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Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

EDUARDO CHINA, individually, and on
behalf of other members of the general public
similarly situated,

Plaintiff,

v.

SOUTHWESTERN INDUSTRIES, INC., an
unknown business entity; and DOES 1
through 100 inclusive,

Defendants.

Lead Case No.: 21STCV11874
Consolidated Case No. 21CMCV00123

Honorable William F. Highberger
Department SSC10

CLASS ACTION

**DECLARATION OF BRIAN J. ST. JOHN
IN SUPPORT OF PLAINTIFF'S MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

[Plaintiff's Motion for Preliminary Approval of
Class Action Settlement; Declaration of
Proposed Class Representative (Eduardo
China); and [Proposed] Order filed
concurrently herewith]

Date: December 19, 2023
Time: 2:00 p.m.
Department: 10

Complaint Filed: March 26, 2021
Trial Date: None Set

DECLARATION OF BRIAN J. ST. JOHN

I, Brian J. St. John, hereby declare as follows:

1. I am an attorney licensed to practice law in the State of California. I am a member of Lawyers *for* Justice, PC, attorneys of record for Plaintiff Eduardo China (“Plaintiff”). The facts set forth in this declaration are within my personal knowledge or based on information and belief, and if called as a witness, I could and would competently testify thereto.

EXPERIENCE AND ADEQUACY OF LAWYERS *for* JUSTICE, PC

2. Since October 2008, Lawyers *for* Justice, PC has almost exclusively focused on the prosecution of consumer and employment class actions, involving wage-and-hour claims, race discrimination, unfair business practices, or consumer fraud. Currently, the firm is attorney of record in over a dozen employment-related putative class actions in both state and federal courts in the State of California. Lawyers *for* Justice, PC is comprised of attorneys who focus on litigating complex wage-and-hour class and Private Attorneys General Act (“PAGA”) representative actions. The firm has successfully litigated cases involving the executive, administrative, and other overtime exemptions to the State of California and federal overtime compensation requirements. During a relatively short time, in association with other law firms, Lawyers *for* Justice, PC has recovered millions of dollars on behalf of thousands of individuals in California. Below is a summary of the experience and qualifications of the attorneys at Lawyers *for* Justice, PC who most recently and primarily have been responsible for the representation of Plaintiff in connection with the resolution of above-captioned matter. Additional attorney and non-attorney staff have also worked on the above-captioned matter.

3. Edwin Aiwazian is the Managing Member and Shareholder of Lawyers *for* Justice, PC. He received his Bachelor of Arts degree from Pepperdine University in April of 1999 and earned a Juris Doctor degree from Pepperdine University School of Law in May of 2004. He has extensive formal training in dispute resolution and negotiation from the Straus Institute for Dispute Resolution as part of its Masters in Dispute Resolution degree program. In addition, he has previously served as a pro bono mediator for the Los Angeles County Superior Court. In October of 2000, he obtained a Litigation Paralegal Certificate from the UCLA

1 Extension Program. During the summer of 2000, he studied Legal Writing at Harvard University.
2 From approximately September 2002 to approximately December 2002, he served as a Judicial
3 Extern to the Honorable Kim McLane Wardlaw of the United States Court of Appeals for the
4 Ninth Circuit. From approximately June 2002 to approximately August 2002, he served as a
5 Judicial Extern to the Honorable Earl Johnson, Jr. of the California Court of Appeal for the Second
6 Appellate District. In December of 2004, he obtained a license to practice law from the California
7 State Bar. Since in or around October of 2008, through his work at Lawyers *for* Justice, PC, he
8 has almost exclusively focused on the prosecution of consumer and employment class actions,
9 involving wage-and-hour claims, race discrimination, unfair business practices, or consumer
10 fraud. While employed by Lawyers *for* Justice PC, he has argued over one hundred (100) motions,
11 taken or defended over one hundred fifty (150) depositions, prepared dozens of expert witnesses
12 for deposition or trial, and attended over one hundred seventy-five (175) mediations. Together
13 with other attorneys at the firm, and in many cases in conjunction with co-counsel, he has
14 successfully litigated cases involving the executive, administrative, and other overtime exemptions
15 to the State of California and federal overtime compensation requirements. Under his supervision,
16 Lawyers *for* Justice, PC has successfully obtained class certification by contested motion practice
17 in approximately fifteen (15) cases in the last decade and litigated over 1,000 class action or
18 representative action cases.

19 4. Arby Aiwarzian is a Member and Shareholder of Lawyers *for* Justice, PC. He
20 received his Bachelor of Arts degree from University of California, Los Angeles and graduated
21 magna cum laude. He earned a Juris Doctor degree, cum laude, from Southwestern Law School.
22 From approximately May 2007 to approximately July 2007, he served as a Judicial Extern to the
23 Honorable Earl Johnson, Jr. of the California Court of Appeal for the Second Appellate District.
24 From approximately August 2008 to approximately December 2008, he served as a Judicial Extern
25 to the Honorable Kim McLane Wardlaw of the United State Court of Appeals for the Ninth Circuit.
26 He was admitted to practice law in California in 2010. He is admitted to practice before all courts
27 of the State of California and all United States District Courts in the State of California. He has
28 worked on many wage-and-hour class action and representative action cases, taking the lead in

1 taking and defending depositions, arguing motions, and attending mediations. He has handled
2 over one hundred and fifty (150) mediations and worked on over two hundred and fifty (250) class
3 action or representative action cases which have resulted in settlement. He has played an integral
4 role in preparing matters for class certification, including and not limited to, successful
5 certification of a class in *Upson v. Sur La Table* (Los Angeles County Superior Court Case No.
6 BC424012), *Montazemi v. Regus Management* (Los Angeles County Superior Court Case No.
7 BC478769), and *Abdulhaqq v. Urban Outfitters* (Alameda County Superior Court Case No.
8 RG13680477). Under his and Edwin Aiwazian's supervision, dozens of class action or
9 representative cases have resulted in settlements that have been granted court approval, including
10 and not limited to, those listed in paragraph 7 herein. He has worked on over one hundred (100)
11 class action or representative action cases which have resulted in settlement.

12 5. Joanna Ghosh is a Senior Member of Lawyers for Justice, PC. She received a
13 Bachelor of Arts degree from California State University, Los Angeles in 2006, a Master of
14 Science degree from the London School of Economics in 2007, and a Juris Doctor degree from
15 Georgetown University Law Center in 2010. She is admitted to practice in California (since 2010)
16 and in New York (since 2013) and is also admitted to practice in all U.S. District Courts in
17 California, the U.S. Bankruptcy Court for the Central District of California, and the U.S. Supreme
18 Court. She has taken and defended dozens of depositions and successfully handled motion practice
19 in class action cases regarding discovery (including and not limited to, regarding class contact
20 information), class certification (both contested class certification and stipulated class
21 certification), arbitration agreements, coordination, intervention. She has successfully handled
22 briefing and oral argument on appeal and obtained notable decisions regarding the Private
23 Attorneys General Act and employer efforts to compel arbitration, e.g., *Betancourt v. Prudential*
24 *Overall Supply*, 9 Cal.App.5th 439 (Cal. Ct. App., Mar. 7, 2017), cert. denied (Cal., May 24, 2017),
25 cert. denied (U.S., Dec. 11, 2017) and *ZB, N.A. v. Superior Court*, 8 Cal.5th 175 (2019). She also
26 has extensive experience with class action and/or representative action settlements. Under her,
27 Edwin Aiwazian, and Arby Aiwazian's supervision, the firm has handled the class certification
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1 and court approval process for hundreds of class action and/or representative action matters that
2 have successfully resolved. She is a member of the California Employment Lawyers Association.

3 6. I am a Member of Lawyers *for* Justice, PC. I received my Bachelor's degree from
4 the University of California, San Diego in 2010 and earned my Juris Doctor degree from the
5 University of California, Berkeley, School of Law in 2013. I was admitted to practice law in
6 California in 2015. I am admitted to practice before all courts of the State of California and all
7 federal district courts in the State of California. I have worked on many wage and hour class action
8 and PAGA representative matters, and my work has included, *inter alia*, researching and drafting
9 pleadings, administrative notice exhaustion, drafting, negotiating, and finalizing stipulations and
10 settlement agreements, engaging in motion practice, claims evaluation and analysis, and making
11 court appearances. Prior to working at Lawyers *for* Justice, PC, I spent several years working for
12 a boutique employment and labor law firm representing employers, and, in 2019 and 2020, I was
13 employed as general counsel for a DMHC licensed discount dental plan.

14 **EXAMPLES OF RESULTS IN WAGE-AND-HOUR CLASS ACTION AND**
15 **REPRESENTATIVE ACTION CASES**

16 7. What follows are just a few examples of the type of results Lawyers *for* Justice, PC
17 ("LFJ") has achieved on behalf of its clients:

18 a) LFJ, in association with co-counsel therein, represented the plaintiffs in a
19 wage-and-hour class action against a major property management company involving allegations
20 of misclassification of various "manager" positions. On September 20, 2010, the court granted
21 final approval of the class action settlement. The Los Angeles County Superior Court Case
22 Number is BC400414.

23 b) LFJ, in association with co-counsel therein, represented the plaintiffs in a
24 wage-and-hour class action against a national retailer of household items involving allegations of
25 misclassification of the "Assistant Store Manager" position. On October 28, 2010, the court
26 granted final approval of the class action settlement. The Los Angeles County Superior Court
27 Case Number is BC413498.

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1 c) LFJ, in association with co-counsel therein, represented the plaintiffs in a
2 wage-and-hour class action against a national property management company involving
3 allegations of misclassification of the “Property Manager” position. On May 23, 2012, the court
4 granted final approval of the class action settlement. The Los Angeles County Superior Court
5 Case Number is BC430918.

6 d) LFJ, in association with co-counsel therein, represented the plaintiffs in a
7 wage-and-hour class action against a national retailer involving allegations of misclassification of
8 the “Store Manager” position. On June 10, 2011, the court granted plaintiffs’ motion for class
9 certification. On August 26, 2013, the court granted final approval of the class action settlement.
10 The Los Angeles County Superior Court Case Number is BC424012.

11 e) LFJ, in association with co-counsel therein, represented the plaintiff in a
12 wage-and-hour class and PAGA representative action against a bank, involving allegations of
13 misclassification of the “Assistant Branch Manager” position. On August 27, 2013, the court
14 granted final approval of the class and PAGA representative action settlement. The Kern County
15 Superior Court Case Number is S-1500-CV-273194-LHB.

16 f) LFJ, in association with co-counsel therein, represented the plaintiff in a
17 wage-and-hour class and PAGA representative action against a national wholesale distributor of
18 plumbing and builder supplies, involving allegations of misclassification of multiple salaried
19 “manager” positions. On May 22, 2014, the court granted final approval of the class and PAGA
20 representative action settlement. The Sacramento County Superior Court Case Number is 34-
21 2012-00136285.

22 g) LFJ, in association with co-counsel therein, represented the plaintiff in a
23 wage-and-hour class action against a multinational corporation that provides global workplace
24 solutions, involving allegations of misclassification of the “Operations Manager” position. On
25 September 16, 2014, the court granted plaintiff’s motion for class certification. The Los Angeles
26 County Superior Court Case Number is BC478769.

27 h) LFJ, in association with co-counsel therein, represented the plaintiff in a
28 wage-and-hour class and PAGA representative action against a national retailer of household

1 items, on behalf of hourly-paid or non-exempt employees. On May 27, 2015, the court granted
2 final approval of the class and PAGA representative action settlement. The San Francisco County
3 Superior Court Case Number is CGC-13-532344.

4 i) LFJ, in association with co-counsel therein, represented the plaintiff in a
5 wage-and-hour class and PAGA representative action involving allegations of misclassification of
6 the salaried residential “Property Manager” position. On September 17, 2015, the court granted
7 plaintiff’s motion for class certification. On October 20, 2017, the court granted final approval of
8 the class and PAGA representative action settlement. The Los Angeles County Superior Court
9 Case Number is BC474784.

