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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF KERN**

10 JOSE AGUILERA,

11 *Plaintiff,*

12  
13 vs.

14 LIFT ENERGY CONSTRUCTION INC.  
15 and DOES 1 to 25, inclusive

16 *Defendant(s).*  
17  
18  
19

Case No.: BCV-21-102742 BCB

**STIPULATION FOR APPROVAL OF PAGA  
SETTLEMENT AND RELEASE**

Action filed: 11/18/2021

CMC: 5/31/22  
Trial: None Set

20 Department: H, Hon. Bernard  
21 Barmann Jr.

Submitted Herewith Under Separate Cover:

- 22 1. Declaration of Harout Messrelian In Support of  
23 Stipulation of PAGA Settlement and Release; and  
24 2. [Proposed] Order  
25  
26  
27  
28

1 **I. INTRODUCTION**

2 Plaintiff Jose Aguilera ("Plaintiff") and Defendant LIFT ENERGY CONSTRUCTION  
3 INC. ("LIFT ENERGY" or "Defendant(s)") have reached an agreement to settle the above-  
4 captioned action (the "Action"). The parties have memorialized the terms of this settlement in a  
5 Settlement Agreement (the "Settlement Agreement"). Attached as "**Exhibit A**" is a copy of the  
6 PAGA Settlement Agreement. By this Stipulation and pursuant to California Labor Code §  
7 2699(l), Plaintiff seeks an order permitting settlement on the terms outlined in the Settlement  
8 Agreement. Plaintiff and Defendant are collectively referred to as the "Parties" and any one of  
9 them individually may be referred to as a "Party."

10 Defendant adamantly denies any liability or wrongdoing of any kind whatsoever  
11 associated with the Action, and further denies that, for any purpose other than settling the Action,  
12 the Action is appropriate for representative treatment. It is the desire of the Parties to fully,  
13 finally, and forever compromise, and discharge all claims known or unknown related to those  
14 alleged in the Action.

15 **II. ALLEGATIONS AND INVESTIGATION**

16 A. Defendant LIFT ENERGY CONSTRUCTION is in the solar installation  
17 industry. Plaintiff was hired to work for Defendant as a laborer on or around January 28, 2021.  
18 Plaintiff's employment with Defendant ended on or around February 23, 2021. At all times  
19 during his employment, Plaintiff was considered an hourly, non-exempt employee.

20 B. Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit  
21 under the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*  
22 ("PAGA"). On March 26, 2021, Plaintiff, on behalf of himself and Defendant's other  
23 California non-exempt hourly employees (hereafter collectively the "Aggrieved Employees")  
24 gave written notice by electronic service to the California Labor and Workforce Development  
25 Agency ("LWDA") and via certified mail to Defendant of his claims against Defendant. In his  
26 notice to the LWDA, Plaintiff asserted on behalf of himself and the Aggrieved Employees that  
27 Defendant (1) failed to compensate for all hours worked and to pay minimum wages (Labor  
28 Code Sections 1194, 1197, 1197.1); (2) failed to pay overtime compensation (Labor Code  
Section 510); (3) failed to provide rest breaks (Labor Code Section 226.7); (4) failed to provide  
meal breaks (Labor Code Sections 512, 226.7); (5) failed to timely pay wages due during

1 employment (Labor Code Section 204); (6) failed to provide accurate itemized wage statements  
2 (Labor Code Section 226); (7) failed to keep accurate and complete payroll records (Labor  
3 Code Section 1174/1174.5); (8) failed to pay wages at the end of employment (Labor Code  
4 section 203); (9) failed to reimburse business expenses (Labor Code Sections 2800, 2802); (10)  
5 failed to provide sick pay (Labor Code sections 232, 246); and (11) failed to provide Worker's  
6 Compensation coverage (Labor Code section 2802) . Plaintiff filed his initial lawsuit on  
7 November 18, 2021 in the Superior Court for the State of California, County of Kern, Case No.  
8 BCV-21-102742 with one cause of action for penalties under PAGA under the following legal  
9 theories: (a) failure to pay all minimum wages owed; (b) failure to pay all overtime and/or  
10 double time wages owed; (c) failure to pay all overtime and/or double time wages owed at the  
11 correct rate(s) of pay due to bonus payments, incentive compensation, or otherwise; (d) failure  
12 to provide compliant meal periods, or premium pay for non-compliant meal periods; (e) failure  
13 to authorize and permit complaint rest periods, or provide premium pay for non-complaint rest  
14 periods; (f) failure to provide accurate, itemized wage statements and/or otherwise maintain  
15 accurate records; (g) failure to timely pay wages during employment and/or upon separation of  
16 employment; (h) failure to indemnify and/or reimburse for all reasonable and necessary  
17 business expenses; (i) all claims for PAGA penalties for unfair business practices that could  
18 have been premised on the facts, claims, causes of action or legal theories described above,  
19 including failure to pay sick pay and provide Worker's Compensation coverage

20 C. According to Defendant's records, it has employed 167 Aggrieved Employees  
21 from March 26, 2020 through June 21, 2021, and that there are paychecks issued for a total of  
22 approximately 1933 pay periods worked for that same time period.

23 D. Defendant denies any liability or wrongdoing of any kind whatsoever associated  
24 with the lawsuit and the Representative PAGA Claim. It is the desire of the Parties to fully,  
25 finally, and forever compromise, and discharge all claims known or unknown related to those  
alleged in Plaintiff's lawsuit.

26 E. On August 13, 2021, the Parties attended a full day mediation session with  
27 Experienced wage-and-hour mediator Eleanor Barr. At the mediation, the Parties agreed to settle  
28 the entire action, including the Representative PAGA claim for violation of Labor Code § 2698,

1 *et seq.* Before agreeing to the terms of the Settlement, the Parties engaged in informal discovery  
2 regarding Defendant's policies, practices, operations, time and payroll information and other  
3 topics. In advance of mediation, Defendant produced Plaintiff's personnel file, including time  
4 and payroll data for Plaintiff and also produced the time records and payroll records for 36  
5 aggrieved employees. Through extensive arm's length negotiations at the mediation and only  
6 after discovery and investigation were performed, the Parties agreed to settlement terms.

7 F. The Parties conducted investigation of the facts and law both before and after the  
8 lawsuit was filed. Counsel for the Parties have further investigated the applicable law as applied  
9 to the facts discovered regarding Plaintiff's claims, the defenses thereto, and the Labor Code  
10 violations claimed by Plaintiff. Based on their own independent investigations and evaluations,  
11 the Parties and their respective counsel are of the opinion that the Settlement for the  
12 consideration and on the terms set forth in this Stipulation are fair, reasonable and adequate and  
13 are in the best interests of Plaintiff, the Aggrieved Employees, and Defendant in light of all  
14 known facts and circumstances and the risks inherent in litigation, especially in this pandemic  
15 era when most businesses are struggling to remain afloat, much less prosper and make a large  
16 profit.

17 G. The Parties further recognize that the issues presented in the Representative  
18 PAGA Claim are likely only to be resolved with extensive and costly pretrial and trial  
19 proceedings, and that further litigation will cause inconvenience, distraction, disruption, delay,  
20 and expense disproportionate to the maximum potential benefits, especially in light of the  
21 pandemic era and the business climate. *See* Declaration of Harout Messrelian, Plaintiff's  
22 counsel, at paragraph 10, filed concurrently.

