

CODY PAYNE, SBN 282342

cody@paynellp.com

KIM NGUYEN, SBN 293906

kim@paynellp.com

PAYNE NGUYEN, LLP

4640 Admiralty Way, Suite 500

Marina del Rey, CA 90292

Telephone: (310) 360-9882

Facsimile: (310) 928-7469

Attorneys for Plaintiff

SALVADOR PEREZ ESPINOZA

Edward J. Miller (Bar No. 244091)

Ashley R. Wedding (Bar No. 284042)

FABOZZI & MILLER, APC

38975 Sky Canyon Drive, Suite 104

Murrieta, CA 92563

Telephone: (951) 296-1775

Facsimile: (951) 296-1776

emiller@fabozzimillerlaw.com

awedding@fabozzimillerlaw.com

Attorneys for Defendant

MCGEE CONTRACTING INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE – SOUTHWEST JUSTICE CENTER

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. Raquel A.
Marquez, Dept. S303

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

Action Filed: March 16, 2021

Trial Date: None Set

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

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

5 **DEFINITIONS**

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

8 2. “Action” means all causes of action, claims, and allegations in the operative
9 complaint filed in *Espinoza v. McGee Contracting Inc.*, Riverside Superior Court Case No.
10 CVS2102108.

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

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

20 5. “Class List” means a complete list of all Class Members that Defendant will
21 diligently and in good faith compile from their records and provide to the Settlement
22 Administrator within fourteen (14) calendar days after Preliminary Approval of this Settlement.
23 The Class List will be formatted in a readable Microsoft Office Excel spreadsheet containing the
24 following information for each Class Member: (1) full name; (2) last known home address;; (4)
25 social security number; (5) start and end dates of active employment as a non-exempt employee
26 of Defendant in the State of California; (6) total Workweeks during the Class Period; and (7) any
27 other information required by the Settlement Administrator in order to effectuate the terms of the
28 Settlement.

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

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

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

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

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

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

12. “Defendant” means McGee Contracting Inc.

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

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

15. “Net Settlement Amount” means the funds available for payments to the Class, 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

1 Penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”) and
2 PAGA Members.

3 16. “PAGA” means the California Labor Code Private Attorneys General Act of 2004
4 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”).

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

15 18. “PAGA Members” means all current and former California non-exempt hourly
16 employees of Defendant who worked at any time during the PAGA Period.

17 19. “PAGA Period” means the period from January 1, 2020, through May 3, 2022.

18 20. “Parties” means Plaintiff and Defendant, collectively, and “Party” shall mean
19 either Plaintiff or Defendant.

20 21. “Participating Class Members” means all Class Members who do not submit a
21 valid and timely Request for Exclusion.

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

25 23. “Plaintiff” means Salvador Perez Espinoza.

26 24. “Preliminary Approval” means the Court order granting preliminary approval of
27 the Settlement Agreement.

1 25. “Released Claims” means all claims, rights, demands, liabilities, and causes of
2 action, arising from, or related to, the same set of operative facts as those set forth in the operative
3 complaint in the Action. The Released Claims shall be limited to those claims that arose during
4 the Class Period. The Released Claims shall not apply to claims for workers’ compensation
5 benefits, unemployment insurance benefits, or any other claim or right that as a matter of law
6 cannot be waived or released. The Parties will meet and confer in good faith if the Court requires
7 changes to the scope of the Released Claims.

8 26. “Released Parties” means Defendant and its officers, directors, and agents.

9 27. “Request for Exclusion” means a valid and timely written statement submitted by
10 a Class Member requesting to be excluded from the Action. To be effective, the Request for
11 Exclusion must contain (a) the Class Member’s full name, address, telephone number, and the
12 last four digits of the Class Member’s Social Security number and/or the Employee ID number
13 and (b) a clear statement requesting to be excluded from the settlement of the class claims similar
14 to the following: “I wish to exclude myself from the class settlement reached in the matter of
15 *Espinoza v. McGee Contracting Inc.* I understand that by excluding myself, I will not receive
16 money from the class portion of the settlement reached in this matter.” To be effective, the
17 Request for Exclusion must be post-marked by the Response Deadline and received by the
18 Settlement Administrator.