10 j) LFJ, in association with co-counsel therein, represented the plaintiffs in a
11 wage-and-hour class and PAGA representative action against a national retailer of upscale
12 hardware and home furnishings, on behalf of non-exempt employees. On April 28, 2016, the court
13 granted final approval of the class and PAGA representative action settlement. The Los Angeles
14 County Superior Court Case Numbers are BC516795 and JCCP4794, and the Judicial Council
15 Coordination Proceeding Number is 4794.

16 k) LFJ, in association with co-counsel therein, represented the plaintiffs in a
17 wage-and-hour class action against a national retailer of apparel and fashion accessories, on behalf
18 of non-exempt employees. On August 5, 2016, the court granted final approval of the class action
19 settlement. The Los Angeles County Superior Court Case Number is BC488069.

20 l) LFJ, in association with co-counsel therein, represented the plaintiffs in a
21 wage-and-hour class action against a national retailer of apparel, accessories, and home products,
22 involving allegations of misclassification of the “Department Manager” position. On August 12,
23 2016, the court granted the plaintiffs’ motion for class certification in part and certified a class. On
24 August 6, 2019, the court granted final approval of the class action settlement. The Alameda
25 County Superior Court Case Number is RG13680477.

26 m) LFJ represented the plaintiff in a PAGA representative action against a real
27 estate and property management company, on behalf of non-exempt employees. On November 4,
28

1 2016, the court granted approval of the PAGA representative action settlement. The Orange
2 County Superior Court Case Number is 30-2015-00775439-CU-OE-CXC.

3 n) LFJ, in association with co-counsel therein, represented the plaintiffs in a
4 wage-and-hour class and PAGA representative action against a full-service bank, on behalf of non-
5 exempt employees. On November 18, 2016, the court granted final approval of the class and
6 PAGA representative action settlement. The San Francisco County Superior Court Case Number
7 is CJC-13-004839 and the Judicial Council Coordination Proceeding Number is 4839.

8 o) LFJ represented the plaintiffs in a wage-and-hour class and PAGA
9 representative action against a foodservice distributor, on behalf of non-exempt employees. On
10 January 26, 2017, the court granted final approval of the class and PAGA representative action
11 settlement. The San Bernardino County Superior Court Case Number is CIVDS1507260.

12 p) LFJ, on behalf of the plaintiff and respondent in a PAGA representative
13 action, successfully opposed in the trial court, and briefed and argued an appeal with respect to the
14 employer's motion to compel arbitration, which resulted in a published opinion by the California
15 Court of Appeal in favor of employees. *Roberto Betancourt v. Prudential Overall Supply* (Cal.
16 App. 4th Dist., Mar. 7, 2017) 9 Cal.App.5th 439, review denied, cert. denied (U.S. Supreme Court
17 Docket No. 17-254). The Riverside County Superior Court Case Numbers are RIC1503952 and
18 RICJCCP5046, and the Judicial Council Coordination Proceeding Number is 5046.

19 q) LFJ, in association with co-counsel therein, represented the plaintiffs in a
20 wage-and-hour class and PAGA representative action against a consumer packaging company, on
21 behalf of non-exempt employees. On March 10, 2017, the court granted final approval of the class
22 and PAGA representative action settlement. The Los Angeles County Superior Court Case
23 Number is BC590429.

24 r) LFJ, in association with co-counsel therein, represented the plaintiffs in a
25 wage-and-hour class and PAGA representative action against a manufacturer of food service
26 industry supplies on behalf of non-exempt employees. On April 14, 2017, the court granted final
27 approval of the class and PAGA representative action settlement. The Orange County Superior
28 Court Case Number is 30-2015-00810013-CU-OE-CXC.

1 s) LFJ, in association with co-counsel therein, represented the plaintiffs in a
2 wage-and-hour class and PAGA representative action against a lumber and hardware company on
3 behalf of non-exempt employees. On April 26, 2017, the court granted final approval of the class
4 and PAGA representative action settlement. The Orange County Superior Court Case Number is
5 30-2014-00747750-CU-OE-CXC.

6 t) LFJ represented the plaintiff in a wage-and-hour class and PAGA
7 representative action against a property management company, on behalf of non-exempt
8 employees. On June 14, 2017, the court granted final approval of the class and PAGA
9 representative action settlement. The Los Angeles County Superior Court Case Number is
10 BC586234.

11 u) LFJ represented the plaintiff in a wage-and-hour class and PAGA
12 representative action against a food company on behalf of non-exempt employees. On June 30,
13 2017, the court granted final approval of the class and PAGA representative action settlement. The
14 Sacramento County Superior Court Case Number is 34-2015-00175871.

15 v) LFJ represented the plaintiffs in a wage-and-hour class and PAGA
16 representative action against a chocolate company on behalf of non-exempt employees. On July
17 19, 2017, the court granted final approval of the class and PAGA representative action settlement.
18 The Alameda County Superior Court Case Number is RG15764300.

19 w) LFJ represented the plaintiff in a PAGA representative action, against the
20 parent company of several restaurants, on behalf of hourly-paid, non-exempt employees. On
21 October 18, 2017, the court granted approval of the PAGA representative action settlement. The
22 Los Angeles County Superior Court Case Number is BC569664.

23 x) LFJ represented the plaintiffs in a wage-and-hour class and PAGA
24 representative action against a manufacturer of plastic containers on behalf of non-exempt
25 employees. On October 31, 2017, the court granted final approval of the class and PAGA
26 representative action settlement. The Los Angeles County Superior Court Case Number is
27 BC577233.

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1 y) LFJ, in association with co-counsel therein, represented the plaintiffs in a
2 wage-and-hour class and PAGA representative action against a bank on behalf of non-exempt
3 employees. On December 11, 2017, the court granted final approval of the class and PAGA
4 representative action settlement. The Los Angeles County Superior Court Case Number is
5 BC569646.

6 z) LFJ, in association with co-counsel therein, represented the plaintiffs in a
7 wage-and-hour class and PAGA representative action against a property management company
8 on behalf of hourly-paid and non-exempt employees. On January 4, 2018, the court granted final
9 approval of the class and PAGA representative action settlement. The Los Angeles County
10 Superior Court Case Number is JCCP4819 and the Judicial Council Coordination Proceeding
11 Number is 4819.

12 aa) LFJ, in association with co-counsel therein, represented the plaintiffs in a
13 wage-and-hour class and PAGA representative action against a global provider of flexible office
14 space solutions. On February 15, 2018, the court granted final approval of the class and PAGA
15 representative action settlement. The Los Angeles County Superior Court Case Number is
16 BC498401.

17 bb) LFJ, in association with co-counsel therein, represents the plaintiff in a
18 wage-and-hour class action against a container manufacturer, on behalf of non-exempt employees.
19 On October 15, 2018, the court granted the plaintiff's motion for class certification. The Tulare
20 County Superior Court Case Number is VCU264528.

21 cc) LFJ represented the plaintiffs in a wage-and-hour class and PAGA
22 representative action against a behavioral health service provider on behalf of non-exempt
23 employees. On November 13, 2018, the court granted final approval of the class and PAGA
24 representative action settlement. The Alameda County Superior Court Case Number is
25 RG16811450.

26 dd) LFJ, in association with co-counsel therein, represented the plaintiff in a
27 PAGA representative action against a global provider of products and services to the energy
28 industry, on behalf of hourly-paid and non-exempt employees. On November 19, 2018, the court

1 granted approval of the PAGA representative action settlement. The Kern County Superior Court
2 Case Number is S-1500-CV-280215-SDC.

3 ee) LFJ, in association with co-counsel therein, represents the plaintiff in a
4 wage-and-hour class action against a parking company on behalf of non-exempt employees. On
5 September 3, 2019, the court granted the plaintiff's motion for class certification and certified a
6 class. The Santa Clara County Superior Court Case Number is 16CV292208 and the Judicial
7 Council Coordination Proceeding Number is 4886.

8 ff) LFJ, in association with co-counsel therein, represents the plaintiffs in a
9 wage-and-hour class and PAGA representative action against a bank on behalf of non-exempt
10 employees. On September 27, 2019, the court granted the plaintiffs' motion for class certification
11 in part and certified a class. The Alameda County Superior Court Case Number is RG15757606
12 and the Judicial Council Coordination Proceeding Number is 4921.

13 gg) LFJ, in association with co-counsel therein, represented the plaintiffs in a
14 wage-and-hour class and PAGA representative action against a national retailer of apparel and
15 fashion accessories, on behalf of non-exempt employees. On October 9, 2019, the court granted
16 the plaintiffs' motion for class certification in part and certified a class. On May 14, 2021, the
17 court granted final approval of the class and PAGA representative action settlement. The
18 Sacramento County Superior Court Case Number is 34-2015-00175330-CU-OE-GDS.

19 hh) LFJ, in association with co-counsel therein, represents the plaintiff in a
20 wage-and-hour class and PAGA representative action against a medical equipment supplier on
21 behalf of non-exempt employees. On February 13, 2020, the court granted the plaintiff's motion
22 for class certification and certified a class. The San Bernardino County Superior Court Case
23 Number is CIVDS1505744.

24 ii) LFJ, in association with co-counsel therein, on behalf of the plaintiff and
25 respondent in a PAGA representative action, successfully opposed in the trial court, and briefed
26 and argued an appeal with respect to the employer's motion to compel arbitration, resulting in a
27 notable decision from the California Supreme Court clarifying the law regarding PAGA claims,
28 *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175. On February 21, 2020, the court granted approval

1 of the PAGA representative action settlement. The San Diego County Superior Court Case
2 Number is 34-2015-00175330.

3 jj) LfJ, in association with co-counsel therein, represents the plaintiff in a
4 wage-and-hour class and PAGA representative action against a large national drug testing
5 laboratory on behalf of non-exempt employees. On February 21, 2020, the court granted the
6 plaintiff's motion for class certification and certified a class. The San Diego County Superior
7 Court Case Number is 37-2018-00019611-CU-OE-CTL.

8 kk) LfJ, in association with co-counsel therein, represents the plaintiffs in a
9 wage-and-hour class and PAGA representative action against a national retailer of sportswear,
10 footwear, and camping equipment on behalf of non-exempt employees. On March 16, 2020, the
11 court granted in part the plaintiff's motion for class certification and certified a class. The
12 Riverside County Superior Court Case Numbers are RIC1507504 and RICJCCP4930, and the
13 Judicial Council Coordination Proceeding Number is 4930.

14 ll) LfJ, in association with co-counsel therein, represented the plaintiffs in a
15 wage-and-hour class action against manufacturer and supplier of power products and services on
16 behalf of non-exempt employees. On July 31, 2020, the court granted in part the plaintiffs' motion
17 for class certification and certified a class. On August 27, 2021, the court granted final approval
18 of the class action settlement. The San Diego County Superior Court Case Number is 37-2015-
19 00025968-CU-OE-CTL.

20 mm) LfJ represents the plaintiff in a wage-and-hour class action against a
21 nutritional products manufacturer on behalf of non-exempt production line employees. On
22 December 13, 2021, the court granted the plaintiff's motion for class certification in part and
23 certified a class. The Solano County Superior Court Case Number is FCS051001.

24 nn) LfJ represents the plaintiffs in a wage-and-hour class action against a
25 manufacturer and distributor of commercial dish and glass cleaning machines and supplies for the
26 restaurant and hospitality industries, on behalf of hourly-paid or non-exempt employees. On July
27 13, 2023, the court granted plaintiffs' motion for class certification and certified a class. The Los
28 Angeles County Superior Court Case Number is BC707670.

BASIC INFORMATION ABOUT THE CASE AND REACHING THE SETTLEMENT

8. Marked and attached hereto as “EXHIBIT 1” is the Joint Stipulation of Class Action and PAGA Settlement (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiff, on the one hand, and Defendant Southwestern Industries, Inc. (“Defendant”), on the other hand (collectively, the “Parties”). The Parties and their counsel have approved the proposed Notice of Class Action Settlement (“Class Notice”), which is attached to the Settlement Agreement as “Exhibit A” and respectfully request that the Court approve it as well.

