

PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698 ET SEQ.)
SETTLEMENT AGREEMENT

Subject to the approval of the Court, this Settlement Agreement (“Settlement Agreement” or “Settlement”) is made and entered into between Plaintiff Arturo Vazquez Hernandez (“Plaintiff”), acting in a private attorney general capacity, on behalf of himself, all PAGA Aggrieved Employees, and on behalf of the State of California, and Defendant Eagle Paving Company Inc. (“Defendant”) (collectively, the “Parties”).

I. DEFINITIONS

The following terms, when used in this Settlement Agreement, shall have the following meanings:

1. “Action” means the matter entitled *Hernandez v. Eagle Paving Company Inc. et al.* filed on January 12, 2021, Superior Court of the State of California, County of San Diego, Case No. 37-2021-00003255-CU-OE-CTL.
2. “Eagle Paving Company Inc.” means and includes any of its past, present and future officers, directors, employees, agents, board members, shareholders, attorneys, insurers, reinsurers, customers, partners, investors, members, representatives, predecessors, parent companies, subsidiaries, affiliates, divisions, successors, agents, and principals, and their heirs, estates, executors, administrators, servants, insurers, attorneys, and assigns.
3. “Claims Administrator” means Phoenix Class Administration.
4. “Complaint” means the operative civil Complaint filed in the Action entitled *Hernandez v. Eagle Paving Company Inc. et al.* on January 12, 2021 in the San Diego Superior Court, County of San Diego, Case No. 37-2021-00003255-CU-OE-CTL.
5. “Court” means the Superior Court of California for the County of San Diego.
6. “Covered Position” means and includes any and all current and former non-exempt employees who worked for Defendant in the State of California from November 18, 2019 until December 31, 2021.
7. “Effective Date” of the Settlement means the date upon which the Superior Court of California for the County of San Diego, or other court assuming jurisdiction of this matter, enters the order approving this Settlement.
8. “Individual PAGA Payment” means the pro rata amount to be paid to each PAGA Settlement Employee from the 25% portion of the PAGA Payment; such individual share to be based on the number of pay periods during which a PAGA Settlement Employee worked for Defendant during the PAGA Period.
9. “LWDA” means the California Labor and Workforce Development Agency.

10. “Gross Settlement Amount” is the sum of Three Hundred Twenty-Five Thousand Dollars and Zero Cents (\$325,000.00), which represents the total amount payable under this Settlement Agreement by Defendant including, without limitation, payments to all PAGA Aggrieved Employees, payment to the LWDA, payment of Plaintiff’s attorneys’ fees and costs, and payment to the Claims Administrator.

11. “Net Settlement Amount” is the amount remaining to distribute to the LWDA and PAGA Aggrieved Employees after the following amounts, if approved by the Court, are subtracted from the Gross Settlement Amount: (a) Plaintiff’s attorneys’ fees up to \$108,225.00 and (b) Plaintiff’s costs up to \$15,000.00 and (c) administration costs up to \$2,500.00.

12. “PAGA” means the California Labor Code Private Attorneys General Act, California Labor Code section 2698, *et seq.*

13. “PAGA Payment” means the Net Settlement Amount of which 75% will be paid to the LWDA, and of which 25% will be paid to PAGA Aggrieved Employees.

14. “PAGA Period” means the time period from November 18, 2019 through December 31, 2021.

15. “PAGA Released Claims” means all claims, rights, demands, liabilities, and causes of action, arising from, or related to, the claims which were asserted in the Complaint under PAGA that were alleged or could have been alleged against Defendant and any of the Released Parties arising out of the facts, circumstances and primary rights at issue in the operative Complaint in the Action and LWDA Letter, including a PAGA claim based on the following underlying Labor Code violations: 201, 202, 203, 204, 226, 226.7, 227.3, 233, 234, 246, 246.5, 510, 512, 1120, 1194, 1198, 1220, *et seq.*, 1771, 1774, 1776, 1815, 2699, *et seq.*, violation of any Industrial Welfare Commission Order, and any other claims asserted in the Complaint during the PAGA Period.

16. “PAGA Aggrieved Employees” consist of all individuals in a Covered Position during the PAGA Period, including Plaintiff. Defendant anticipates the number of PAGA Aggrieved Employees to be approximately **104**.