19 28. “Response Deadline” means the date sixty (60) days after the Settlement
20 Administrator mails the Class Notice to Class Members and the last date on which Class Members
21 may submit Requests for Exclusion, written objections to the Settlement, or workweek disputes.
22 In the event the 60th day falls on a Sunday or Federal holiday, the Response Deadline will be
23 extended to the next day on which the U.S. Postal Service is open. The Response Deadline for
24 Requests for Exclusion or Objections will be extended fifteen (15) calendar days for any Class
25 Member who is re-mailed a Class Notice by the Settlement Administrator, unless the 15th day
26 falls on a Sunday or Federal holiday, in which case the Response Deadline will be extended to
27 the next day on which the U.S. Postal Service is open. The Response Deadline may also be
28 extended by express agreement between Class Counsel and Defendant. Under no circumstances,

1 however, will the Settlement Administrator have the authority to unilaterally extend the deadline
2 for Class Members to submit a Request for Exclusion or Objection to the settlement.

3 29. "Settlement" means the disposition of the Action pursuant to this Agreement.

4 30. "Settlement Administrator" means Phoenix Settlement Administrators. The
5 Parties each represent that they do not have any financial interest in the Settlement Administrator
6 or otherwise have a relationship with the Settlement Administrator that could create a conflict of
7 interest.

8 31. "Settlement Administration Costs" means the costs payable from the Total
9 Settlement Amount to the Settlement Administrator for administering this Settlement, including,
10 but not limited to, printing, distributing, and tracking documents for this Settlement, translating
11 the Class Notice into Spanish, calculating/confirming the Class Members' Workweeks and Pay
12 Periods from the information contained in the Class List, calculating each Participating Class
13 Member's Individual Settlement Payment, tax reporting, distributing the Total Settlement
14 Amount, providing necessary reports and declarations, and other duties and responsibilities set
15 forth herein to process this Settlement, and as requested by the Parties or the Court. Settlement
16 Administration Costs shall not exceed Twelve Thousand Dollars (\$12,000.00).

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

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

25 **TERMS OF AGREEMENT**

26 34. Settlement Consideration. Defendant shall fully fund the Total Settlement
27 Amount as set forth in Paragraph 36 of this Agreement. The following will be paid out of the
28 Total Settlement Amount: the sum of the Individual Settlement Payments, the Class

Representative Enhancement Payment, Class Counsel's Fees and Costs, the PAGA Penalties, and the Settlement Administration Costs, as specified in this Agreement. Except for any employer-side payroll taxes due on the wage portion of the Individual Settlement Payments, or as a result of an increase in the number of workweeks as set forth below, Defendant shall not be required to pay more than the Total Settlement Amount. The Total Settlement Amount is non-reversionary; no portion of the Total Settlement Amount will revert to Defendant.

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

a) Increase the Total Settlement Amount on a *pro rata* basis equal to the 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%.

36. 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

1 Administrator, no later than thirty (30) calendar days upon Notice of Entry of the court order
2 entering final approval.

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

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

16 39. Class Representative Enhancement Payment. Defendant agrees not to oppose or
17 object to any application or motion by Plaintiff for a Class Representative Enhancement Payment
18 of Seven Thousand Five Hundred Dollars (\$7,500.00) to Plaintiff Salvador Perez Espinoza. The
19 Class Representative Enhancement Payment is in exchange for the General Release of Plaintiff's
20 individual claims, and for Plaintiff's time, effort and risk in bringing and prosecuting the Action.
21 Any adjustments made by the Court to the requested Class Representative Enhancement Payment
22 shall not be deemed a material modification of this Agreement. In the event that the Court reduces
23 or does not approve the requested Class Representative Enhancement Payment, the Settlement
24 Agreement remains in full force and effect, Plaintiff shall not have the right to revoke the
25 settlement for that reason, it shall remain binding, and any portion of the requested Class
26 Representative Enhancement Payment that is not awarded by the Court to the Class
27 Representative shall be reallocated to the Net Settlement Amount and distributed to Participating
28 Class Members as provided in this Agreement.