9. Based on information provided by Defendant, the Class is estimated to consist of 192 individuals.

10. The effectiveness of Lawyers *for* Justice, PC (“Plaintiff’s Counsel” or “Class Counsel”) in prosecuting this matter has translated into tangible monetary benefits in the following respects: (1) Class Members, the State of California, and Aggrieved Employees recover over a reasonably short period of time as opposed to waiting additional years for the same, or possibly worse, result; (2) a guaranteed result that compares favorably with other complex wage-and-hour class and/or representative action settlements of similar type given the strengths and weaknesses of the case; and (3) significant savings in attorneys’ fees and/or costs that would have only increased significantly had the case progressed through certification, trial, and/or appeals.

11. Since the above-captioned action was commenced, Class Counsel has litigated the case for over two (2) years and was actively preparing the matter for class certification and trial, prior to reaching the Settlement. The Parties have engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by Jeffrey A. Ross, Esq., a well-respected mediator experienced in mediating complex labor and employment matters. In the course of mediation and settlement discussions, the Parties exchanged extensive information and engaged in discussions regarding their evaluations of the case and various aspects of the case, including but not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and/or representative adjudication, the law relating to class certification, off-the-clock theory, meal and rest periods, representative PAGA actions, and wage-

1 and-hour law and enforcement, as well as the evidence produced and analyzed, and the possibility
2 of appeals, among other things. During all settlement discussions, the Parties conducted their
3 negotiations at arm's length in an adversarial position. Arriving at a settlement that was acceptable
4 to all Parties was not easy. Defendant and its counsel felt strongly about their ability to prevail on
5 the merits and at certification, and Plaintiff and Class Counsel believed that they would be able to
6 obtain class certification and prevail at trial. After conducting extensive investigations, informal
7 discovery, exchange of information, and settlement negotiations, and with the aid of the mediator's
8 evaluation, the Parties have agreed that the matter is well-suited for settlement given the legal
9 issues relating to Plaintiff's principal claims, as well as the costs and risks to both sides that would
10 attend further litigation. The Settlement is a fair, reasonable, and adequate resolution of the
11 Released Class Claims of Plaintiff and Settlement Class members, and of the Released PAGA
12 Claims of Plaintiff, Aggrieved Employees, and the State of California, with respect the Released
13 Parties.

14 12. Prior to reaching the Settlement, Class Counsel investigated the veracity, strength,
15 and scope of the claims, and was preparing for class certification and trial. Class Counsel
16 conducted significant investigation and informal discovery regarding the facts of the case,
17 including and not limited to, the exchange, review, and analysis of thousands of documents and
18 data obtained from Defendant, Plaintiff, and other sources. The volume of information, data and
19 documents that Class Counsel reviewed and analyzed included and was not limited to:
20 employment records of Plaintiff and other Class Members, a detailed sampling of Class Members'
21 time and pay data, multiple iterations of Defendant's Employee Handbook, company policy
22 acknowledgements, internal memoranda, job descriptions, new hire orientation checklists,
23 operations and employment practices, forms, procedures, and policies (including but not limited
24 to Work Hours and Break Time policy, Attendance policy, Personal Conduct policy, Cell Phone
25 Policy, and Use of Computer Software Policy), among other information and documents. Class
26 Counsel interviewed Plaintiff and conducted investigation to gather facts and circumstances
27 surrounding Plaintiff and putative class members' employment. Counsel for the Parties also met
28 and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery,

1 and the production of documents and data in the course of litigation and in connection with
2 mediation and settlement negotiations. Class Counsel also drafted pleadings and the mediation
3 brief and prepared for and attended court proceedings, mediation, and settlement negotiations,
4 among other tasks.

5 13. Counsel for the Parties have also invested time researching and investigating the
6 applicable law, which is often evolving as it relates to class certification, representative PAGA
7 claims, off-the-clock theory, meal and rest periods, wage-and-hour law and enforcement,
8 Plaintiff's claims and damages, and Defendant's defenses thereto, as well as facts discovered.
9 Based on Class Counsel's analysis, the result achieved in this litigation is fair, adequate, and
10 reasonable.

11 14. The Settlement provides for a Total Settlement Amount of One Million Nine
12 Hundred Thousand Dollars and no cents (\$1,900,000.00). The Net Settlement Amount is the
13 Settlement Amount less the following amounts subject to approval by the Court: Attorneys' Fees
14 and Costs, Class Representative Enhancement, Settlement Administration Expenses, the PAGA
15 Penalty Amount. Assuming that the amounts allocated under the Settlement toward these
16 payments are awarded by the Court, the Net Settlement Amount that will be available for
17 distribution to Settlement Class Members is currently estimated to be Nine Hundred Twenty-
18 Seven Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$927,666.67).
19 Additionally, 75% of the PAGA Penalty Amount, i.e., \$225,000.00), will be distributed to the
20 Labor Workforce Development Agency ("LWDA") and 25% of the PAGA Penalty Amount, (i.e.,
21 \$75,000.00), will be distributed to the Aggrieved Employees. The Settlement Amount will be
22 fully distributed to Participating Class Members and PAGA Penalty Amount will be fully
23 distributed to the California Labor and Workforce Development Agency and Aggrieved
24 Employees, in accordance with the terms of the Settlement.

25 15. The Parties have agreed to retain Phoenix Settlement Administrators ("Phoenix" or
26 Settlement Administrator") to handle the notice and settlement administration process. The Parties
27 respectfully request that the Court appoint Phoenix to handle these procedures and serve as the
28 Settlement Administrator. Defendant will provide the Settlement Administrator with a list of Class

Members that Defendant will compile from its records, which will include each Class Member's full name, last known mailing address, telephone number, Social Security Number, the start and end dates employed as an hourly-paid or non-exempt employee of Defendant in California during the Class Period and during the PAGA Period, and the Settlement Administrator will calculate each Class Member's estimated share of the Net Settlement Amount ("Individual Settlement Share") and estimated share of the PAGA Penalty Amount ("Individual PAGA Payment"). The Settlement Administrator will also receive Requests for Exclusion, written Notices of Objection, and disputes regarding Workweeks; provide necessary reports and declarations; calculate, subtract, and transmit necessary taxes and withholdings; prepare and submit informational and other tax filings and documents; issue and transmit all payments provided for by the Settlement, including and not limited to, mailing Individual Settlement Payments to Participating Class Members and Individual PAGA Payments to Aggrieved Employees; and perform any other usual and customary duties for administering a class action settlement. Settlement Administration Costs are currently estimated not to exceed Nine Thousand Dollars and No Cents (\$9,000.00) and will be paid out of the Total Settlement Amount, subject to approval of the Court.

16. Based on investigation and information discovered, Class Counsel believes that there is sufficient evidence to support the allegations made in the lawsuit, including the allegations that Defendant, with respect to Plaintiff and the Class Members, *inter alia*, failed to properly pay overtime and minimum wages, failed to provide compliant meal and rest periods and to pay associated premium pay, failed to timely pay wages during employment and upon termination of employment, failed to provide compliant wage statements, failed to maintain requisite payroll records, and failed to reimburse necessary business expenses, and thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, *et seq.* and conduct giving rise to civil penalties recoverable under the Private Attorneys General Act of 2004 (California Labor Code sections 2698, *et seq.*). Plaintiff also asserted that Class Members and Aggrieved Employees were expected to perform similar job duties and were subject to the same or similar operations and employment policies, practices, and procedures. Additionally, Plaintiff asserted that Defendant's recordkeeping practices with respect to Plaintiff, Class

1 Members and Aggrieved Employees were substantially the same during the time period at issue.
2 As a result of said alleged uniform practices, Plaintiff claims that Class Members, and Aggrieved
3 Employees were not paid all of the compensation that was owed to them by Defendant. Thus, in
4 Class Counsel's view, it is clear that the outcome of this litigation would be determined by
5 Defendant's uniform operations and employment practices, policies, and procedures that Plaintiff
6 alleges applied across Defendant's hourly-paid or non-exempt employees in California during the
7 relevant time period.

8 17. Class Counsel is aware of the defenses and position of Defendant but believes that
9 Plaintiff could potentially obtain class certification despite many obstacles. Plaintiff and Class
10 Counsel have also taken into account the uncertainty and risk of the outcome of further litigation,
11 and the difficulties and delays inherent in such litigation, including those involved in class
12 certification and/or representative adjudication. Plaintiff and Class Counsel further recognize the
13 burdens of proof necessary to establish liability for the claims asserted in the lawsuit, Defendant's
14 defenses, and the difficulties in establishing entitlement to monetary recovery. Plaintiff and Class
15 Counsel have also considered the Parties' settlement discussions, as well as the evaluations of the
16 mediator, who is experienced and well-regarded in complex labor and employment matters.

17 18. Defendant, on the other hand, denied and continues to deny any liability and
18 wrongdoing of any kind associated with the allegations in the lawsuit, and further denies that the
19 lawsuit is appropriate for class treatment or representative adjudication for any purpose other than
20 the Settlement. Defendant believes that it would ultimately succeed in the matter. Both sides have
21 also had the opportunity to conduct investigations and gather documents and information relating
22 to Plaintiff's and Putative Class Members' employment with Defendant, and Defendant's
23 operations and employment policies, practices, and procedures. The Parties also reviewed and
24 analyzed thousands of documents and data, including but not limited to a detailed sampling of
25 Class Members' time and pay information, to determine the potential value and strength of the
26 claims. The available information enabled Class Counsel to assess and value the class and PAGA
27 claims and prepare violation, damages, and penalties analyses and models. Accordingly, the
28 Parties have conducted adequate investigation and discovery to be sufficiently informed of the

1 nature and extent of the Class and PAGA claims, and to enable both sides to fully evaluate the
2 Settlement for its fairness, adequacy, and reasonableness. The Parties have agreed that the matter
3 is well-suited for settlement given the legal issues relating to Plaintiff's principal claims, as well
4 as the costs and risks to both sides that would attend further litigation. The Settlement takes into
5 account the strengths and weaknesses of each side's position and the uncertainty of how the case
6 might have concluded at certification, trial, and/or appeals.

7 19. The Settlement Agreement provides for Class Counsel to apply for attorneys' fees
8 in an amount of up to one-third (1/3) of the Total Settlement Amount (i.e., \$633,333.33) and
9 expenses and costs in an amount not to exceed Twenty Thousand Dollars (\$20,000.00), which will
10 be paid out of the Total Settlement Amount, subject to approval by the Court. It should be noted
11 that Class Counsel has borne all of the risks and costs of litigation and has not yet received any
12 compensation for its efforts.

13 20. The Settlement Agreement provides for payment of up to Ten Thousand Dollars
14 (\$10,000.00) to Plaintiff as a Class Representative Enhancement, to be paid out of the Total
15 Settlement Amount subject to approval by the Court. Plaintiff spent considerable time and effort
16 to produce past employment records and to provide the facts and evidence necessary to attempt to
17 prove the allegations. Plaintiff was available whenever Class Counsel needed Plaintiff, and
18 actively tried to obtain and provide information that would facilitate the pursuit of the Class and
19 PAGA claims. Accordingly, it is appropriate and just for Plaintiff to receive a Class
20 Representative Enhancement, in addition to an Individual Settlement Payment, for services
21 performed in the matter on behalf of the Class, State of California, and Aggrieved Employees.

22 21. Class Counsel submits that the Settlement is fair, reasonable, and adequate, and is
23 in the best interests of Plaintiff, the Class, Aggrieved Employees, and the State of California. Class
24 Counsel further submits that the Settlement is within an acceptable range of recovery for this type
25 of litigation given the strengths and weaknesses of the case, the inherent costs and risks of further
26 litigation, and the costs and risks associated with class certification, representative adjudication,
27 trial, and/or appeals.

28 I declare under penalty of perjury under the laws of the State of California that the

foregoing is true and correct.

Executed on this thirtieth day of October 2023 at Glendale, California.



Brian J. St. John

EXHIBIT 1

1 **JOINT STIPULATION OF SETTLEMENT AND RELEASE**

2 This Joint Stipulation of Settlement and Release (hereinafter “Stipulation of Settlement,”
3 “Settlement,” “Agreement,” or “Settlement Agreement”) is made and entered into by and between
4 Plaintiff EDUARDO CHINA, individually, and on behalf of all others similarly situated and aggrieved
5 employees (“Plaintiff”), and Defendant SOUTHWESTERN INDUSTRIES, INC. (“Southwestern” or
6 “Defendant”). Plaintiff and Defendant are collectively referred to herein as “the Parties.”

