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Attorneys for Plaintiff and the Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SOLANO

LOUIS WEYBREW, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

vs.

BEI CONSTRUCTION, INC.; and DOES 1
through 50, inclusive,

Defendants.

Case No.: FCS055658

[Assigned for all purposes to the Hon. E.
Bradley Nelson, Department 4]

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

Date: November 4, 2021
Time: 9:00 a.m.
Dept.: 4

Complaint Filed: November 10, 2020
FAC Filed: January 13, 2021
Trial Date: None Set

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I, Max W. Gavron, declare as follows:

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

CASE SUMMARY

2. On November 5, 2020, Plaintiff filed a notice with the Labor and Workforce Development Agency (“LWDA”) alleging that Defendant BEI Construction, Inc. (“Defendant”) violated Labor Code § 226(a), pursuant to Labor Code § 2699 (“PAGA notice”). The PAGA notice alleged that Defendant failed to identify the pay period start date on wage statements issued to employees.

3. On November 10, 2020, Plaintiff filed the initial complaint. The initial complaint alleged causes of action for (1) violation of Labor Code § 226(a) and (2) violation of Labor Code § 2698, *et seq.*

4. On or about December 4, 2020, Defendant filed a notice with the LWDA asserting that it cured the defects identified in Plaintiff's PAGA notice. Specifically, Defendant stated that it revised its wage statements to include a "Period Start Date" to all employee wage statements and a "Department – Salary" under the "Earnings" column on wage statements issued to exempt employees. Defendant also stated that revised wage statements were sent to current and former non-union employees on December 3, 2020, via email and/or priority mail.

5. On January 4, 2021, the LWDA issued a decision on the cure dispute after briefing from both Parties. The LWDA determined that Defendant had not cured the violation of Labor Code 226(a)(6) for failure to include the inclusive pay period dates.

6. On January 12, 2021, Plaintiff filed a charge with the California Department of Fair Employment & Housing (“DFEH”), alleging claims for disability discrimination, retaliation, and wrongful termination.

7. On January 13, 2021, Plaintiff filed a first amended complaint, adding individual causes of action for disability discrimination in violation of the Fair Employment and Housing Act (“FEHA”), failure to engage in the interactive process in violation of the FEHA, failure to accommodate in violation of the FEHA, retaliation in violation of the FEHA, and wrongful termination in violation of public policy (the “FEHA Claims”). Plaintiff’s FEHA Claims have been separately settled through an Individual Settlement Agreement and Release, which contains a confidentiality provision.

8. The first amended complaint is the operative Complaint (“Complaint”). As alleged in the Complaint, Plaintiff seeks to represent the Class and other aggrieved employees. Plaintiff further seeks damages, penalties, interest, attorneys’ fees, and costs.

9. Following the filing of the complaint, the Parties engaged in formal and informal discovery. Defendant propounded requests for production of documents, interrogatories, and requests for admission, and Plaintiff responded. Defendant also produced documents including Plaintiff's personnel file, wage statements, and copies of Defendant's employment policies in addition to quantitative information regarding the number of putative class members and wage statements issued. This information allowed me to conduct a full damage analysis.

MEDIATION

10. After Plaintiff filed the operative Complaint, the Parties agreed to attempt mediation of Plaintiff's claims. On May 24, 2021, the Parties engaged in an all-day mediation session with neutral Steven J. Serratore, Esq. After the exchange of data and materials and extended negotiations, on June 28, 2021, the Parties reached an agreement in principle with the assistance of the mediator. The Parties agreement is detailed in the attached Joint Stipulation of Class Action Settlement.

SUMMARY OF THE SETTLEMENT TERMS

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

12. The proposed class consists of “all current and former employees of Defendant

1 in the State of California who earned wages at any time between May 16, 2019 through
2 December 4, 2020.” See Settlement Agreement ¶ 3. Class Members do not need to do anything
3 should they wish to receive their share of the settlement funds. If a Class Member does not
4 wish to take part in this settlement and be bound by the release, he or she must submit an
5 exclusion request. *Id.* ¶ 63.

6 13. The Settlement Agreement provides for Four Hundred Eighty-Five Thousand
7 Dollars (\$485,000.00) as the Gross Settlement Amount. *Id.* ¶ 16. The Net Settlement Amount,
8 calculated after deduction of attorneys’ fees, costs, Class Representative Enhancement
9 Payment, payment to the LWDA, and Settlement Administration Costs, shall be distributed to
10 Participating Class Members. Participating Class Members who do not opt-out of the
11 settlement will be awarded a portion of the Net Settlement Amount on a pro-rata basis, based
12 upon the number of pay periods each respective Participating Class Member worked during the
13 Class Period.

14 14. As part of the Settlement Agreement, Defendant does not object to Plaintiff’s
15 Counsel’s request for attorney’s fees up to one-third of the Gross Settlement Amount—*i.e.*, the
16 sum of One Hundred Sixty-One Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven
17 Cents (\$161,666.67), plus up to Twenty-Five Thousand Dollars (\$25,000.00) for
18 reimbursement of litigation costs. *Id.* ¶ 47. Also, as part of the Settlement Agreement
19 Defendant does not object to Plaintiff’s request for an enhancement payment of Ten Thousand
20 Dollars (\$10,000.00). *Id.* ¶ 48.

21 15. Finally, the Settlement Agreement provides for the payment of the Settlement
22 Administrator for the administration of this current settlement. The Parties have received a
23 quote from Phoenix Settlement Administrators for a fee of approximately Nine Thousand Five
24 Hundred Dollars (\$9,500.00) to administer the settlement. *Id.* ¶ 49.

25 16. After deducting the amounts listed above, it is estimated that the Net Settlement
26 Amount of \$256,333.33 will be distributed to the Class.

27 **POTENTIAL STATUTORY AND CIVIL PENALTIES**

28 17. I negotiated the settlement sum based on a clear understanding of the maximum

1 exposure in this case. Based on the number of Class Members (558) and pay periods at issue
2 (16,717), the total maximum potential class and PAGA penalties are approximately \$5.77
3 million. Of this amount, the maximum potential Labor Code section 226(e) penalties is
4 approximately \$1.6 million (16,717 pay periods x \$100 – (558 class members x \$50)). This
5 exposure assumes that the Court would find that the Class suffered “injury” as a result of the
6 alleged violations, and that the violations were “knowing and intentional.” As explained above,
7 Defendant disputes that Plaintiff can establish either on a class-wide basis.

8 18. The maximum potential PAGA penalties are approximately \$4.17 million. I
9 calculated the PAGA penalties using the civil penalty set forth in Labor Code section 226.3.
10 See Cal. Lab. Code § 226.3 (an employer who violates Labor Code section 226(a) “shall be
11 subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per
12 violation in an initial citation”). However, the trial court has the discretion to reduce PAGA
13 civil penalties “if, based on the facts and circumstances of the particular case, to do otherwise
14 would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” See Cal.
15 Labor Code § 2699(e)(2). Thus, the \$4.17 million figure does not factor in the likelihood that
16 the Court would greatly reduce the amount of penalties at trial.

17 19. Under the facts of this case, I appreciate the risk that Defendant could present a
18 persuasive argument to reduce the amount of PAGA penalties at trial. For example, in *Fleming*
19 *v. Covidien, Inc.*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. Aug. 12, 2011), while the plaintiff
20 ultimately prevailed in a PAGA trial predicated on a violation of Labor Code section 226(a),
21 *i.e.*, inaccurate wage statements, the Court assessed only 17% of the maximum penalties— and
22 this was after finding liability at trial. Similarly, Judge Carville of the Alameda Superior Court
23 in the matter of *Parr v. Golden State Overnight*, Alameda Superior Court Case No.
24 RG12618103, assessed PAGA penalties upon Defendant of approximately 7% of the total
25 maximum penalties—again, this was only after plaintiff had prevailed at trial. In one recent
26 California Court of Appeal case, a trial court’s reduction of PAGA penalties by 90% was
27 upheld. *Carrington v. Starbucks*, 30 Cal. App. 5th 504, 529 (2018).