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

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

42. 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

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

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

11 b) Calculation of PAGA Portion of Individual Settlement Payments. The
12 Settlement Administrator will calculate the total Pay Periods for all PAGA Members by adding
13 the number of Pay Periods worked by each PAGA Member during the PAGA Period. The amount
14 that each PAGA Member will receive will be calculated by dividing each participating PAGA
15 Member's individual Pay Periods by the total Pay Periods of all PAGA Members, and multiplying
16 the resulting fraction by the 25% share of the PAGA Penalties designated for distribution to
17 aggrieved employees. PAGA Members shall receive this portion of their Individual Settlement
18 Payment regardless of whether they opt out of the participation regarding the class claims.

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

1 44. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
2 Participating Class Members and/or PAGA Members under this Settlement, as well as any other
3 payments made pursuant to this Settlement, will not be utilized to calculate any additional benefits
4 under any benefit plans to which any Class Members and/or PAGA Members may be eligible,
5 including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans,
6 vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties'
7 intention that this Settlement Agreement will not affect any rights, contributions, or amounts to
8 which any Class Members may be entitled under any benefit plans.

9 46. Settlement Administration Process. The Parties agree to cooperate in the
10 administration of the Settlement and to make all reasonable efforts to control and minimize the
11 costs and expenses incurred in administration of the Settlement. The Settlement Administrator
12 will provide the following services:

13 46(a) Establish and maintain a Qualified Settlement Fund.

14 46(b) Calculate the Individual Settlement Payment each Participating Class
15 Member is eligible to receive and the portion of the PAGA Penalties
16 each PAGA Member shall receive.

17 46(c) Translate the Class Notice from English to Spanish.

18 46(d) Print and mail the Class Notice in English and Spanish.

19 46(e) Perform address searches as detailed below, including conducting
20 additional address searches and skip traces for mailed Class Notices
21 that are returned as undeliverable.

22 46(f) Process Requests for Exclusion, Objections, calculate Participating
23 Class Members' Individual Settlement Payment, field inquiries or
24 disputes from Class Members.

25 46(g) Print and issue Settlement Payment Checks, prepare any IRS W2 and
26 1099 Tax Forms and any other filings required by any governmental
27 taxing authority.

28 46(h) Distribute Plaintiff's Enhancement Payment, Class Counsel's Fees and

Costs, the LWDA's portion of the PAGA Penalties, and the Settlement Administration Costs, including all related tax forms.

46(i) Inform Defendant of its employer-side payroll tax liability and making all necessary deposits and payments to the necessary taxing authorities for the payments received for the employer-share of payroll taxes.

46(j) Track and deliver uncashed Individual Settlement Payment checks as outlined in this Agreement.

46(k) Provide declarations and/or other information to this Court as requested by the Parties and/or the Court.

46(l) Provide weekly status reports to counsel for the Parties.

46(m) Posting a notice of final judgment, after entry of the judgment, online at the Settlement Administrator's website for a period of sixty (60) days pursuant to California Rule of Court 3.769.

46(n) All other duties assigned to the Settlement Administrator as set forth in this Agreement of by Court order.

47. Delivery of the Class List. Within fourteen (14) calendar days of Preliminary Approval, Defendant will provide the Class List to the Settlement Administrator. This is a material term of the Agreement, and if Defendant fails to comply, Plaintiff shall have the right to void the Agreement.