7 This Settlement Agreement shall be binding on Plaintiff, Participating Class Members (as
8 defined below), the California Labor & Workforce Development Agency (the “LWDA”) with respect
9 to the Aggrieved Employees (as defined below), and on Defendant, subject to the terms and conditions
10 hereof and the approval of the Court.

11 THE PARTIES STIPULATE AND AGREE as follows:

12 **DEFINITIONS**

13 The following are certain definitions applicable to this Agreement. Definitions contained
14 elsewhere in the body of this Agreement shall also be effective.

15 1. “Actions” means collectively, the lawsuits entitled *Eduardo China v. Southwest*
16 *Industries Inc.*, Los Angeles County Superior Court, Case No. 21STCV11874, and Los Angeles County
17 Superior Court, Case No. 21CMCV00123.

18 2. “Aggrieved Employees” means all current and former hourly paid or non-exempt
19 employees of Defendant in California between March 16, 2020 through October 31, 2022.

20 3. “Attorneys’ Fees and Costs” means attorneys’ fees approved by the Court for Class
21 Counsel’s litigation and resolution of the Lawsuit, and all actual costs incurred and to be incurred by
22 Class Counsel in the Actions, as set forth in Paragraph 54 below.

23 4. “Class Complaint” means the Class Action Complaint for Damages filed in the Class
24 Action on March 26, 2021.

25 5. “Class Counsel” means Edwin Aiwasian, Arby Aiwasian, Joanna Ghosh, and Brian J.
26 St. John of Lawyers *for* Justice, PC, counsel for Plaintiff, who will seek to be appointed counsel for the
27 Class.
28

1 6. “Class Data” means a complete list of all Class Members and Aggrieved Employees that
2 Defendant will diligently and in good faith compile from its records and provide to the Settlement
3 Administrator on one spreadsheet and shall include the Class Members’ and Aggrieved Employees’ full
4 names; last known addresses; telephone numbers; Social Security Numbers; and dates of employment
5 and/or number of Workweeks worked as non-exempt or hourly employees of Defendant during the
6 Class Period and the PAGA Period for each Class Member and Aggrieved Employee.

7 7. “Class Member(s)” or “Class” means all current and former hourly-paid or non-exempt
8 employees of Defendant in California employed between March 26, 2017 through October 31, 2022.

9 8. “Class Period” means the time period from March 26, 2017 through October 31, 2022.

10 9. “Class Representative” means Eduardo China, individually and in his capacity seeking
11 to act as class representative.

12 10. “Class Representative Enhancement” means the amount to be paid to the named Plaintiff
13 as enhancement for his role as Class Representative, and for the risks and work attendant to that role
14 and in exchange for a general release against Defendant, as set forth in in Paragraph 53 below. The
15 Class Representative Enhancement shall be paid from the Total Settlement Amount.

16 11. “Class Settlement” means the settlement and release of the Released Class Claims.

17 12. “Court” means the Superior Court of the State of California for the County of Los
18 Angeles.

19 13. “Defendant” means Southwestern Industries, Inc.

20 14. “Defendant’s Counsel” or “Defense Counsel” means Keesal, Young & Logan.

21 15. “Effective Date” means, if no individuals intervene and there are no objections, when
22 all of the following events have occurred: (i) this Settlement Agreement has been executed by all Parties
23 and their respective counsel; (ii) the Court has given preliminary approval to the Settlement; (iii) the
24 Notice has been given to the Class, providing them with sixty (60) calendar days after the initial mailing
25 of the Notice to dispute information contained in the Notice, to opt out of the Class Settlement, or to
26 object to the Class Settlement; and (iv) the Court has held a final approval hearing and entered a final
27 order and judgment certifying the Class and approving this Settlement. If any individual intervenes
28

1 and/or there is an objection, this Settlement shall become effective only when the following additional
2 events have occurred (i) final affirmation of the Final Approval from any appeal, the expiration of the
3 time for, or the denial of, a petition to review the Final Approval, or if review is granted, the date of
4 final affirmation of the Final Approval following review pursuant to that grant; or (ii) the date of final
5 dismissal of any appeal from the Final Approval or the final dismissal of any proceeding to review the
6 Final Approval, provided that the Final Approval is affirmed and/or not reversed in any part; (iii) if no
7 individuals intervene but objections are filed, the expiration date of the time for the filing or noticing of
8 any appeal from the Court's Final Approval of the Settlement, as determined under Rule 8.104(a) of the
9 California Rules of Court.

10 16. "Final Approval" means the determination by the Court that the Settlement is fair,
11 reasonable, and adequate, and entry of the Final Approval Order and Judgment based thereon.

12 17. "Final Approval Hearing" means the hearing at which the Court will consider and
13 determine whether the Settlement should be granted Final Approval

14 18. "Individual PAGA Payment" means the payment of each Aggrieved Employee's *pro*
15 *rata* share of the 25% portion of the PAGA Penalty Amount, as provided in Paragraph 56(b).

16 19. "Individual Settlement Payment" means the net payment of each Participating Class
17 Member's Individual Settlement Share, after reduction for the employee's share of taxes and
18 withholdings with respect to the wages portion of the Individual Settlement Share, as provided in
19 Paragraph 57 below.

20 20. "Individual Settlement Share" means the *pro rata* share of the Net Settlement Amount
21 that a Class Member may be eligible to receive under the Settlement Agreement, to be calculated in
22 accordance with Paragraph 56(a).

23 21. "Judgment" means the judgment entered in the Final Approval Order and Judgment.

24 22. "Net Settlement Amount" means the portion of the Total Settlement Amount that is
25 available for distribution to Settlement Class Members for the Class Settlement, which is the Total
26 Settlement Amount less the Court-approved Class Representative Enhancement, Settlement
27 Administration Expenses, PAGA Penalty Amount, and Attorneys' Fees and Costs.

23. “Notice” means the Notice of Proposed Class Action Settlement, attached as Exhibit “A.”

24. “Notice of Objection” means a Class Member’s written objection to the Class Settlement, which must include: (a) the case name and number of the Class Action; (b) the objector’s full name, signature, address, telephone number, and the last four digits of his or her Social Security number; (c) a written statement of all grounds for the objection accompanied by any legal support for such objection; and (d) copies of any papers, briefs, or other documents upon which the objection is based.

25. “Objecting Settlement Class Member” means a Settlement Class Member, other than Plaintiff, who submits a valid and timely objection to the Class Settlement pursuant to Paragraph 71(c) below.

26. “PAGA” means California Private Attorney General Act, Labor Code sections 2698, *et seq.*

27. “PAGA Complaint” means the Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. filed in the PAGA Action on May 21, 2021.

28. “PAGA Notice” means the March 16, 2021 letter Plaintiff sent to the LWDA and to Defendant, providing written notice of his intent to seek civil penalties under PAGA for Defendant’s alleged violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and Industrial Welfare Commission Wage Orders, including and not limited to, Wage Orders No. 1-2001, 4-2001, 7-2001, and 9-2001.

29. “PAGA Penalty Amount” means the portion of the Total Settlement Amount that the Parties have allocated toward civil penalties under PAGA, for the PAGA Settlement, as set forth in Paragraph 52. From this amount, 75% will be paid to the LWDA and 25% will be distributed to Aggrieved Employees.

30. “PAGA Period” means March 16, 2020 through October 31, 2022.

31. “Participating Class Members” means all Class Members who do not submit a timely and valid Request for Exclusion from the Class Settlement.

32. “Plaintiff’s Released Claims” means the claims released by Plaintiff pursuant to this Agreement.

33. “Released Class Claims” means any and all claims under state, federal, or local law, arising out of the facts alleged in the Class Complaint, arising during the Class Period, including but not limited to claims under the California Labor Code, Industrial Welfare Commission Wage Orders, regulations, and/or other provisions of law for failure to pay overtime wages and/or failure to pay such wages at the correct rates of pay, failure to provide compliant meal periods and associated premiums, failure to provide compliant rest periods and associated premiums, failure to pay minimum wages, failure to timely pay wages upon termination and associated waiting time penalties, failure to timely pay wages during employment and associated waiting time penalties, failure to provide compliant wage statements, failure to keep requisite payroll records, failure to reimburse necessary business expenses, and violation of California’s unfair competition law.

34. “Released PAGA Claims” means any and all claims for civil penalties pursuant to PAGA, arising out of the facts alleged in the PAGA Notice, arising during the PAGA Period, including but not limited to claims for failure to pay minimum and overtime wages and/or failure to pay such wages at the correct rate(s) of pay, failure to provide compliant meal and rest breaks and associated premiums, failure to provide compliant wage statements, failure to timely pay all wages upon separation of employment and associated waiting-time penalties, failure to timely pay wages during employment and associated waiting time penalties, failure to keep requisite payroll records, failure to reimburse business expenses, and unfair and unlawful business practices in violation of California Business and Professions Code section 17200, *et seq.*

35. “Released Parties” means Defendant, and all of its present and former parent companies, subsidiaries, affiliates, and divisions, and their principals, shareholders, directors, officers, agents, representatives, employees, attorneys, insurers, successors, and assigns.

36. “Request for Exclusion” means a Class Member’s written letter indicating a request to be excluded from the Class Settlement. The Request for Exclusion must: (a) contain the case name and number of the Class Action; (b) be signed by the Class Member; (c) contain the full name, address,

1 telephone number, and the last four digits of the Social Security Number of the Class Member requesting
2 exclusion; and (d) clearly state that the Class Member does not wish to be included in the Class
3 Settlement.

4 37. "Response Deadline" means the deadline by which Class Members must submit a
5 Request for Exclusion, Notice of Objection, and/or dispute of the Workweeks credited to them, which
6 shall be the date that is sixty (60) calendar days from the initial mailing of the Notice by the Settlement
7 Administrator, unless the 60th day falls on a Sunday or Federal holiday, in which case the Response
8 Deadline will be extended to the next day on which the U.S. Postal Service is open. The Response
9 Deadline may also be extended by express agreement between Class Counsel and Defendant's Counsel.
10 Under no circumstances, however, will the Settlement Administrator have the authority to extend the
11 Response Deadline. In the event that a Class Notice is re-mailed to a Class Member, the Response
12 Deadline for that Class Member shall be the extended by fifteen (15) calendar days from the initial
13 mailing of the Class Notice.

14 38. "Settlement Administrator" refers to Phoenix Settlement Administrators, or any other
15 third-party settlement administrator mutually agreed to by the Parties, that will provide the Notice to the
16 Settlement Class Members and distribute the Settlement Payments as described in this Agreement.

17 39. "Settlement Administration Expenses" means the costs payable from the Total
18 Settlement Amount, subject to Court approval, to the Settlement Administrator for administering this
19 settlement, as set forth in Paragraph 55 below.

20 40. "Total Settlement Amount" means the amount of One-Million and Nine-Hundred
21 Thousand Dollars and Zero Cents (\$1,900,000.00) to be paid by Defendant in full resolution of all
22 Released Class Claims, Released PAGA Claims, and the Actions, which includes all Attorneys' Fees
23 and Costs, Class Representative Enhancement, PAGA Penalty Amount, Net Settlement Amount to be
24 paid to the Participating Class Members, and Settlement Administration Expenses. The employer's
25 share of taxes on the wages portion of Individual Settlement Shares will be paid by Defendant separately
26 and in addition to the Total Settlement Amount, as provided in Paragraph 57 below.

41. “Workweeks” means the number of weeks each Class Member and/or Aggrieved Employee worked for Defendant as an hourly-paid or non-exempt employee in California during the Class Period and/or PAGA Period, which will be calculated by the Settlement Administrator based on information provided by Defendant by way of Class Data, by counting each week during the Class Period and/or the PAGA Period during which the Class Member and/or Aggrieved Employee, as applicable, was employed by Defendant as a non-exempt employee in California and worked at least one shift.