### 23 **III. FAIRNESS OF THE SETTLEMENT**

24 A. While this *Jose Aguilera* lawsuit is a Representative PAGA Claim, the Parties are  
25 not obligated to follow the class action procedural rules for obtaining approval of this settlement.  
26 *Arias v. Superior Court (Angelo Dairy)* (2009) 46 Cal.4th 969.

27 B. Plaintiff alleges that the strongest claim is that Plaintiff and other Aggrieved  
28 Employees were not provided timely, uninterrupted meal and rest breaks and were not paid the  
correct amount of overtime compensation. In terms of Plaintiff's other claims for minimum wage  
violations and failure to compensate for all hours worked, no rounding issues were observed. The  
other associated PAGA claims are derivative of the meal/rest break and overtime allegations for

1 which Defendant would not have additional liability for inaccurate pay stubs, failure to pay all  
2 wages owed, failure to keep accurate payroll records, and failure to pay wages at the end of  
3 employment.

4 C. Plaintiff contends that the civil penalty statutes applicable to the Representative  
5 PAGA Claim are Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, 2802 and 2699(f)(2). Under  
6 these civil penalty statutes, an employee who suffers a Labor Code violation, may be awarded a  
7 sum of money for each pay period in which he or she was underpaid. However, under Labor  
8 Code § 2699(e)(2), the Court can reduce an award of civil penalties if the award is unjust,  
9 arbitrary, oppressive, or confiscatory.

10 D. Under the civil penalty formulas applicable under PAGA, Plaintiff estimated a  
11 maximum exposure of approximately \$141,205.65 for civil penalties for Plaintiff's strongest  
12 disputed claims of failure to provide meal and rest periods. Plaintiff's analysis, which Defendant  
13 vehemently disputes, revealed a 48.7% violation rate for either late, short, or interrupted meal  
14 periods. As such, with the 48.7% violation rate, the maximum exposure would be \$47,068.55,  
15 which is calculated as \$50 penalty multiplied by 941.37 pay periods (48.7% of the 1933 pay  
16 periods). Plaintiff extrapolated the same 48.7% for rest break violations, which would equate to  
17 an exposure of \$94,137.10 (\$100 penalty per pay period multiplied by 941.37 pay periods).  
18 Assuming that Plaintiff's calculations and analysis is accurate, the maximum exposure presumes  
19 that the Court will not reduce the penalty award as unjust, arbitrary, oppressive, or confiscatory.  
20 As far as the claim for overtime compensation, Plaintiff's theory is that Defendant failed to  
21 include non-discretionary bonus payments in calculating the regular rate of pay, which would  
22 lead to inaccurate overtime rates. The maximum exposure for overtime compensation would be  
23 \$193,300 (\$100 penalty multiplied by 1933 pay periods), however, that presumes that there was  
24 an overtime violation for every employee during every PAGA period. The latter is not in line  
25 with reality, especially since Plaintiff located just 28 bonus payments in the sample size covering  
26 1,064 weeks or 4,230 shifts. As mentioned, the \$193,300 figure presumes that the Court will find  
27 Defendant liable for the maximum possible civil penalty for failure to pay overtime for every  
28 paycheck Defendant issued to the Aggrieved Employees; and not reduce the penalty award as  
unjust, arbitrary, oppressive, or confiscatory.

///

E. Moreover, Plaintiff is aware of no California state courts awarding Plaintiff

multiple PAGA penalties for the same violation for the same pay period under different Labor Code provisions. As such, one of the risks Plaintiff faces is that the Court would refuse to “stack” civil penalties arising under the various Labor Code statutes. Furthermore, judges have awarded extremely small sums to PAGA claimants in the past. In addition, Defendant would make an argument under *Naranjo v. Spectrum Security Services, Inc.*, 40 Cal. App. 5th 444 (Cal. App. 2d Dist., Sept. 26, 2019) and other similar cases, that meal or rest period violations are not a predicate for civil penalties for improper wage statements and untimely final wages under Labor Code secs. 201-203, 226, 226.3, and 2699. Defendant also adamantly disputes all of Plaintiff’s allegations in the operative Complaint.

F. The source of penalties available is under PAGA, which allows employees to seek civil penalties for certain violations of the Labor Code so long as the penalties are not unjust, arbitrary, oppressive, or confiscatory. There are no State Court decisions under the PAGA to date with substantial awards of civil penalties. There is a substantial risk that the Court could reduce civil penalties to an insignificant amount if it is unpersuaded by Plaintiff’s evidence of willful and intentional conduct. The PAGA expressly counsels against such awards. *See Lab. Code* § 2699(e)(2) (“...a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”). Further, although, class certification is not required for a PAGA claim, Defendant could contend that Plaintiff should show that the PAGA claims are manageable.

G. As such, Defendant could also convince the Court to dismiss the claims due to unmanageability. *Wesson v. Staples The Office Superstore, LLC* (2021) 68 Cal.App.5th 746 (“*Wesson*”); *Feltzs v. Cox Communs. Cal.* (October 21, 2021) 2021 U.S. Dist. LEXIS 207087. On September 9, 2021, the California Court of Appeal issued the significant decision in *Wesson v. Staples the Office Superstore, LLC*, holding that courts have authority to ensure that PAGA claims are manageable, and that courts may limit or strike unmanageable PAGA claims. Defendant contends that Plaintiff’s allegations require a host of individualized inquiries which would arguably devolve into a series of mini-trials based on whether each employee voluntarily elected to unilaterally waive a provided meal period or authorized rest break, based on position titles, job duties and the type of work they perform. (*See, e.g., Brinker,*

53 Cal.4th at 1004.) In *Ortiz v. CVS Caremark Corp.*, the court dismissed a PAGA claim because it was unmanageable. 2014 WL 1117614, at \*3–4 (N.D. Cal. 2014). In *Ortiz v. CVS Caremark Corp.*, the court dismissed a PAGA claim because it was unmanageable. 2014 WL 1117614, at \*3–4 (N.D. Cal. 2014). The Ortiz court cited the “multitude of individualized assessments” that case would have required in ordering dismissal. *Id.* at \*4. Several other courts have adopted *Ortiz*, and dismissed PAGA claims where, as here, there are a large number of allegedly aggrieved individuals whose claims require individual assessments. *See, e.g., Litty v. Merrill Lynch & Co.*, 2014 WL 5904904, at \*3 (C.D. Cal. 2014); *Bowers v. First Student, Inc.*, 2015 WL 1862914, at \*4 (C.D. Cal. 2015); *see also Stafford v. Dollar Tree Stores, Inc.*, 2014 WL 6633396, at \*2–4 (E.D. Cal. 2014) (bifurcating trial of plaintiff’s claim from representative claims: “in light of the number of potential aggrieved employees, judicial economy favors deferring the representative portion of the PAGA claim”); *Amey v. Cinemark USA Inc.*, 2015 WL 2251504, at \*16 (N.D. Cal. May 13, 2015). DS, ¶ 24. The risk of an unmanageable trial is heightened in a representative PAGA claim because the burden of proof rests with the plaintiff to establish violations of the Labor Code “with respect to each and every individual on whose behalf [they] seek[] to recover civil penalties.” *Molina v. Dollar Tree Stores, Inc.*, 2013 U.S. Dist. LEXIS 138642, at \*33-34 (C.D. Cal. Aug. 9, 2013); *Hibbs-Rines v. Seagate Techs, LLC*, 2009 WL 513496, at \*4 (N.D. Cal. Mar. 2, 2009). Moreover, in a PAGA case the plaintiff must prove liability with respect to “each and every individual” through representative evidence – but without sacrificing the defendant’s due process right to present proof of their affirmative defenses. *Elkins v. Superior Court*, 41 Cal. 4th 1337, 1357 (2007); *Walmart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2561 (2011); *Duran v. U.S. Bank Nat’l Ass’n*, 59 Cal. 4th 1, 33-34 (2014). Plaintiff is required to establish a violation of the Labor Code in each pay period of each and every one of the approximately 167 employees. The Court could find that this is an impractical task and require the Eligible Employees to bring individual claims instead of a PAGA representative claim.

