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MCGEE CONTRACTING INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

SALVADOR PEREZ ESPINOZA, individually
and as a private attorney general;

Plaintiff,

vs.

MCGEE CONTRACTING INC., a California
Corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No.: CVSW2102108

Assigned for all purposes to Hon. Craig
Riemer, Dept. 1

**AMENDED JOINT STIPULATION OF
CLASS ACTION SETTLEMENT AND
RELEASE**

Action Filed: March 16, 2021

Trial Date: None Set

1 **AMENDED JOINT STIPULATION OF CLASS ACTION SETTLEMENT AND**
2 **RELEASE**

3 This Amended Joint Stipulation of Class Action Settlement and Release is entered into by
4 and between Plaintiff Salvador Perez Espinoza, individually and on behalf of the Class and
5 Defendant McGee Contracting Inc.

6 **DEFINITIONS**

7 1. “Agreement” or “Settlement Agreement” means this Amended Joint Stipulation
8 of Class Action Settlement and Release.

9 2. “Action” means all causes of action, claims, and allegations in the operative
10 complaint filed in *Espinoza v. McGee Contracting Inc.*, Riverside Superior Court Case No.
11 CVSW2102108.

12 3. “Class Counsel” means Payne Nguyen, LLP.

13 4. “Class Counsel’s Fees and Costs” means attorneys’ fees for Class Counsel’s
14 litigation and resolution of the Action and their expenses and costs incurred in connection with
15 the Action, which shall be paid from the Total Settlement Amount. Class Counsel will request
16 attorneys’ fees not to exceed one-third (1/3) of the Total Settlement Amount (\$227,813.33) and
17 the reimbursement of any costs and expenses associated with Class Counsel’s litigation and
18 settlement of the Action, not to exceed Fifteen Thousand Dollars (\$15,000.00), subject to the
19 Court’s approval. Defendant has agreed not to oppose Class Counsel’s request for fees and
20 reimbursement of costs and expenses in the amounts set forth above.

21 5. “Class List” means a complete list of all Class Members that Defendant will
22 diligently and in good faith compile from their records and provide to the Settlement
23 Administrator within fourteen (14) calendar days after Preliminary Approval of this Settlement.
24 The Class List will be formatted in a readable Microsoft Office Excel spreadsheet containing the
25 following information for each Class Member: (1) full name; (2) last known home address; (3)
26 social security number; (4) start and end dates of active employment as a non-exempt employee
27 of Defendant in the State of California; (5) total Workweeks during the Class Period; and (6) any
28

1 other information required by the Settlement Administrator in order to effectuate the terms of the
2 Settlement.

3 6. “Class” or “Class Members” means all current and former California non-exempt
4 hourly employees of Defendant who worked at any time during the Class Period.

5 7. “Class Notice” means the Notice of Proposed Class Action Settlement in a form
6 substantially similar to the form attached hereto as **Exhibit A**, in both English and Spanish, as
7 approved by the Court, that will be mailed to each Class Members’ last known address and which
8 will provide Class Members with information regarding the Action and information regarding the
9 settlement of the Action.

10 8. “Class Period” means the period from January 1, 2018, through May 3, 2022.

11 9. “Class Representative” means Plaintiff Salvador Perez Espinoza in his capacity as
12 the representative of the Participating Class Members.

13 10. “Class Representative Enhancement Payment” means the amount that the Court
14 authorizes to be paid to Plaintiff Salvador Perez Espinoza, in addition to his Individual Settlement
15 Payment, in recognition of the efforts and risks he has taken in assisting with the prosecution of
16 the Action and in exchange for the General Release of his claims as provided herein.

17 11. “Court” means the Superior Court of the State of California for the County of
18 Riverside.

19 12. “Defendant” means McGee Contracting Inc.

20 13. “Final Approval” means the Court entering an order granting final approval of the
21 Settlement Agreement.

22 14. “Individual Settlement Payment” means the amount payable from the Net
23 Settlement Amount to each Participating Class Member and any payment a PAGA Member is
24 eligible to receive from the employee portion of the PAGA Penalties. Individual Settlement
25 Payments shall be paid by a single settlement check made payable to Participating Class Members
26 and/or PAGA Members.

27 15. “Net Settlement Amount” means the funds available for payments to the Class,
28 which shall be the amount remaining after the following amounts are deducted from the Total

Settlement Amount: (1) Class Counsel's fees, (2) Class Counsel's costs, (3) Settlement Administration Costs, (4) Class Representative Enhancement Payment to Plaintiff, and (5) PAGA Penalties to be paid to the California Labor and Workforce Development Agency ("LWDA") and PAGA Members.

16. "Objection" means a Participating Class Member's valid and timely written objection to the Settlement Agreement. For an Objection to be valid, it must be signed by the Participating Class Member and include the Class Member's full name, address, telephone number, last four digits of their social security number, and the specific reason including any legal grounds for the Participating Class Member's objection. An objection form substantially in the form attached hereto as **Exhibit B** shall be included with the Class Notice and distributed to the Class Members.

17. "PAGA" means the California Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, "PAGA").

18. "PAGA Penalties" means the portion of the Total Settlement Amount that the Parties have agreed to allocate in order to settle claims arising under the Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*). The Parties have agreed that Seventy-Five Thousand Dollars (\$75,000.00) of the Total Settlement Amount will be allocated to the resolution of Plaintiff's PAGA claims. Seventy-five percent (75%) of the PAGA Penalties (i.e., \$56,250.00) will be paid to the LWDA in accordance with Labor Code §§ 2698 *et seq.* The remaining twenty-five percent (25%) of the PAGA Penalties (i.e., \$18,750.00), will be distributed *pro rata* to PAGA Members. PAGA Members will receive payment from the employee portion of the PAGA Penalties regardless of their decision to participate in the class action if the PAGA Penalties is approved by the Court.

19. "PAGA Members" means all current and former California non-exempt hourly employees of Defendant who worked at any time during the PAGA Period.

20. "PAGA Period" means the period from January 1, 2020, through March 16, 2022.

21. "Parties" means Plaintiff and Defendant, collectively, and "Party" shall mean either Plaintiff or Defendant.

1 22. “Participating Class Members” means all Class Members who do not submit a
2 valid and timely Request for Exclusion.

3 23. “Pay Period” shall mean any bi-weekly pay period (i.e. pay period beginning on
4 Sunday and ending on second following Saturday) in which a Class Member or PAGA Member
5 performed work for Defendant at least one day.

6 24. “Plaintiff” means Salvador Perez Espinoza.

7 25. “Preliminary Approval” means the Court order granting preliminary approval of
8 the Settlement Agreement.

9 26. “Released Class Claims” means all claims, rights, demands, liabilities, and causes
10 of action that are alleged, or reasonably could have been alleged, based on the facts set forth in
11 the operative complaint in the Action. The Released Class Claims shall be limited to those claims
12 that arose during the Class Period. The Released Claims shall not apply to claims for workers’
13 compensation benefits, unemployment insurance benefits, or any other claim or right that as a
14 matter of law cannot be waived or released. The Parties will meet and confer in good faith if the
15 Court requires changes to the scope of the Released Claims.

16 27. “Released PAGA Claims” means all claims under the California Labor Code
17 Private Attorneys General Act of 2004 for civil penalties that were alleged in the January 8, 2021
18 notice sent by Plaintiff to the LWDA, and only to the extent that those claims are also alleged in
19 the operative complaint in the Action.

20 28. “Released Parties” means Defendant and its officers, directors, and employees.

21 29. “Request for Exclusion” means a valid and timely written statement submitted by
22 a Class Member requesting to be excluded from the Action. To be effective, the Request for
23 Exclusion must contain (a) the Class Member’s full name, address, telephone number, and the
24 last four digits of the Class Member’s Social Security number and (b) a clear statement requesting
25 to be excluded from the settlement of the class claims similar to the following: “I wish to exclude
26 myself from the class settlement reached in the matter of *Espinoza v. McGee Contracting Inc.* I
27 understand that by excluding myself, I will not receive money from the class portion of the
28 settlement reached in this matter.” To be effective, the Request for Exclusion must be post-marked

1 by the Response Deadline and received by the Settlement Administrator. The Request for
2 Exclusion shall not be effective as to the release of claims arising under the Private Attorneys
3 General Act. A request for exclusion form substantially in the form attached hereto as **Exhibit C**
4 shall be included with the Class Notice and distributed to the Class Members.

