

Memorandum of Understanding for PAGA Settlement

Subject to approval by the Court before which this action is pending, and with the provision that this Memorandum of Understanding ("MOU"), which may be further memorialized in a Joint Stipulation of Settlement, the parties hereby agree to the following terms of settlement of the Private Attorneys General ("PAGA") claim, including dismissal without prejudice of class claims, in the action designated as Lisa Allen v. Blue Pacific Engineering Construction, Inc.; Shahram Elihu; Palm Engineering Construction Company, Inc., Case Number 37-2020-00040867-CU-OE-CTL (hereinafter the "PAGA and Class Lawsuit"), currently pending in San Diego County Superior Court.

The parties agree that this MOU is not evidence that the Complaint filed by Plaintiff has any merit, nor does it constitute an admission of any wrongdoing by Defendants. Defendants do not admit to individual or joint liability or to the suitability of this case for a PAGA judgment other than for purposes of settlement. This MOU will not be deemed admissible in any other proceeding or in this proceeding other than to effectuate this settlement ("PAGA Settlement").

1. Plaintiff Lisa Allen ("Plaintiff") and Defendants Blue Pacific Engineering Construction, Inc., Shahram Elihu, and Palm Engineering Construction Company, Inc. ("Defendants") shall be referred to as the "Parties."

2. The PAGA Members are defined as follows:

All current and former non-exempt employees of Defendants from November 12, 2019, through approval of the settlement or July 30, 2022, whichever occurs earlier ("PAGA Member" and "Aggrieved Employee"). Defendants estimate 153 Aggrieved Employees and approximately 11,000 pay periods.

3. A non-reversionary settlement fund will be established and the maximum extent of liability will be (the "Maximum Payment") Thirty Five Thousand dollars (\$35,000) for the PAGA Settlement.

- (a) The Maximum Payment is inclusive of attorneys' fees, costs and expenses directly or indirectly related to the PAGA and Class Lawsuit (which includes all such fees, costs and expenses incurred to date, as well as all such fees, costs and expenses incurred in documenting the settlement, securing approval of the settlement, administering and obtaining a judgment and dismissal of the PAGA and Class Lawsuit before the Court, except for those fees, costs, and expenses released under the Confidential Individual Settlement referenced in section 18, *infra*), claims administration costs, the service payment to the PAGA representative, civil penalties paid to the State of California, and any taxes or portions of taxes, including the employer's share of payroll taxes. If there is any reduction in attorneys' fees, costs, enhancement, etc. by the Court then the funds be added to the Net Settlement Amount. The Court of jurisdiction and Claims Administrator shall have no power to increase the Maximum Payment or to depart from the express terms of the MOU herein.

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- (b) The Maximum Payment shall comprise and include a Net Settlement Amount ("Net Settlement Amount"). The Net Settlement Amount shall be the Maximum Payment, minus the following: (1) the maximum potential award of attorneys' fees and costs to counsel; (2) the maximum potential enhancement payment to the named plaintiff (hereinafter the "PAGA Representative"); (3) allotted funds to the Claims Administrator; and (4) any and all remaining costs or fees. Defendants shall not be required to make any payment in excess of the Maximum Payment, for any cause or reason.
 - (c) The parties will negotiate and select a Claims Administrator, who shall follow all Defendants' instructions not in express contravention of this MOU.
4. The Net Settlement Amount is calculated based upon the following:
- (a) Attorney fees. Plaintiff's counsel will request, and Defendant and its counsel will not oppose, an award of up to 1/3 of the Maximum Payment, which at Thirty Five Thousand Dollars (\$35,000) results in Eleven Thousand Six Hundred Sixty Six dollars and Sixty Seven cents (\$11,666.67) as an award of attorneys' fees. This amount shall be included in the maximum extent of liability. This settlement is expressly conditioned on the settlement satisfying all claims for attorneys' fees and costs of each and every of the law firms representing plaintiffs, including Sullivan Employment Law PC.
 - (b) Plaintiff's counsel will request, and Defendant and its counsel will not oppose, costs of up to a maximum of Two Thousand Two Hundred Seventy-Five dollars (\$2,275). This amount shall be included in the maximum extent of liability.
 - (c) The Motion for Approval shall ask for up to Three Thousand Five Hundred dollars (\$3,500) for claims administration and handling. This amount shall be included in the maximum extent of liability.
 - (d) Plaintiff does not request an Enhancement Award as a result of this settlement.
 - (e) The Net Settlement Amount is estimated to be \$35,000, less \$11,666.67 in attorney fees, less \$2,275 in litigation costs, less \$3,500 in settlement administration costs, less \$0 in Enhancement Award, equaling \$17,558.33, subject to the Court's approval of the amounts set forth in this Section.
5. Within 15 days of the approval of the settlement, Defendants shall provide the Claims Administrator with the name, most current mailing address and telephone number of each PAGA Member. The Claims Administrator shall sign an agreement with Defendants to keep this information confidential, in a password protected database.
6. Defendant shall deposit the Maximum Payment to the Settlement Administrator within 30 days of the approval of the settlement unless there are objectors to the

approval of the settlement, in which case payment shall be made within 30 days after the time to appeal has run or all appeals have been exhausted, whichever occurs later.