H. The Parties further recognize that the issues presented in the Representative PAGA Claim are likely only to be resolved with extensive and costly pretrial and trial proceedings, and that further litigation will cause inconvenience, distraction, disruption, delay, and expense disproportionate to the maximum potential benefits to the Subject Employees and

1 Plaintiff from continued litigation, especially in the pandemic era where further and extensive  
2 litigation may cause businesses to shut down, resulting in no monetary compensation to Plaintiff,  
3 Plaintiff's attorneys, other Aggrieved Employees, and the State of California.

4 I. The settlement of the Representative PAGA Claim involves monetary relief to all  
5 Aggrieved Employees, Plaintiff, his attorneys, and the State of California.

6 J. Furthermore, Plaintiff recognizes that continued litigation presents significant  
7 risks that support a significant downward departure from Plaintiff's estimated civil penalties  
8 amount. In view of the risks, the Settlement represents a fair, adequate, and reasonable  
9 compromise amount for these claims and is in the best interest of Plaintiff and Eligible  
10 Employees and thus, warrants approval. *See Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479  
11 (9th Cir. June 3, 2014) 2014 WL 2465049, \* 3. The PAGA settlement and its terms are fair, just,  
12 reasonable, adequate, and equitable to Defendant, Plaintiff, and the State, especially in light of  
13 the current economic climate, and are the product of good faith, and informed arms-length  
14 negotiations between the Parties consistent with public policy and fully comply with applicable  
15 provisions of law. *See Declaration of Harout Messrelian*, Plaintiff's counsel, at paragraph 19,  
16 filed concurrently.

#### 17 **IV. TERMS AND PROCEDURES OF THE SETTLEMENT**

18 A. The Settlement covers any and all civil penalties claims arising from Plaintiff's  
19 allegations in his Complaint, as laid out above.

20 B. Defendant agrees to pay \$150,000.00 toward the Settlement (the "Gross  
21 Settlement Amount" or "GSA") which will be distributed by Defendant as follows:

22 1. \$50,000.00 (33 1/3% of the GSA) in attorneys' fees to Harout Messrelian,  
23 Esq. of Messrelian Law Inc.

24 2. \$7,425.75 in attorney litigation costs to Harout Messrelian, Esq. of  
25 Messrelian Law Inc.

26 3. \$3,150.00 in PAGA Settlement Administrator costs to the Settlement  
27 Administrators (Phoenix).

28 4. \$89,424.25 (the "Net Settlement Amount" or "NSA") will be divided as  
follows:

a. \$67,068.19 (75% of "NSA") to the LWDA, which represents  
civil penalties payable to the LWDA under the Labor Code  
Private Attorneys General Act ("PAGA"), Labor Code section

2698, *et seq.*; and

- b. \$22,356.06 (25% of NSA) (the “Aggrieved Employee Amount”) to the Aggrieved Employees which represents civil penalties payable to the Aggrieved Employees as compensation for civil penalties that are allegedly owed on the Representative PAGA Claim for the period from March 26, 2020 through Approval of the Settlement.

C. Plaintiff and each Aggrieved Employee shall receive a portion of the Aggrieved Employee Amount on a pro-rata basis by multiplying the Aggrieved Employee Amount by the ratio of (i) the number of pay periods worked by the Aggrieved Employee during the release period and (ii) the total number of pay periods worked by all Aggrieved Employees during the release period.

D. For purposes of computing taxes, one-hundred percent (100%) of the Aggrieved Employee Settlement Award shall be considered to be a civil penalty and shall not be subject to withholding, unless otherwise required by law. The Claims Administrator shall file proof of payment.

**V. THE PROPOSED FEE AMOUNT FOR ATTORNEYS’ FEES AND COST AMOUNT FOR LITIGATION EXPENSES IS FAIR, ADEQUATE, AND REASONABLE AND SHOULD BE APPROVED**

A. Plaintiff’s counsel represents Plaintiff on a straight contingency basis. Plaintiff counsel’s request for \$50,000.00 in attorney fees and \$7,425.75 in litigation costs is fair and reasonable. “Empirical studies show that, regardless of whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery. Chavez v. Netflix, Inc. (2008) 162 Cal.App.4<sup>th</sup> 43, 47 fn. 11 (quoting Shaw v. Toshiba America Information Systems, Inc. (E.D. Tex. 2000) 91 F.Supp.2d 942, 972; *See also* Lafitte v. Robert Half Int’l Inc. (Cal. Aug. 11, 2016) 1 Cal.5<sup>th</sup> 480, 503, 376 P.3d 672, 686 (holding that courts can use the percentage method for the calculation of attorneys’ fees). This is also consistent with Plaintiff’s Counsel’s experience in cases involving PAGA claims. This award is justified here because Plaintiff’s counsel achieved a strong result for the Aggrieved Employees and the State while bearing the substantial burdens of contingency representation. *See* Declaration of Harout Messrelian, Plaintiff’s counsel, at paragraph 21, filed concurrently.

B. It is an accepted practice in wage and hour class action settlements to award attorneys’ fees to Plaintiff’s Counsel based on a percentage of the total settlement value agreed

1 upon by the parties. California courts have long recognized that an appropriate method for  
2 awarding attorneys' fees in class actions is to award a percentage of the common fund. (Serrano  
3 v. Priest (1977), 20 Cal.3d. 25, 48-49 ["when a number of persons are entitled in common to a  
4 specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the  
5 creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney's fees  
6 out of the fund"]; Wershba v. Apple Computer, Inc. (2001), 91 Cal.App.4<sup>th</sup>, 230, 254; Lealao v.  
7 Beneficial California, Inc. (2000) 82 Cal.App.4<sup>th</sup> 19, 26-30.)

8 C. The litigation costs expended to aid in the representation of the Aggrieved  
9 Employees include the following : lawsuit filing fee of \$1450.75, PAGA initial filing fee of  
10 \$75.00, a mediation fee of \$5,150.00 (for Plaintiff's portion of the mediation); and expert data  
11 analysis fee of \$750.00. All of these costs are documented and reasonably incurred. *See*  
12 Declaration of Harout Messrelan, Plaintiff's counsel, at paragraph 22, filed concurrently.