5 30. "Response Deadline" means the date sixty (60) days after the Settlement
6 Administrator mails the Class Notice to Class Members and the last date on which Class Members
7 may submit Requests for Exclusion, written objections to the Settlement, or workweek disputes.
8 In the event the 60th day falls on a Sunday or Federal holiday, the Response Deadline will be
9 extended to the next day on which the U.S. Postal Service is open. The Response Deadline for
10 Requests for Exclusion or Objections will be extended fifteen (15) calendar days for any Class
11 Member who is re-mailed a Class Notice by the Settlement Administrator, unless the 15th day
12 falls on a Sunday or Federal holiday, in which case the Response Deadline will be extended to
13 the next day on which the U.S. Postal Service is open. The Response Deadline may also be
14 extended by express agreement between Class Counsel and Defendant. Under no circumstances,
15 however, will the Settlement Administrator have the authority to unilaterally extend the deadline
16 for Class Members to submit a Request for Exclusion or Objection to the settlement.

17 31. "Settlement" means the disposition of the Action pursuant to this Agreement.

18 32. "Settlement Administrator" means Phoenix Settlement Administrators. The
19 Parties each represent that they do not have any financial interest in the Settlement Administrator
20 or otherwise have a relationship with the Settlement Administrator that could create a conflict of
21 interest.

22 33. "Settlement Administration Costs" means the costs payable from the Total
23 Settlement Amount to the Settlement Administrator for administering this Settlement, including,
24 but not limited to, printing, distributing, and tracking documents for this Settlement, translating
25 the Class Notice into Spanish, calculating/confirming the Class Members' Workweeks and Pay
26 Periods from the information contained in the Class List, calculating each Participating Class
27 Member's Individual Settlement Payment, tax reporting, distributing the Total Settlement
28 Amount, providing necessary reports and declarations, and other duties and responsibilities set

1 forth herein to process this Settlement, and as requested by the Parties or the Court. Settlement
2 Administration Costs shall not exceed Twelve Thousand Dollars (\$12,000.00).

3 34. "Total Settlement Amount" means the sum of Six Hundred Eighty-Three
4 Thousand Four Hundred Forty Dollars (\$683,440.00). The Total Settlement Amount is non-
5 reversionary; no portion of the Total Settlement Amount will return to Defendant. The employers
6 share of payroll taxes arising from the payments made under this Settlement shall be paid by
7 Defendant separate from and in addition to the Total Settlement Amount.

8 35. "Workweek" means any calendar week (i.e. a week beginning on Sunday and
9 ending on Saturday) in which a Class Member or PAGA Member performed work for Defendant
10 at least one day during the Class Period.

11 **TERMS OF AGREEMENT**

12 36. Settlement Consideration. Defendant shall fully fund the Total Settlement
13 Amount as set forth in Paragraph 36 of this Agreement. The following will be paid out of the
14 Total Settlement Amount: the sum of the Individual Settlement Payments, the Class
15 Representative Enhancement Payment, Class Counsel's Fees and Costs, the PAGA Penalties, and
16 the Settlement Administration Costs, as specified in this Agreement. Except for any employer-
17 side payroll taxes due on the wage portion of the Individual Settlement Payments, or as a result
18 of an increase in the number of workweeks as set forth below, Defendant shall not be required to
19 pay more than the Total Settlement Amount. The Total Settlement Amount is non-reversionary;
20 no portion of the Total Settlement Amount will revert to Defendant.

21 37. Potential Increase to the Total Settlement Amount. Defendant has represented
22 there are approximately 34,222 Workweeks within the Class Period and approximately 939 class
23 members. Defendant shall confirm the verified number of Workweeks within the Class Period
24 prior to the filing of Plaintiff's Motion for Preliminary Approval. Should the actual number of
25 Workweeks increase by more than ten percent (10%) (i.e. increase by more than 3,422
26 Workweeks), Defendant shall choose to either:

27 a) Increase the Total Settlement Amount on a *pro rata* basis equal to the
28 percentage increase in the number of Workweeks worked by the Class Members above 10% (for

example, if the number of Workweeks increases by 11%, the Total Settlement Amount will increase by 1%), or

b) End the Class Period on the date on which the actual number of Workweeks worked by the Class Members exceeded the 34,222 number by 10%.

38. Funding of the Total Settlement Amount. Within five (5) calendar days upon Notice of Entry of the Court Order Entering Final Approval, but no sooner than May 3, 2023 (“Initial Funding Date”), Defendant will deposit one-half (1/2) of the Total Settlement Amount, or \$341,720.00, into a Qualified Settlement Fund (“QSF”) to be established by the Settlement Administrator. Defendant will deposit the remaining one-half (1/2) of the Total Settlement, or \$341,720.00, and all applicable employer-side payroll taxes, within twelve (12) months of the Initial Funding Date. Defendant shall also provide all information necessary for the Settlement Administrator to calculate necessary payroll taxes including their official names, 8 digit state unemployment insurance tax ID numbers, and other information requested by the Settlement Administrator, no later than thirty (30) calendar days upon Notice of Entry of the court order entering final approval.

39. Distribution of the Total Settlement Amount. Within seven (7) calendar days of the full funding of the Settlement, the Settlement Administrator will issue payments for: (a) Individual Settlement Payments; (b) the PAGA Penalties to the LWDA; (c) the Class Representative Enhancement Payment; (d) Class Counsel’s Fees and Costs; and (e) Settlement Administration Costs.

40. Attorneys’ Fees and Costs. Defendant agrees not to oppose or impede any application or motion by Class Counsel for attorneys’ fees of up to one-third (1/3) of the Total Settlement Amount (\$227,813.33) plus the reimbursement of costs and expenses associated with Class Counsel’s litigation and settlement of the Action, in an amount not to exceed Fifteen Thousand Dollars (\$15,000.00), both of which will be paid from the Total Settlement Amount. Any portion of the requested fees or costs that is not awarded by the Court to Class Counsel shall be reallocated to the Net Settlement Amount and distributed to Participating Class Members as provided in this Agreement.

1 41. Class Representative Enhancement Payment. Defendant agrees not to oppose or
2 object to any application or motion by Plaintiff for a Class Representative Enhancement Payment
3 of Seven Thousand Five Hundred Dollars (\$7,500.00) to Plaintiff Salvador Perez Espinoza. The
4 Class Representative Enhancement Payment is in exchange for the General Release of Plaintiff's
5 individual claims, and for Plaintiff's time, effort and risk in bringing and prosecuting the Action.
6 Any adjustments made by the Court to the requested Class Representative Enhancement Payment
7 shall not be deemed a material modification of this Agreement. In the event that the Court reduces
8 or does not approve the requested Class Representative Enhancement Payment, the Settlement
9 Agreement remains in full force and effect, Plaintiff shall not have the right to revoke the
10 settlement for that reason, it shall remain binding, and any portion of the requested Class
11 Representative Enhancement Payment that is not awarded by the Court to the Class
12 Representative shall be reallocated to the Net Settlement Amount and distributed to Participating
13 Class Members as provided in this Agreement.

14 42. Settlement Administration Costs. The Settlement Administrator will be paid for
15 the reasonable costs of administration of the Settlement and distribution of payments from the
16 Total Settlement Amount as further set forth in this Agreement. Settlement Administration Costs
17 shall not exceed Twelve Thousand Dollars (\$12,000.00). To the extent that Settlement
18 Administration Costs are less than \$12,000.00, the difference shall become part of the Net
19 Settlement Amount and distributed to Participating Class Members as provided in this
20 Agreement.

