., Santa Ana, California 92701.
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The Final Fairness and Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement is currently set to be held at [REDACTED] .m. on [REDACTED], in the Civil Complex Center of Orange County Superior Court, located at 751 W. Santa Ana Blvd., Department CX-105, Santa Ana, California 92701. You are not required to attend the Hearing, but you are welcome to do so.

Why Am I Receiving This Notice?

Defendants' records show that you currently work, or previously worked, for Defendants as a non-exempt employee in the State of California any time from October 6, 2016 through February 7, 2022. You were sent this Class Notice because you have a right to know about a proposed settlement of a class action lawsuit, and about all of your options before the Court decides whether to finally approve the settlement. If the Court approves the settlement and then any objections and appeals are resolved, a "Settlement Administrator" appointed by the Court will make the payments described in this Notice. This Notice explains the Lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

What Is This Case About?

Gustavo Rosete Heredia was a non-exempt employee for Defendants in California. He is the "Plaintiff" in this case and is suing on behalf of himself and Class Members for Defendants' alleged failure to pay overtime wages, failure to pay minimum wages, failure to provide legally-compliant meal and rest breaks under California law, failure to provide compliant wage statements, failure to timely pay all wages due upon termination or resignation, failure to reimburse employees for business expenses, and engagement in unfair business practices. Based on these and other alleged Labor Code violations, Plaintiff also seeks to recover penalties under the California Labor Code Private Attorney Generals Act pursuant to Labor Code sections 210, 226.3, 558, 1197.1, and 2699.

Defendants deny all of the allegations made by Plaintiff and deny that they violated any law. Defendants are confident that they have strong legal and factual defenses to these claims, but they recognize the risks, distractions, and costs associated with continued litigation. This Settlement is the result of good faith, arm's length negotiations between Plaintiff and Defendants, through their respective attorneys. Both sides agree that in light of the risks and expenses associated with continued litigation, this Settlement is fair and appropriate under the circumstances, and in the best interests of the Class Members. The Settlement is a compromise and is not an admission of liability on the part of Defendants.

Questions? Contact the Settlement Claims Administrator toll free at [PHONE NUMBER]

The Court has made no ruling on the merits of Plaintiff's claims. The Court has only preliminarily approved this Class Action Settlement. The Court will decide whether to give final approval to the Settlement at the Final Fairness and Approval Hearing.

Summary of the Settlement Terms

Plaintiff and Defendants have agreed to settle this case on behalf of themselves and the Class Members for the Gross Settlement Amount of \$800,000, unless the Gross Settlement Amount is escalated pursuant to the Agreement. The Gross Settlement Amount includes: (1) Administration Costs of up to \$9,000; (2) a service payment of up to \$7,500.00 to Plaintiff for his time and effort in pursuing this case and in exchange for a broader release of claims against Defendants; (3) up to 35% in attorneys' fees which, unless the Gross Settlement Amount is escalated pursuant to the Agreement, amounts to \$280,000.00 in attorneys' fees; (4) actual litigation costs up to \$25,000.00 to Class Counsel; and (5) payment allocated to PAGA penalties in the amount of \$50,000.00, \$37,500.00 of which will be payable to the Labor and Workforce Development Agency ("LWDA") and \$12,500.00 of which will be payable to Aggrieved Employees. After deducting these sums, a total of approximately \$428,500.00 will be available for distribution to Class Members ("Net Settlement Amount"), and an additional \$12,500.00 will be available for distribution to Aggrieved Employees. In addition to the Gross Settlement Amount, Defendants will separately pay all employer-side payroll tax payments due and payable to federal and state tax authorities as a result of this Settlement.