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

49. Confirmation of Contact Information in the Class List. Prior to mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. Any Class Notice returned to the Settlement Administrator as non-deliverable on or before the Response Deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding

1 address affixed thereto and the Settlement Administrator will indicate the date of such re-mailing
2 on the Class Notice. If no forwarding address is provided, the Settlement Administrator will
3 promptly attempt to determine the correct address using a skip-trace, or other search using the
4 name, address and/or Social Security number of the Class Member involved, and will then
5 perform a single re-mailing. If any Class Notice sent to a Class Member by the Settlement
6 Administrator is returned as undeliverable to a current employee, then Defendant shall make all
7 reasonable efforts to obtain the current address from the Class Member and provide the same
8 within seven (7) calendar days of notice from the Settlement Administrator. Those Class Members
9 who receive a re-mailed Class Notice, whether by skip-trace or by request, will have between the
10 later of (a) an additional fifteen (15) calendar days or (b) the Response Deadline to postmark a
11 Request for Exclusion, or an Objection to the Settlement.

12 50. Class Notice. All Class Members will be mailed a Class Notice. Each Class Notice
13 will provide: (a) information regarding the nature of the Action; (b) a summary of the Settlement's
14 principal terms; (c) the Class definition; (d) the total number of Workweeks each respective Class
15 Member worked for Defendant during the Class Period; (e) each Class Member's estimated
16 Individual Settlement Payment and the formula for calculating Individual Settlement Payments;
17 (f) the dates which comprise the Class Period and PAGA Period; (g) the deadlines by which the
18 Class Member must postmark Requests for Exclusion, Objections to the Settlement, or Workweek
19 disputes; (h) the Released Claims, as set forth herein; and (j) the date for the final approval
20 hearing.

21 51. Disputed Information on Class Notice. Class Members will have an opportunity
22 to dispute the information provided in their Class Notice. To the extent Class Members dispute
23 the number of Workweeks with which they have been credited or the amount of their Individual
24 Settlement Payment, Class Members may produce evidence to the Settlement Administrator
25 showing that such information is inaccurate. Absent evidence rebutting Defendant's records,
26 Defendant's records will be presumed determinative. However, if a Class Member produces
27 evidence contrary to Defendant's records by the Response Deadline, the Settlement Administrator
28 shall notify Class Counsel and Defendant's Counsel to discuss and resolve the dispute, including

1 providing all available relevant information to all counsel. The Parties will resolve all disputes
2 jointly, which shall be final and binding on any Class Member disputes, and shall thereafter
3 instruct the Settlement Administrator how to proceed in processing the dispute. If the Parties
4 cannot reach an agreement, disputes shall be referred to the Settlement Administrator for a
5 determination and if the dispute remains unresolved after that, the dispute shall be submitted to
6 the Court for final determination. All such disputes are to be resolved or submitted to the Court
7 no later than fourteen (14) calendar days after the Response Deadline.

8 52. Defective Submissions. If a Class Member's Request for Exclusion is defective as
9 to the requirements listed herein, that Class Member will be given an opportunity to cure the
10 defect(s). The Settlement Administrator will mail the Class Member a cure letter within three (3)
11 business days of receiving the defective submission to advise the Class Member that his or her
12 submission is defective and that the defect must be cured to render the Request for Exclusion
13 valid. The Class Member will have until the later of (a) the Response Deadline or (b) fifteen (15)
14 calendar days from the date of the cure letter, whichever date is later, to postmark a revised
15 Request for Exclusion. If a Class Member responds to a cure letter by filing a defective claim,
16 then the Settlement Administrator will have no further obligation to give notice of a need to cure.
17 If the revised Request for Exclusion is not postmarked within that period, it will be deemed
18 untimely.