21 43. PAGA Penalties. Seventy-Five Thousand Dollars (\$75,000.00) of the Total
22 Settlement Amount shall be allocated from the Total Settlement Amount for settlement of claims
23 for civil penalties under the PAGA. The Settlement Administrator shall pay seventy-five percent
24 (75%) of the PAGA Penalties, or Fifty-Six Thousand Two Hundred Fifty Dollars (\$56,250.00),
25 to the LWDA. The remaining twenty-five percent (25%) of the PAGA Penalties, or Eighteen
26 Thousand Seven Hundred Fifty Dollars (\$18,750.00), will be distributed to PAGA Members on
27 a *pro rata* basis based on the total number of Pay Periods worked by each PAGA Member during
28

the PAGA Period. PAGA Members shall receive their portion of the PAGA Penalties regardless of their decision to opt-out of the class settlement.

44. Net Settlement Amount for Payment of Class Claims. The Net Settlement Amount will be used to satisfy the class portion of Participating Class Members' Individual Settlement Payments in accordance with the terms of this Agreement. The estimated Net Settlement Amount is as follows:

Total Settlement Amount	\$	683,440.00
Class Representative Enhancement Payment:	\$	7,500.00
Class Counsel's Fees:	\$	227,813.33
Class Counsel's Costs:	\$	15,000.00
PAGA Penalties:	\$	75,000.00
Settlement Administration Costs:	\$	12,000.00
Estimated Net Settlement Amount:	\$	346,126.67

45. Individual Settlement Payment Calculations. Individual Settlement Payments will be paid from the Net Settlement Amount and the 25% portion of the PAGA Penalties for PAGA Members and shall be paid pursuant to the formulas set forth herein:

a) Calculation of Class Portion of Individual Settlement Payments. The Settlement Administrator will calculate the total Workweeks for all Participating Class Members by adding the number of Workweeks worked by each Participating Class Member during the Class Period. The amount that each Participating Class Member will be eligible to receive will be calculated by dividing each Participating Class Member's individual Workweeks by the total Workweeks of all Participating Class Members, and multiplying the resulting fraction by the Net Settlement Amount.

b) Calculation of PAGA Portion of Individual Settlement Payments. The Settlement Administrator will calculate the total Pay Periods for all PAGA Members by adding the number of Pay Periods worked by each PAGA Member during the PAGA Period. The amount that each PAGA Member will receive will be calculated by dividing each participating PAGA Member's individual Pay Periods by the total Pay Periods of all PAGA Members, and multiplying

the resulting fraction by the 25% share of the PAGA Penalties designated for distribution to aggrieved employees. PAGA Members shall receive this portion of their Individual Settlement Payment regardless of whether they opt out of the participation regarding the class claims.

c) Allocation of Individual Settlement Payments. All Individual Settlement Payments will be allocated as follows: twenty percent (20%) of each Individual Settlement Payment will be allocated as wages and eighty percent (80%) shall be allocated as interest and penalties. The portion of the Individual Settlement Payment allocated to wages will be reported by the Settlement Administrator on an IRS Form W-2. The remaining non-wage payments will be reported on an IRS Form-1099 by the Settlement Administrator. For PAGA Members who submit a timely and valid Request for Exclusion, 100% of the Individual Settlement Payment to that PAGA Member shall be allocated as penalties, and not wages, for which the Settlement Administrator will issue to the PAGA Member an IRS Form-1099.

46. No Credit Toward Benefit Plans. The Individual Settlement Payments made to Participating Class Members and/or PAGA Members under this Settlement, as well as any other payments made pursuant to this Settlement, will not be utilized to calculate any additional benefits under any benefit plans to which any Class Members and/or PAGA 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 plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which any Class Members may be entitled under any benefit plans.

47. 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 administration of the Settlement. The Settlement Administrator will provide the following services:

47(a) Establish and maintain a Qualified Settlement Fund.

47(b) Calculate the Individual Settlement Payment each Participating Class Member is eligible to receive and the portion of the PAGA Penalties each PAGA Member shall receive.

- 1 47(c) Translate the Class Notice from English to Spanish.
- 2 47(d) Print and mail the Class Notice in English and Spanish.
- 3 47(e) Perform address searches as detailed below, including conducting
- 4 additional address searches and skip traces for mailed Class Notices
- 5 that are returned as undeliverable.
- 6 47(f) Process Requests for Exclusion, Objections, calculate Participating
- 7 Class Members' Individual Settlement Payment, field inquiries or
- 8 disputes from Class Members.
- 9 47(g) Print and issue Settlement Payment Checks, prepare any IRS W2 and
- 10 1099 Tax Forms and any other filings required by any governmental
- 11 taxing authority.
- 12 47(h) Distribute Plaintiff's Enhancement Payment, Class Counsel's Fees and
- 13 Costs, the LWDA's portion of the PAGA Penalties, and the Settlement
- 14 Administration Costs, including all related tax forms.
- 15 47(i) Inform Defendant of its employer-side payroll tax liability and making
- 16 all necessary deposits and payments to the necessary taxing authorities
- 17 for the payments received for the employer-share of payroll taxes.
- 18 47(j) Track and deliver uncashed Individual Settlement Payment checks as
- 19 outlined in this Agreement.
- 20 47(k) Provide declarations and/or other information to this Court as requested
- 21 by the Parties and/or the Court.
- 22 47(l) Provide weekly status reports to counsel for the Parties.
- 23 47(m) Posting a notice of final judgment, after entry of the judgment, online
- 24 at the Settlement Administrator's website for a period of sixty (60) days
- 25 pursuant to California Rule of Court 3.769.
- 26 47(n) All other duties assigned to the Settlement Administrator as set forth in
- 27 this Agreement of by Court order.
- 28 48. Delivery of the Class List. Within fourteen (14) calendar days of Preliminary

1 Approval, Defendant will provide the Class List to the Settlement Administrator. This is a
2 material term of the Agreement, and if Defendant fails to comply, Plaintiff shall have the right to
3 void the Agreement.

4 49. Class Notice by First-Class U.S. Mail. Within seven (7) calendar days after
5 receiving the Class List from Defendant, the Settlement Administrator will mail the Class Notice
6 to all Class Members via regular First-Class U.S. Mail, using the most current, known mailing
7 addresses identified in the Class List.

8 50. Confirmation of Contact Information in the Class List. Prior to mailing, the
9 Settlement Administrator will perform a search based on the National Change of Address
10 Database for information to update and correct for any known or identifiable address changes.
11 Any Class Notice returned to the Settlement Administrator as non-deliverable on or before the
12 Response Deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding
13 address affixed thereto and the Settlement Administrator will indicate the date of such re-mailing
14 on the Class Notice. If no forwarding address is provided, the Settlement Administrator will
15 promptly attempt to determine the correct address using a skip-trace, or other search using the
16 name, address and/or Social Security number of the Class Member involved, and will then
17 perform a single re-mailing. If any Class Notice sent to a Class Member by the Settlement
18 Administrator is returned as undeliverable to a current employee, then Defendant shall make all
19 reasonable efforts to obtain the current address from the Class Member and provide the same
20 within seven (7) calendar days of notice from the Settlement Administrator. Those Class Members
21 who receive a re-mailed Class Notice, whether by skip-trace or by request, will have between the
22 later of (a) an additional fifteen (15) calendar days or (b) the Response Deadline to postmark a
23 Request for Exclusion, or an Objection to the Settlement.

24 51. Class Notice. All Class Members will be mailed a Class Notice. Each Class Notice
25 will provide: (a) information regarding the nature of the Action; (b) a summary of the Settlement's
26 principal terms; (c) the Class definition; (d) the total number of Workweeks each respective Class
27 Member worked for Defendant during the Class Period; (e) each Class Member's estimated
28 Individual Settlement Payment and the formula for calculating Individual Settlement Payments;

(f) the dates which comprise the Class Period and PAGA Period; (g) the deadlines by which the Class Member must postmark Requests for Exclusion, Objections to the Settlement, or Workweek disputes; (h) the Released Class Claims, as set forth herein; and (j) the date for the final approval hearing.