#### 13 **VI. NO ADMISSION OF LIABILITY OR WRONGDOING**

14 The payment of consideration or any other obligation are not and shall not be construed  
15 in any way as an admission of wrongdoing or liability on the part of Defendant, or any other  
16 person or business entity. Defendant adamantly denies all allegations of wrongdoing arising out  
17 of the employment relationship between the Parties, including the Aggrieved Employees. The  
18 Parties intend merely to avoid the expense, delay, uncertainty and burden of continued litigation.

#### 19 **VII. PAGA SETTLEMENT ADMINISTRATION**

20 A. The Parties agree to use PHOENIX SETTLEMENT ADMINISTRATOR to handle the  
21 administration of this Settlement.

22 B. Notice to Aggrieved Employees.

23 Notice shall be provided to the Aggrieved Employees in the following manner:  
24 No later than ten (10) calendar days after the Effective Date, Defendant shall provide the  
25 Settlement Administrator with a list of all Aggrieved Employees (hereinafter the "Aggrieved  
26 Employees List"). The Aggrieved Employees List shall state the first name and last name in  
27 separate columns for each Aggrieved Employee; the last known home address for each  
28 Aggrieved Employee; each Aggrieved Employee's social security number, and each Aggrieved  
Employee's respective number of pay periods worked for Defendant during the Release Period  
based on Defendant's records.

1 The Settlement Administrator shall utilize the United States National Change of Address  
2 (“NCOA”) database and also perform an Accurant or similar skip tracing process to determine  
3 the best most recent addresses for the Aggrieved Employees prior to mailing the notices and  
4 settlement checks.

5 No later ten (10) calendar days after Defendant provides the Aggrieved Employees List  
6 and deposits the Gross Settlement Amount with the Settlement Administrator, the Settlement  
7 Administrator shall mail the Notice of PAGA Settlement (attached hereto as Exhibit “A”)  
8 together with a settlement payment to all Aggrieved Employees by first-class United States mail,  
9 postage prepaid, with directions to the Postmaster to forward the Notice of PAGA Settlement  
10 and return all undeliverable Notices to the Settlement Administrator. For each Notice of PAGA  
11 Settlement that is returned as undeliverable, the Settlement Administrator shall promptly attempt  
12 to locate the Aggrieved Employee by performing an additional skip trace and shall re-mail the  
13 Notice and settlement check no later than ten (10) days following receipt of the undeliverable  
14 Notice.  
15

16 C. Settlement Payment Procedures

17 Deposit of Gross Settlement Amount with Settlement Administrator.

18 No later than thirty (30) calendar days after the Effective Date, Defendant shall deposit  
19 the Gross Settlement Amount with the Settlement Administrator.

20 D. PAGA Payments

21 The total sum available for payment of PAGA penalties (the “Net Settlement Amount”)  
22 shall be calculated by deducting Plaintiff’s Attorney’s Fees, Litigation Costs, and Settlement  
23 Administration Costs, collectively referenced in Section 3.01(a), (b), and (c) from the Gross  
24 Settlement Amount.

25 The Net Settlement Amount will be subdivided as follows: 75% of the payment will be paid  
26 to the Labor and Workforce Development Agency and 25% will be paid to Aggrieved  
27 Employees. The 25% of the Net Settlement Amount payable to the Aggrieved Employees will  
28

1 be divided among the Aggrieved Employees based on the following formula:

2 Twenty-Five Percent of the Net Settlement Amount shall be divided by the total pay  
3 periods worked for Defendant by all Aggrieved Employees during the Release Period to yield  
4 the "Employee Settlement Share Value." Each Aggrieved Employee shall be paid their  
5 individual total pay periods worked for Defendant during the Release Period multiplied by the  
6 Employee Settlement Share Value.

7 All Aggrieved Employees who cash their settlement check may receive an IRS Form  
8 1099 for their portion of the settlement, if deemed required by the Settlement Administrator (in  
9 compliance with IRS guidelines).

10 The settlement checks issued to Aggrieved Employees shall remain valid for one  
11 hundred eighty (180) days. Any settlement checks remaining uncashed after one hundred  
12 eighty (180) days shall cause that Aggrieved Employee's payment to be distributed to  
13 Controller of the State of California to be held pursuant to the Unclaimed Property Law,  
14 California Civil Code section 1500 et seq., for the benefit of that Aggrieved Employee. The  
15 Parties agree that this disposition results in no "unpaid residue" under California Civil  
16 Procedure Code section 384, as the entire Net Settlement will be paid out to Aggrieved  
17 Employee. Therefore, Defendant will not be required to pay any interest on said amount. In  
18 the event that an Aggrieved Employee's Individual Settlement Payment is distributed to the  
19 Controller of the State of California, the terms of the final judgment and the Release of Claims  
20 will nevertheless be binding upon that Aggrieved Employee.

22 E. Plaintiff's Attorneys' Fees, Litigation Costs Payment

23 No later than twenty-one (21) days after the Effective Date, the Settlement  
24 Administrator shall pay the court approved Plaintiff's Attorneys' Fees and Litigation Costs to  
25 Plaintiff's Counsel.

26 Any Plaintiff's Attorneys' Fees or Litigation Costs awarded to Plaintiff's Counsel by  
27 the Court shall be deducted from the Gross Settlement Amount for the purpose of determining  
28 the Net Settlement Amount. The "future" aspect of these amounts include, without limitation,

1 all time and expenses expended by Plaintiff's Counsel in defending the Settlement and  
2 securing Approval of the Agreement (including any appeals therein). There will be no  
3 additional charge of any kind to the Aggrieved Employees or request for additional  
4 consideration from Defendant for such work. This amount shall include all attorneys' fees,  
5 litigation costs, service fees, and expenses for which Plaintiff and Plaintiff's Counsel could  
6 claim under any legal theory whatsoever.

7 F. Settlement Administrator Expenses.

8 Upon completion of the Settlement Administrator's duties under the Agreement, the  
9 Settlement Administrator shall pay itself its actual costs in administering the settlement, up to  
10 the amount allocated to it for Settlement Administration Expenses.  
11

12 **VIII. TAXES**

13 Plaintiff and each Aggrieved Employee bear full responsibility for the payment of any  
14 taxes or withholdings arising from the Aggrieved Employee Settlement Awards paid to them.

15 **IX. RELEASED CLAIMS**

16 Upon the approval by the Court of this Settlement, Plaintiff, the State of California and  
17 each Aggrieved Employee shall fully release and forever discharge Defendant and the Released  
18 Parties from any and all claims, rights, demands, liabilities for violation of PAGA (Labor Code  
19 § 2699, et seq.) that arose during the Release Period as it relates to Labor Code section 2698, et  
20 seq. for alleged violations of California Labor Code sections 201, 202, 203, 204, 210, 226, 226.3,  
21 226.7, 218.5, 218.6, 232, 246, 256, 510, 512, 558, 558.1, 1174, 1174.5, 1182.2, 1194, 1194.2,  
22 1197, 1197.1, 1198, 1182.12-1198 et seq., 2698, 2699, 2800, 2802, 3700.5, Industrial Welfare  
Commission Wage Orders nos. 4/7, and Business Professions Code Section 17200.