28 20. Further, Defendant raised several defenses that presented risk, including that its

1 wage statements complied with Labor Code § 226(a), that employees did not suffer any injury
2 as defined by Labor Code § 226(e), and, even if its wage statements did not comply, it did not
3 issue them “knowingly and intentionally.”

4 21. Assuming that the Court assessed PAGA penalties of approximately 10% of the
5 total maximum, the PAGA penalties at issue would be roughly \$417,000.

6 22. Here, the Gross Settlement Amount is fair and reasonable as it is approximately
7 8.4% of the potential recovery of Plaintiff’s class and PAGA claims if Plaintiff was to fully
8 succeed at trial.

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

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

16 24. From the inception of the case, Class Counsel has zealously represented the
17 interests of the Class. The settlement was obtained for the benefit of the Class, as opposed to
18 the individual Class Representative.

19 25. The Settlement Agreement calls for the Net Settlement Amount (calculated after
20 deduction of attorneys’ fees, costs, Class Representative Enhancement Payment, LWDA
21 payment, and Settlement Administration Costs) to be paid to all Class Members. Based on an
22 estimated Net Settlement Amount of \$256,333.33, Class Members will be entitled to recover,
23 based on a raw average, approximately \$459.38.

24 26. The amount any Class Member will be entitled to recover will be greater or
25 lower, depending on the number of pay periods each respective Participating Class Member
26 worked during the Class Period, with some entitled to receive more, and others less. This is
27 fair, as it directly allocates greater recovery to individual Class Members who have allegedly
28 suffered greater harm. The amount may also vary depending on the number of timely Requests

1 for Exclusion received by the Settlement Administrator.

2 27. Additionally, the scope of the release is appropriately limited. As a condition of
3 participating in this settlement, Class Members release “a. All claims, including penalties,
4 costs, and attorneys’ fees related thereto, that could have been brought under the facts and
5 allegations made in the operative Complaint, for violation of Labor Code section 226 that
6 accrued from May 16, 2019 through December 4, 2020; b. All claims for penalties under the
7 California Labor Code Private Attorneys General Act of 2004, including costs and attorneys’
8 fees related thereto, predicated on the violation of Labor Code section 226 based on the facts
9 as alleged in the operative Complaint that accrued from May 16, 2019 through December 4,
10 2020.” Settlement Agreement ¶¶ 25, 73. This release is appropriately limited, as it only applies
11 during the time period of May 19, 2019 through December 4, 2020.

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

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

22 **ATTORNEY EXPERIENCE**

23 30. Class Counsel has a great deal of experience in wage and hour class action
24 litigation and has been approved as class counsel in a number of class actions. My co-counsel
25 and I can and will adequately represent the Class Members in this action. I have no conflicts
26 with the Class and will adequately represent the Class.

27 31. I have spent significant time researching and pursuing the claims that have been
28 alleged in this action. Based on my review of all the information, and based on my experience

1 in class action litigation, I believe this settlement to be fair, adequate, and reasonable.

2 32. Any remaining monies from uncashed settlement checks will be distributed to
3 Legal Aid at Work. Plaintiff's counsel does not have any relationship or connection with or to
4 Legal Aid at Work.

5 33. I am one of the primary attorneys on this matter. My qualifications are as
6 follows: I received a full-tuition scholarship, and graduated from Southwestern Law School in
7 2013, magna cum laude. I was in the top 5% of my class. During my time at Southwestern, I
8 was a Notes and Comments Editor on the Southwestern Law Review. I also received awards
9 for achieving the highest grade in my class in several courses. In 2012, I was a full-time extern,
10 at the United States District Court for the Central District. Immediately after law school, I
11 taught several courses at Southwestern, including Principles of Legal Analysis and Legal
12 Methods. I taught those courses for approximately four years.

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

18 35. From February 2016, through Fall 2017, I practiced at the international law firm
19 of Arnold & Porter, which had recently merged with Kaye Scholer, LLP. I defended Fortune
20 50 companies in Multi-District Litigation primarily in the product liability sphere. I also
21 successfully drafted an appellate brief in the Ninth Circuit resulting in the reversal of a
22 summary judgment decision regarding trade secret issues, in addition to working in several
23 other practice groups.

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

28 37. I am currently an associate at the law firm Diversity Law Group, P.C., an

1 employment law firm that has handled numerous wage and hour class and individual actions,
2 on both plaintiff and defense sides. My current practice focuses on employment matters
3 involving both class actions, and single plaintiffs. The firm currently has cases in the Los
4 Angeles Superior Courts, the Orange County Superior Courts, the San Diego County Superior
5 Courts, and the United States District Courts for the Central, Northern, and Eastern Districts of
6 California. I am currently handling numerous wage and hour class action lawsuits with the
7 firm, including, but not limited to: *Agar v. Sensient Natural Ingredients, LLC* (Case No. CV-
8 19-001906, Stanislaus County Superior Court); *Cunningham, et al. v. Diverse Business*
9 *Solutions* (Case No. CIVDS1817095, San Bernardino County Superior Court); *Heredia v.*
10 *Eddie Bauer LLC* (Case No. 16CV300475, United States District Court, Northern District of
11 California); *Parsons v. Estenson Logistics, LLC* (Case No. 34-2019-00252929, Sacramento
12 County Superior Court); and *Coronel v. Pinnacle Agriculture* (Case No. 18CV004287,
13 Monterey County Superior Court).

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

18 39. I have also assisted the firm in numerous wage and hour class action mediations.

19 40. My co-counsel and I will adequately represent the Class Members in this action.
20 Plaintiff's counsel have and will zealously represent Plaintiff and the Class and pursue this
21 lawsuit to its conclusion.

22 41. I have no conflicts with the Class and will adequately represent the Class.

23 42. Attached as **Exhibit A** is a true and correct copy of the signed Settlement
24 Agreement in this matter. A copy of the proposed notice to be sent to Class Members is
25 attached to the Stipulation as **Exhibit A to the Settlement Agreement**.

26 **NOTICE TO THE LWDA**

27 43. Concurrent with the filing of the Motion for Preliminary Approval of Class
28 Action Settlement, my office uploaded the Motion and Settlement Agreement to the LWDA's

1 website.

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

4 Executed on this 15th day of September, 2021, at Los Angeles, California.

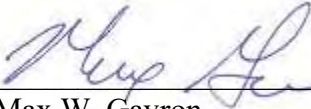
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EXHIBIT A

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Attorneys for Defendant
BEI CONSTRUCTION, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SOLANO

LOUIS WEYBREW, as an individual and on
 behalf of all others similarly situated,

Plaintiffs,

vs.

BEI CONSTRUCTION, INC.; and DOES 1
 through 50, inclusive,

Defendants.

Case No.: FCS055658

[Assigned for all purposes to the Hon. E.
 Bradley Nelson, Department 4]

**JOINT STIPULATION OF CLASS
 ACTION SETTLEMENT**

Complaint Filed: November 10, 2020
 FAC Filed: January 13, 2021

1 **JOINT STIPULATION OF CLASS ACTION SETTLEMENT**

2 This Joint Stipulation of Class Action Settlement is made and entered into by and
3 between Plaintiff Louis Weybrew ("Weybrew" or "Plaintiff") as an individual and on behalf
4 of all others similarly situated and Defendant BEI Construction, Inc. ("BEI" or "Defendant")
5 (together with Plaintiff, the "Parties").

6 **DEFINITIONS**

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

9 1. "Action" means *Louis Weybrew v. BEI Construction, Inc.*, Case No. FCS055658
10 (filed on November 10, 2020).