52. Disputed Information on Class Notice. Class Members will have an opportunity to dispute the information provided in their Class Notice. To the extent Class Members dispute the number of Workweeks with which they have been credited or the amount of their Individual Settlement Payment, Class Members may produce evidence to the Settlement Administrator showing that such information is inaccurate. Absent evidence rebutting Defendant's records, Defendant's records will be presumed determinative. However, if a Class Member produces evidence contrary to Defendant's records by the Response Deadline, the Settlement Administrator shall notify Class Counsel and Defendant's Counsel to discuss and resolve the dispute, including providing all available relevant information to all counsel. The Parties will resolve all disputes jointly, which shall be final and binding on any Class Member disputes, and shall thereafter instruct the Settlement Administrator how to proceed in processing the dispute. If the Parties cannot reach an agreement, disputes shall be referred to the Settlement Administrator for a determination and if the dispute remains unresolved after that, the dispute shall be submitted to the Court for final determination. All such disputes are to be resolved or submitted to the Court no later than fourteen (14) calendar days after the Response Deadline.

53. Defective Submissions. If a Class Member's Request for Exclusion is defective as to the requirements listed herein, that Class Member will be given an opportunity to cure the defect(s). The Settlement Administrator will mail the Class Member a cure letter within three (3) business days of receiving the defective submission to advise the Class Member that his or her submission is defective and that the defect must be cured to render the Request for Exclusion valid. The Class Member will have until the later of (a) the Response Deadline or (b) fifteen (15) calendar days from the date of the cure letter, whichever date is later, to postmark a revised Request for Exclusion. If a Class Member responds to a cure letter by filing a defective claim, then the Settlement Administrator will have no further obligation to give notice of a need to cure.

1 If the revised Request for Exclusion is not postmarked within that period, it will be deemed
2 untimely.

3 54. Request for Exclusion Procedures. Any Class Member wishing to opt-out from the
4 Action must sign and postmark a written Request for Exclusion to the Settlement Administrator
5 by the Response Deadline. A Request for Exclusion form substantially in the form attached hereto
6 as **Exhibit C** shall be included with the Class Notice and distributed to the Class Members. The date
7 of the postmark on the return mailing envelope receipt confirmation will be the exclusive means
8 to determine whether a Request for Exclusion has been timely submitted. All Requests for
9 Exclusion will be submitted to the Settlement Administrator, who will certify jointly to Class
10 Counsel and Defendant's Counsel the Requests for Exclusion that were timely submitted. All
11 Class Members who do not request exclusion from the Action will be bound by all terms of the
12 Settlement Agreement if the Settlement is granted final approval by the Court.

13 55. Defendant's Right to Rescind. If more than ten percent (10%) of the Class
14 Members in the Class Period (rounded to the next whole number) elect not to participate in the
15 Settlement by submitting a valid and timely Request for Exclusion, then Defendant may, at its
16 election, rescind the Settlement Agreement and all actions taken in furtherance of it will be
17 thereby null and void. Defendant must meet and confer with Class Counsel prior to exercising
18 this right and must make clear its intent to rescind the Agreement within fourteen (14) calendar
19 days of the Settlement Administrator notifying the Parties of these opt-outs. If Defendant
20 exercises its right to rescind the Agreement, Defendant shall be responsible for all Settlement
21 Administration Costs incurred to the date of rescission.

22 56. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class
23 Member who does not affirmatively opt-out of the Settlement by submitting a timely and valid
24 Request for Exclusion will be bound by all of its terms, including those pertaining to the Released
25 Class Claims, as well as any judgment that may be entered by the Court if it grants final approval
26 to the Settlement. Class Members who opt-out of the Settlement shall not be bound by such
27 judgment or release. The names of Class Members who have opted-out of the settlement shall be
28 disclosed to the Counsel for Plaintiff and Defendant and noted in the proposed final judgment

submitted to the Court.

57. Objection Procedures. To object to the Settlement, a Participating Class Member must postmark a valid Objection to the Settlement Administrator on or before the Response Deadline. For an Objection to be valid, it must be signed by the Participating Class Member and include the Class Member's full name, address, telephone number, the last four digits of their social security number, and the specific reason including any legal grounds for the Participating Class Member's objection. An objection form substantially in the form attached hereto as **Exhibit B** shall be included with the Class Notice and distributed to the Class Members.

58. The postmark date will be deemed the exclusive means for determining that the Objection is timely. Participating Class Members who fail to object in the manner specified above will be foreclosed from making a written objection, but shall still have a right to appear at the Final Approval Hearing in order to have their objections heard by the Court. At no time will any of the Parties or their counsel seek to solicit or otherwise encourage Participating Class Members to submit written objections to the Settlement or appeal from the Order and judgment. Class Counsel will not represent any Participating Class Members with respect to any objections to this Settlement.

59. Certification Reports Regarding Individual Settlement Payment Calculations. The Settlement Administrator will provide Defendant's Counsel and Class Counsel a weekly report which certifies: (a) the number of Class Members who have submitted Requests for Exclusion; (b) the number of re-mailed and/or undeliverable Class Notices; and (c) whether any Class Member has submitted a challenge to any information contained in the Class Notice. Additionally, the Settlement Administrator will provide to counsel for all Parties any updated reports regarding the administration of the Settlement Agreement as needed or requested. The Settlement Administrator will provide a declaration to Class Counsel in advance of the hearing on Final Approval of the settlement which Class Counsel shall be responsible for reviewing and approving.

60. Uncashed Settlement Checks. Any checks issued by the Settlement Administrator to Participating Class Members and PAGA Members will be negotiable for at least one hundred eighty (180) calendar days. If a Participating Class Member does not cash his or her settlement

1 check within 180 days of mailing, the Settlement Administrator shall distribute the uncashed
2 funds, subject to Court approval, to the Controller of the State of California to be held pursuant
3 to the Unclaimed Property Law, California Civil Code §1500, *et. seq.* for the benefit of those
4 Participating Class Members who did not cash their checks until such time that they claim their
5 property. The Parties agree that this disposition results in no “unpaid residue” under California
6 Civil Procedure Code § 384, as the entire Net Settlement Amount will be paid out to Participating
7 Class Members, whether or not they all cash their settlement checks. Therefore, Defendant will
8 not be required to pay any interest on such amounts. If a PAGA Member does not cash his or her
9 settlement check within 180 days of mailing, the Settlement Administrator shall distribute the
10 uncashed funds, on a *pro rata* basis, to the PAGA Members who did cash their checks. However,
11 if the collective amount of those uncashed checks by PAGA Members does not justify the expense
12 of a second distribution to PAGA Members who did cash their checks, the Settlement
13 Administrator shall distribute the uncashed funds to the LWDA. The Individual Settlement
14 Payments provided to Participating Class Members and PAGA Members shall prominently state
15 the expiration date or a statement that the settlement check will expire in one hundred eighty (180)
16 days, or alternatively, such a statement may be made in a letter accompanying the Individual
17 Settlement Payment. Expired Individual Settlement Payments will not be reissued, except for
18 good cause and as mutually agreed by the Parties in writing. The Parties agree no unclaimed funds
19 will result from the settlement process detailed in this Agreement.

20 61. Administration of Taxes by the Settlement Administrator. The Settlement
21 Administrator will be responsible for issuing to Plaintiff, Participating Class Members, and Class
22 Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid
23 pursuant to this Settlement. The Settlement Administrator will also be responsible for forwarding
24 all payroll taxes and penalties to the appropriate government authorities.

25 62. Tax Liability. Defendant makes no representation as to the tax treatment or legal
26 effect of the payments called for hereunder, and Plaintiff and Participating Class Members are
27 not relying on any statement, representation, or calculation by Defendant or by the Settlement
28 Administrator in this regard. Plaintiff and Participating Class Members understand and agree that

except for Defendant's employer-side portion of any payroll taxes, they will be solely responsible for the payment of any taxes and penalties assessed on the payments described herein. Defendant's share of any employer-side payroll taxes and other required employer withholdings due on the Individual Settlement Payments shall be paid separate and apart from the Total Settlement Amount.

63. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section, the "acknowledging party" and each Party to this Agreement other than the acknowledging party, an "other party") acknowledges and agrees that: (1) no provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department circular 230 (31 CFR part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his, her or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Agreement, (b) has not entered into this Agreement based upon the recommendation of any other Party or any attorney or advisor to any other Party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty that may be imposed on the acknowledging party, and (3) no attorney or adviser to any other Party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

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

65. Release by Participating Class Members. Upon the full funding of the Total Settlement Amount, and all applicable employer-side payroll taxes, Participating Class Members hereby do and shall be deemed to have fully, finally, and forever released and discharged the

Released Parties from any and all Released Class Claims for the Class Period. This release shall be binding on all Participating Class Members.

66. PAGA Release by Plaintiff, the LWDA, and the State of California. Upon the full funding of the Total Settlement Amount, Plaintiff, as the PAGA representative, and the State of California, and the Labor and Workforce Development Agency shall fully release and discharge the Released Parties from the Released PAGA Claims that arose during the PAGA Period. Plaintiff shall notify the LWDA of this settlement pursuant to Labor Code section 2698 et seq. and shall submit any judgment or order approving the PAGA settlement to the LWDA within 10 days after the judgment or order.

67. Release of Additional Claims & Rights by Plaintiff. Upon the full funding of the Total Settlement Amount, and all applicable employer-side payroll taxes, Plaintiff will agree to the additional following General Release: In consideration of Defendant's promises and agreements as set forth herein, Plaintiff releases the Released Parties from all claims, demands, rights, liabilities and causes of action of every nature and description whatsoever, known or unknown, asserted or that might have been asserted, whether in tort, contract, or for violation of any state or federal statute, rule or regulation arising out of, relating to, or in connection with any act or omission by or on the part of any of the Released Party committed or omitted prior to the execution thereof. Specifically, Plaintiff will expressly waive and relinquish, to the fullest extent permitted by law, the provisions, rights and benefits afforded of section 1542 of the California Civil Code, or any other provision under federal or state law, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

This release specifically excludes claims for unemployment insurance, disability, social security, and workers' compensation (with the exception of claims arising pursuant to California Labor Code Sections 132(a) and 4553).

1 68. Neutral Employment Reference. Defendant agrees that it will adopt a neutral
2 reporting policy regarding any future employment references related to Plaintiff. In the event that
3 any potential or future employers of Plaintiff request a reference regarding Defendant's
4 employment of Plaintiff, Defendant shall only provide Plaintiff's dates of employment and job
5 titles during employment. Defendant shall not refer to the Action or this Settlement.

6 69. Nullification of Settlement Agreement. In the event that: (a) the Court does not
7 finally approve the Settlement as provided herein; (b) the Court strikes or does not approve any
8 material term of this Settlement Agreement; or (c) the Settlement does not become final as written
9 and agreed to by the Parties for any other reason, then this Settlement Agreement, and any
10 documents generated to bring it into effect, will be null and void, all amounts deposited into the
11 QSF will be returned to Defendant, and the Parties shall be returned to their original respective
12 positions. Any order or judgment entered by the Court in furtherance of this Settlement
13 Agreement will likewise be treated as void from the beginning. Pursuant to California Evidence
14 Code § 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding
15 to approve, interpret, or enforce this Settlement Agreement. Should the Court fail to approve this
16 settlement for any reason, the Parties agree that they will return to and attend mediation with a
17 mutually agreed mediator in an effort to reach a settlement that may be approved by the Court.

18 70. Preliminary Approval Hearing. Plaintiff will request a hearing before the Court to
19 request Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary
20 Approval Order for: (a) conditional certification of the Class for settlement purposes only, (b)
21 Preliminary Approval of the proposed Settlement Agreement, and (c) setting a date for a Final
22 Approval Hearing. The Preliminary Approval Order will provide for the Class Notice to be sent
23 to all Class Members as specified herein. In conjunction with the Preliminary Approval hearing,
24 Plaintiff will submit this Agreement, which sets forth the terms of the Settlement, and will include
25 the proposed Class Notice attached as Exhibit A. Defendant agrees that it will not oppose
26 Plaintiff's Motion for Preliminary Approval. This is a material term of the settlement and any
27 opposition by Defendant will be grounds for Plaintiff to withdraw from the settlement. Any failure
28 by the Court to fully and completely approve the Agreement as to the Action, or the entry of any

1 Order by another Court with regard to any of the Action which has the effect of preventing the
2 full and complete approval of this Settlement Agreement as written and agreed to by the Parties,
3 will result in this Settlement Agreement and the Memorandum of Understanding entered into by
4 the Parties, and all obligations under this Settlement Agreement and the Memorandum of
5 Understanding being nullified and voided.

6 71. Final Settlement Approval Hearing and Entry of Judgment. Upon completion of the
7 Class Notice process, including the expiration of the deadlines to postmark Requests for
8 Exclusion or Objections to the Settlement Agreement, a Final Approval Hearing will be conducted
9 to determine the Final Approval of the Settlement Agreement along with the amounts properly payable
10 for: (a) Individual Settlement Payments; (b) the PAGA Penalties; (c) Class Counsel's Fees and Costs; (d)
11 the Class Representative Enhancement Payment; and (e) the Settlement Administration Costs. Class
12 Counsel will be responsible for drafting all documents necessary to obtain Final Approval but
13 shall provide the proposed judgment to Defendant's Counsel for their approval (which shall not
14 be unreasonably withheld). Any failure by the Court to fully and completely approve the
15 Settlement Agreement as to all of the Action, or the entry of any Order by another Court with
16 regard to the Action which has the effect of modifying material terms of this Agreement or
17 preventing the full and complete approval of the Settlement Agreement as written and agreed to
18 by the Parties, will result in this Agreement and all obligations under this Agreement being null
19 and void. Defendant agrees it shall not oppose the granting of the Motion for Final Approval,
20 provided Defendant has not exercised its right to rescind pursuant to the terms of this Agreement.

21 72. Judgment and Continued Jurisdiction. Upon Final Approval of the Settlement by
22 the Court or after the Final Approval Hearing, the Parties will present the judgment to the Court
23 for its approval. After entry of final judgment, the Court will have continuing jurisdiction solely
24 for purposes of addressing: (a) the interpretation and enforcement of the terms of the Settlement,
25 (b) settlement administration matters, and (c) such post-judgment matters as may be appropriate
26 under court rules or as set forth in this Settlement.

27 73. Exhibits Incorporated by Reference. The terms of this Settlement include the terms
28 set forth in any attached Exhibits, which are incorporated by this reference as though fully set

1 forth herein. Any Exhibits to this Agreement are an integral part of the Settlement.

2 74. Entire Agreement. This Settlement Agreement and any attached Exhibits
3 constitute the entirety of the Parties' Settlement. No other prior or contemporaneous written or
4 oral agreements may be deemed binding on the Parties.

5 75. Amendment or Modification. This Settlement Agreement may be amended or
6 modified only by a written instrument signed by counsel for all Parties or their successors-in-
7 interest.

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

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

21 78. California Law Governs. All terms of this Settlement Agreement hereto will be
22 governed by and interpreted according to the laws of the State of California.

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

28 80. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe

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

7 81. Invalidity of Any Provision. Before declaring any provision of this Agreement
8 invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible
9 consistent with applicable precedents so as to define all provisions of this Agreement valid and
10 enforceable.

11 82. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to
12 class certification for purposes of this Settlement only; except, however, that either party may
13 appeal any court order that materially alters the Settlement Agreement's terms.

14 83. Class Action Certification for Settlement Purposes Only. The Parties agree to
15 stipulate to class action certification only for purposes of the Settlement. If, for any reason, the
16 Settlement is not approved, the stipulation to certification will be void. The Parties further agree
17 that certification for purposes of the Settlement is not an admission that class action certification
18 is proper under the standards applied to contested certification motions and that this Agreement
19 will not be admissible in this or any other proceeding as evidence that either: (a) a class action
20 should be certified or (b) Defendant is liable to Plaintiff or any Class Member, other than
21 according to the Settlement's terms.