17. “Parties” mean Plaintiff and Defendant.

18. “Plaintiff’s Counsel” means Alex Asil Mashiri of Mashiri Law Firm, A Professional Corporation and Tamim Jami of The Jami Law Firm P.C.

19. “Released Parties” means Defendant and its past, present, and future officers, directors, employees, board members, shareholders, attorneys, insurers, reinsurers, customers, partners, investors, members, representatives, predecessors, parent companies, subsidiaries, affiliates, divisions, successors, agents, and principals, and their heirs, estates, executors, administrators, servants, insurers, attorneys, assigns, and any individual or entity that could be jointly liable with Defendant.

20. “Settlement Approval” means the settlement approval order that will be entered by the Court.

II. RECITALS

1. Plaintiff was performing work in a Covered Position for Defendant during the PAGA Period.

2. On November 18, 2020, Plaintiff provided written notice to the LWDA and Defendant pursuant to Labor Code section 2699.3 of *inter alia* alleged violations of the California Labor Code and Industrial Welfare Commission Orders.

3. On January 12, 2021, Plaintiff filed the Complaint under the PAGA with the Court on behalf of the State of California and other aggrieved employees alleging multiple violations of the California Labor Code and Industrial Welfare Commission Wage Orders by Defendant.

4. The Parties have each independently analyzed and investigated the facts and law relevant to this case through informal discovery, including, but not limited to, the employment policies, procedures, and practices implicated by the PAGA Representative Claims; a sampling of timekeeping records, payroll records, and wage statements relating to Plaintiff and the other non-exempt employees on whose behalf the PAGA Representative Claims are asserted in the Action; and summaries of data pertaining to the number of employees allegedly affected by the PAGA Representative Claims.

5. After evaluating the strengths and weaknesses of their respective positions, after considering the time, expense, and risk associated with litigating this case to judgment, and after engaging in arm's-length settlement negotiations on September 24, 2021 at a mediation with Mr. Tripper Ortman, a well-respected wage and hour mediator, the Parties agreed to fully and finally, and exclusively, resolve the PAGA Released Claims as to Plaintiff and the PAGA Aggrieved Employees, subject to Court approval.

6. This Settlement contemplates the entry of an Order by the Court approving the payment allocated for settlement of PAGA penalties to Plaintiff and the PAGA Aggrieved Employees, and the dismissal with prejudice of the Complaint.

III. OPERATIVE TERMS OF SETTLEMENT AGREEMENT

The Parties agree as follows:

1. **Non-Admission**. Nothing in this Settlement Agreement shall be construed to be an admission by Plaintiff that his claims do not have merit or by Defendant of any liability or wrongdoing as to Plaintiff, PAGA Aggrieved Employees or any other person, and Defendant specifically disclaims any such liability or wrongdoing. Defendant specifically disclaims any liability to Plaintiff or any other allegedly aggrieved employee for any alleged violation of his/her rights, or for any alleged violation of any order, law, statute, duty or contract. The Parties have entered into this Settlement Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and risks. This Settlement Agreement and any related court documents or orders are not and may not be cited or admitted as evidence of liability.

2. **Gross Settlement Amount.** Defendant shall pay Three Hundred and Twenty-Five Thousand Dollars and Zero Cents (\$325,000.00) as the Gross Settlement Amount. Defendant will not pay more than the Gross Settlement Amount. The number of PAGA Aggrieved Employees during the PAGA Period are anticipated to be approximately **104**; if this amount increases by more than 10% before the end of the PAGA Period, Defendant will have the option to either increase the Gross Settlement Amount in proportion to any such change or change the cutoff date for PAGA Aggrieved Employees to an earlier date. Defendant shall distribute the Gross Settlement Amount within twenty-one (21) business days after the Effective Date.