THE LITIGATION

42. On March 26, 2021, Plaintiff filed a Class Action Complaint for Damages against Southwest Industries, Inc. in the Superior Court of California for the County of Los Angeles, Case No. 21STCV11874 (the “Class Action”), alleging causes of action for violation of (1) California Labor Code §§ 510 and 1198 (Failure to Pay Overtime), (2) California Labor Code §§ 226.7 and 512(a) (Failure to Provide Meal Periods and Associated Premiums), (3) California Labor Code § 226.7 (Failure to Provide Rest Periods and Associated Premiums), (4) California Labor Code §§ 1194, 1197, and 1197.1 (Failure to Pay Minimum Wages), (5) California Labor Code §§ 201 and 202 (Failure to Timely Pay Final Wages), (6) California Labor Code § 204 (Failure to Timely Pay Wages During Employment), (7) California Labor Code § 226(a) (Failure to Provide Compliant Wage Statements), (8) California Labor Code § 1174(d) (Failure to Keep Requisite Payrolls Records); (9) California Labor Code §§ 2800 and 2802 (Failure to Reimburse Business Expenses); and (10) Violation of California Business and Professions Code §§ 17200, *et seq.*, on behalf of a putative class of all current and former hourly-paid or non-exempt employees who worked for Defendant within the State of California at any time since March 26, 2017, and putative subclasses.

43. On March 16, 2021, Plaintiff provided written notice to the LWDA and Defendant of the specific provisions of the California Labor Code that Defendant violated. On May 21, 2021, Plaintiff filed a complaint for civil penalties under the Private Attorneys General Act in the Superior Court of California for the County of Los Angeles, Case No. 21CMCV00123 (the “PAGA Action”), alleging a single cause of action for California Labor Code § 2698, *et seq.* (California Labor Code Private

Attorneys General Act of 2004), on behalf of all persons who have been employed by Defendant as hourly-paid or non-exempt employees who worked for Defendant in the State of California at any time since March 16, 2020.

44. On July 9, 2021, Plaintiff filed an Amendment to Complaint in the Class Action, correcting the name of the Defendant to Southwestern Industries, Inc.

45. On September 2, 2021, Plaintiff filed an Amendment to Complaint in the PAGA Action, correcting the name of the Defendant to Southwestern Industries, Inc.

46. Defendant denies all material allegations set forth in the Actions and has asserted numerous affirmative defenses. Notwithstanding, in the interest of avoiding further litigation, Defendant desires to fully, finally, and forever settle the Actions, Released Class Claims, and Released PAGA Claims.

47. Class Counsel in the Actions diligently investigated the allegations asserted in the Actions and evaluated the claims against Defendant, including any and all applicable defenses and the applicable law. The investigation included, *inter alia*, the exchange of information, data, and documents, and review of numerous corporate policies and practices.

48. On June 30, 2022, the Parties participated in an all-day mediation with a highly-respected and neutral mediator with substantial class-action expertise, Jeffrey Ross (the “Mediator”), in an attempt to resolve Plaintiff’s claims. Eventually, with the assistance of the Mediator’s evaluations, the Parties reached the settlement that is memorialized herein. The settlement discussions were conducted at arms-length, and the settlement is a result of an informed and detailed analysis of Defendant’s potential liability and exposure in relation to the costs and risks associated with continued litigation. Based on the documents produced, as well as Class Counsel’s own independent investigation and evaluation, Class Counsel have determined that the settlement with Defendant for the consideration and on the terms set forth herein is fair, reasonable, and adequate, and is in the best interest of the Class Members, the State of California, and Aggrieved Employees in light of all known facts and circumstances, including the defenses asserted by Defendant, risk of significant delay and uncertainty associated with litigation and various defenses asserted by Defendant.

49. The Parties agree that this Settlement Agreement resolves the pending claims in both the Class Action and the PAGA Action. The Parties expressly acknowledge that this Settlement Agreement is entered into solely for the purpose of compromising significantly disputed claims and that nothing herein is an admission of liability or wrongdoing by Defendant. If for any reason the Settlement Agreement is not approved, it will be of no force or effect, and the Parties shall be returned to their original respective positions.

50. **Escalator Clause.** Defendant represents that as of June 30, 2022, there were one hundred eighty-four (184) Class Members and that there were 24,244 Workweeks for the period from March 26, 2017 to June 30, 2022. If the Workweek total increases more than ten percent (10%) above 24,244 during the Class Period (i.e., March 26, 2017 through October 31, 2022), the Total Settlement Amount will be increased proportionally by the amount of the increase over ten percent (10%). For example, if the Workweek total increases by eleven percent (11%) to 26,911 Workweeks, the Total Settlement Amount will be increased by one percent (1%). Alternatively, Defendant may choose to end the Class Period on the date that the Workweeks reach 26,668.

SETTLEMENT TERMS

In consideration of the mutual covenants, promises, and agreements set forth herein, the Parties agree, subject to the Court's approval, as follows:

51. **Total Settlement Amount.** Subject to final Court approval, and in consideration for the releases described in this Agreement, within fifteen (15) calendar days after the Effective Date, the Settlement Administrator will provide the Parties with an accounting of the amounts to be paid by Defendant pursuant to the terms of the Settlement Agreement. Within thirty (30) calendar days of the Effective Date or on June 30, 2023, whichever date is later, Defendant shall pay a one-time deposit of the Total Settlement Amount of One-Million and Nine-Hundred Thousand Dollars (\$1,900,000.00), along with any employer-side tax obligations associated with the Total Settlement Amount, into a settlement account to be established by the Settlement Administrator, to resolve the Actions, including to resolve all claims asserted against Defendant. Within seven (7) calendar days of the funding of the Total Settlement Amount, the Settlement Administrator will issue payments due under the Settlement

1 and approved by the Court, as follows: (a) Individual Settlement Payments to all Participating Class
2 Members; (b) Individual PAGA Payments to Aggrieved Employees; (c) Attorneys' Fees and Costs to
3 Class Counsel; (d) Class Representative Enhancement to Plaintiff; (e) Settlement Administration
4 Expenses to the Settlement Administrator; and (f) LWDA Payment to the LWDA. Except for any
5 employer payroll taxes, it is understood and agreed that Defendant's maximum total liability under this
6 Settlement shall not exceed the Total Settlement Amount, subject to Paragraph 50.

7 **52. PAGA Penalty Amount.** Subject to approval by the Court, the Parties agree that the
8 amount of three hundred thousand dollars (\$300,000.00) from the Total Settlement Amount shall be
9 allocated to satisfy claims for civil penalties under PAGA (i.e., the PAGA Penalty Amount), of which
10 seventy-five percent (75%), or \$225,000.00, will be distributed to the LWDA ("LWDA Payment") and
11 twenty-five percent (25%), or \$75,000.00, will be distributed to the Aggrieved Employees on a *pro rata*
12 basis, based on Workweeks during the PAGA Period (i.e., Individual PAGA Payment).

13 **53. Class Representative Enhancement.** In recognition of his efforts and work in
14 prosecuting the Actions, Defendant agrees not to oppose or impede any application or motion for a Class
15 Representative Enhancement in an amount up to ten thousand dollars (\$10,000) to Plaintiff. The Class
16 Representative Enhancement, which will be paid out of the Total Settlement Amount, subject to Court
17 approval, will be in addition to his Individual Settlement Payment and Individual PAGA Payment that
18 is to be paid pursuant to the Settlement. The Parties acknowledge and agree that the Class
19 Representative Enhancement payment is not a wage payment representing compensation for services
20 rendered or other unpaid income otherwise owed to Plaintiff from Defendant or the Released Parties,
21 but rather is characterized as a non-wage payment attributable to the Plaintiff's role as potential and
22 actual Settlement Class representative, and for the risks and work attendant to that role. As such, income
23 or employment tax withholdings or other deductions will not be made from the payment of a Class
24 Representative Enhancement, but it shall be reported on an IRS Form 1099 or similar form to the
25 appropriate taxing authorities. Any amount of the requested Class Representative Enhancement not
26 awarded to Plaintiff by the Court shall be part of the Net Settlement Amount to be paid to all
27 Participating Class Members on a *pro rata* basis.

1 **54. Attorneys' Fees and Costs.** Class Counsel will request, and Defendant agrees not to
2 oppose attorneys' fees of up to thirty-five percent (35%) of the Total Settlement Amount (i.e., up to
3 \$665,000.00 if the Total Settlement Amount remains \$1,900,000) and actual litigation costs and
4 expenses associated with Class Counsel's litigation and settlement of the Actions, in an amount not to
5 exceed twenty thousand (\$20,000.00) to Class Counsel, both of which will be paid from the Total
6 Settlement Amount subject to Court approval. These amounts will cover any and all work to be
7 performed and all costs to be incurred in connection with obtaining the Court's approval of this
8 Settlement Agreement, including any objections raised and any appeals necessitated by those objections.
9 Class Counsel shall be solely and legally responsible for correctly characterizing this compensation for
10 tax purposes and for paying any taxes on the amounts received. With respect to the Attorneys' Fees and
11 Costs to Class Counsel, the Settlement Administrator may purchase an annuity to utilize United States
12 Treasuries and bonds or other attorney fee deferral vehicles, for Class Counsel. Any additional expenses
13 for the use of attorney fee deferral vehicles by the Settlement Administrator shall be paid separately by
14 Class Counsel and shall not be included within the Settlement Administration Costs. Any amounts of
15 attorney fees or costs not awarded by the Court to Class Counsel shall be part of the Net Settlement
16 Amount to be paid to all Participating Class Members on a *pro rata* basis. Any Court order awarding
17 less than the amount sought by Class Counsel shall not be grounds to rescind the Settlement Agreement
18 or otherwise void the Settlement.

19 **55. Settlement Administrator Expenses.** The Settlement Administrator will be paid for the
20 reasonable costs of administration of the Settlement and distribution of payments under the Settlement,
21 which is currently estimated not to exceed nine thousand dollars (\$9,000.00). These costs, which will
22 be paid from the Total Settlement Amount, subject to Court approval, will include, *inter alia*, translating
23 the Class Notice into Spanish, printing, distributing, and tracking Notices and other documents for this
24 settlement, calculating and distributing payments due under the Settlement, issuing of 1099 and W-2
25 IRS Forms and all required tax reporting, filings, withholdings, and remittances, providing necessary
26 reports and declarations, and other duties and responsibilities set forth herein to process this settlement,
27 and as requested by the Parties. To the extent actual Settlement Administration Expenses are greater
28

1 than the estimated amount stated herein, such excess amount will be deducted from the Total Settlement
2 Amount, subject to approval by the Court. Any portion of the estimated, designated, and/or awarded
3 Settlement Administration Expenses which are not in fact required to fulfill payment to the Settlement
4 Administrator to undertake the required settlement administration duties will be part of the Net
5 Settlement Amount for the benefit of Participating Class Members.

6 **56. Individual Settlement Share and PAGA Payment.** Class Members shall not be
7 required to submit a claim in order to receive a share of the Net Settlement Amount, and Aggrieved
8 Employees shall not be required to submit a claim in order to receive a share of the PAGA Penalty
9 Amount, and no portion of the Total Settlement Amount shall revert to Defendant. The Settlement
10 Administrator will use the Class Data provided by Defendant to calculate each Participating Class
11 Member's Individual Settlement Shares and each Aggrieved Employee's Individual PAGA Payments
12 based on the following formulas:

13 (a) Individual Settlement Share Calculations:

14 i. After Preliminary Approval of the Settlement, the Settlement
15 Administrator will divide the Net Settlement Amount by the Workweeks of all Class Members to yield
16 the "Estimated Workweek Value," and multiply each Class Member's individual Workweeks by the
17 Estimated Workweek Value to yield his or her estimated Individual Settlement Share that he or she may
18 be eligible to receive under the Settlement.

19 ii. After Final Approval of the Settlement, the Settlement Administrator will
20 divide the final Net Settlement Amount by the Workweeks of all Participating Class Members to yield
21 the "Final Workweek Value," and multiply each Participating Class Member's individual Workweeks
22 by the Final Workweek Value to yield his or her Individual Settlement Share.