22 84. Non-Admission of Liability. The Parties enter into this Agreement to resolve the
23 dispute that has arisen between them and to avoid the burden, expense and risk of continued
24 litigation. In entering into this Agreement, Defendant does not admit, and specifically denies, it
25 has violated any federal, state, or local law; violated any regulations or guidelines promulgated
26 pursuant to any statute or any other applicable laws, regulations or legal requirements; breached
27 any contract; violated or breached any duty; engaged in any misrepresentation or deception; or
28 engaged in any other unlawful conduct with respect to their employees. Neither this Agreement,

1 nor any of its terms or provisions, nor any of the negotiations connected with it, shall be construed
2 as an admission or concession by Defendant of any such violations or failures to comply with any
3 applicable law. Except as necessary in a proceeding to enforce the terms of this Agreement, this
4 Agreement and its terms and provisions shall not be offered or received as evidence in any action
5 or proceeding to establish any liability or admission on the part of Defendant or to establish the
6 existence of any condition constituting a violation of, or a non-compliance with, federal, state,
7 local or other applicable law.

8 85. Captions. The captions and section numbers in this Agreement are inserted for the
9 reader's convenience, and in no way define, limit, construe or describe the scope or intent of the
10 provisions of this Agreement.

11 86. Waiver. No waiver of any condition or covenant contained in this Settlement
12 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered
13 to imply or constitute a further waiver by such party of the same or any other condition, covenant,
14 right or remedy.

15 87. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms
16 and conditions of this Agreement. Accordingly, this Agreement will not be construed more
17 strictly against one Party than another merely by virtue of the fact that it may have been prepared
18 by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations
19 between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

20 88. Representation By Counsel. The Parties acknowledge that they have been
21 represented by counsel throughout all negotiations that preceded the execution of this Agreement,
22 and that this Agreement has been executed with the consent and advice of counsel and reviewed
23 in full. Further, Plaintiff and Class Counsel warrant and represent that there are no liens on the
24 Agreement.

25 89. All Terms Subject to Final Court Approval. All amounts and procedures described
26 in this Settlement Agreement herein will be subject to final Court approval.

27 90. Cooperation and Execution of Necessary Documents. The Parties agree to
28 cooperate to promote participation in the Settlement, and in seeking court approval of the

1 Settlement. The Parties and their counsel agree not to take any action to encourage any Class
2 Members to opt out of and/or object to the Settlement. Defendant agrees not to obtain any
3 individual settlement agreements or waivers, Pick Up Stix agreements or arbitration agreements
4 from any Class Member prior to the funding of the Total Settlement Amount concerning claims
5 released via this Agreement, or enter into any arbitration agreement with any Class Member that
6 covers the claims released via this Agreement during the Settlement approval process prior to the
7 funding of the Total Settlement Amount and that the Parties will work in good faith to reach an
8 agreement approved by the Court.

9 91. Enforcement and Continuing Jurisdiction of the Court. To the extent consistent
10 with class action procedure, this Settlement Agreement shall be enforceable by the Court pursuant
11 to California Code of Civil Procedure § 664.6. The Court shall retain continuing jurisdiction over
12 the Action and over all Parties and Class Members, to the fullest extent to enforce and effectuate
13 the terms and intent of this Settlement Agreement, and to adjudicate any claimed breaches of this
14 Settlement Agreement. The Court may award reasonable attorneys' fees and costs to the
15 prevailing party in any motion or action taken and based on an alleged violation of any material
16 term of the Settlement Agreement.

17 92. Voluntary Agreement. The Parties acknowledge that they have entered into this
18 Settlement Agreement voluntarily, on the basis of their own judgment and without coercion,
19 duress, or undue influence of any Party, and not in reliance on any promises, representations, or
20 statements made by the other Parties other than those contained in this Settlement Agreement.
21 Each of the Parties hereto expressly waives any right they might ever have to claim that this
22 Settlement Agreement was in any way induced by fraud.

23 93. Confidentiality. The Parties and their counsel agree to keep the terms of the
24 Settlement confidential until the filing of Plaintiff's Motion for Preliminary Approval. Plaintiff,
25 Class Counsel, Defendant, and their counsel agree that they will not issue any press releases,
26 initiate any contact with the press, respond to any press inquiry or have any communication with
27 the press about the fact, amount or terms of the Settlement Agreement. Notwithstanding anything
28 in this provision, Plaintiff's Counsel can discuss the Settlement with Plaintiff and with Class

Members and can include it in all necessary Court and ancillary documents supporting the resolution of the Action. Nothing in this paragraph is intended to interfere with Class Counsel's duties and obligations to faithfully discharge their duties as Class Counsel, including but not limited to, communicating with Class Members regarding the Settlement.

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

///

APPROVED AS TO FORM AND CONTENT:

Dated: 09/16/2022 02:23 UTC

PLAINTIFF

By: Salvador Perez Espinoza

Salvador Perez Espinoza

Dated: _____

DEFENDANT MCGEE CONTRACTING INC.

By: _____

Name: _____

Title: _____

Members and can include it in all necessary Court and ancillary documents supporting the resolution of the Action. Nothing in this paragraph is intended to interfere with Class Counsel's duties and obligations to faithfully discharge their duties as Class Counsel, including but not limited to, communicating with Class Members regarding the Settlement.

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

///

APPROVED AS TO FORM AND CONTENT:

Dated: _____

PLAINTIFF

By: _____

Salvador Perez Espinoza

Dated: 9/19/2022

DEFENDANT MCGEE CONTRACTING INC.

By: *Jason McGee*
Jason McGee (Sep 19, 2022 13:53 PDT)

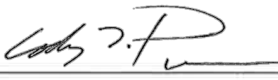
Name: Jason McGee

Title: President

1 APPROVED AS TO FORM ONLY:
2

3 Dated: 9/20/2022
4

PAYNE NGUYEN, LLP

5 By: 
6 Cody Payne, Esq.
7 Kim Nguyen, Esq.
8 Attorneys for Plaintiff Salvador Perez
9 Espinoza

10
11 Dated: 9/13/2022
12

FABOZZI & MILLER, APC

13 By: 
14 Ashley R. Wedding, Esq.
15 Attorneys for Defendant McGee
16 Contracting Inc.
17
18
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28

EXHIBIT A

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Salvador Perez Espinoza v. McGee Contracting Inc.

Riverside County Superior Court, Case No. CVSW2102108

**THIS IS A COURT-AUTHORIZED NOTICE. IT IS NOT A SOLICITATION.
PLEASE READ THIS NOTICE CAREFULLY.
YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT OR DO NOT ACT.**

To: All current and former California non-exempt (i.e., entitled to overtime pay, meal breaks and rest breaks) hourly employees of McGee Contracting Inc. who worked at any time from January 1, 2018, through May 3, 2022.
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BASIC INFORMATION

1. What is this settlement about?

You are receiving this notice as a result of a lawsuit brought on March 16, 2021, by Salvador Perez Espinoza (“Plaintiff”) against McGee Contracting Inc. (“Defendant”). The case is currently pending in the Riverside County Superior Court, Case No. CVSW2102108 (the “Action”). Defendant’s records show that you currently work, or previously worked, for Defendant in California.

The lawsuit claims that Defendant violated sections of the California Labor Code and California Business and Professions Code. Specifically, Plaintiff alleges that Defendant failed to provide compliant meal and rest periods and associated premium pay, did not properly pay employees all wages owed for all time worked, did not provide accurate wage statements, did not timely pay all wages owed at termination of employment, failed to reimburse employees for necessary business expenses, and maintained unfair business practices. The settlement also seeks to recover penalties pursuant to the California Private Attorneys General Act (“PAGA”). The lawsuit claims that Defendant violated the California Labor Code and the California Business and Professions Code, and that Plaintiff and other employees like him are entitled to damages, penalties and restitution. Defendant denies all alleged violations and denies that it owes any damages, penalties, or restitution. The Court has not made a ruling on the merits of the lawsuit. Rather, the Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate, and reasonable. Any final determination of those issues will be made at the Final Approval Hearing. By agreeing to settle, Defendant is not admitting liability on any of the factual allegations or claims in the lawsuit or that the lawsuit can or should proceed as a class action or PAGA action.