3. **Net Settlement Amount.** The Parties agree that the following amounts should be subtracted from the Gross Settlement Amount, if approved by the Court, resulting in a Net Settlement Amount to be distributed to the LWDA and PAGA Aggrieved Employees hereinafter referred to as the ("PAGA Payment"):

a. **Plaintiff's Attorneys' Fees and Costs.** Defendant will not oppose Plaintiff's request for attorneys' fees in the amount up to \$108,225 and costs up to \$15,000.00 incurred in prosecuting this Action. In the event the Court approves a payment of less than the amount of fees and costs requested by Plaintiff, the difference will be added to the PAGA Payment.

b. **Administration Cost.** Defendant will not oppose the Claims Administrator's costs in the amount up to \$2,500.00 for administering the Settlement. In the event the Court approves a payment of less than this amount, the difference will be added to the PAGA Payment

4. **PAGA Payment.** A portion of the PAGA Payment will be allocated to the LWDA and the remainder will be allocated to PAGA Aggrieved Employees in settlement of the PAGA Released Claims. The PAGA Payment will be subject to Court approval consistent with California Labor Code section 2699.3(b)(4). Upon approval, the PAGA Payment shall be allocated as follows:

- (1) 75% will be paid to the LWDA, as required by California Labor Code section 2699(i).
- (2) 25% will be divided on a pro rata basis among PAGA Aggrieved Employees and distributed in Individual PAGA Payments, as required by California Labor Code section 2699(i).
- (3) The payments will be reported on IRS Forms 1099 issued to the LWDA and each PAGA Aggrieved Employee. The Settlement Administrator will be responsible for issuing to PAGA Aggrieved Employees and Class Counsel any 1099 or other tax forms as may be required by law for all amounts paid pursuant to this Settlement.

5. **Representative PAGA Release.** As of the Effective Date, all PAGA Aggrieved Employees and the State of California, in consideration of the PAGA Payment, shall be bound by this Agreement and shall have recourse exclusively to the benefits, rights, and remedies provided

8. **Filing of Request for Approval of PAGA Settlement by Plaintiff's Counsel.**

Plaintiff's Counsel shall be responsible for preparing either an *Ex Parte* Application or Motion for Approval of the PAGA Settlement, whichever Plaintiff's counsel deems proper. Plaintiff shall provide the requisite notice of this Settlement Agreement to the LWDA on or before the date Plaintiff requests Settlement Approval from the Court. If the Court approves this Settlement, the Parties shall request that the Court enter an Order approving the settlement.

As part of the request to approve the Settlement, Plaintiff shall submit a proposed order granting approval of this Settlement. The Order granting approval of the settlement shall provide for a dismissal, with prejudice, of the entire Action and the Complaint. The Court shall retain jurisdiction to enforce the terms of this Agreement. This Settlement is expressly conditioned upon the Court entering such an Order approving this Settlement as set forth herein. The Order approving the Settlement will not release or bar any claims other than the PAGA Released Claims as to Plaintiff and PAGA Aggrieved Employees.

IV. ADMINISTRATION OF SETTLEMENT

1. **Claims Administrator.** The Settlement Administrator will be responsible for establishing a qualified settlement fund ("QSF") and issuing payments and appropriate tax forms to PAGA Aggrieved Employees, the LWDA, and Plaintiff's Counsel.

2. **Provision of Information for PAGA Aggrieved Employees.** Within 7 calendar days after the Effective Date, Defendant will provide the information regarding the PAGA Aggrieved Employees to the Settlement Administrator. This information will include the name, most recently known address, social security number, and total pay periods worked for each of the PAGA Aggrieved Employees. The list shall also include the sum total of all pay periods worked by PAGA Aggrieved Employees during the PAGA Period. Because Social Security numbers are included in the list, the Settlement Administrator will maintain the list in confidence, and access shall be limited to those with a need to use the list as part of the administration of the Settlement.

The Settlement Administrator will calculate the amount to be received by each PAGA Aggrieved Employee. Within five (5) calendar days of receiving the Gross Settlement Amount, the Settlement Administrator will circulate to counsel for both Parties an anonymized spreadsheet containing the estimated individual settlement payments to each PAGA Aggrieved Employee and the data used to calculate said payments. The Settlement Administrator shall obtain approval from all counsel of the calculations before mailing Individual PAGA Payments.

3. **Explanatory Letter and Individual PAGA Payments.** Upon receipt of the information for PAGA Aggrieved Employees, the Settlement Administrator will perform a search on the National Change of Address database to update the PAGA Aggrieved Employees' addresses.

Within two (2) calendar days of receiving approval from counsel of the payment calculations as provided above, the Settlement Administrator will issue payments to: (a) PAGA

Aggrieved Employees along with an explanatory letter similar to that attached hereto as **Exhibit A**; (b) the LWDA; (c) Plaintiff's Counsel; and (d) itself.