23 Plaintiff entered into a confidential individual settlement agreement with Defendant to  
24 settle his individual claims. As part of this confidential agreement, Plaintiff also provided  
25 Defendant with a general release of all claims, whether known or unknown, including unknown  
26 claims covered by Civil Code Section 1542. See, Declaration of Harout Messrelian ¶ 23.

27 ///

28 **X. CONCLUSION**

The Parties respectfully requests the Court grant this Stipulation.

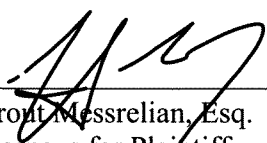
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Respectfully Submitted,

MESSRELIAN LAW INC.

DATED: December 22, 2021

By

  
Harout Messrelian, Esq.

Attorneys for Plaintiff

JOSE AGUILERA

SHERMAN LAW CORPORATION

DATED: December 22, 2021

By



LISA SHERMAN, ESQ.

Attorneys for Defendant LIFT ENERGY  
CONSTRUCTION, INC.

# EXHIBIT A

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

*Jose Aguilera v. Life Energy Construction, Inc.*  
Kern County Superior Court

IT IS HEREBY STIPULATED AND AGREED by and among the undersigned Parties, subject to the approval of the Court, that the settlement of this action shall be memorialized by and subject to the following terms and conditions. Capitalized terms used herein shall have the meanings set forth in Article I or elsewhere in this Private Attorneys General Act (Labor Code § 2698 *et seq.*) Settlement Agreement ("Agreement").

This Agreement is made by and between Defendant Life Energy Construction, Inc. ("Defendant") and Plaintiff Jose Aguilera ("Plaintiff"), for himself and on behalf of the State of California, (Defendant and Plaintiff as defined herein, are sometimes collectively referred to as the "Parties.") Subject to the Court's subsequent approval of the Settlement, this Agreement shall be effective once fully executed by the Parties.

The Parties agree that the Action shall be, and hereby is, ended, settled, resolved, and concluded by agreement of Defendant to pay the total sum of One Hundred Fifty Thousand Dollars and Zero Cents (\$150,000.00) for settlement of the Action (as defined below), which shall be fully inclusive to resolve the Action, including but not limited to Plaintiff's Counsel's attorneys' fees and costs and the settlement administrator's fees.

**Article I.**

**Definitions.**

Section 1.01 Definitions.

Unless otherwise defined herein, the following terms used in this Agreement shall have the meanings ascribed to them as set forth below:

- (a) "Action" shall refer to Plaintiff's lawsuit, which will be filed after execution of this

Agreement, entitled *Jose Aguilera v. Lift Energy Construction, Inc.*, Kern County Superior Court Case No. [to be determined].

- (b) "Aggrieved Employees" is defined as all current and former hourly or non-exempt employees that worked for Defendant in California at any time during the Release Period (as defined herein).
- (c) "Court" means the Superior Court for the State of California, Kern County.
- (d) "Counsel for Defendant" is:

Lisa Sherman, Esq.  
Sherman Law Corporation  
9454 Wilshire Blvd, Suite 600  
Beverly Hills, CA 90212  
Phone: 424-249-3631, Fax: 213-394-3066  
Email: Lisa@sherm-law.com

- (e) "Effective Date" means the date upon which both of the following have occurred: (i) approval of the Settlement is granted by the Superior Court of California for the County of Los Angeles, or other court assuming jurisdiction of this matter, and (ii) the Court's Judgment approving the Settlement becomes "Final." Final shall mean the latest of: (i) if there is an appeal of the Court's Judgment, the date the Judgment is affirmed on appeal, the date of dismissal of such appeal, or the expiration of the time to file a petition for writ of certiorari to the California Supreme Court, or, (ii) if a petition for writ of certiorari is filed, the date of denial of the petition for writ of certiorari, or the date the Judgment is affirmed pursuant to such petition; or (iii) if no appeal is filed, the expiration date of the time for filing or noticing any appeal of the final judgment.
- (f) "Gross Settlement Amount" refers to the total maximum sum of One Hundred Fifty Thousand Dollars and Zero Cents (\$150,000.00), which shall be paid by Defendant to fund the Settlement, and from which all settlement payments for the Net Settlement Amount, Court approved attorneys' fees and costs, and Settlement Administration Costs shall be paid.
- (g) "Net Settlement Amount" means the total sum available for payment of PAGA penalties

to the Aggrieved Employees and the LWDA after deducting Plaintiffs Counsel's fees and costs, costs of administration, and individual settlement payments, collectively referenced in Section 3.01(a-d), from the Gross Settlement Amount.

(h) "Plaintiffs Counsel" is:

Harout Messrelian, Esq.  
Messrelian Law Inc.  
500 N Central Avenue  
Glendale, CA  
Tel. (818) 484-6531  
Fax. (818) 956-1983  
Email: hm@messrelianlaw.com

(i) "Release Period" means March 26, 2020 through the date approval of the Settlement is granted by the Superior Court of California for the County of Kern.

G) "Released Claims" means any and all claims, rights, demands, liabilities and causes of action for civil penalties under the PAGA that arose during the Release Period, that were alleged or pled in the Action or that could have been alleged or pled based on the facts alleged in the Action, including but not limited to the following claims: (a) failure to pay all minimum wages owed; (b) failure to pay all overtime and/or double time wages owed; (c) failure to pay all overtime and/or double time wages owed at the correct rate(s) of pay due to bonus payments, incentive compensation, or otherwise; (d) failure to provide compliant meal periods, or premium pay for non-compliant meal periods; (e) failure to authorize and permit complaint rest periods, or provide premium pay for non-complaint rest periods; (f) failure to provide accurate, itemized wage statements and/or otherwise maintain accurate records; (g) failure to timely pay wages during employment and/or upon separation of employment; (h) failure to indemnify and/or reimburse for all reasonable and necessary business expenses; (i) all claims for PAGA penalties for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories described above, including failure to pay sick pay and provide Worker's Compensation coverage; and G) all other claims under the Private Attorneys General Act that were or

could have been premised on the facts, claims, causes of action or legal theories described above pursuant to the IWC Wage Order(s) and/or California Labor Code, including but not limited to California Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 218.5, 218.6, 232, 246, 256, 510, 512, 558, 558.1, 1174, 1174.5, 1182.2, 1194, 1194.2, 1197, 1197.1, 1198, 1182.12-1198 et seq., 2698, 2699, 2800, 2802, and 3700.5.

- (k) "Released Parties" means Defendant and each of its parents, subsidiaries and related entities, owners, officers, directors, shareholders, persons, employees, including but not limited to agents, servants, representatives, members, attorneys, insurers, re-insurers, assigns, and affiliates and any and all other entities with whom they have been, are now, or may hereafter be affiliated, and any of their affiliated companies, predecessors, successors and assigns, as well as their past or present owners, officers, directors, agents, representatives, attorneys, insurers, re-insurers, assigns, or employees, as well as any individual or entity that could be jointly liable with Defendant for any of the Released Claims.
- (l) "Settlement Administrator" refers to [to be determined by the parties]
- (m) "Settlement" or "Agreement" refers to the settlement of the PAGA claim reached by the Parties of the Action, as set forth herein.