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

13 3. "Class" or "Class Member(s)" means all current and former employees of
14 Defendant in the State of California who earned wages at any time between May 16, 2019
15 through December 4, 2020. Defendant has represented that the Class Members worked
16 16,717 pay periods during the Class Period.

17 4. "Class Counsel" means Howard L. Magee, Larry W. Lee, and Max W. Gayron
18 of Diversity Law Group, P.C. and William L. Marder of Polaris Law Group.

19 5. "Class Counsel Award" means such award of fees and costs and expenses as the
20 Court may authorize to be paid to Class Counsel for the services they have rendered and will
21 render to Plaintiff and the Class in the Action. Defendant agrees not to oppose Class Counsel
22 Award of up to one-third (1/3) of the Gross Settlement Amount (\$485,000.00), i.e. the sum of
23 One Hundred Sixty-One Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents
24 (\$161,666.67), and costs in the amount of up to Twenty-Five Thousand Dollars (\$25,000.00),
25 subject to the Court finally approving this Settlement. Any portion of the Class Counsel Award
26 not awarded to Class Counsel shall be added to the Net Settlement Amount.

27 6. "Class List and Data" means information regarding all Class Members that
28 Defendant will diligently and in good faith compile from its records and provide to the

1 Settlement Administrator after Preliminary Approval of this Settlement. The Class List shall be
2 formatted as a Microsoft Excel spreadsheet or equivalent and shall include each Class
3 Member's: full name; employee number; most recent mailing address; Social Security
4 Number; number of pay periods worked during the period of May 16, 2019 through December
5 4, 2020.

6 7. "Class Period" means the period from May 16, 2019 through December 4, 2020.

7 8. "Class Representative" or "Plaintiff" means Plaintiff Louis Weybrew.

8 9. "Class Representative Enhancement Payment" means the amount that the Court
9 authorizes to be paid to Plaintiff, in recognition of his efforts and risks in assisting with the
10 prosecution of the Action. Subject to the Court granting final approval, the Parties agree that
11 Plaintiff shall be paid up to Ten Thousand Dollars (\$10,000.00) from the Gross Settlement
12 Amount.

13 10. "Complaint" means the operative First Amended Class Action Complaint filed
14 by Plaintiff Louis Weybrew in this Action.

15 11. "Counsel for Defendant" or "Defense Counsel" means Katherine S. Catlos and
16 Kartikey A. Pradhan of the law firm Kauman Dolowich & Voluck, LLP.

17 12. "Court" means the Superior Court of the State of California, County of Solano,
18 or any other court taking jurisdiction of the Action.

19 13. "Defendant" means Defendant BEI Construction, Inc.

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

27 15. "Final Approval" means that the Final Approval Order has been entered by the
28 Court.

1 16. "Gross Settlement Amount" means the maximum settlement amount of Four
2 Hundred Eighty-Five Thousand Dollars (\$485,000.00) to be paid by Defendant as a result of
3 this Stipulation. The Gross Settlement Amount includes all Individual Settlement Payments to
4 Participating Class Members, the Class Representative Enhancement Payment to Plaintiff,
5 Settlement Administration Costs to the Settlement Administrator, the PAGA Payment
6 (including LWDA payment), interest, and Class Counsel Award.

7 17. "Individual Settlement Payment" means the amount payable from the Net
8 Settlement Amount to each Participating Class Member.

9 18. "Net Settlement Amount" means the balance of the Gross Settlement Amount
10 remaining after deduction of the approved Class Representative Enhancement Payment,
11 Settlement Administration Costs, the LWDA portion of the PAGA Payment, and Class
12 Counsel Award. The entire Net Settlement Amount is the maximum amount that will be
13 available for distribution to Participating Class Members.

14 19. "Notice of Objection" means a Class Member's written objection to the
15 Settlement. A valid Notice of Objection should include: (a) the objector's full name, signature,
16 address, and telephone number; (b) a written statement of basis for the objection; and (c) any
17 copies of papers, briefs, or documents upon which the objection is based. The Notice of
18 Objection must be returned by mail to the Settlement Administrator at the specified address
19 indicated in the Notice Packet and should be postmarked on or before the Response Deadline.

20 20. "Notice Packet" means the Notice of Class Action Settlement, substantially in
21 the form attached as **Exhibit A**.

22 21. "PAGA Payment" means the portion of the Gross Settlement Amount that the
23 Parties have agreed will be allocated to resolve all claims, penalties, and remedies under the
24 Private Attorneys General Act of 2004 (Cal. Lab. Code section 2698, *et seq.*, "PAGA"). The
25 amount of the PAGA Payment is subject to Court approval pursuant to California Labor Code
26 section 2699(l). The Parties have agreed that Thirty Thousand Dollars (\$30,000.00) of the
27 Gross Settlement Amount shall be allocated to the resolution of any Class Members' claims
28 arising under PAGA. Pursuant to the PAGA, seventy-five percent (75%), *i.e.* the sum of

1 Twenty-Two Thousand Five Hundred Dollars (\$22,500.00), of the PAGA Payment shall be
2 paid to the California Labor and Workforce Development Agency ("LWDA"), and 25%, *i.e.*
3 the sum of Seven Thousand Five Hundred Dollars (\$7,500.00), of the PAGA Payment shall be
4 part of the Net Settlement Amount to be distributed to Participating Class Members. This
5 settlement will be forwarded to the LWDA by Class Counsel or the Settlement Administrator
6 and any reallocation of settlement proceeds to increase the PAGA payment will not constitute
7 grounds by either party to void this Agreement, so long as the Gross Settlement Amount
8 remains the same.

9 22. "Parties" means Plaintiff, on behalf of himself and Participating Class Members,
10 and Defendant collectively.

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

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

15 25. "Released Claims" means the following:

- 16 a. All claims, including penalties, costs, and attorneys' fees related thereto,
17 that could have been brought under the facts and allegations made in the
18 operative Complaint, for violation of Labor Code section 226 that
19 accrued from May 16, 2019 through December 4, 2020;
- 20 b. All claims for penalties under the California Labor Code Private
21 Attorneys General Act of 2004, including costs and attorneys' fees
22 related thereto, predicated on the violation of Labor Code section 226
23 based on the facts as alleged in the operative Complaint that accrued from
24 May 16, 2019 through December 4, 2020.

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

1 representatives.

2 27. "Request for Exclusion" means a valid, timely, written request by a Class
3 Member indicating a request to be excluded from the Settlement. The Request for Exclusion
4 must: (a) clearly state that the Class Member does not wish to be included in the Settlement;
5 (b) set forth the name, address, telephone number and last four digits of the Social Security
6 Number of the Class Member requesting exclusion; (c) be signed by the Class Member; (d) be
7 returned by mail to the Settlement Administrator at the specified address indicated in the
8 Notice Packet; and (e) be postmarked on or before the Response Deadline.

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

12 29. "Settlement" means the agreement among the Parties to resolve the Action, as set
13 forth in this Stipulation.

14 30. "Settlement Administrator" means Phoenix Settlement Administrators. The
15 Parties each represent that they do not have any financial interest in the Settlement
16 Administrator or otherwise have a relationship with the Settlement Administrator that could
17 create a conflict of interest.

18 31. "Settlement Administration Costs" means the fees and expenses reasonably
19 incurred by the Settlement Administrator as a result of the procedures and processes expressly
20 required by this Agreement, which are estimated at Nine Thousand Five Hundred Dollars
21 (\$9,500.00). Any portion of the Settlement Administration Costs not used or approved by the
22 Court shall be added to the Net Settlement Amount.

23 32. "Settlement Payment Check" means the payment to Participating Class Members
24 pursuant to this Settlement who do not submit a valid Request for Exclusion from the
25 Settlement, which shall be mailed ten (10) calendar days after receipt of funds from Defendant
26 as set forth in Paragraph 68.