7. Within 5 days of receipt of the Maximum Payment from Defendants, the Settlement Administrator shall disburse the funds as provided herein.
8. Upon the final approval of the settlement by the court, the Plaintiff, State of California, and PAGA Members will release and discharge Defendant, and its former and present parents, subsidiaries, and affiliates, and their current and former officers, directors, employees, partners, shareholders and agents, and the predecessors and successors, assigns, and legal representatives of all such entities and individuals ("Released Parties"), from the PAGA claims arising during the period from November 12, 2019, to the date on which the court gives approval of the Settlement ("PAGA Release Period"). The PAGA claims released by the Plaintiff, the State of California, and PAGA Members are for all PAGA penalties and related attorneys' fees and litigation costs under the Private Attorneys General Act for the following violations of the Labor Code: (1) failure to pay minimum and prevailing wages; (2) failure to pay overtime wages; (3) failure to provide compliant rest periods and/or pay missed rest period premiums; (4) failure to provide compliant meal periods and/or pay missed meal period premiums; (5) failure to reimburse business expenses; (6) failure to provide complete and accurate wage statements; (7) waiting time penalties; and (8) failure to pay timely wages ("PAGA Released Claims").
9. In consideration of their awarded attorneys' fees and expenses, Counsel waives any and all claims to any further attorneys' fees and expenses in connection with the Lawsuit except as otherwise provided herein and the separate Confidential Individual Settlement Agreement.
10. Nothing in this release shall affect, impact, preclude, or prevent Defendants from pursuing claims against third parties, including, without limitation, claims for express, implied or equitable indemnity or contribution. This includes claims against payroll companies, payroll processors, management companies, human resources companies, consultants, and related individuals and entities.
10. Uncashed Checks: Uncashed checks shall be void after 180 days and shall be revert to cy pres organization Justice Gap Fund.
11. Defendant's payroll records will be presumptively determinative in any dispute over entitlement to payment or payment amount.
12. The Parties and their counsel will support each and every provision of this MOU and, if one is entered into, the Stipulation of Settlement before the Court. Defendants agree not to actively oppose the award of attorneys fees and costs contemplated in this Agreement.
13. The parties agree that this Memorandum of Understanding is confidential (except for purposes of enforcement) and that neither party will issue any press release or other public or non-public representation regarding the settlement other than as necessary to obtain Court approval and effectuate the terms of the settlement. The parties and

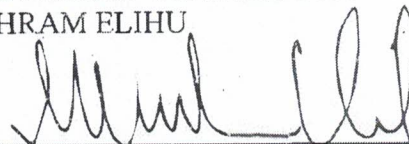
their counsel agree that they will not initiate or have any contact with the press, respond to any press inquiry or have any communication with the press about this case. Plaintiff's counsel will not communicate with other wage-hour Plaintiff's counsel nor utilize in their marketing or advertising materials or website the name of Defendants or their principals as it relates to this settlement.

14. The parties agree that the subsequent filing of the MOU and/or Stipulation for Settlement is for settlement purposes only and if, for any reason, the settlement is not approved, the Stipulation for Settlement and this MOU will be of no force or effect in a contested matter.
15. The parties agree that, upon approval of the settlement, the Class Claims will be dismissed without prejudice, the PAGA claims will be dismissed with prejudice, and Plaintiff's individual claims shall be dismissed with prejudice according to the terms of the separate Confidential Individual Settlement Agreement. This dismissal will constitute a binding and final resolution of any and all claims by any Participating PAGA Members, as defined by the Release herein, and preclude any claims under PAGA for the PAGA period defined above.
16. This MOU may be signed in counterparts.
17. The parties intend that this MOU shall be fully enforceable and binding upon all parties, and that it shall be admissible and subject to disclosure in any proceeding to enforce its terms under Code of Civil Procedure section 664.6 and any other applicable statute or law, notwithstanding the mediation confidentiality provisions that otherwise might apply under federal and state law.

BLUE PACIFIC CONSTRUCTION INC. AND
SHAHRAM ELIHU

DATED: June 2, 2022

By



Shahram Elihu, individually and as
Chief Executive Officer

PALM ENGINEERING CONSTRUCTION
COMPANY INC.

DATED: June __, 2022

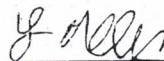
By

Rasoul Shahbazi, President

6/1/2022

DATED: June __, 2022

By



Lisa Allen

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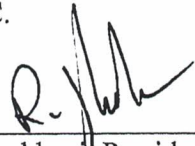
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BLUE PACIFIC CONSTRUCTION INC. AND
SHAHRAM ELIHU

DATED: June __, 2022

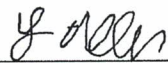
By _____
Shahram Elihu, individually and as
Chief Executive Officer
PALM ENGINEERING CONSTRUCTION
COMPANY INC.

DATED: June __, 2022

By  _____
Rasoul Shahbazi, President

6/1/2022

DATED: June __, 2022

By  _____
Lisa Allen

Counsel's agreement as to form:

Dated: June __, 2022

JOEL GLASER APC

By: 

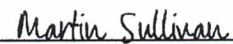
Joel P. Glaser

Attorneys for Defendants

6/1/2022

Dated: June __, 2022

SULLIVAN EMPLOYMENT LAW PC

By: 

Martin Sullivan

Attorneys for Plaintiff