Distribution to Class Members and Aggrieved Employees

Class Members who do not opt out will receive a *pro rata* payment based on the number of verified actual weeks worked by Class Members for Defendants during the Class Period ("Eligible Workweeks"). Specifically, Class Members' payments will be calculated by dividing the number of Eligible Workweeks attributed to the Class Member by all Eligible Workweeks attributed to members of the Settlement Class, multiplied by the Net Settlement Amount. Otherwise stated, the formula for a Class Member is: (individual's Eligible Workweeks ÷ total Settlement Class Eligible Workweeks) x Net Settlement Amount. In addition, Class Members who worked during the PAGA Period will receive a pro rata share of the \$12,500 allocated as PAGA penalties, whether or not they opt out, based on the number of workweeks worked by the Class Member during the PAGA Period.

Defendants' records indicate that you worked [Eligible Workweeks] as a non-exempt employee in California during the Class Period and [Eligible Pay Periods] during the PAGA Period. Based on these records, your estimated payment as a Class Member would be [\$Estimated Award] and your estimated payment for PAGA civil penalties would be [\$Estimated Award]. If you believe this information is incorrect and wish to dispute it, you must mail a dispute to the Settlement Administrator no later than [RESPONSE DEADLINE]. Please include copies of any documentation you have that you contend supports your dispute.

Tax Reporting

100% of the payments for PAGA penalties to Aggrieved Employees will be allocated as penalties reported on an IRS Form 1099; 20% of each Settlement Payment will be allocated as wages and reported on an IRS Form W-2; and 80% will be allocated as penalties and interest reported on an IRS Form 1099. **This notice is not intended to provide legal or tax advice**, from either the Parties or their attorneys, on your Settlement Share. You should consult your tax advisor for any tax issues pertaining to this Settlement.

Questions? Contact the Settlement Claims Administrator toll free at [PHONE NUMBER]

Your Options Under the Settlement

Option 1 – Do Nothing and Receive Your Payment

If you do not opt out, you are automatically entitled to your Settlement Check because you are a Class Member. If you do not dispute your settlement share calculation and do not opt out of the settlement, you will be bound by the settlement and receive a settlement payment. **In other words, if you are a Class Member, you do not need to take any action to receive the settlement payment set forth above.**

Settlement payment checks must be cashed soon after receipt. The Settlement checks will be able to be cashed for 180 days after they are issued. Within 7 days after expiration of the 180-day period, the Settlement checks will no longer be able to be cashed. Any funds represented by Settlement checks remaining uncashed for more than 180 days after issuance shall be considered unpaid, unclaimed or abandoned funds and shall be transmitted to Legal Aid at Work, 180 Montgomery Street, Suite 600, San Francisco, California 94104 for use in the County of Orange, State of California.

Class Members who do not submit a valid and timely opt out (pursuant to Section 2 below), will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released Claims he or she may have or had upon final approval of this Settlement, entry of judgment, and payment by Defendants to the Settlement Administrator.

“Released Claims” means all claims asserted in the First Amended Complaint filed in the Action, and any and all claims that may be asserted against the Released Parties based on the factual allegations in the First Amended Complaint filed in the Action, including, for the duration of the Class Period: (a) all claims for failure to pay minimum wages; (b) all claims for failure to pay overtime wages; (c) all claims for failure to provide compliant meal and/or rest periods or compensation in lieu thereof; (d) all claims for the failure to timely pay all wages due upon termination, resignation, or other separation of employment; (e) all claims for non-compliant wage statements; (f) all claims for failure to reimburse business expenses; (g) all claims for violation of Labor Code section 226, subdivision (c); and (h) all claims asserted through California Business & Professions Code § 17200 *et seq.* arising out of the Labor Code violations referenced in the First Amended Complaint (the “Class Released Claims”).

For Aggrieved Employees, the release includes, for the duration of the PAGA Period, all claims released during the Class Period, as well as all claims for civil penalties under PAGA arising out of Labor Code sections 210, 226.3, 558, 1197.1 and 2699 based on the factual allegations and Labor Code sections alleged to have been violated in the PAGA Notice and/or First Amended Complaint, which includes, without limitation, Labor Code sections 200, 201, 202, 203, 204, 226, 246, 432, 510, 512, 1174, 1194, 1197, 1198.5, 2802 and 2810.5 (the “PAGA Released Claims”).

“Class Period” means the period from October 6, 2016 through February 7, 2022.