27 **RECITALS**

28 33. This Settlement is made and entered into by and between Plaintiff and

1 Defendant, and is subject to the terms and conditions hereof, and to the Court's approval. The
2 Parties expressly acknowledge that this Agreement is entered into solely for the purpose of
3 compromising significantly disputed claims and that nothing herein is an admission of liability
4 or wrongdoing by Defendant. Defendant denies that it is liable to Plaintiff or the Class
5 Members and denies that it has violated any law.

6 34. On November 5, 2020, Plaintiff filed a notice with the Labor and Workforce
7 Development Agency ("LWDA") alleging that Defendant violated Labor Code section
8 226(a), pursuant to Labor Code section 2699 ("PAGA notice"). The PAGA notice alleged
9 that Defendant failed to identify the pay period start date on wage statements issued to
10 employees.

11 35. On November 10, 2020, Plaintiff filed the initial complaint. The initial
12 complaint alleges causes of action for (1) violation of Labor Code section 226(a) and (2)
13 violation of Labor Code section 2698 *et seq.*

14 36. On or about December 4, 2020, Defendant filed a notice with the LWDA,
15 asserting that it cured the defects identified in Plaintiff's PAGA notice. Specifically,
16 Defendant stated that it revised its wage statements to include a "Period Start Date" to all
17 employee wage statements and a "Department – Salary" under the "Earnings" column on
18 wage statements issued to exempt employees. The revised wage statements were sent to
19 current and former non-union employees on December 3, 2020, via email and/or priority
20 mail.

21 37. On December 18, 2020, Plaintiff filed a response to Defendant's cure notice.

22 38. On or about December 28, 2020, Defendant filed a reply and declaration to
23 Plaintiff's cure response.

24 39. On January 4, 2021, the LWDA issued a decision on the cure dispute. The
25 LWDA determined that Defendant had not cured the violation of Labor Code 226(a)(6) for
26 failure to include the inclusive pay period dates.

27 40. On January 12, 2021, Plaintiff filed a charge with the California Department of
28 Fair Employment & Housing ("DFEH"), alleging claims for disability discrimination,

1 retaliation, and wrongful termination.

2 41. On January 13, 2021, Plaintiff filed a first amended complaint, adding
3 individual causes of action for disability discrimination in violation of the Fair Employment
4 and Housing Act ("FEHA"), failure to engage in the interactive process in violation of the
5 FEHA, failure to accommodate in violation of the FEHA, retaliation in violation of the
6 FEHA, and wrongful termination in violation of public policy (the "FEHA Claims").
7 Plaintiff's FEHA Claims have been separately settled through an Individual Settlement
8 Agreement and Release, which contains a confidentiality provision. The first amended
9 complaint is the operative Complaint ("Complaint"). As alleged in the Complaint, Plaintiff
10 seeks to represent the Class and other aggrieved employees. Plaintiff further seeks damages,
11 penalties, interest, attorneys' fees, and costs.

12 42. After Plaintiff filed the operative Complaint, the Parties agreed to participate in
13 private mediation. In connection with the mediation, Defendant produced documents for
14 Plaintiff's review, including Plaintiff's personnel file, employee handbook, and copies of
15 reissued wage statements to putative Class Members. Defendant also produced data relating to
16 the number of Class Members and wage statements issued to each Class Member, which
17 allowed Plaintiff to conduct a full damage analysis.

18 43. On May 24, 2021, the Parties engaged in an all-day mediation session with
19 neutral Steven J. Serratore, Esq. After the exchange of data and materials and extended
20 negotiations, on June 28, 2021, Plaintiff and Defendant reached a class-wide settlement
21 agreement that resulted from arm's length negotiations that included the mediation session. In
22 sum, Plaintiff and his counsel had sufficient information to assess this Action.

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

27 **TERMS OF AGREEMENT**

28 45. Settlement Consideration. Defendant shall pay the sum of the Gross Settlement

1 Amount of Four Hundred Eighty-Five Thousand Dollars (\$485,000.00) as specified in this
2 Agreement in full satisfaction of all claims arising from the Action, which shall be used to pay:
3 (1) Individual Settlement Payments; (2) Class Counsel Award; (3) Class Representative
4 Enhancement Payment; (4) Settlement Administration Costs to the Settlement Administrator;
5 and (5) the PAGA Payment (including LWDA payment). The Parties agree that this is a non-
6 reversionary Settlement and that no portion of the Gross Settlement Amount shall revert to
7 Defendant, except in the event of rescission pursuant to Section 66 of this Agreement. In no
8 event shall Defendant be required to pay more than the Gross Settlement Amount as specified
9 in this Agreement.

10 46. Funding of the Gross Settlement Amount. Within fourteen (14) calendar days
11 after the Effective Date, Defendant shall make a one-time deposit of the Gross Settlement
12 Amount into a Qualified Settlement Fund ("QSF") to be established by the Settlement
13 Administrator. The QSF shall be an interest-bearing account at a federally-insured bank. The
14 Parties agree that the QSF is intended to be a "Qualified Settlement Fund" under Section 468B
15 of the Internal Revenue Code and Treas. Reg. § 1.468B-1, 26 C.F.R. § 1.468B-1, *et seq.*, and
16 will be administered by the Settlement Administrator as such. The Parties agree to cooperate
17 with the Settlement Administrator and one another to the extent reasonably necessary to carry
18 out the provisions of this Section.

19 47. Class Counsel Award. Defendant agrees not to oppose or impede any
20 application or motion by Class Counsel for attorneys' fees of up to one-third (1/3) of the Gross
21 Settlement Amount, i.e., the sum of One Hundred Sixty-One Thousand Six Hundred Sixty-Six
22 Dollars and Sixty-Seven Cents (\$161,666.67), and costs in the amount of up to Twenty-Five
23 Thousand Dollars (\$25,000.00), which shall be paid from the Gross Settlement Amount. The
24 Settlement Administrator shall issue an IRS Form 1099 to Class Counsel reflecting the
25 awarded attorneys' fees, costs and expenses. Any portion of the Class Counsel Award not
26 awarded to Class Counsel shall be added to the Net Settlement Amount and shall be distributed
27 to Class Members as provided in this Agreement.

28 48. Class Representative Enhancement Payment. Defendant agrees not to oppose or

1 impede any application or motion by Plaintiff for a Class Representative Enhancement
2 Payment of up to Ten Thousand Dollars (\$10,000.00) to Plaintiff. The Class Representative
3 Enhancement Payment shall be paid from the Gross Settlement Amount, and shall be paid in
4 addition to Plaintiff's Individual Settlement Payment as a Participating Class Member. The
5 Settlement Administrator shall issue an IRS Form 1099 to Plaintiff reflecting the Class
6 Representative Enhancement Payment. Plaintiff shall be solely and legally responsible to pay
7 any and all applicable taxes on his Class Representative Enhancement Payment and shall
8 hold harmless Defendant from any claim or liability for taxes, penalties, or interest arising as
9 a result of the Class Representative Enhancement Payment. Any portion of the Class
10 Representative Enhancement Payment not awarded to Plaintiff shall be added to the Net
11 Settlement Amount and shall be distributed to Class Members as provided in this Agreement.

12 49. Settlement Administration Costs. The Settlement Administrator shall be paid for
13 the reasonable costs of administration of the Settlement from the Gross Settlement Amount,
14 currently estimated at Nine Thousand Five Hundred Dollars (\$9,500.00). These costs, which
15 shall be paid from the Gross Settlement Amount, shall include, *inter alia*, the required tax
16 reporting on the Individual Settlement Payments, the issuing of 1099 IRS Forms, establishing a
17 Qualified Settlement Fund, administering and distributing the Gross Settlement Amount and
18 Class Counsel Award, and providing necessary reports and declarations. Any portion of the
19 Settlement Administration Costs not allowed shall be added to the Net Settlement Amount and
20 shall be distributed to Class Members as provided in this Agreement.