19 53. Request for Exclusion Procedures. Any Class Member wishing to opt-out from the
20 Action must sign and postmark a written Request for Exclusion to the Settlement Administrator
21 by the Response Deadline. The date of the postmark on the return mailing envelope receipt
22 confirmation will be the exclusive means to determine whether a Request for Exclusion has been
23 timely submitted. All Requests for Exclusion will be submitted to the Settlement Administrator,
24 who will certify jointly to Class Counsel and Defendant's Counsel the Requests for Exclusion
25 that were timely submitted. All Class Members who do not request exclusion from the Action
26 will be bound by all terms of the Settlement Agreement if the Settlement is granted final approval
27 by the Court.

28 54. Defendant's Right to Rescind. If more than ten percent (10%) of the Class

1 Members in the Class Period (rounded to the next whole number) elect not to participate in the
2 Settlement by submitting a valid and timely Request for Exclusion, then Defendant may, at its
3 election, rescind the Settlement Agreement and all actions taken in furtherance of it will be
4 thereby null and void. Defendant must meet and confer with Class Counsel prior to exercising
5 this right and must make clear its intent to rescind the Agreement within fourteen (14) calendar
6 days of the Settlement Administrator notifying the Parties of these opt-outs. If Defendant
7 exercises its right to rescind the Agreement, Defendant shall be responsible for all Settlement
8 Administration Costs incurred to the date of rescission.

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

17 56. Objection Procedures. To object to the Settlement, a Participating Class Member
18 must postmark a valid Objection to the Settlement Administrator on or before the Response
19 Deadline. For an Objection to be valid, it must be signed by the Participating Class Member and
20 include the Class Member's full name, address, telephone number, the last four digits of their
21 social security number and/or Employee ID number, and the specific reason including any legal
22 grounds for the Participating Class Member's objection. The postmark date will be deemed the
23 exclusive means for determining that the Objection is timely. Participating Class Members who
24 fail to object in the manner specified above will be foreclosed from making a written objection,
25 but shall still have a right to appear at the Final Approval Hearing in order to have their objections
26 heard by the Court. At no time will any of the Parties or their counsel seek to solicit or otherwise
27 encourage Participating Class Members to submit written objections to the Settlement or appeal
28 from the Order and judgment. Class Counsel will not represent any Participating Class Members

1 with respect to any objections to this Settlement.

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

11 58. Uncashed Settlement Checks. Any checks issued by the Settlement Administrator
12 to Participating Class Members and PAGA Members will be negotiable for at least one hundred
13 eighty (180) calendar days. If a Participating Class Member or PAGA Member does not cash his
14 or her settlement check within 180 days of mailing, the Settlement Administrator shall distribute
15 the uncashed funds, subject to Court approval, to the Controller of the State of California to be
16 held pursuant to the Unclaimed Property Law, California Civil Code §1500, *et. seq.* for the benefit
17 of those Participating Class Members and PAGA Members who did not cash their checks until
18 such time that they claim their property. The Parties agree that this disposition results in no
19 "unpaid residue" under California Civil Procedure Code § 384, as the entire Net Settlement
20 Amount will be paid out to Participating Class Members and PAGA Members, whether or not
21 they all cash their settlement checks. Therefore, Defendant will not be required to pay any interest
22 on such amounts. The Individual Settlement Payments provided to Participating Class Members
23 and PAGA Members shall prominently state the expiration date or a statement that the settlement
24 check will expire in one hundred eighty (180) days, or alternatively, such a statement may be
25 made in a letter accompanying the Individual Settlement Payment. Expired Individual Settlement
26 Payments will not be reissued, except for good cause and as mutually agreed by the Parties in
27 writing. The Parties agree no unclaimed funds will result from the settlement process detailed in
28 this Agreement.

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

6 60. Tax Liability. Defendant makes no representation as to the tax treatment or legal
7 effect of the payments called for hereunder, and Plaintiff and Participating Class Members are
8 not relying on any statement, representation, or calculation by Defendant or by the Settlement
9 Administrator in this regard. Plaintiff and Participating Class Members understand and agree that
10 except for Defendant's employer-side portion of any payroll taxes, they will be solely responsible
11 for the payment of any taxes and penalties assessed on the payments described herein.
12 Defendant's share of any employer-side payroll taxes and other required employer withholdings
13 due on the Individual Settlement Payments shall be paid separate and apart from the Total
14 Settlement Amount.