4. **Undeliverable Notices.** The Settlement Administrator will issue each PAGA Aggrieved Employee a check for his or her share of the PAGA Payment along with a Settlement Notice. Prior to mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip trace, or other search using the name, address or Social Security number of the PAGA Aggrieved Employee involved, and will then perform a single re-mailing. Individual PAGA Payment checks will remain negotiable for 180 calendar days, and PAGA Aggrieved Employees will have 180 calendar days from the date of the mailing to cash their Individual PAGA Payment checks. If an PAGA Aggrieved Employee's check is returned to the Settlement Administrator with a forwarding address provided by the United States Postal Service, the Settlement Administrator will promptly resend the check to that PAGA Aggrieved Employee to that address, but this re-mailing will not extend the 180-day period to cash a check. Funds represented by Individual PAGA Payment checks returned as undeliverable and those Individual PAGA Payment checks remaining un-cashed for more than 180 calendar days after issuance will escheat to the Legal Aid Society of San Diego, Inc. or other fund subject to court approval.

Defendant fully discharges its obligations to those PAGA Aggrieved Employees who are entitled to an Individual PAGA Payment through the Settlement Administrator's mailing of a check, regardless of whether such checks are actually received and/or negotiated by PAGA Aggrieved Employees.

5. **Accounting.** Within fifteen (15) calendar days of receiving approval from counsel of the payment calculations, the Settlement Administrator will provide an accounting under oath to the Parties of the amounts paid from the Settlement, via a declaration or otherwise.

6. **Tax Consequences.** Individual PAGA Payments made under this Settlement will be attributed 100% as penalties and interest and paid via IRS Form 1099 issued to each PAGA Aggrieved Employee. Defendant makes no representations or warranties with respect to tax consequences of any payment under this Settlement Agreement.

V. MISCELLANEOUS PROVISIONS

1. **Mutual Preparation and Drafting.** The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement. The Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that neither Party shall be considered the "drafter" of this Settlement Agreement for purposes of having terms construed against that Party.

2. **No Impact on Benefit Plans.** Neither the Settlement Agreement nor any amounts paid to Plaintiff or any PAGA Aggrieved Employee under the Settlement will modify any previously credited hours or service under any employee benefit plan, policy or bonus program sponsored by Defendant. Such amounts will not form the basis for additional contributions to, benefits under or any other monetary entitlement under Defendant's sponsored benefit plans, policies or bonus programs. The payments made under the terms of this Settlement Agreement shall not be applied retroactively, currently or on a going-forward basis, as salary, earnings, wages or any other form of compensation for the purposes of any Defendant benefit plan, policy, or bonus program. Defendant retains the right, if necessary, to modify the language of its benefit plans, policies and bonus programs to effect this intent, and to make clear that any amounts paid pursuant to this Settlement Agreement are not for "hours worked," "hours paid," "hours of service," or any similar measuring term as defined by applicable plans, policies, and bonus programs for purposes of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are not required by this Settlement Agreement.

3. **Successors.** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators and successors.

4. **Costs and Fees.** The Parties shall each bear their own costs, attorneys' fees, and other fees incurred in connection with this Settlement Agreement, the Action, and Plaintiff's claims, except as otherwise set forth specifically herein.

5. **Authority.** Defendant represents and warrants that the undersigned has the authority to act on behalf of Defendant and to bind Defendant to the terms of this Settlement Agreement. Plaintiff represents and warrants that he has the authority to enter into this Settlement Agreement.

6. **Governing Law.** This Settlement Agreement shall be construed under and governed by the laws of the State of California. This Settlement Agreement shall be deemed to have been entered into in San Diego, California, and all questions of validity, interpretation, or performance of any of its terms or of any rights or obligations of the Parties to this Settlement Agreement shall be governed by California law. If any legal or equitable action is necessary to enforce the terms of this Settlement Agreement, it shall be brought in the State of California, County of San Diego.

7. **Complete Agreement.** The Parties each acknowledge and represent that no promise or representation not contained in this Settlement Agreement has been made to them, and acknowledge and represent that this Settlement Agreement contains the entire understanding between them and contains all terms and conditions pertaining to the compromise and settlement of the PAGA claim, and that this Settlement Agreement shall supersede the previously executed Memorandum of Understanding between the Parties. This Settlement Agreement cannot be amended or modified except by a writing signed by the Parties hereto.