## **Article II.**

### **Background.**

#### **Section 2.01    Background.**

- (a) On March 26, 2021, Plaintiff mailed Defendant and the Labor Workforce Development Agency notice of alleged Labor Code and IWC Wage Order(s) violations that allegedly subjected Defendant to penalties under PAGA.
- (b) Subsequently, the Parties engaged in an extensive investigation that included an exchange of applicable policy documents, key data points regarding the size and makeup of the putative group, and a sampling of employee time and pay records.

- (c) The Parties attended a private mediation on August 13, 2021, with private mediator Eleanor Barr, which resulted in a settlement proposal that was accepted by the Parties that day. Thereafter, the Parties have continued to negotiate the specific terms of the settlement, including the terms of this Agreement. Pursuant to the terms of the Memorandum of Understanding as already signed by the Parties, Plaintiff is to file a lawsuit alleging one cause of action for PAGA penalties in order to gain approval of the PAGA settlement.

### **Article III.**

#### **Approval and Implementation of Settlement.**

##### **Section 3.01 Allocation of the Gross Settlement Amount.**

The Parties will cooperate in obtaining through written stipulation or unopposed motion or *ex parte* application, if required, an Order from the Court approving the payment of the Gross Settlement Amount as follows:

(a) **Plaintiff's Attorneys' Fees.** Plaintiff's Counsel may request and be paid up to 33 1/3% of the Gross Settlement Amount or Fifty Thousand Dollars and Zero Cents (\$50,000.00) for attorneys' fees ("Plaintiff's Attorney's Fees.") If Plaintiff's counsel's request for 33 1/3% of the Gross Settlement Amount is not approved and/or is reduced by the Court, any amount not approved and/or reduced by the Court will be included in the Net Settlement Amount to be paid to the Aggrieved Employees. Defendant agrees not to oppose a fee request by Plaintiff's counsel in the foregoing amount.

(b) **Litigation Costs.** Plaintiff's Counsel may request up to Ten Thousand Dollars and Zero Cents (\$10,000.00) of the Gross Settlement Amount as reimbursement for actual expenses incurred in the Action ("Litigation Costs.") If Plaintiff's counsel's request for reimbursement of Litigation Costs is not approved and/or is reduced by the Court, any amount not approved and/or reduced by the Court will be included in the Net Settlement Amount to be paid to Aggrieved Employees. Defendant agrees not to oppose a request for reimbursement of Litigation Costs not exceeding the foregoing amount.

(c) Administration Costs. Plaintiffs Counsel may request up to Ten Thousand Dollars and Zero Cents (\$10,000.00) of the Gross Settlement Amount as payment to the Settlement Administrator for costs incurred by the Settlement Administrator in connection with the Settlement, including mailing of the Notice of PAGA Settlement described herein ("Settlement Administration Costs"). To the extent the Settlement Administration Expenses exceed this amount, they shall be paid from the Gross Settlement Amount; to the extent they fall below this amount, they shall be included in the Net Settlement Amount to be paid to the Aggrieved Employees.

(d) Net Settlement Amount. The Net Settlement Amount shall be determined by deducting Plaintiffs Attorney's Fees, Litigation Costs, and Settlement Administration Costs as set forth in section 3.01(a), (b), and (c) from the Gross Settlement Amount. The Net Settlement Amount shall be distributed as set forth below in section 3.04(b).

The Parties agree to use their best efforts to expedite the preparation and submission of the settlement documents. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed and shall take all steps that may be requested by the Court relating to, or that are otherwise necessary to the approval and implementation of the payment of PAGA penalties as described in this Agreement.

#### Section 3.02 Court Approval.

The Parties will seek the Court's approval of the PAGA settlement, and the payment of penalties as described in this Agreement by way of a stipulation or unopposed motion or *ex parte* application to be filed by Plaintiffs Counsel or as directed by the Court. Pursuant to California Labor Code section 2699(1)(2) and as required under PAGA, Plaintiff also will submit a copy of this Agreement to the Labor and Workforce Development Agency at the same time it is submitted to the Court. The Court's approval of the payment of the Gross Settlement Amount as described in this Agreement shall be embodied in a written Order.

Section 3.03 Notice to Aggrieved Employees.

- (a) Notice. Notice shall be provided to the Aggrieved Employees in the following manner:
- (1) No later than ten (10) calendar days after the Effective Date, Defendant shall provide the Settlement Administrator with a list of all Aggrieved Employees (hereinafter the "Aggrieved Employees List"). The Aggrieved Employees List shall state the first name and last name in separate columns for each Aggrieved Employee; the last known home address for each Aggrieved Employee; each Aggrieved Employee's social security number, and each Aggrieved Employee's respective number of pay periods worked for Defendant during the Release Period based on Defendant's records.
  - (2) The Settlement Administrator shall utilize the United States National Change of Address ("NCOA") database and also perform an *Accurint* or similar skip tracing process to determine the best most recent addresses for the Aggrieved Employees prior to mailing the notices and settlement checks.
  - (3) No later ten (10) calendar days after Defendant provides the Aggrieved Employees List and deposits the Gross Settlement Amount with the Settlement Administrator, the Settlement Administrator shall mail the Notice of PAGA Settlement (attached hereto as **Exhibit "A"**) together with a settlement payment to all Aggrieved Employees by first-class United States mail, postage prepaid, with directions to the Postmaster to forward the Notice of PAGA Settlement and return all undeliverable Notices to the Settlement Administrator. For each Notice of PAGA Settlement that is returned as undeliverable, the Settlement Administrator shall promptly attempt to locate the Aggrieved Employee by performing an additional skip trace and shall re-mail the Notice and settlement check no later than ten (10) days following receipt of the undeliverable Notice.

Section 3.04 Settlement Payment Procedures.

(a) Deposit of Gross Settlement Amount with Settlement Administrator.

No later than thirty (30) calendar days after the Effective Date, Defendant shall deposit the Gross Settlement Amount with the Settlement Administrator.

(b) PAGA Payments.

The total sum available for payment of PAGA penalties (the "Net Settlement Amount") shall be calculated by deducting Plaintiffs Attorney's Fees, Litigation Costs, and Settlement Administration Costs, collectively referenced in Section 3.01(a), (b), and (c) from the Gross Settlement Amount.

The Net Settlement Amount will be subdivided as follows: 75% of the payment will be paid to the Labor and Workforce Development Agency and 25% will be paid to Aggrieved Employees. The 25% of the Net Settlement Amount payable to the Aggrieved Employees will be divided among the Aggrieved Employees based on the following formula:

Twenty-Five Percent of the Net Settlement Amount shall be divided by the total pay periods worked for Defendant by all Aggrieved Employees during the Release Period to yield the "Employee Settlement Share Value." Each Aggrieved Employee shall be paid their individual total pay periods worked for Defendant during the Release Period multiplied by the Employee Settlement Share Value.

All Aggrieved Employees who cash their settlement check may receive an IRS Form 1099 for their portion of the settlement, if deemed required by the Settlement Administrator (in compliance with IRS guidelines).