23 (b) Individual PAGA Payment Calculations: Individual PAGA Payments will be
24 calculated and apportioned from the 25% of the PAGA Penalty Amount payable to Aggrieved
25 Employees, based on the Aggrieved Employees' Workweeks during the PAGA Period, as follows: the
26 Settlement Administrator will divide 25% of the PAGA Penalty Amount by the Workweeks of all
27 Aggrieved Employees during the PAGA Period to yield the "PAGA Workweek Value," and multiply
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each Aggrieved Employee's individual Workweeks during the PAGA Period by the PAGA Workweek Value to yield his or her Individual PAGA Payment.

57. **Allocation of Individual Settlement Payments.** Each Individual Settlement Payment will be allocated for tax purposes based on the allegations in the Actions as follows: twenty percent (20%) will be paid as wages subject to withholding of all applicable local, state, and federal taxes; and eighty percent (80%) will be paid as interest and as civil penalties (pursuant to, e.g., California Labor Code sections 203, 226) from which no taxes will be withheld. The Settlement Administrator will issue to each Participating Class Member an Internal Revenue Service Form W-2 and comparable state forms with respect to the wage allocation and a Form 1099 with respect to the civil penalties and interest allocations. The Settlement Administrator will withhold the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Shares, and issue checks to Participating Class Members for their Individual Settlement Payments (i.e., payment of their Individual Settlement Share net of these taxes and withholdings). Any payment for an Individual PAGA Payment will be allocated as one hundred percent (100%) penalties, will not be subject to taxes or withholdings, and will be reported on an IRS Form-1099, if necessary. The employer's share of taxes and contributions on the wages portion of Individual Settlement Shares will be paid separately and in addition to the Total Settlement Amount.

58. **Settlement Payments Do Not Give Rise to Additional Benefits.** It is expressly understood and agreed that the receipt of such Settlement Payments will not entitle any Settlement Class Member to additional compensation or benefits under any company bonus, contest or incentive, other compensation or benefit plan or agreement in place during the period covered by the Settlement, nor will it entitle any Settlement Class Member to any increased retirement, 401(k) benefits or matching benefits, or deferred compensation benefits. It is the intent of this Settlement that the Settlement Payments provided for in this Agreement are the sole payments to be made by Defendant or any Released Party to the Settlement Class Members and that the Settlement Class Members are not entitled to any new or additional compensation or benefits as a result of having received the Settlement Payments (notwithstanding any contrary language or agreement in any benefit or compensation plan document

1 that might have been in effect during the period covered by this Agreement), including those of the
2 Released Parties. Except for the Class Representative, Settlement Class Members are not eligible to
3 receive any compensation other than a Settlement Payment or PAGA Payment, if applicable.

4 **59. Stipulated Class Certification and Representative Treatment.** Plaintiff and Class
5 Counsel and Defendant and Defendant's Counsel agree to the certification of the Settlement Class
6 identified above and that the Aggrieved Employees are appropriate for representative treatment for the
7 sole purpose of effectuating this Settlement. Should, for whatever reason, the Settlement not become
8 final, the fact that Plaintiff and Defendant were willing to stipulate to class certification and/or
9 representative treatment as part of the Settlement shall have no bearing on, and shall not be admissible
10 in connection with, the issue of whether a class should be certified in a non-settlement context in the
11 Class Action or representative treatment would be appropriate in a non-settlement context in the PAGA
12 Action. Defendant expressly reserves the right to oppose class certification and/or representative
13 treatment should the Settlement not become final.

14 **60. Stipulated Consolidation of the Class Action and PAGA Action.** On May 20, 2022,
15 by way of Court order, the Class Action and PAGA Action were consolidated, with the Class Action
16 designated the lead action.

17 **61. Denial of Liability.** Defendant denies that it has engaged in any unlawful activity, has
18 failed to comply with the law in any respect, or has any liability to anyone under the claims asserted in
19 the Actions, and contends that the Actions are not suitable for class certification and/or representative
20 treatment. The Parties expressly acknowledge that this Settlement is entered into solely for the purpose
21 of compromising highly disputed claims and that nothing herein is an admission of liability or
22 wrongdoing by Defendant or any of the Released Parties. Neither this Agreement nor any document
23 prepared in connection with the Settlement may be used or admitted in any proceeding by Plaintiffs, or
24 any person within the Class, or any third party, as an admission by Defendant or any of the Released
25 Parties. However, this paragraph and all other provisions of this Agreement notwithstanding, any and
26 all provisions of this Agreement may be admitted in evidence and otherwise used in any and all
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proceedings to enforce any or all terms of this Agreement, or in defense of any claims released or barred by this Agreement.

62. **Tax Liability.** Class Counsel, Defendant, and Defendant's Counsel make no representations as to the tax treatment or legal effect of Settlement Amounts called for hereunder, and Plaintiff and the Settlement Class Members are not relying on any statement or representation by Class Counsel, Defendant, or Defendant's Counsel in this regard. Plaintiff and Class Members understand and agree that they will be solely responsible for the payment of any taxes and penalties assessed on their respective Settlement Amounts described herein. Income tax withholding will also be made pursuant to applicable federal, state, and/or local withholding codes or regulations. Forms W-2 and/or Forms 1099 will be distributed at times and in the manner required by the Internal Revenue Code of 1986 (the "Code") and consistent with this Agreement. If the Code, the regulations promulgated thereunder, or other applicable tax law, are changed after the date of this Agreement, the processes set forth in this paragraph may be modified in a manner to bring Defendant into compliance with any such changes.

63. **Release of Released Class Claims.** Upon the Effective Date and full funding of the Total Settlement Amount, Plaintiff and all Class Members who do not submit a timely and valid Request for Exclusion (i.e., Participating Class Member), will be deemed to have fully, finally and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released Class Claims.

64. **Release of Released PAGA Claims.** Upon the Effective Date and full funding of the Total Settlement Amount, Plaintiff, the State of California with respect to all Aggrieved Employees, and all Aggrieved Employees, will be deemed to have fully, finally and forever released, settled, compromised, relinquished, and discharged the Released Parties from the Released PAGA Claims.

65. Class Representative, on behalf of himself and the Participating Class Members, acknowledges and agrees that the claims asserted in the Actions, including but not limited to claims for unpaid wages, unreimbursed expenses, missed meal and rest breaks, and untimely payment of wages in the Actions, are disputed, and that the payments set forth herein constitute payment of all sums allegedly due to them. Class Representative, on behalf of himself and the Participating Class Members,

1 acknowledge and agree that California Labor Code Section 206.5 is not applicable to the Parties hereto.
2 Section 206.5 provides in pertinent part as follows:

3 An employer shall not require the execution of any release of any claim
4 or right on account of wages due, or to become due, or made as an advance
5 on wages to be earned, unless payment of those wages has been made.

6 66. **General Release of Claims by Plaintiff.** In addition, upon the Effective Date and full
7 funding of the Total Settlement Amount, Plaintiff will be deemed to have fully released and discharged
8 the Released Parties of and from all claims arising from his employment with Defendant, separation of
9 employment from Defendant, and any acts that could have been asserted in any legal action or
10 proceeding against Defendant, whether known or unknown, arising under any federal, state, or local
11 law, or statute, including, *inter alia*, those arising under the California Labor Code, Fair Labor Standards
12 Act, Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, Employee Retirement
13 Income Security Act, National Labor Relations Act, California Corporations Code, California Business
14 and Professions Code, Orders of the California Industrial Welfare Commission, California Fair
15 Employment and Housing Act, California Constitution (all as amended), and law of contract and tort,
16 as well as for discrimination, harassment, retaliation, wrongful termination, lost wages, benefits, other
17 employment compensation, emotional distress, medical expenses, other economic and non-economic
18 damages, attorney fees, and costs, arising on or before the date on which the Settlement is executed.
19 With respect to those claims released by Plaintiff in an individual capacity, Plaintiff acknowledges and
20 waives any and all rights and benefits available under California Civil Code Section 1542, which
21 provides:

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

26 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and
27 complete release and discharge of all parties, Plaintiff expressly acknowledges that this Settlement
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1 Agreement is intended to include in its effect, without limitation, all claims that Plaintiff knew of, as
2 well as all claims that they do not know or suspect to exist in their favor against the Released Parties, or
3 any of them, for the time period from the beginning of time to the execution of this Settlement
4 Agreement, and that this Settlement Agreement contemplates the extinguishment of any such Plaintiff's
5 claims. This Release excludes any release that cannot be made as a matter of law.

6 **67. Disputes Regarding Settlement Administration.** All disputes relating to
7 administration of the Settlement by the Settlement Administrator (except for disputes regarding Class
8 Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms
9 and conditions of this Settlement Agreement, until Plaintiff and Defendant notify the Court that all
10 payments and obligations contemplated by this Settlement Agreement have been fully carried out. Prior
11 to presenting any issue to the Court, counsel for the Parties will confer in good faith to resolve the
12 dispute without the necessity of Court intervention. The Settlement Administrator shall also be
13 responsible for issuing to Plaintiff, Participating Class Members, and Class Counsel any Forms W-2,
14 Forms 1099, or other Tax Forms as may be required by law for all amounts paid pursuant to this
15 Agreement. The Settlement Administrator shall also be responsible for setting up all necessary tax
16 accounts and forwarding all payroll taxes and penalties to the appropriate government authorities.

17 **68.** No person shall have any claim against Defendant, Defendant's Counsel, any of the
18 Released Parties, Plaintiff, Participating Class Members, or Class Counsel based on mailings,
19 distributions and payments made in accordance with this Settlement.

20 **NOTICE/APPROVAL OF SETTLEMENT, SETTLEMENT IMPLEMENTATION**

21 **69. Notice.** A Notice of Proposed Class Action Settlement in approximately the form
22 attached hereto as "**Exhibit A**" and as approved by the Court, shall be sent by the Settlement
23 Administrator to the Class Members and Aggrieved Employees by First-Class U.S. Mail. Any returned
24 envelopes from this mailing with forwarding addresses will be utilized by the Settlement Administrator
25 to forward the Notices to the Class.

26 (a) Within fifteen (15) calendar days from the date of Preliminary Approval of this
27 Settlement by the Court, Defendant shall provide Class Data to the Settlement Administrator.

1 (b) Within fifteen (15) calendar days after the Class Data is provided to the
2 Settlement Administrator, the Settlement Administrator will run a check of the Class Members' and
3 Aggrieved Employees' addresses against those on file with the U.S. Postal Service's National Change
4 of Address List; this check will be performed only once per Class Member and/or Aggrieved Employee
5 by the Settlement Administrator. The Settlement Administrator will mail the Notice to the Settlement
6 Class Members by First-Class U.S. Mail.

7 (c) Notices returned to the Settlement Administrator as non-deliverable during the
8 sixty (60) calendar-day period shall be resent to the forwarding address, if any, on the returned envelope
9 within five (5) calendar days. A returned Notice will be forwarded only once per Class Member by the
10 Settlement Administrator. If there is no forwarding address, the Settlement Administrator will do a
11 computer search for a new address using the Class Member's Social Security number; this search will
12 be performed only once per Class Member by the Settlement Administrator and re-mail the Notice
13 within five (5) calendar days. Upon completion of these steps by the Settlement Administrator,
14 Defendant and the Settlement Administrator shall be deemed to have satisfied their obligations to
15 provide the Notice to the affected Class Member. The affected Class Member shall remain a member
16 of the Class and shall be bound by all the terms of the Settlement and the Judgment.

17 70. The Settlement Administrator will not send any reminder notices of any nature to the
18 Settlement Class Members.

19 71. **Class Members' Rights.** Each Class Member will be fully advised of the Settlement,
20 the ability to object to the provisions in the Class Settlement, and the ability to opt out or request
21 exclusion from the Class Settlement. The Notice will inform the Class Members of the Court-established
22 deadlines for filing objections or requesting exclusion from the Class Settlement in accordance with the
23 following guidelines:

24 (a) Requests for Exclusion from the Class Settlement. Any Class Member, other
25 than Plaintiff, may request to be excluded from the Class Settlement by submitting a "Request for
26 Exclusion" to the Settlement Administrator, postmarked on or before the Response Deadline. The
27 Request for Exclusion should state in words to this effect:

1 "I WISH TO BE EXCLUDED FROM THE CLASS SETTLEMENT IN
2 THE *EDUARDO CHINA V. SOUTHWESTERN INDUSTRIES INC.*
3 LAWSUIT, LOS ANGELES SUPERIOR COURT CASE NOS
4 21STCV11874 AND 21CMCV00123. I UNDERSTAND THAT IF I
5 ASK TO BE EXCLUDED FROM THE CLASS SETTLEMENT, I WILL
6 NOT RECEIVE ANY MONEY FROM THE CLASS SETTLEMENT.