21 50. PAGA Payment. Subject to Court approval, the Parties agree that the amount of
22 Thirty Thousand Dollars (\$30,000.00) of the Gross Settlement Amount shall be designated for
23 satisfaction of claims for civil penalties under the PAGA. The Settlement Administration shall
24 pay seventy-five percent (75%) of the PAGA payment, i.e. the sum of Twenty-Two Thousand
25 Five Hundred Dollars (\$22,500.00), to the LWDA. The remaining twenty-five percent (25%),
26 i.e., the sum of Seven Thousand Five Hundred Dollars (\$7,500.00), shall be part of the Net
27 Settlement Amount to be distributed to Participating Class Members as per this Agreement.

28 51. Calculation of Individual Settlement Payments. The Net Settlement Amount

1 shall be used to satisfy Individual Settlement Payments to Participating Class Members from
2 the Settlement Class in accordance with the terms of this Agreement. The Settlement
3 Administrator will allocate the Individual Settlement Payments by distributing the Net
4 Settlement Amount to the Class on a pro-rata basis. The Net Settlement Amount will be
5 divided by the total number of pay periods for all Class Members during the Class Period,
6 which will result in the "Pay Period Value." The Pay Period Value will be multiplied by the
7 number of pay periods each Class Member worked during the Class Period. Participating
8 Class Members are entitled to 100% of the Net Settlement Amount. Defendant maintains no
9 reversionary right to any portion of the Net Settlement Amount. If there are any timely
10 submitted Requests for Exclusion, the Settlement Administrator shall proportionately
11 increase the Individual Settlement Payments for each Participating Class Member so that the
12 amount actually distributed to Participating Class Members equals 100% of the Net
13 Settlement Amount.

14 52. Tax Treatment. One hundred percent (100%) of each Individual Settlement
15 Payment shall be allocated as payment for alleged unpaid civil and statutory penalties. The
16 portions allocated to interest and penalties shall be reported on an IRS Form-1099. The
17 Enhancement Payment shall be reported on an IRS Form-1099. Defendant makes no
18 representation as to the tax treatment or legal effect of the payments called for in this
19 Agreement, and Plaintiff and Participating Class Members are not relying on any statement,
20 representation, or calculation by Defendant. Plaintiff and Participating Class Members
21 understand and agree that they will be solely responsible for the payment of any taxes and
22 penalties assessed on the payments described herein. Plaintiff, Class Counsel, and
23 Participating Class Members shall be solely and legally responsible for correctly
24 characterizing the payments they receive pursuant to this Agreement for tax purposes and for
25 paying any taxes on the amounts received.

26 53. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
27 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH
28 PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN

1 “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF
2 THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE
3 BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER
4 ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
5 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
6 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
7 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED);
8 (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS OR
9 ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING
10 TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED
11 INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER
12 PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT
13 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
14 ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY
15 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
16 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
17 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR
18 ADVISER’S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS
19 LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF
20 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING
21 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

22 54. Issuance of Tax Forms. The Settlement Administrator shall be responsible for
23 issuing to Plaintiff, Participating Class Members, and Class Counsel any 1099 or other tax
24 forms as may be required by law for all amounts paid pursuant to this Agreement. All
25 expenses and costs incurred by, or at the direction of, the Settlement Administrator in
26 connection with the operation and implementation of this Settlement Agreement (including,
27 without limitation, expenses of tax attorneys and/or accountants and mailing and distribution
28 costs and expenses relating to filing or failing to file the informational and other tax returns

described in this Agreement) shall be treated as, and considered to be, costs of administration of this Settlement and thus part of the Administration Costs.

55. Calculation of Gross Settlement Amount. The Gross Settlement Amount was calculated with, and is premised on, Defendant's representation that Class Members worked 16,717 pay periods during the Class Period. If the number of pay periods during the Class Period increases, the Gross Settlement Amount shall be proportionally increased by the same percentage. For example, if the number of pay periods worked during the Class Period increases by 1%, so too shall the Gross Settlement amount increase by 1%.

56. No Credit Toward Benefit Plans. The Individual Settlement Payments made to Participating Class Members under this Agreement, the Enhancement Payment made to Plaintiff, as well as any other payments made pursuant to this Agreement, shall not be utilized to calculate any additional benefits under any benefit plans to which Plaintiff or any Class Members may be eligible, including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plans. Rather, it is the Parties' intention that this Settlement will not affect any rights, contributions, or amounts to which any Class Members may be entitled under any benefit plans. The Parties agree that any Individual Settlement Payment or the Class Representative Enhancement Payment paid to Participating Class Members or Plaintiff under the terms of this Agreement do not represent any modification of Participating Class Members' or Plaintiff's previously credited hours of service or other eligibility criteria under any employee pension benefit plan, employee welfare benefit plan, or any other plan or program, sponsored by Defendant. Further, any Individual Settlement Payments or the Class Representative Enhancement Payment paid hereunder shall not be considered "compensation" in any year for purposes of determining eligibility for, or benefit accrual within, an employee pension benefit plan, employee welfare benefit plan, or any other plan or program sponsored by Defendant.

57. Settlement Administration Process. The Parties agree to cooperate in the administration of the Settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in the administration of the Settlement. The Settlement

1 Administrator shall provide the following services: (a) calculate each Class Member's
2 potential Individual Settlement Payment from the Net Settlement Amount and applicable
3 withholdings; (b) prepare and mail the Notice of Settlement; (c) take appropriate steps to
4 trace, update and locate any Class Member whose address or contact information as provided
5 to the Settlement Administrator is inaccurate or outdated; (d) provide to Class Counsel and
6 Defendant's counsel a weekly report of the progress and completion of tasks identified in
7 this Agreement; (e) establish and maintain prior to disbursement all settlement funds in a
8 qualified settlement fund; (f) issue and distribute all payments provided for in this
9 Agreement, including the Individual Settlement Payments; and (g) report the payments made
10 pursuant to this Agreement as required on a Form 1099 or other applicable forms.

11 58. Delivery of the Class List and Data. Within fifteen (15) calendar days of
12 Preliminary Approval, Defendant shall provide the Class List and Data to the Settlement
13 Administrator.

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

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

21 61. Notice Packets. All Class Members will be mailed a Notice Packet. Each Notice
22 Packet will provide: (1) information regarding the nature of the Action; (2) a summary of the
23 Settlement's principal terms; (3) the Class definition; (4) each Class Member's estimated
24 Individual Settlement Payment and the formula for calculating Individual Settlement
25 Payments, if they do not request to be excluded; (5) the dates that comprise the Class Period;
26 (6) instructions on how to submit valid Requests for Exclusion or objections; (7) the deadlines
27 by which the Class Member must submit a Request for Exclusion or Notice of Objection to the
28 Settlement; (8) the date for the final approval hearing; and (9) the claims to be released. The

1 Notice Packet will also inform Class Members that, in order to receive the Individual
2 Settlement Payment, they do not need to do anything except keep the Settlement Administrator
3 apprised of their current mailing addresses.

4 62. Re-Mailing of Returned Notices. Any Notice Packets returned to the Settlement
5 Administrator as non-deliverable on or before the Response Deadline shall be re-sent promptly
6 via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement
7 Administrator shall indicate the date of such re-mailing on the Notice Packet. If no forwarding
8 address is provided, the Settlement Administrator shall promptly attempt to determine the
9 correct address using a skip-trace, or other search using the name, address and/or Social
10 Security Number of the Class Member involved, and shall then perform a re-mailing. Those
11 Class Members who receive a re-mailed Notice Packet shall have their Response Deadline
12 extended by up to fifteen (15) days from the original Response Deadline.

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

1 shall provide counsel for Defendant with a complete list of all Class Members who have timely
2 submitted an Exclusion Form.