The settlement checks issued to Aggrieved Employees shall remain valid for one hundred eighty (180) days. Any settlement checks remaining uncashed after one hundred eighty (180) days shall cause that Aggrieved Employee's payment to be distributed to Controller of the State of

California to be held pursuant to the Unclaimed Property Law, California Civil Code section 1500 et seq., for the benefit of that Aggrieved Employee. The Parties agree that this disposition results in no "unpaid residue" under California Civil Procedure Code section 384, as the entire Net Settlement will be paid out to Aggrieved Employee. Therefore, Defendant will not be required to pay any interest on said amount. In the event that an Aggrieved Employee's Individual Settlement Payment is distributed to the Controller of the State of California, the terms of the final judgment and the Release of Claims will nevertheless be binding upon that Aggrieved Employee.

(a) Plaintiffs Attorneys' Fees, Litigation Costs and Service Fees Payment.

No later than twenty-one (21) days after the Effective Date, the Settlement Administrator shall pay the court approved Plaintiffs Attorneys' Fees and Litigation Costs to Plaintiffs Counsel.

Any Plaintiffs Attorneys' Fees or Litigation Costs awarded to Plaintiffs Counsel by the Court shall be deducted from the Gross Settlement Amount for the purpose of determining the Net Settlement Amount. The "future" aspect of these amounts include, without limitation, all time and expenses expended by Plaintiffs Counsel in defending the Settlement and securing Approval of the Agreement (including any appeals therein). There will be no additional charge of any kind to the Aggrieved Employees or request for additional consideration from Defendant for such work. This amount shall include all attorneys' fees, litigation costs, service fees, and expenses for which Plaintiff and Plaintiffs Counsel could claim under any legal theory whatsoever.

(b) Settlement Administrator Expenses.

Upon completion of the Settlement Administrator's duties under the Agreement, the Settlement Administrator shall pay itself its actual costs in administering the settlement, up to the amount allocated to it for Settlement Administration Expenses.

Section 3.05 Order Approving Settlement and Judgment.

Plaintiff and Defendant will jointly submit, with the documents asking the Court to approve the settlement and this Agreement, an order based on the Settlement to be entered by the Court granting approval of the PAGA penalties and retaining jurisdiction over all matters relating to the administration, consummation, enforcement, and interpretation of the terms of this Agreement and closing the case after submission of proof by the administrator of the payment of all funds enumerated in the Settlement.

**Article IV.**

**Limitations On Use Of This Settlement.**

Section 4.01 No Admission.

Defendant denies liability for any claims alleged by Plaintiff on his own behalf or on behalf of the State of California and any of its agencies, including but not limited to the Department of Industrial Relations, Division of Labor Standards Enforcement, and Labor Workforce and Development Agency, and the Aggrieved Employees upon any claim or cause of action. This Agreement does not constitute, and is not intended to constitute, an admission by Defendant as to the merits, validity, or accuracy of any of the allegations or claims made against it in the Action.

Nothing in this Agreement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of the negotiations leading to this Agreement, is intended by the Parties to constitute, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in this case or any other judicial, arbitral, administrative, investigative or other forum or proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. The Parties themselves agree not to introduce, use, or admit this Agreement, directly or indirectly, in this case or any other judicial, arbitral, administrative, investigative or other forum or proceeding, as

purported evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity, or for any other purpose. Notwithstanding the foregoing, this Agreement may be used in any proceeding before the Court that has as its purpose the interpretation, implementation, or enforcement of this Agreement or any orders or judgments of the Court entered in connection with the Agreement.

None of the documents produced or created by Plaintiff or Aggrieved Employees in connection with the claims or claims resolution procedures constitute, and they are not intended to constitute, an admission by Defendant of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity.

Section 4.02 Non-Evidentiary Use.

Neither this Agreement nor any of its terms shall be offered or used as evidence by any of the Parties, or their counsel in the Action or in any other action or proceeding; provided, however, this shall not prevent this Agreement from being used, offered, or received in evidence in any proceeding to enforce, construe, or finalize this Agreement and to secure its approval by the Court.

Section 4.03 Nullification.

- (a) If the Court should for any reason refuse to approve the payment of PAGA penalties as described in this Agreement, then (a) this Agreement shall be considered null and void, (b) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect, and (c) all Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had been neither entered into nor filed with the Court.
- (b) If the Court does not approve the payment of PAGA penalties as described in this Agreement, the Parties agree to meet and confer to address the Court's concerns. If the Parties are unable to agree on a resolution, the Parties agree to seek the assistance of mediator Eleanor Barr to resolve any disputes.

- (c) Invalidation of any material portion of this Agreement shall invalidate this Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

## **Article V.**

### **Release and Waiver of Claims.**

#### **Section 5.01 Plaintiffs and Aggrieved Employees' Release of PAGA Claims**

Upon the final approval by the Court of this Settlement, Plaintiff and each Aggrieved Employee, shall, for the Release Period, fully release and forever discharge Defendant and its present and former officers, directors, employees, shareholders, agents, trustees, representatives, attorneys, insurers, parent companies, subsidiaries, divisions, affiliates, predecessors, successors, assigns, including any individual or entity that are alleged to be or could be jointly liable with Defendant (the foregoing are collectively referred to hereafter as the "Releasees") from the Released Claims. In event Defendant fails to deposit the Gross Settlement Amount with the Settlement Administrator, this Release and Waiver of Claims shall not become effective.

### **Miscellaneous Provisions.**

#### **Section 5.02 Voluntariness.**

This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any of the Parties, or of any other person, firm or other entity.

#### **Section 5.03 Amendments.**

The terms and provisions of this Agreement may be amended only by a written agreement that is both (a) signed by the Plaintiff and Defendant who executed this Agreement and (b) approved by the Court. Any waiver of any provision of this Agreement shall not constitute a waiver of any other provision of this Agreement unless expressly so indicated otherwise.

Section 5.04 Assignment.

None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party, Aggrieved Employee, Plaintiffs Counsel , or Defense Counsel without the express written consent of each other Party and their respective counsel hereto. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under this Agreement and shall not be construed to confer any right or to avail any remedy to any other person. Plaintiff expressly warrants that he has not transferred to any person or entity any right or cause of action, or claim released by this Agreement.

Section 5.05 Governing Law.

This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California.

Section 5.06 Entire Agreement.

This Agreement contains the entire understanding of the Parties hereto in respect of the subject matter contained herein. This Agreement supersedes all prior agreements and understandings among the Parties hereto with respect to the settlement of the Action.

Section 5.07 Waiver of Compliance.

Any failure of any Party, and/or Plaintiffs Counsel hereto to comply with any obligation, covenant, agreement, or condition herein may be expressly waived in writing, to the extent permitted under applicable law, by the Party or Parties and their respective counsel hereto entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

Section 5.08 Counterparts.

This Agreement, and any amendments hereto, may be executed in any number of counterparts and any Party and/or their respective counsel hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. A scanned or faxed signature shall be valid as an original signature. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for any of the other counterparts.

Section 5.09 Attorneys' Fees and Costs.

Except as expressly provided herein, Defendant and Plaintiff shall each bear their own attorney's fees and costs.

Section 5.10 Dispute(s).