2. What is a class action?

You have an opportunity to participate in this lawsuit because the lawsuit was brought as a “class action.” In a class action, one or more people called the Class Representative (in this case Mr. Espinoza, also known as “Plaintiff”), sue on behalf of people who appear to have similar claims. All of these people are referred to here as Class Members. In a class action one court resolves the issues for all Class Members in one lawsuit, except for those who exclude themselves from the Class. The Riverside County Superior Court is in charge of this particular class action.

As part of the settlement, Plaintiff and Defendant agreed to resolve the lawsuit on a class basis with respect to all of the claims Plaintiff alleged against Defendant as a class and representative action, for settlement purposes only, and to ask the Court to approve the settlement.

3. Why is there a settlement?

The Court has not decided in favor of the Plaintiff or Defendant. Instead, both sides agreed to a settlement which is

memorialized in the Joint Stipulation of Class Action Settlement and Release (“Agreement” or “Settlement”). On [DATE OF PRELIMINARY APPROVAL], the Court granted preliminary approval of the Settlement, appointed Plaintiff Salvador Perez Espinoza as the Class Representative, and appointed his attorneys at Payne Nguyen, LLP as counsel for the Class (“Class Counsel”).

The Class Representative and Class Counsel think the Settlement is best for the Class.

WHO IS IN THE SETTLEMENT?

4. How do I know if I am part of the settlement?

You are part of the Settlement, and a Class Member, if you were employed by Defendant as a California non-exempt (i.e., entitled to overtime pay, meal breaks and rest breaks) hourly employee who worked at any time from January 1, 2018, through May 3, 2022 (the “Class Period”).

THE SETTLEMENT BENEFITS—WHAT YOU GET

5. What does the settlement provide?

The Settlement provides that Defendant will pay a maximum of Six Hundred Eighty-Three Thousand Four Hundred Forty Dollars (\$683,440.00) (“Total Settlement Amount”). This includes all costs and attorneys’ fees for Class Counsel.

The “Net Settlement Amount” is the portion of the Total Settlement Amount that will be available for distribution to Class Members who do not submit timely and valid requests for exclusion in exchange for the release of their class claims. The Net Settlement Amount is the Total Settlement Amount less the following amounts (which are subject to Court approval):

- A. **Attorneys’ Fees to Class Counsel** not to exceed one-third (1/3) of the Total Settlement Amount or Two Hundred Twenty-Seven Thousand Eight Hundred Thirteen Dollars and Thirty-Three Cents (\$227,813.33);
- B. **Litigation Costs/Expenses to Class Counsel** not to exceed Fifteen Thousand Dollars (\$15,000.00);
- C. **Enhancement Payment to the Plaintiff** in an amount not to exceed Seven Thousand Five Hundred Dollars (\$7,500.00);
- D. **Settlement Administration Costs** which are currently estimated to be Twelve Thousand Dollars (\$12,000.00); and
- E. **PAGA Penalties** in the amount of Seventy-Five Thousand Dollars (\$75,000.00) for the settlement of claims arising under the PAGA. Seventy-Five percent (75%) of this amount (\$56,250.00) shall be paid to the Labor & Workforce Development Agency (“LWDA”). The remaining twenty-five percent (25%) (\$18,750.00) will be distributed to PAGA Members (i.e., all current and former California non-exempt hourly employees of Defendant who worked at any time from March 16, 2020, through May 3, 2022 (“PAGA Period”)) for their claims arising under PAGA.

The amount you are eligible to receive from the settlement, your “Individual Settlement Payment,” will be determined on a *pro rata* basis, based on the number of weeks you worked in California as a non-exempt hourly employee of Defendant from January 1, 2018, through May 3, 2022 (“workweeks”). Your Individual Settlement Payment includes both your estimated share of the Net Settlement Amount and, if eligible, your share of the PAGA Penalties. Your share of the PAGA Penalties will be calculated on a *pro rata* basis, based on the number of pay periods that you worked between March 16, 2020, through May 3, 2022.

Your Individual Settlement Payment will be apportioned as twenty percent (20%) wages and eighty percent (80%)

interest and penalties. If you opt out of the class claims portion of the Settlement, then your share of PAGA Penalties, if you are eligible to receive this payment, will be apportioned as one hundred percent (100%) penalties. The wage portion of the Individual Settlement Payment will be subject to withholding for the employee taxes and will be reported on a W-2 Form. Employer-side payroll taxes shall be paid separately from and in addition to the Total Settlement Amount. The penalties and interest portions of each class member's settlement payment will not be subject to any withholdings and will be reported on an IRS Form 1099.

You worked [redacted] workweeks during the Class Period as a Class Member. Your estimated Individual Settlement Payment is \$ [redacted], less applicable taxes and withholdings. The amount of this payment is subject to change depending on the payments approved by the Court and other factors.

This amount was determined based on Defendant's record of your employment between January 1, 2018, through May 3, 2022, and is presumed correct. If you dispute the accuracy of Defendant's records as to the number of weeks you worked during the Class Period, you must contact the Settlement Administrator and provide any documentation you have supporting such dispute by [60 calendar days from the date of mailing]. All disputes regarding your workweeks will be resolved and decided by the Parties or if the Parties cannot agree, the Court, after you submit evidence to the Settlement Administrator. The Settlement Administrator's contact information is listed below:

[Settlement Administrator]
[Address]
[Telephone No.]

HOW TO GET A PAYMENT FROM THE SETTLEMENT

6. How can I get a payment from the settlement?

You do not have to do anything to qualify for a payment of your portion of the Settlement.

7. What am I giving up if I do not request to be excluded from the settlement?

Upon the funding of the Total Settlement Amount by Defendant, in exchange for the consideration set forth by the Settlement, Class Members who do not submit a timely request for exclusion shall release the "Released Parties" from the "Released Class Claims" for the Class Period.

The "Released Parties" include Defendant McGee Contracting Inc. and its officers, directors, and employees.

The "Released Class Claims" means all claims, rights, demands, liabilities, and causes of action that are alleged, reasonably could have been alleged, based on the facts set forth in the operative complaint in the Action. The Released Class Claims shall be limited to those claims that arose during the Class Period from January 1, 2018, through May 3, 2022.

EXCLUDING YOURSELF FROM THE RELEASE OF CLASS CLAIMS

If you want to keep the right to sue or continue to sue Defendant with respect to the Released Class Claims, then you must submit a request for exclusion in conformity with the requirements set forth herein. If you exclude yourself, you will not receive payment from Net Settlement Amount. However, if eligible, you will still receive a payment in an amount equal to your estimated *pro rata* share of the PAGA Penalties because the Request for Exclusion does not apply to this claim.

8. How can I exclude myself from the settlement?

To exclude yourself from the release of Released Class Claims, you must submit a written and signed Request for Exclusion. You must include your full name, address, telephone number, and the last four digits of your social security number. Your Request for Exclusion must also include a statement that you do not wish to be included in this lawsuit similar to the following: “I wish to exclude myself from the class action settlement reached in the matter of *Espinoza v. McGee Contracting Inc.* I understand that by excluding myself, I will not receive money from the class portion of the settlement reached in this matter.” A Request for Exclusion form has been included with this notice for you to use and a statement to this effect is already included on the enclosed Request for Exclusion form.

The written Request for Exclusion must be mailed to the Settlement Administrator at the address listed below, post-marked by [60 calendar days from the date of mailing]. You cannot exclude yourself by phone.

[Settlement Administrator]
[Address]

If you submit a valid and timely Request for Exclusion form, you will not be legally bound by the release of Released Class Claims.

Class Members who fail to submit a valid and timely Request for Exclusion form on or before [60 calendar days from the date of mailing] will be bound by all terms of the Settlement and any final disposition entered if the Settlement is approved by the Court.

9. If I don't exclude myself, can I sue Defendant for the same thing later?

No. Unless you submit a valid and timely Request for Exclusion, you give up the right to sue Defendant and Released Parties for the Released Class Claims. If you have a pending lawsuit involving the Released Class Claims, speak to your lawyer in that lawsuit immediately.