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

8 65. Objection Procedures. Any Class Member who does not opt-out of this
9 Settlement shall be entitled to object to the Settlement. To object to the Settlement, a Class
10 Member should return by mail a written statement of objection to the Settlement Administrator
11 at the specified address by the Response Deadline. The Notice of Objection should include: (a)
12 the objector's full name, signature, address, and telephone number; (b) a written statement of
13 the basis for the objection; and (c) any copies of papers, briefs, or documents upon which the
14 objection is based. Class Members who submit a timely Notice of Objection will have the right
15 to appear at the final approval hearing to have their objections heard by the Court, at their own
16 expense. However, any Class Member who does not submit a Notice of Objection in
17 compliance with this section may nevertheless appear at the final approval hearing and present
18 an oral objection to the Settlement. Any Class Member who does not submit a Notice of
19 Objection in compliance with this section, or who does not appear at the final approval hearing
20 and present an oral objection to the Settlement, shall be deemed to have waived any
21 objection(s), shall be conclusively deemed a Participating Class Member, and shall be
22 precluded from making any objection (including by appeal or otherwise) to the Settlement. At
23 no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class
24 Members to submit written objections to the Settlement or appeal from the Order and
25 Judgment. Class Counsel shall not represent any Class Members with respect to any such
26 objections to this Settlement. Any Class Member who submits a valid Request for Exclusion
27 shall not be allowed to object to this Settlement.

28 66. Defendant's Right to Rescind. If more than five percent (5%) of the Class

Members opt out of the settlement by submitting valid and timely Requests for Exclusion, Defendant has the unilateral right in its sole discretion to rescind the Settlement Agreement. The Parties agree that they will not encourage any Class Member to object to the Settlement or to opt out. If Defendant exercises its option to rescind, Defendant shall: (a) provide written notice to Class Counsel at least ten (10) business days prior to the final approval hearing, provided Defendant has been provided notice of all such opt outs, and (b) pay all Settlement Administration Costs incurred by the Settlement Administrator up to the date of Defendant's notice to rescind. In the event the Settlement is terminated, the Parties shall proceed in all respects as if this Agreement had not been executed.

67. Settlement Administrator's Reports of Information. The Settlement Administrator shall provide Defense Counsel and Class Counsel a weekly report which certifies the number of Class Members who have submitted valid Requests for Exclusion. Additionally, the Settlement Administrator will provide to counsel for both Parties any updated reports regarding the administration of the Settlement as needed or requested. The Settlement Administrator shall also forward to Parties' counsel and file with the Court any Notices of Objection received immediately upon receipt. Further, if requested by Parties' counsel, the Settlement Administrator shall forward any Request for Exclusion to the Parties' counsel so that they can determine whether the Request for Exclusion is valid and timely.

68. Distribution Timing of Individual Settlement Payments. Within ten (10) calendar days of Defendant funding the Gross Settlement Amount, the Settlement Administrator shall issue payments to (1) Participating Class Members; (2) the Labor and Workforce Development Agency; (3) Plaintiff; and (4) Class Counsel. The Settlement Administrator shall also issue a payment to itself for services performed in connection with the Settlement.

69. Uncashed Settlement Payment Checks. Any checks issued by the Settlement Administrator to Class Members shall be negotiable for not less than one hundred and eighty (180) days from the date of their issuance. This is a non-reversionary settlement. All Individual Settlement Payments to Class Members that remain un-cashed within one hundred eighty (180)

1 days of the mailing of Settlement Payment Checks by the Settlement Administrator shall be
2 paid out pursuant to California Code of Civil Procedure section 384 to the following *cy pres*
3 recipient: Legal Aid at Work.

4 70. Certification of Completion. Upon completion of administration of the
5 Settlement, the Settlement Administrator shall provide a written declaration under oath to
6 certify such completion to the Court and counsel for all Parties.

7 71. Administration Costs if Settlement Fails or is Delayed. If an objection to the
8 Settlement is filed with the Court, regardless of the ultimate outcome of any appeals taken, or
9 if the Settlement is voided or rescinded, any costs incurred by the Settlement Administrator
10 shall be borne equally by Defendant and Plaintiff, unless otherwise specified in this
11 Agreement.

12 72. No Prior Assignments. The Parties and their counsel represent, covenant, and
13 warrant that they have not directly or indirectly assigned, transferred, encumbered, or
14 purported to assign, transfer, or encumber to any person or entity any portion of any liability,
15 claim, demand, action, cause of action or right herein released and discharged.

16 73. Release of Claims by Participating Class Members. Upon the Effective Date,
17 for and in consideration of the mutual promises, terms and conditions by and between the
18 Participating Class Members and Defendant set forth herein, the sufficiency of which
19 consideration is expressly acknowledged, the Participating Class Members do hereby fully,
20 finally and forever release and discharge the Released Parties from any and all Released
21 Claims. Nothing in this Agreement shall be construed to require Participating Class Members
22 to waive or release rights which may not be waived or released as a matter of applicable law.
23 This release is final and binding on all Participating Class Members.

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

28 75. Disputes Regarding Individual Settlement Payments. In the event that Class

1 Members have a dispute as to the data provided by the Defendant, Class Members will have
2 the opportunity to provide documentation and/or an explanation. If there is a dispute, the
3 Settlement Administrator will consult with the Parties to determine whether an adjustment is
4 warranted. The Settlement Administrator shall determine the eligibility for, and the amounts
5 of, any Individual Settlement Payments under the terms of this Agreement, and that
6 determination shall be binding.

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

12 77. Preliminary Approval Hearing. Plaintiff shall obtain a hearing before the Court
13 to request the Preliminary Approval of the Settlement, and the entry of a Preliminary Approval
14 Order: (i) approving of the proposed Settlement, and (ii) setting a date for a Final
15 Approval/Settlement Fairness Hearing. The Preliminary Approval Order shall provide for the
16 Notice Packet to be sent to all Class Members as specified herein. In conjunction with the
17 Preliminary Approval hearing, Plaintiff shall submit this Agreement, which sets forth the terms
18 of this Settlement, and will include the proposed Notice Packet, attached to this Agreement as
19 **Exhibit A**. If the Court declines to approve the Settlement or approves it conditional on
20 modifications to the settlement terms, the Parties shall work in good faith to modify the
21 settlement terms to obtain approval, provided that the material terms of the Settlement are not
22 affected.

23 78. Final Settlement Approval Hearing. Upon expiration of the deadlines to submit
24 Requests for Exclusion or Notices of Objections to the Settlement, and with the Court's
25 permission, a Final Approval/Settlement Fairness Hearing shall be conducted to determine the
26 Final Approval of the Settlement along with the amounts properly payable for: (i) Individual
27 Settlement Payments; (ii) the PAGA (including LWDA) Payment; (ii) the Class Counsel
28 Award; (iii) the Class Representative Enhancement Payment; and (iv) Settlement

1 Administration Costs. Class Counsel will be responsible for drafting all documents necessary
2 to obtain final approval. Class Counsel will also be responsible for drafting the attorneys' fees
3 and costs application to be heard at the Final Approval Hearing.

4 79. Entry of Judgment and Continued Jurisdiction of the Court. Concurrent with the
5 Motion for Final Approval, the Parties shall also jointly seek the entry of Judgment consistent
6 with the terms of this Agreement. After entry of the Judgment, the Court shall have continuing
7 jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the
8 terms of the Settlement, (ii) Settlement administration matters, and (iii) such post-Judgment
9 matters as may be appropriate under court rules or as set forth in this Agreement.