Should any dispute(s) arise among the Parties or their respective counsel regarding the implementation or interpretation of this Agreement, Plaintiffs Counsel and Defendant's counsel shall meet and confer in an attempt to reach a resolution. If the Parties are unable to reach a resolution, they agree to submit any such dispute(s) to the Court. Except as expressly provided herein, this Agreement has not been executed in reliance upon any other written or oral representations or terms, and no such extrinsic oral or written representations or terms shall modify, vary or contradict its terms. In entering into this Agreement, the Parties agree that this Agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and enforced under the laws of the State of California, both in its procedural and substantive aspects, without regard to its conflict of laws provisions. Any claim arising out of or relating to the Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior Court of the State of California for the County of Los Angeles. The foregoing is only limited to disputes concerning this Agreement and in no way limits or negates the enforceability and effect of any underlying arbitration agreements. Plaintiff, on his own behalf and on behalf of the Aggrieved Employees, and Defendant participated

in the negotiation and drafting of this Agreement and had available to them the advice and assistance of independent counsel. As such, neither Plaintiff nor Defendant may claim that any ambiguity in this Agreement should be construed against the other.

Section 5.11 Fair Settlement

Plaintiff, Defendant, Plaintiffs Counsel, and Defendant's Counsel believe that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiation, taking into account all relevant factors, current and potential, and is consistent with public policy, and fully complies with applicable law.

Section 5.12 Binding.

This Agreement shall bind and inure to the benefit of the Parties hereto and to their respective successors, assigns, legatees, heirs, and personal representatives.

Section 5.13 Waiver of Appeals.

The Parties waive all appeals from the Court's approval of the PAGA penalties, unless the Court materially modifies the settlement and/or the PAGA penalties.

Section 6.12 Continuing Jurisdiction.

The Court shall retain exclusive and continuing equity jurisdiction of this Action over all Parties and Aggrieved Employees to interpret and enforce the terms, conditions and obligations of this Agreement.

Section 6.13 Escalator Provision.

Defendant represents that as of August 13, 2021, there were approximately 1,933 pay periods worked by Aggrieved Employees in California during the PAGA Period ("Affected Pay Periods"). If the actual number of Affected Pay Periods is more than 15% greater than this number

(i.e., if there are more than 2,223 Affected Pay Periods), Defendant shall at its option either (a) increase the Gross Settlement Amount in proportion to the increase in Affected Pay Periods (e.g., if the number of Affected Pay Periods is 18% greater than 1,933, Defendant will increase the GSA by 3%) or (b) cut off/cap the Release Period as of the date that the 15% is exceeded.

## **Article VII.**

### **Publicity**

#### **Section 7.01 Publicity.**

Plaintiff and his counsel agree that they have not and will not publish the Agreement. In response to any inquiries Plaintiffs will state that "the case was resolved and it was resolved confidentially." Plaintiffs Counsel shall not report the Agreement or its content in any medium or in any publication, shall not post or report anything regarding the claims of Plaintiffs or the Aggrieved Employees on their website, and shall not contact any reporters or media regarding the Agreement or its content. However, Plaintiffs attorneys are authorized to make disclosures to the Court and the LWDA for the purposes of obtaining the approval of the settlement. This disclosure is limited to court filings and electronic submission of settlement documents to the LWDA and neither Plaintiffs nor their counsel or representatives are permitted to disseminate or publish, distribute, or discuss the information provided to the Court in those filings outside the filings themselves and any hearing held on those filings, unless ordered otherwise by the Court.

**IN WITNESS WHEREOF**, the Parties have executed this Private Attorneys General Act Settlement Agreement on the date(s) set forth below.

*[Signature Page to Follow]*

**APPROVED AND ACCEPTED.**

Dated: Sep 8, 2021, 2021

By:   
Jose Aguilera (Sep 8, 2021 20:25 PDT)  
Jose Aguilera

Dated: 9/3, 2021

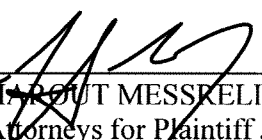
Lift Energy Construction, Inc.

By:   
Printed Name: Mike Hayes  
Title: Chief Revenue Officer

**APPROVED AS TO FORM ONLY**

Dated: September 3, 2021

MESSRELIAN LAW INC.

By:   
HAROLD MESSRELIAN  
Attorneys for Plaintiff Jose Aguilera

Dated: 9/3, 2021

SHERMAN LAW CORPORATION

By:   
LISA SHERMAN  
Attorneys for Defendant  
Lift Energy Construction, Inc.

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

**NOTICE OF PAGA SETTLEMENT AND  
RELEASE**

To [NAME]:

The enclosed check is your share of a court-approved representative action settlement between Plaintiff Jose Aguilera ("Plaintiff"), and Defendant Lift Energy Construction, Inc. ("Defendant") in the matter of *Jose Aguilera v. Lift Energy Construction, Inc.*, Kern County Superior Court Case No. BCV-21-102742 BCB.

Plaintiff filed a lawsuit against Defendant as the representative of the State of California and Defendant's other current and former hourly or non-exempt employees that worked in California ("PAGA Group Member"). Plaintiff asserted claims against Defendant under California Labor Code § 2698 *et seq.*, also known as the Private Attorneys General Act ("PAGA"), based on the alleged failure by Defendants to provide meal periods and rest breaks, pay for all hours worked, including overtime compensation, reimbursement of necessary business expenses, itemized wage statements and timely payment of wages during and after employment. Defendant denies and disputes that it violated the law in any way but agreed to enter into a settlement to avoid the cost and disruption of litigation.

Pursuant to the Court's Order, a payment of \$150,000 was approved in settlement of this lawsuit. After accounting for Plaintiff's Counsel's attorneys' fees of \$50,000.00 and reimbursement of litigation costs of \$\_\_\_\_\_, administration expenses to \_\_\_\_\_, of \$\_\_\_\_\_, the remaining sum called the "PAGA Payment" will be divided pursuant to California law as follows: \$\_\_\_\_\_ (75%) to the State of California Labor Workforce Development Agency and \$\_\_\_\_\_ (25%) to all PAGA Group employees to be shared on a proportionate basis.

As a PAGA Group Member between March 26, 2020 and [INSERT APPLICABLE DATE], you are covered by this settlement. Per the Court's final judgment in this case, all people covered by the settlement have released any and all Released Claims (as defined in the Judgment/Order), including but not limited to claims for civil penalties under PAGA arising from Defendant's alleged failure to provide meal periods and rest breaks, pay for all hours worked, including overtime compensation, reimbursement of necessary business expenses, itemized wage statements and timely payment of wages before [INSERT APPLICABLE DATE]. This means that you are not able to pursue a PAGA lawsuit against Defendant based on such Released Claims.

The enclosed check is your share of the settlement. The payment amount was calculated based on the number of pay periods you worked for Defendant as a PAGA Group Member between March 26, 2020 and [INSERT APPLICABLE DATE], as determined by Defendant's business records. Because this calculation was approved by the Court, the amount of your payment is final and cannot change. Enclosed with your check is an IRS Form 1099. Please note that no taxes were withheld from your payment, so it will be your responsibility to pay any taxes that may be due. You should consult with your own tax accountant with regard to any questions that you may have concerning any taxes that may be due. Further, you are bound by the settlement and release of claims based on the Court's final judgment whether or not you cash or deposit the enclosed check.

If you have any questions or would like more information about the settlement or this lawsuit, you may contact the Claims Administrator at [Claims Administrator], [Address], [Telephone Number] or you may review the papers, pleadings and records on file with the Court by scheduling an appointment with the clerk of the Kern Superior Court.