7 Any Request for Exclusion must include the full name, address, telephone number, last four digits of
8 the Social Security number or date of birth, and signature of the Class Member requesting exclusion.
9 The Request for Exclusion must be returned by mail to the Settlement Administrator at the specified
10 address. Any such Request must be made in accordance with the terms set forth in the Notice. A
11 Request for Exclusion will be timely only if postmarked by the Response Deadline, unless the Parties
12 otherwise agree in writing. Any Class Member who timely requests exclusion in compliance with these
13 requirements: (i) will not have any rights under the Class Settlement as a Participating Class Member,
14 including the right to object, appeal, or comment on the Class Settlement; (ii) will not be entitled to
15 receive any payments under the Class Settlement; and (iii) will not be bound by the Class Settlement or
16 the Judgment, with respect to the Released Class. Any Class Member who submits a Request for
17 Exclusion is prohibited from making any objection to the Class Settlement. Aggrieved Employees
18 shall be bound to the PAGA Settlement irrespective of whether they exercise their option to opt out
19 of the Class Settlement.

20 (b) Binding Effect on Final Settlement Class Members. Except for those Class
21 Members who exclude themselves from the Class Settlement in compliance with the procedures set
22 forth above, all Participating Class Members will: (i) be deemed to be Participating Class Members for
23 all purposes under this Agreement; (ii) will be bound by the terms and conditions of this Agreement,
24 the Judgment, and the releases set forth herein; and (iii) except as otherwise provided herein, will be
25 deemed to have waived all objections and oppositions to the fairness, reasonableness, and adequacy of
26 the Settlement.

27 (c) Objections to the Class Settlement. Any Class Member, other than Plaintiff, may
28 object to the terms of the Class Settlement by submitting a written objection or presenting their objection
orally at the Final Approval Hearing, whether or not they have submitted a written objection as outlined

1 herein. To object, a Class Member submit a timely and complete Notice of Objection to the Settlement
2 Administrator, by mail, of his/her/their objection, which must be postmarked by the Response Deadline
3 at the address set forth in the Notice. The Notice of Objection shall include the full name, address,
4 telephone number, dates of employment with Defendant of the Objecting Settlement Class Member, the
5 case name and number of the Class Action, the basis for the objection, including any legal support and
6 each specific reason in support of the objection, as well as any documentation or evidence in support
7 thereof, and, if the Objecting Settlement Class Member is represented by counsel, the name and address
8 of his/her/their counsel. The Settlement Administrator shall provide objections, if any, to Class Counsel
9 and Defense Counsel within three (3) calendar days of receipt, and the Settlement Administrator shall
10 attach the same to its declaration of due diligence it files with the Court prior to the Final Approval
11 Hearing. Any Participating Class Member who files a Notice of Objection remains eligible to receive
12 monetary compensation from the Class Settlement. Plaintiff and Defendants shall not be responsible
13 for any fees, costs, or expenses incurred by any Class Member and/or his/her/their counsel related to
14 any objections to the Class Settlement. Submitting a Notice of Objection does not preserve the right to
15 appeal the Judgment. Rather, the right to appeal is preserved by becoming a party of record by timely
16 and properly intervening or filing a motion to vacate the Judgment under Code of Civil Procedure
17 section 663.

18 (d) Responses to Objections. Counsel for the Parties may file a response to any
19 Notices of Objection submitted by Objecting Settlement Class Members at least five (5) court days
20 before the date of the Final Approval Hearing.

21 72. Class Members will have until the Response Deadline to object or submit a Request for
22 Exclusion to the Settlement Administrator by U.S. Mail. The Settlement Administrator shall disclose
23 jointly to Class Counsel and Defendant's Counsel the number of Notices of Objection or Requests for
24 Exclusion were timely submitted on a weekly basis, and upon the request of Class Counsel or
25 Defendant's Counsel.

1 73. **Presumption Regarding Receipt of Notice.** It will be conclusively presumed that if an
2 envelope has not been returned within thirty (30) calendar days of the mailing of the Notice that the
3 Class Member received the Notice.

4 74. **Disputes Regarding Workweeks.** Class Members are deemed to participate in the Class
5 Settlement unless they opt-out. The Notice will inform Class Members of his/her/their estimated
6 Individual Settlement Payment, Individual PAGA Payment (if applicable), and the number of
7 Workweeks worked during the Class Period and during the PAGA Period. Class Members and
8 Aggrieved Employees may dispute their Workweeks worked if they feel they were employed more
9 Workweeks in the Class Period and/or PAGA Period than Defendant's records show by submitting
10 evidence to the Settlement Administrator on or before the Response Deadline. Defendant's records will
11 be presumed determinative absent reliable evidence to rebut Defendant's records, but the Settlement
12 Administrator will evaluate the evidence submitted by the Class Member or Aggrieved Employee and
13 provide the evidence submitted to Class Counsel and Defense Counsel who agree to meet and confer in
14 good faith about the evidence to determine the Class Member's or Aggrieved Employee's actual number
15 of Workweeks worked and estimated Individual Settlement Payment and/or Individual PAGA Payment.
16 If Class Counsel and Defense Counsel are unable to agree, they agree to submit the dispute to the
17 Settlement Administrator to render a final decision. Class Members and Aggrieved Employees will
18 have until the Response Deadline to dispute Workweeks worked, unless extended by the Court. In the
19 event that the Settlement Administrator increases the number of Workweeks worked for any Class
20 Member or Aggrieved Employee, then the Settlement Administrator will recalculate the Class
21 Members' Individual Settlement Payments and Aggrieved Employees' Individual PAGA Payments;
22 accordingly, in no event will Defendant be required to increase the Total Settlement Amount.

23 75. **Declaration of Due Diligence.** Class Counsel shall provide to the Court, at least five
24 (5) calendar days prior to the final approval hearing, a declaration by the Settlement Administrator of
25 due diligence and proof of mailing with regard to the mailing of the Notice, as well as a list of Settlement
26 Class Members who submitted timely and valid Requests for Exclusion from Class Settlement.

1 76. The Parties shall provide the Settlement Administrator with a copy of the Final
2 Approval Order and Judgment once it is entered by the Court, and the Settlement Administrator shall
3 post the Final Approval Order and Judgment on its website within three (3) business days of receipt
4 and shall maintain the posting for sixty (60) calendar days. No individualized notice of the Final
5 Approval Order and Judgment will be required to be provided to the Class.

6 **ADMINISTRATION OF SETTLEMENT PAYMENTS**

7 77. **Settlement Checks.** The Settlement Administrator will be responsible for undertaking
8 appropriate deductions, required tax reporting, and issuing Individual Settlement Payments by way of
9 check to Participating Class Members and Individual PAGA Payments by way of check to Aggrieved
10 Employees, in accordance with this Settlement Agreement. The Settlement Administrator may, at its
11 discretion, distribute the Individual Settlement Payment and Individual PAGA Payment by way of a
12 single check that combines both payments (if applicable). Any checks issued to Participating Class
13 Members or Aggrieved Employees shall remain valid and negotiable for one-hundred and eighty (180)
14 calendar days from the date of their issuance. If any Participating Class Member's or Aggrieved
15 Employee's check is not cashed within that period, the check will be void and a stop-payment will be
16 issued and those funds shall be distributed to the State of California's Unclaimed Property Fund in the
17 names of the Participating Class Members or Aggrieved Employees who failed to cash their checks.
18 The Parties agree that this disposition results in no "unpaid residue" under California Civil Procedure
19 Code § 384, as the entire Net Settlement Amount will be paid out to Participating Class Members,
20 whether or not they all cash their Individual Settlement Payment and/or Individual PAGA Payment
21 checks. The release of Released Class Claims will be binding upon all Participating Class Members
22 who do not cash their checks within the 180-day period. In the event that any settlement check is
23 returned to the Settlement Administrator within 180 days of mailing, the Settlement Administrator will,
24 within five (5) business days of receipt of the returned settlement check, perform a skip trace to locate
25 the individual. If a new address is located by these means, the Settlement Administrator will have ten
26 (10) business days to re-issue the check and will notify Defendant's Counsel and Class Counsel that a
27 re-issued check has been sent. Neither Defendants, Defendant's Counsel, Class Counsel, Plaintiff, nor
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the Settlement Administrator will have any liability for lost or stolen settlement checks, forged signatures on settlement checks, or unauthorized negotiation of settlement checks.

78. **Reallocation of Settlement Proceeds.** To the extent certain Class Members opt-out of the Class Settlement, the payments to those Class Members who have not opted-out (i.e., Participating Class Members) shall be increased on a *pro rata* basis from the Net Settlement Amount.

79. Upon completion of its calculation of Individual Settlement Payments and Individual PAGA Payments, the Settlement Administrator shall provide Class Counsel and Defendant's Counsel with a report listing the amount of all payments to be made to each Participating Class Member and Aggrieved Employee (to be identified anonymously by employee number). A Declaration attesting to completion of all payment obligations will be provided to Class Counsel and Defendant's Counsel and filed with the Court.

DUTIES OF THE PARTIES WITH RESPECT TO PRELIMINARY APPROVAL

80. Pending completion of all of the prerequisites necessary to effectuate this Settlement including amending the operative pleading, the Parties agree, subject to Court approval, to a stay of all proceedings in the Actions except such as are necessary to effectuate the Settlement.

81. Class Counsel will provide Defendant's Counsel a draft of the motion before the filing deadline. Defendant agrees not to oppose the motion as long as it is consistent with this Settlement Agreement. Said motion shall apply to the Court for the entry of an order ("Preliminary Approval Order"), which shall be mutually agreed upon by the Parties, seeking the following:

(a) Scheduling a final approval and fairness hearing on the question of whether the proposed Settlement, including payment of attorneys' fees and costs, and the Class Representative Enhancement, should be finally approved as fair, reasonable, and adequate as to the members of the Settlement Class;

(b) Conditionally certifying a Class for purposes of settlement only;

(c) Preliminarily appointing Plaintiff as representative of the Class;

(d) Preliminarily appointing Class Counsel as counsel for the Class;

1 (e) Approving as to form and content the mutually-agreed upon and proposed Notice
2 and directing the mailing of the Notice to the Class by First Class U.S. Mail;

3 (f) Approving the manner and method for Class Members to request exclusion
4 from or object to the Class Settlement as contained herein and within the Notice; and

5 (g) Preliminarily approving the Settlement subject only to the objections of Class
6 Members and final review by the Court.

7 **DUTIES OF THE PARTIES WITH RESPECT TO FINAL APPROVAL**

8 82. Following the Response Deadline, and with the Court's permission, a final approval
9 hearing will be conducted to determine whether Final Approval of the Settlement should be granted,
10 along with the amounts properly payable for: (a) Individual Settlement Payments; (b) Individual PAGA
11 Payments; (c) LWDA Payment; (d) Attorneys' Fees and Costs; (e) Class Representative Enhancement;
12 and (f) Settlement Administration Expenses. Plaintiff and Class Counsel will be responsible for drafting
13 the motion seeking Final Approval of the Settlement. Class Counsel will provide Defendant's Counsel
14 a draft of the motion before filing it with the Court. By way of said motion, Plaintiff will apply for the
15 entry of the mutually-agreed upon proposed order and judgment ("Final Approval Order and
16 Judgment"), which will provide for, in substantial part, the following:

17 (a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and
18 adequate, and directing consummation of its terms and provisions;

19 (b) Certification of the Class for settlement purposes;

20 (c) Approving Class Counsel's application for an award of Attorneys' Fees and
21 Costs;

22 (d) Approving any Class Representative Enhancement to Plaintiff;

23 (e) Approving Settlement Administration Expenses to the Settlement Administrator;

24 (f) Setting a date when the Settlement Administrator shall report to the Court the
25 completion of the distribution process and the total amount that was actually paid to the Participating
26 Class Members and Aggrieved Employees;

1 (g) Directing Defendant to fund all amounts due under the Settlement Agreement
2 and ordered by the Court; and

3 (h) Entering judgment in the Actions, while maintaining continuing jurisdiction, in
4 conformity with California Rules of Court 3.769 and the Settlement Agreement.