“PAGA Period” means the period from September 3, 2019 through February 7, 2022.

“Released Parties” shall mean Defendants and each of AS Pool Plastering’s past, present, and future respective affiliates, parents, subsidiaries, predecessors, successors, divisions, joint venturers and assigns, and each of these entities’ past or present directors, officers, employees, partners, members, principals, agents, insurers, co-insurers, re-insurers, shareholders, attorneys, and personal or legal representatives.

Questions? Contact the Settlement Claims Administrator toll free at [PHONE NUMBER]

Option 2 – Opt Out of the Settlement

If you do not wish to participate in the Settlement, you may exclude yourself by submitting a written request to be excluded from the Class. Your written request must expressly and clearly indicate that you do not want to participate in the Settlement, and you desire to be excluded from the Settlement. The written request for exclusion must include your name, your Social Security Number and signature, and the following statement or something to its effect: “Please exclude me from the Settlement Class in the *Gustavo Rosete Heredia v. Alan Smith Pool Plastering, Inc., et al.* matter. I understand that as a result of this request for exclusion, I will not receive any payment or other benefit from the Settlement, except as may be otherwise due to me if I am also an Aggrieved Employee”. Sign, date, and mail your written request for exclusion by U.S. First-Class Mail to the address below.

The proposed settlement includes the settlement of the PAGA Released Claims. An employee may not request exclusion from the settlement of the PAGA Released Claims. Thus, if the court approves the settlement, then even if you request exclusion from the settlement, you will still receive an individual settlement share for the PAGA Released Claims and will be deemed to have released the PAGA Released Claims. A request for exclusion will preserve your right to individually pursue only the remaining Class Released Claims.

[Settlement Administrator]

The written request to be excluded from the Settlement must be postmarked or received by the Administrator not later than **[RESPONSE DEADLINE]**. If you exclude yourself from the Settlement then you will get no payment related to the Class Released Claims, and retain your legal rights to pursue claims that would otherwise be released by the settlement of the class claims in the Lawsuit.

DO NOT SEND AN “OPT-OUT” REQUEST IF YOU WANT TO RECEIVE YOUR SHARE UNDER THE CLASS SETTLEMENT!

Option 3 – File an Objection to the Settlement

If you wish to object to the Settlement, you may file an objection in writing stating why you object to the Settlement. Your objection must provide your full name, address, your reasons why you think the Court should not approve the Settlement, along with any legal authority, if any, you assert supports your objection, and your signature. Your objection must be mailed to the Administrator no later than **[RESPONSE DEADLINE]**. Please note that **you cannot both object to the Settlement and exclude yourself**. If the Court overrules your objection, you will be bound by the Settlement and will receive your Settlement Share.

Final Fairness Hearing

You may, if you wish, also appear at the Final Fairness and Approval Hearing set for [REDACTED] at [REDACTED].m. in the Civil Complex Center of Orange County Superior Court, located at 751 W. Santa Ana Blvd., Department CX-105, Santa Ana, California 92701, and discuss your objections with the Court and the Parties at your own expense. You may also retain an attorney to represent you at the Hearing at your own expense.

Questions? Contact the Settlement Claims Administrator toll free at **[PHONE NUMBER]**

Additional Information

This Notice of Class Action Settlement is only a summary of this case and the Settlement. For a more detailed statement of the matters involved in this case and the Settlement, you may visit www. .com, call the Settlement Administrator at [PHONE NUMBER] or Class Counsel:

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You may also refer to the pleadings, the Settlement Agreement, and other papers filed in this case, which may be inspected at the Office of the Clerk of Orange County Superior Court, located at [ADDRESS], during regular business hours of each court day.

All inquiries by Class Members regarding this Notice of Class Action Settlement and/or the Settlement should be directed to the Settlement Administrator.

**PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE,
DEFENDANTS, OR DEFENDANTS' ATTORNEYS WITH INQUIRIES.**

Questions? Contact the Settlement Claims Administrator toll free at [PHONE NUMBER]