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

13 81. Confidentiality. The Parties and their counsel agree that they will not issue any
14 press releases, initiate any contact with the press, respond to any press inquiry or have any
15 communication with the press about the fact, amount or terms of the Settlement. In addition,
16 the Parties and their counsel agree that they will not engage in any advertising or distribute any
17 marketing materials relating to the Settlement of this case prior to preliminary approval,
18 including, but not limited to, any postings on any websites maintained by Class Counsel. Any
19 communication about the Settlement to Class Members prior to the court-approved mailing
20 will be limited to a statement that a settlement has been reached and the details will be
21 communicated in a forthcoming Court-approved notice. Notwithstanding anything to the
22 contrary in this paragraph or elsewhere in this Agreement, Defendant shall be permitted to
23 make such disclosures regarding this case and settlement as it deems necessary or appropriate
24 for purposes of corporate reporting, and/or complying with applicable securities laws and the
25 rules of the stock exchange on which shares are traded or as otherwise required by law.

26 82. Entire Agreement. This Agreement and any attached Exhibits and the Individual
27 Settlement Agreement and Release constitute the entirety of the Parties' Settlement terms. No
28 other prior or contemporaneous written or oral negotiations or agreements may be deemed

1 binding on the Parties.

2 83. Disputes Regarding Language of Final Settlement Agreement. If the Parties
3 have a dispute with regard to the language of the Agreement, the Parties agree to informally
4 resolve the dispute by engaging Steven J. Serratore, Esq. to mediate such dispute.

5 84. Amendment or Modification. This Agreement may be amended or modified
6 only by a written instrument signed by the Parties or their successors-in-interest.

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

17 86. Binding on Successors and Assigns. This Agreement shall be binding upon, and
18 inure to the benefit of, the successors, heirs, or assigns of the Parties hereto, as previously
19 defined.

20 87. California Law Governs. All terms of this Agreement and Exhibits hereto shall
21 be governed by and interpreted according to the laws of the State of California.

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

27 89. Acknowledgement that the Settlement is Fair and Reasonable. The Parties
28 believe this Agreement is a fair, adequate and reasonable settlement of the Action and have

1 arrived at this Settlement after arm's-length negotiations, mediation, and in the context of
2 adversarial litigation, taking into account all relevant factors, present and potential. The Parties
3 further acknowledge that they are each represented by competent counsel and that they have
4 had an opportunity to consult with their counsel regarding the fairness and reasonableness of
5 this Agreement.

6 90. Invalidity of Any Provision. Before declaring any provision of this Agreement
7 invalid, the Court shall first attempt to construe the provision as valid to the fullest extent
8 possible consistent with applicable precedents so as to define all provisions of this Agreement
9 valid and enforceable. Any invalid, illegal, or unenforceable provision determined by the Court
10 shall in no way affect any other provision if Defendant and Class Counsel, on behalf of the
11 Parties and the Settlement Class, mutually elect in writing to proceed as if such invalid, illegal,
12 or unenforceable provision had never been included in this Agreement.

13 91. Waiver of Certain Appeals. The Parties agree to waive appeals; except,
14 however, that Plaintiff or Class Counsel may appeal any reduction in the Class Counsel's
15 Award below the amount Class Counsel requests, and either Party may appeal any order that
16 materially alters the Agreement's terms.

17 92. Plaintiff's Waiver of Right to Be Excluded. Plaintiff agrees to sign this
18 Settlement Agreement and, by signing this Settlement Agreement, is hereby bound by the
19 terms herein. For good and valuable consideration, Plaintiff further agrees that he shall not
20 request to be excluded from the Settlement Agreement. Any such request for exclusion by
21 Plaintiff shall be void and of no force or effect. Efforts by Plaintiff to circumvent the terms of
22 this paragraph shall be void and of no force or effect.

23 93. Class Action Certification for Settlement Purposes Only. The Parties are
24 agreeing to class certification for settlement purposes only. This Agreement shall not
25 constitute, in this or any other proceeding, an admission of any kind by Defendant, including
26 without limitation, that certification of a class for trial or any other purpose is appropriate or
27 proper or that Plaintiff or any Class Member can establish any of the requisite elements for
28 class treatment of any of the claims in this Action. If, for any reason, the Settlement is not

1 finally approved, this Agreement will be void and the Parties will be restored to their
2 respective positions in the lawsuit as if they had not entered into this Agreement. The Parties
3 further agree that this Agreement, the final stipulation of Settlement, or any documents or
4 orders issued related to this Settlement will not be admissible, other than according to the
5 Settlement's terms, in this or any other proceeding as evidence that either: (i) a class action
6 should be certified, or (ii) Defendant is liable to Plaintiff or any Class Member.

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

22 95. Captions. The captions and section numbers in this Agreement are inserted for
23 the reader's convenience, and in no way define, limit, construe or describe the scope or intent
24 of the provisions of this Agreement.

25 96. Waiver. No waiver of any condition or covenant contained in this Agreement or
26 failure to exercise a right or remedy by any of the Parties hereto shall be considered to imply or
27 constitute a further waiver by such party of the same or any other condition, covenant, right or
28 remedy.

1 97. Enforcement Actions. In the event that one or more of the Parties institutes any
2 legal action or other proceeding against any other Party or Parties to enforce the provisions of
3 this Settlement, or to declare rights and/or obligations under this Settlement, the prevailing
4 Party or Parties shall be entitled to recover from the non-prevailing Party or Parties reasonable
5 attorneys' fees and costs, including expert witness fees incurred in connection with any
6 enforcement actions.

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

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

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

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

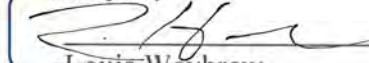
25 IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this
26 Joint Stipulation of Class Action Settlement and Release between Plaintiff and Defendant as
27 of the date(s) set forth below:

28 **READ CAREFULLY BEFORE SIGNING**

PLAINTIFF

Dated: 8/20/2021

DocuSigned by:


Louis Weybrew

DEFENDANT

BEI Construction, Inc.

Dated: _____

By: _____

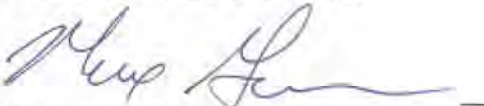
Its: _____

APPROVED AS TO FORM AND CONTENT

Dated: 8/20/21

DIVERSITY LAW GROUP, P.C.

By: _____



Howard L. Magee

Larry W. Lee

Max W. Gavron

Attorneys for Plaintiff and the Class

Dated: August 20, 2021

POLARIS LAW GROUP

By: _____



William L. Marder

Attorneys for Plaintiff and the Class

Dated: _____

KAUFMAN DOLOWICH & VOLUCK, LLP

By: _____

Katherine Catlos

Kartikey A. Pradhan

Attorneys for Defendant BEI Construction, Inc.

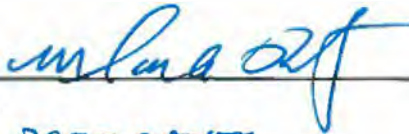
1
2 **PLAINTIFF**

3 Dated: _____

4 Louis Weybrew

5 **DEFENDANT**
6 **BEI Construction, Inc.**

7 Dated: AUGUST 31, 2021

8 
9 By: _____
10 Its: PRESIDENT

11 **APPROVED AS TO FORM AND CONTENT**

12 Dated: _____

13 **DIVERSITY LAW GROUP, P.C.**

14 By: _____
15 Howard L. Magee
16 Larry W. Lee
17 Max W. Gavron
18 Attorneys for Plaintiff and the Class

19 Dated: _____

20 **POLARIS LAW GROUP**

21 By: _____
22 William L. Marder
23 Attorneys for Plaintiff and the Class

24 Dated: September 3, 2021

25 **KAUFMAN DOLOWICH & VOLUCK, LLP**

26 By: /s/ Katherine S. Catlos
27 Katherine Catlos
28 Kartikey A. Pradhan
Attorneys for Defendant BEI Construction, Inc.

EXHIBIT A

Louis Weybrew v. BEI Construction, Inc.
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SOLANO
(CASE NO. FCS055658)

NOTICE OF CLASS ACTION SETTLEMENT (“NOTICE”)

IF YOU ARE A CURRENT OR FORMER CALIFORNIA EMPLOYEE OF BEI CONSTRUCTION, INC. (“BEI”) AND YOU:

EARNED WAGES AT ANY TIME FROM MAY 16, 2019 THROUGH DECEMBER 4, 2020

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

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

«BarcodeString»
SIMID «SIMID»

ATTN: «FirstName» «LastName»

«Address1» «Address2»

«City» «Abbrev» «Zip»

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

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT

You Can DO NOTHING	You will receive a payment from the settlement. If you do nothing, you continue your participation in this lawsuit, and you will be impacted by the outcome of this case. You will receive a settlement payment; however, you will lose any rights to sue BEI separately for the same legal claims made in the lawsuit. The estimated amount of your settlement payment is shown above. To receive your settlement payment, all you need to do is keep the Settlement Administrator informed of your current mailing address. Once the Court grants final approval of the settlement, the Settlement Administrator will mail your check to the address on file for you.
You Can ASK TO BE EXCLUDED FROM THE SETTLEMENT (Deadline: _____, 2021)	If you ask to be excluded from the settlement, you will get no payment from the settlement, but you will keep any rights to sue BEI separately for the same legal claims made in this lawsuit. Important: You cannot ask to be excluded <u>and</u> still get a settlement payment.
You Can OBJECT TO THE SETTLEMENT (Deadline: _____, 2021)	If you do not like the settlement, you can send a written objection to the Settlement Administrator by the deadline or personally appear at the final approval hearing. If your objection is overruled by the Court, you will still be bound by the terms of the settlement and will receive a settlement payment. Important: If you object to the settlement, you cannot also ask to be excluded.

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

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

1. Why Should You Read this Notice?

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

2. What is this Lawsuit About?

In the lawsuit, the Plaintiff alleges that BEI failed to provide accurate wage statements in violation of California Labor Code section 226(a). BEI denies the allegations in the lawsuit and denies it has engaged in any wrongdoing. BEI asserts that it complied with all legal requirements, but is resolving this action in order to avoid the risk and costs of further legal proceedings.

3. Why is this a Class Action?

This lawsuit is a class action. In a class action, one or more persons, called a class representative (in this case, Louis Weybrew), sue on behalf of people who allegedly have similar claims. All these people are a class or class members. One case resolves the issues for all class members, except for those who exclude themselves from the class. The Solano County Superior Court is in charge of the case. The lawsuit is known as *Louis Weybrew v. BEI Construction, Inc.*, Case No. FCS055658.

4. Why is There a Settlement?

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

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

The Court has decided that the following individuals are class members: all current and former employees of Defendant in the State of California who earned wages at any time between May 16, 2019 through December 4, 2020 (the “Class”). If you received this Notice you are a member of the Class.

6. What Does the Settlement Provide?

The proposed settlement provides for a cash payment by BEI in the amount of \$485,000.00 to fully and finally resolve all claims in the lawsuit (referred to as the “Gross Settlement Amount”). The total amount to be distributed to class members who can be located, and who do not exclude themselves from the settlement, will be the Gross Settlement Amount minus the following (the “Net Settlement Amount”): (a) settlement administration costs not to exceed \$9,500.00; (b) class representative enhancement award to Plaintiff not to exceed \$10,000.00 for his work and efforts in prosecuting this cases, and for undertaking the risks of costs (in the event the outcome was not favorable); (c) Class Counsel’s attorneys’ fees not to exceed \$161,666.67; (d) Class Counsel’s actual litigation costs and expenses as supported by declaration not to exceed \$25,000.00; and (e) payment of \$22,500.00 to the

Labor and Workforce Development Agency. **Class Counsel's attorneys' fees and costs remain subject to Court approval.**

No portion of the Net Settlement Amount will be returned to BEI under any circumstances. Instead any unclaimed portions will be distributed to a charitable organization called Legal Aid at Work.

7. How Much Will My Payment Be?

Your estimated share of the settlement is shown on the first page of this notice. The amount you are to receive is based on the number of applicable pay periods you worked during the period of May 16, 2019 through December 4, 2020.

Based upon BEI's records, you are a member of the Class. [Based thereon, the number of pay periods you worked is determined to be **. If this information appears correct, you do not need to do anything further to receive your settlement payment. If you disagree with the number of wage statements, see below (Question 9).]

8. How Do I Receive a Payment?

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

9. What If I Believe the Information is Inaccurate?

If you believe the number of pay periods you worked is inaccurate, you may dispute it by sending a letter to [Settlement Administrator] [ADMINISTRATOR'S ADDRESS] no later than _____, 2021. Be sure to include your name, address, telephone number, last four digits of your Social Security Number, and a statement as to what and why you are disputing. Also attach a copy of any documentation you want to include to support your dispute.

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

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

- All claims, including penalties, costs, and attorneys' fees related thereto, that could have been brought under the facts and allegations made in the operative Complaint, for violation of Labor Code section 226 that accrued from May 16, 2019 through December 4, 2020;
- All claims for penalties under the California Labor Code Private Attorneys General Act of 2004, including costs and attorneys' fees related thereto, predicated on the violation of Labor Code section 226 based on the facts as alleged in the operative Complaint that accrued from May 16, 2019 through December 4, 2020.

11. How Do I Exclude Myself from the Settlement?

To exclude yourself from the settlement (also referred to as "opt-out"), you must mail a letter to the Settlement

Administrator saying that you want to be excluded from the *Louis Weybrew v. BEI Construction, Inc.* settlement.

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

If you submit a timely and valid “opt-out” request, you will no longer be a member of the class and you will not receive any money from the settlement, or be able to object to the settlement, but you will not be legally bound by anything that happens in this lawsuit. You will keep any rights to sue (or continue to sue) BEI in the future for the same legal claims made in this lawsuit, at your own expense.

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

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

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

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

13. What is the Difference Between Objecting and Excluding?

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

14. Do I Have a Lawyer in this Case?

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

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

The attorneys for the Plaintiff and the class will be paid from the Gross Settlement Amount. Class Counsel will ask for up to \$161,666.67 in attorneys’ fees and for actual litigation costs incurred up to a maximum of \$25,000.00, the actual amount of which will be determined by the Court at the final approval hearing (see Question 16 below for details as to when this hearing will take place). Class members (like you) do not have to

pay the fees and costs of Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

If approved by the Court, a service payment for the Plaintiff of an amount up to \$10,000.00 will be paid from the Gross Settlement Amount for his work and efforts in prosecuting this case, and for undertaking the risks of costs (in the event the outcome of this lawsuit was not favorable).

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

The Court has preliminarily approved the settlement and will hold a final approval hearing to decide whether to give final approval to the settlement. This hearing will be held before the Honorable E. Bradley Nelson on _____, 2021, at ____ a.m., in Department 4 of the Superior Court of California for the County of Solano, located at 600 Union Avenue, Fairfield, CA 94533, to determine whether the proposed settlement is fair, reasonable, and adequate, and whether it should be finally approved by the Court. If there are objections, the Court will consider them. After the hearing, the Court will decide whether to approve the settlement. We do not know how long this decision will take. The final approval hearing may be continued without further notice. The Court may adjourn or continue the hearing from time to time, without further notification, as the Court may direct.

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

17. How Do I Receive More Information?

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

18. What is the Contact Information for Class Counsel?

The addresses for Class Counsel are as follows:

DIVERSITY LAW GROUP, P.C.
Howard L. Magee
Larry W. Lee
Max W. Gavron
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
Telephone: (213) 488-6555
Fax: (213) 488-6554

POLARIS LAW GROUP
William L. Marder
501 San Benito Street, Suite 200
Hollister, CA 95023
Telephone: (831) 531-4214
Fax: (831) 634-0333

WHAT IF I HAVE QUESTIONS?

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

Louis Weybrew v. BEI Construction, Inc.
c/o Phoenix Settlement Administrators
Address
City, CA, Zip
Toll-Free Phone Number: [insert]

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

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