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

1 limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or
2 tax structure of any transaction, including any transaction contemplated by this Agreement.

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

7 63. Release by Participating Class Members, PAGA Members, the LWDA and the
8 State of California. Upon the full funding of the Total Settlement Amount, and all applicable
9 employer-side payroll taxes, Participating Class Members hereby do and shall be deemed to have
10 fully, finally, and forever released and discharged the Released Parties from any and all Released
11 Claims for the Class Period. This release shall be binding on all Participating Class Members. All
12 PAGA Members, regardless of whether they submit timely and valid Requests for Exclusion from
13 the Settlement, shall release all claims arising under PAGA for the PAGA Period. The LWDA
14 and the State of California shall release all claims under PAGA for the PAGA Period.

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

26 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR
27 OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR
28 HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF

1 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR
2 HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

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

6 65. Neutral Employment Reference. Defendant agrees that it will adopt a neutral
7 reporting policy regarding any future employment references related to Plaintiff. In the event that
8 any potential or future employers of Plaintiff request a reference regarding Defendant's
9 employment of Plaintiff, Defendant shall only provide Plaintiff's dates of employment and job
10 titles during employment. Defendant shall not refer to the Action or this Settlement.

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

23 67. Preliminary Approval Hearing. Plaintiff will request a hearing before the Court to
24 request Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary
25 Approval Order for: (a) conditional certification of the Class for settlement purposes only, (b)
26 Preliminary Approval of the proposed Settlement Agreement, and (c) setting a date for a Final
27 Approval Hearing. The Preliminary Approval Order will provide for the Class Notice to be sent
28 to all Class Members as specified herein. In conjunction with the Preliminary Approval hearing,

1 Plaintiff will submit this Agreement, which sets forth the terms of the Settlement, and will include
2 the proposed Class Notice attached as Exhibit A. Defendant agrees that it will not oppose
3 Plaintiff's Motion for Preliminary Approval. This is a material term of the settlement and any
4 opposition by Defendant will be grounds for Plaintiff to withdraw from the settlement. Any failure
5 by the Court to fully and completely approve the Agreement as to the Action, or the entry of any
6 Order by another Court with regard to any of the Action which has the effect of preventing the
7 full and complete approval of this Settlement Agreement as written and agreed to by the Parties,
8 will result in this Settlement Agreement and the Memorandum of Understanding entered into by
9 the Parties, and all obligations under this Settlement Agreement and the Memorandum of
10 Understanding being nullified and voided.

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

26 69. Judgment and Continued Jurisdiction. Upon Final Approval of the Settlement by
27 the Court or after the Final Approval Hearing, the Parties will present the judgment to the Court
28 for its approval. After entry of final judgment, the Court will have continuing jurisdiction solely

for purposes of addressing: (a) the interpretation and enforcement of the terms of the Settlement, (b) settlement administration matters, and (c) such post-judgment matters as may be appropriate under court rules or as set forth in this Settlement.

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

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

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

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

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

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

76. Execution and Counterparts. This Settlement Agreement is subject only to the

1 execution of all Parties. However, the Settlement Agreement may be executed in one or more
2 counterparts. All executed counterparts and each of them, including facsimile and scanned copies
3 of the signature page, will be deemed to be one and the same instrument provided that counsel
4 for the Parties will exchange among themselves original signed counterparts.