10. If I exclude myself, can I get money from this settlement?

No, except if you worked for Defendant at any time from March 16, 2020, through May 3, 2022, in which case you will still receive the portion of your Individual Settlement Payment for the claims that arise under PAGA.

THE LAWYERS REPRESENTING YOU

11. Do I have a lawyer in this case?

The Court has approved PAYNE NGUYEN, LLP as Class Counsel. The firm's contact information is:

PAYNE NGUYEN LLP
Cody Payne, Esq.
Kim Nguyen, Esq.
4640 Admiralty Way, Suite 500
Marina del Rey, California 90292
Telephone: (310) 360-9882

Class Counsel will ask the Court for attorneys' fees of up to \$227,813.33 and reimbursement of litigation cost/expenses of up to \$15,000.00. These amounts are subject to Court approval and the Court may award less than these amounts.

OBJECTING TO THE SETTLEMENT

You can object to the Settlement or some part of it.

12. How do I tell the Court if I don't like the settlement?

If you are a Class Member, you can object to the Settlement and you can give reasons for why you think the Court should not approve it. The Court will consider your views. To make a written objection, you must mail your signed objection to the Settlement Administrator no later than [60 calendar days from the date of mailing]. An Objection Form has been included with this notice for you to use. Your written objection must include your full name, address, telephone number, the last four digits of your social security number, and the specific reason for your objection. You may also come to the Final Approval Hearing on [DATE] and make an oral objection at that time, regardless of whether you submitted a written objection.

13. What is the difference between objecting and excluding?

Objecting is simply telling the Court that you do not like something about the Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement. If you exclude yourself by submitting a valid and timely Request for Exclusion, you have no basis to object because the case no longer affects you.

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to grant final approval of the Settlement ("Final Approval Hearing"). You may attend, but you do not have to attend.

14. When and where will the Court decide whether to approve the settlement?

The Court will hold the Final Approval Hearing at [REDACTED] a.m./p.m. on [REDACTED], 2022], at the Riverside County Superior Court – Southwest Justice Center, located at 30755-D Auld Road, Murrieta, California 92563, in Department S303.

At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate, and determine whether to grant final approval of the Settlement. If there are objections, the Court will consider them.

15. Do I have to come to the hearing?

No. If you agree to the Settlement, you do not have to come to Court to talk about it. However, you may attend. You may also retain your own lawyer at your expense to attend on your behalf. You may attend in person, but you may also attend remotely if you wish. Please see <https://www.riverside.courts.ca.gov/PublicNotices/remote-appearances.php> for information on how to schedule remote appearances.

16. How will I learn if the settlement was approved?

A notice of final judgment will be posted on the Settlement Administrator's website located at [www.\[REDACTED\].com](http://www.[REDACTED].com).

IF YOU DO NOTHING

17. What happens if I do nothing at all?

If you do nothing, you will receive your share of the Settlement, and you will release the Released Class Claims. You will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendant or Released Parties about the Released Class Claims, ever again.

If the Settlement is approved by the Court, your Individual Settlement Payment will be mailed to you by the Settlement Administrator after the Final Approval Hearing. This check will remain valid and negotiable for 180 days. If you do not cash your settlement check within 180 days, these funds will be transferred to the Controller of the State of California's Unclaimed Property Fund in your name. You may then claim these funds from there.

GETTING MORE INFORMATION

18. How do I get 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 viewing the Settlement located on the Settlement Administrator's website at [REDACTED] or by contacting the Settlement Administrator or Class Counsel.

The Settlement Agreement is also attached to the Declaration of Cody Payne in Support of Plaintiff's Amended Motion for Preliminary Approval of Class Action and PAGA Settlement as Exhibit 1. This document was filed on [REDACTED] and may be viewed at the Riverside County Superior Court located at 4050 Main Street, Riverside, California 92501 or online by entering Case No. CVSW2102108 on the Riverside County Superior Court website, located at <https://epublic-access.riverside.courts.ca.gov/public-portal/?q=user/login&destination=node/379> and purchasing this document from the Court's docket.

WHAT IF MY INFORMATION CHANGES?

19. What if my contact information changes?

It is your responsibility to inform the Settlement Administrator of your updated information to ensure receipt of settlement payments or communications regarding this matter. You can change or update your contact information by contacting the Settlement Administrator.

DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO THE CLERK OF THE COURT OR THE JUDGE

EXHIBIT B

OBJECTION FORM

Salvador Perez Espinoza v. McGee Contracting Inc.
Riverside County Superior Court, Case No. CVSW2102108

INSTRUCTIONS: If you wish to tell the Court that you do not like the Settlement or some part of it, you may make an objection by completing, signing and returning this Objection Form to the Settlement Administrator at the address listed below. Please state each reason for your objection and any legal support for your objection. You must sign and complete this form accurately and in its entirety. You must mail this form to the Settlement Administrator at the address below so that it is postmarked on or before the **[insert Response Deadline]**.

Phoenix Settlement Administrators

[Mailing Address]

The Court will consider your objection at the Final Approval Hearing if you submit a timely and valid written statement of objection. All of the information on this form is required. If you do not provide all of the information below, your objection will be deemed null and void. Even if you submit an objection, you will (1) be bound by the terms of the Settlement, including the release of Released Class Claims, unless the Court does not approve the Settlement; and (2) receive your share of class settlement benefits under the Settlement, as approved by the Court. You cannot object to the Settlement if you request exclusion from the Settlement. You may come to the Final Approval Hearing and be heard even if you do not complete this form.

1. CONTACT INFORMATION

First and Last Name: _____
Home Street Address: _____
City, State, Zip Code: _____
Telephone Number: (____) _____
Last 4 digits of Social Security Number: _____

2. REASON FOR OBJECTION

Please state each reason you do not like the Settlement and any legal support for your objection:

Signed: _____ Dated: _____

Print Name: _____

EXHIBIT C

REQUEST FOR EXCLUSION FROM THE SETTLEMENT

Salvador Perez Espinoza v. McGee Contracting Inc.

Riverside County Superior Court, Case No. CVSW2102108

IF YOU COMPLETE THIS FORM YOU WILL NOT RECEIVE YOUR SHARE OF CLASS SETTLEMENT BENEFITS UNDER THE SETTLEMENT

DO NOT COMPLETE THIS FORM IF YOU WANT TO PARTICIPATE IN THE SETTLEMENT

TO BE EXCLUDED FROM THE SETTLEMENT, THIS REQUEST FOR EXCLUSION FORM MUST BE SIGNED AND MAILED TO THE SETTLEMENT ADMINISTRATOR VIA U.S. MAIL POSTMARKED ON OR BEFORE [REDACTED].

INSTRUCTIONS

If you do not want to participate in this lawsuit and Settlement, you may “opt out” of the Settlement. If you opt out of this lawsuit and the Settlement, (a) you will have no right to receive any class action settlement benefit under the Settlement in this case; (b) you will not be bound by the terms of the Settlement; and (c) you will have no right to object to the Settlement and be heard at the Final Approval hearing.

If you were employed at any time from March 16, 2020, through May 3, 2022, you will still receive your share of penalties arising under the California Private Attorneys General Act of 2004 (“PAGA”) claim because the opt-out provision does not apply to this claim. However, you **will not** receive your share of the settlement for the class claims.

To opt out, you must fill out all information in the section below, sign, and return this Request for Exclusion Form to the Settlement Administrator at the address below. To be timely, your Request for Exclusion Form must be postmarked **on or before [insert Response Deadline]**.

Phoenix Settlement Administrators

[Mailing Address]

OPT OUT SIGNATURE

By signing this Request for Exclusion Form, I wish and hereby exclude myself from the class settlement reached in the matter of *Espinoza v. McGee Contracting Inc.* By signing this Request for Exclusion Form, I understand that I will not receive money from the class portion of the settlement, and cannot object to the Settlement or be heard at the Final Approval hearing.

Signed: _____ Dated: _____

Print Name: _____

Address: _____

Telephone Number: _____

Last 4 digits of Social Security Number: _____