8. **Nullification of Settlement Agreement.** In the event that: (i) the Court does not approve the Settlement as provided herein; or (ii) the Settlement does not become final for any

other reason, then this Settlement Agreement and any documents generated to bring it into effect, will be null and void, and the Parties will be returned to their original respective positions, without prejudice. Neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect

9. **Judgment and Continued Jurisdiction.** After approval of this Settlement, the Court will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii) Settlement administration matters, and (iii) such matters as may be appropriate under court rules or as set forth in this Settlement Agreement.

The Parties further agree that upon the occurrence of the dismissal of the Action pursuant to the terms of this Agreement, this Agreement shall be enforceable by the Court pursuant to Code of Civil Procedure Section 664.6 and the Court shall retain exclusive and continuing equity jurisdiction of this Action over all Parties and PAGA Aggrieved Employees to interpret and enforce the terms, conditions and obligation of the Agreement.

10. **Entire Agreement.** This Settlement Agreement constitutes the entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements may be deemed binding on the Parties.

11. **Amendment or Modification.** This Settlement Agreement may be amended or modified only by a written instrument, signed by either the Parties or their successors-in-interest or counsel for all Parties.

12. **Binding on Successors and Assigns.** This Settlement Agreement will be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

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

14. **Acknowledgement that the Settlement is Fair and Reasonable.** The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action, and have arrived at this settlement after arm's-length negotiations by experienced counsel. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this settlement.

15. **Invalidity of Any Provision.** Before declaring any provision of this Settlement Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Settlement Agreement valid and enforceable. Invalidity of any material portion of this

Agreement shall invalidate this Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

16. **Severability.** If any term or provision of this Settlement Agreement is held to be invalid or unenforceable, the remaining portions of this Settlement Agreement will continue to be valid and will be performed, construed and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the Parties, as determined from the face of the Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

17. **Waiver.** No waiver of any condition or covenant contained in this Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such Party of the same or any other condition, covenant, right or remedy.

18. **Enforcement Action.** In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement Agreement or to declare rights and/or obligations under this settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

19. **Dispute(s).** Should any dispute(s) arise among the Parties or their respective counsel regarding the implementation or interpretation of this Agreement, the Parties agree to submit any such dispute(s) to the Court. To the extent any Party seeks to enforce any of the terms of this Agreement in Court or before the Court, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

20. **Non-Evidentiary Use.** Neither this Agreement nor any of its terms shall be offered or used as evidence by any of the Parties, or their respective counsel in the Action or in any other action or proceeding; provided, however, this shall not prevent this Agreement from being used, offered, or received in evidence in any proceeding to enforce, construe, or finalize this Agreement.

21. **Representation by Counsel.** The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed in full.

22. **No Public Comment.** Neither the Parties nor their counsel Parties shall make or issue any public statements to the press or any other third party, nor post any information on websites or other public forums, concerning the Action in any way.

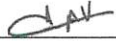
23. **Cooperation and Execution of Necessary Documents.** All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.

24. **Binding Agreement.** The Parties warrant that they understand and have full authority to enter into this settlement, and further intend that this Settlement Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

25. **Denial of Liability.** The Parties expressly recognize that the making of this Settlement Agreement does not in any way constitute an admission or concession of wrongdoing on the part of Defendant. Nothing in this settlement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of this Action, is intended by the Parties to, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in any other judicial, arbitral, administrative, investigative or other forum or proceeding, as evidence of any violation of any federal, state or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this Settlement Agreement may be used in any Court proceeding that has as its purpose the interpretation, implementation or enforcement of the settlement or any orders or judgments of the Court entered into in connection therewith.

IN WITNESS THEREOF, the Parties each acknowledge that he/it has read the foregoing Settlement Agreement, accepts and agrees to the provisions contained in this Settlement Agreement, and hereby executes it voluntarily and with full understanding of its consequences.

DATED: Oct 25, 2021

By: 
Plaintiff Arturo Vazquez Hernandez

DATED: 11/03, 2021

By: 
Defendant Eagle Paving Company, Inc.
By: Joel Batule
Title: CEO