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

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

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

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

27 81. Non-Admission of Liability. The Parties enter into this Agreement to resolve the
28 dispute that has arisen between them and to avoid the burden, expense and risk of continued

1 litigation. In entering into this Agreement, Defendant does not admit, and specifically denies, it
2 has violated any federal, state, or local law; violated any regulations or guidelines promulgated
3 pursuant to any statute or any other applicable laws, regulations or legal requirements; breached
4 any contract; violated or breached any duty; engaged in any misrepresentation or deception; or
5 engaged in any other unlawful conduct with respect to their employees. Neither this Agreement,
6 nor any of its terms or provisions, nor any of the negotiations connected with it, shall be construed
7 as an admission or concession by Defendant of any such violations or failures to comply with any
8 applicable law. Except as necessary in a proceeding to enforce the terms of this Agreement, this
9 Agreement and its terms and provisions shall not be offered or received as evidence in any action
10 or proceeding to establish any liability or admission on the part of Defendant or to establish the
11 existence of any condition constituting a violation of, or a non-compliance with, federal, state,
12 local or other applicable law.

13 82. Captions. The captions and section numbers in this Agreement are inserted for the
14 reader's convenience, and in no way define, limit, construe or describe the scope or intent of the
15 provisions of this Agreement.

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

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

25 85. Representation By Counsel. The Parties acknowledge that they have been
26 represented by counsel throughout all negotiations that preceded the execution of this Agreement,
27 and that this Agreement has been executed with the consent and advice of counsel and reviewed
28 in full. Further, Plaintiff and Class Counsel warrant and represent that there are no liens on the

1 Agreement.

2 86. All Terms Subject to Final Court Approval. All amounts and procedures described
3 in this Settlement Agreement herein will be subject to final Court approval.

4 87. Cooperation and Execution of Necessary Documents. The Parties agree to
5 cooperate to promote participation in the Settlement, and in seeking court approval of the
6 Settlement. The Parties and their counsel agree not to take any action to encourage any Class
7 Members to opt out of and/or object to the Settlement. Defendant agrees not to obtain any
8 individual settlement agreements or waivers, Pick Up Stix agreements or arbitration agreements
9 from any Class Member prior to the funding of the Total Settlement Amount concerning claims
10 released via this Agreement, or enter into any arbitration agreement with any Class Member that
11 covers the claims released via this Agreement during the Settlement approval process prior to the
12 funding of the Total Settlement Amount and that the Parties will work in good faith to reach an
13 agreement approved by the Court.

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

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

28 90. Confidentiality. The Parties and their counsel agree to keep the terms of the

Settlement confidential until the filing of Plaintiff's Motion for Preliminary Approval. Plaintiff, Class Counsel, Defendant, and their counsel agree that they will not issue any press releases, initiate any contact with the press, respond to any press inquiry or have any communication with the press about the fact, amount or terms of the Settlement Agreement. Notwithstanding anything 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.

91. 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.

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APPROVED AS TO FORM AND CONTENT:

Dated: 06/01/2022 02:29 UTC

PLAINTIFF

By: Salvador Perez Espinoza

Salvador Perez Espinoza

Dated: 5/18/2022

DEFENDANT MCGEE CONTRACTING INC.

By: Jason McGee
Jason McGee (May 18, 2022 14:47 PDT)

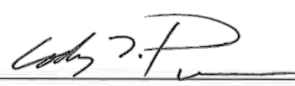
Name: Jason McGee

Title: Chief Executive Officer

1 APPROVED AS TO FORM ONLY:
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3 Dated: 6/01/2022
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PAYNE NGUYEN, LLP

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6 By: 

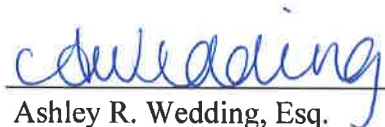
Cody Payne, Esq.

Kim Nguyen, Esq.

Attorneys for Plaintiff Salvador Perez
Espinoza
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11 Dated: 5/12/2022
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FABOZZI & MILLER, APC

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14 By: 

Ashley R. Wedding, Esq.

Attorneys for Defendant McGee
Contracting Inc.
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