5 83. After entry of the Final Approval Order and Judgment, the Court shall have continuing
6 jurisdiction over the Actions solely for purposes of (i) enforcing this Agreement, (ii) addressing
7 settlement administration matters, and (iii) addressing any post-Judgment matters as may be appropriate
8 under court rules or applicable law.

9 **NULLIFICATION AND TERMINATION**

10 84. In the event that this Settlement is not approved by the Court, or if for any reason the
11 Effective Date does not occur, the Settlement shall be deemed null, void and unenforceable and shall
12 not be used nor shall it be admissible in any subsequent proceedings either in this Court or any other
13 judicial, arbitral, administrative, investigative, or other court, tribunal, forum, or other proceeding,
14 including without limitation any wage and hour, or other litigation against Defendant.

15 85. If 10% or more of the Settlement Class Members request exclusion or opt out of this
16 Settlement, then Defendant in its sole discretion may elect to terminate, nullify and void this Settlement.
17 The Settlement Administrator shall provide Defendant's Counsel with the information necessary to
18 effectuate this provision on a regular basis, but no less frequently than on a monthly basis. To terminate
19 this Settlement under this paragraph, Defendant's Counsel must give Class Counsel written notice no
20 later than 15 calendar days after the Notice Response Deadline has expired.

21 86. In the event this Settlement is nullified or terminated as provided above: (i) this
22 Settlement shall be considered null and void, (ii) neither this Settlement nor any of the related
23 negotiations or proceedings shall have any force or effect and no party shall be bound by any of its
24 terms, and (iii) all Parties to this Settlement shall stand in the same position, without prejudice, as if the
25 Settlement had been neither entered into nor filed with the Court.

1 **OTHER TERMS**

2 87. **Parties' Authority.** The signatories hereto hereby represent that they are fully
3 authorized to enter into this Settlement and bind the Parties hereto to the terms and conditions thereof.

4 88. **Mutual Full Cooperation.** The Parties agree to fully cooperate with each other to
5 accomplish the terms of this Settlement including, but not limited to, execution of such documents and
6 taking such other action as reasonably may be necessary to implement the terms of this Settlement. The
7 Parties to this Settlement shall use their best efforts, including all efforts contemplated by this Settlement
8 and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this
9 Settlement and the terms set forth herein. As soon as practicable after execution of this Settlement,
10 Class Counsel shall, with the assistance and cooperation of Defendant and Defendant's Counsel, take
11 all necessary steps to secure the Court's preliminary and final approval of this Settlement.

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

16 90. **No Admission of Liability.** Nothing contained herein, nor the consummation of this
17 Settlement, is to be construed or deemed an admission of liability, culpability, negligence, or
18 wrongdoing on the part of Defendant. Defendant denies all the claims and contentions alleged by
19 Plaintiff in the Actions. The Defendant has entered into this Settlement solely with the intention to
20 avoid further disputes and litigation with the attendant inconvenience and expenses.

21 91. **Full and Complete Defense.** This Agreement may be pleaded by any Released Party as
22 a full and complete defense to and may be used as the basis for an injunction against, any action, suit,
23 or other proceeding that has been or may be instituted, prosecuted, or attempted, asserting any Released
24 Class Claim or Released PAGA Claim.

25 92. **Waiver.** The waiver by one Party of any breach of this Agreement by another Party shall
26 not be deemed a waiver of any other prior or subsequent breach of this Agreement.

1 93. **Inadmissibility of Agreement.** Whether or not the Settlement becomes final, neither
2 the Settlement, nor any document, statement, proceeding or conduct related to the Agreement, nor any
3 reports or accounting thereof, is to be construed as, offered, or admitted in evidence as, received as, or
4 deemed to be evidence for any purpose adverse to the Released Parties, including, but not limited to,
5 evidence of a presumption, concession, indication, or admission by any of the Released Parties of any
6 liability, fault, wrongdoing, omission, concession, or damage. Each of the Parties hereto has entered
7 into this Settlement with the intention of avoiding further disputes and litigation with the attendant
8 inconvenience and expenses. This Stipulation of Settlement is a settlement document, and it, along with
9 all related documents such as the notices, and motions for preliminary and final approval, shall, pursuant
10 to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be inadmissible in
11 evidence in any proceeding, except an action or proceeding to approve the settlement, and/or interpret
12 or enforce this Stipulation of Settlement. The stipulation for class certification as part of this Agreement
13 is for settlement purposes only and if, for any reason the settlement is not approved, the stipulation will
14 be of no force or effect.

15 94. **External Media.** Parties and attorneys will keep the Settlement confidential through
16 preliminary approval. Thereafter, the Parties and attorneys will agree to make no comments to the
17 media or otherwise publicize the terms of the Settlement. Plaintiff and Class Counsel further agree that
18 they shall not reference the Settlement or the Actions in any marketing materials, on any websites,
19 emails and correspondence regarding the Actions against Defendant or related companies (outside of
20 emails and correspondence necessary to effectuate this Settlement).

21 95. **Enforcement Action.** In the event that one or more of the Parties to this Settlement
22 institutes any legal action or other proceeding against any other party or parties to enforce the provisions
23 of this Settlement or to declare rights and/or obligations under this Settlement, the successful party or
24 parties shall be entitled to recover from the unsuccessful party or parties reasonable attorneys' fees and
25 costs, including expert witness fees incurred in connection with any enforcement actions.

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1 96. **Parties Contact Information.** Unless otherwise specifically provided herein, all
2 notices, demands, and other communications given hereunder shall be in writing and shall be deemed
3 to have been duly given as of the third business day after mailing by United States mail, addressed as
4 follows:

5 To the Class or Plaintiff:

6 Edwin Aiwarzian
7 **LAWYERS *for* JUSTICE, PC**
8 410 West Arden Avenue, Suite 203
 Glendale, California 91203

9 To Defendant:

10 Melanie L Ronen
11 Bryce M. Cullinane
12 KEESAL, YOUNG & LOGAN
13 A Professional Corporation
14 400 Oceangate
15 Long Beach, CA 90802
 Telephone: (562) 436-2000
 Facsimile: (562) 436-7416
 Email: melanie.ronen@kyl.com
 bryce.cullinane@kyl.com

16 97. **Dismissal of Lawsuit with Prejudice.** The Plaintiff agrees to dismiss the Actions with
17 prejudice upon entry of the Court's Final Approval Order and Judgment and after full funding and
18 distribution of the Total Settlement Amount. This dismissal with prejudice shall be as to Defendant in
19 the Actions.

20 98. **Entire Agreement.** After this Agreement is signed and delivered by Plaintiff,
21 Defendant, and their attorneys of record, this Agreement and its attached Exhibits shall constitute the
22 entire agreement among the Parties relating to settlement of the Actions and the causes of action and
23 defenses asserted therein, and it shall then be deemed that no oral representations, warranties or
24 inducements have been made to any party concerning this Agreement or its Exhibits other than the
25 representations, warranties, and covenants expressly stated in this Agreement and its Exhibits.

26 99. **Reference to Court.** Except where the context indicates otherwise, references to the
27 Court shall also include any other courts that take jurisdiction of any of the matters that currently
28 complete the Actions.

1 100. **Amendment or Modification.** This Agreement, and any and all parts of it, may be
2 amended, modified, changed, or waived only by an express written instrument signed by all Parties or
3 their successor-in-interest.

4 101. **Binding on Successors or Assigns.** This Agreement shall be binding upon, and inure
5 to the benefit of, the successors of each of the Parties and the Released Parties.

6 102. **Governing Law.** All terms of this Agreement and its Exhibits shall be governed by and
7 interpreted according to the laws of the State of California, without giving effect to any conflict of law
8 principles or choice of law principles.

9 103. **Cooperation in Drafting.** Plaintiff and Defendant have cooperated in the drafting and
10 preparation of this Agreement. This Agreement shall not be construed against any Party on the basis
11 that the Party was the drafter or participated in the drafting. Plaintiff and Defendant expressly waive
12 the common-law and statutory rule of construction that ambiguities should be construed against the
13 drafter of an agreement and further agree, covenant, and represent that the language in all parts of this
14 Agreement shall be in all cases construed as a whole, according to its fair meaning.

15 104. **Headings.** The descriptive headings of any paragraph or section of this Agreement are
16 inserted for convenience of reference only and do not constitute a part of this Agreement.

17 105. **Court Retains Jurisdiction.** The Parties agree that upon the entry of judgment of
18 dismissal pursuant to the terms of this Agreement, that, pursuant to Code of Civil Procedure section
19 664.6, the Court shall retain exclusive and continuing equity jurisdiction of this Action over all Parties
20 to interpret, enforce, and effectuate the terms, conditions, intents, and obligations of this Agreement.

21 106. **Signatures of All Class Members Unnecessary to be Binding.** It is agreed that, because
22 the members of the Class are numerous, it is impossible or impractical to have each Class Member
23 execute this Settlement Agreement. The Notice will advise all Class Members of the binding nature of
24 the releases provided herein and such shall have the same force and effect as if this Settlement
25 Agreement were executed by each Class Member.

26 107. **Counterparts.** This Agreement may be executed in one or more counterparts. All
27 executed counterparts and each of them, including facsimile, electronic, and scanned copies of the
28

signature page, shall be deemed to be one and the same instrument, provided that counsel for the Parties to this Agreement shall exchange among themselves original signed counterparts. Any executed counterpart shall be admissible in evidence to prove the existence and contents of this Agreement.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Settlement and Release between Plaintiff and Defendants:

IT IS SO AGREED.

DATED: August _____, 2023

EDUARDO CHINA
Plaintiff

DATED: August 9, 2023

By: Stephen F. Pinto
Name: Stephen F. Pinto
Title: President
SOUTHWESTERN INDUSTRIES, INC.
Defendant

APPROVED AS TO FORM:

DATED: August 9, 2023



Melanie L. Ronen
Bryce M. Cullinane
KEESAL, YOUNG & LOGAN
Attorneys for Defendant
SOUTHWESTERN INDUSTRIES, INC.

DATED: August _____, 2023

Edwin Aiwarzian
Joanna Ghosh
Brian J. St. John
LAWYERS for JUSTICE, PC
Attorneys for Plaintiff
EDUARDO CHINA

signature page, shall be deemed to be one and the same instrument, provided that counsel for the Parties to this Agreement shall exchange among themselves original signed counterparts. Any executed counterpart shall be admissible in evidence to prove the existence and contents of this Agreement.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Settlement and Release between Plaintiff and Defendants:

IT IS SO AGREED.

09/18/2023

DATED: August _____, 2023

Electronically Signed 2023-09-18 23:31:59 UTC - 172.114.243.125
Nintex AssureSign® Eduardo China f6593831-d632-4047-91f0-b081017b3366

EDUARDO CHINA
Plaintiff

DATED: August _____, 2023

By: _____
Name: _____
Title: _____
SOUTHWESTERN INDUSTRIES, INC.
Defendant

APPROVED AS TO FORM:

DATED: August _____, 2023

Melanie L. Ronen
Bryce M. Cullinane
KEESAL, YOUNG & LOGAN
Attorneys for Defendant
SOUTHWESTERN INDUSTRIES, INC.

DATED: September 18, 2023


Edwin Aiwanian
Joanna Ghosh
Brian J. St. John
LAWYERS for JUSTICE, PC
Attorneys for Plaintiff
EDUARDO CHINA

EXHIBIT A

NOTICE OF CLASS ACTION SETTLEMENT

China v. Southwest Industries Inc

**Los Angeles County Superior Court, Case No. 21STCV11874
Los Angeles County Superior Court, Case No. 21CMCV00123**

PLEASE READ THIS NOTICE CAREFULLY.

You have received this Notice because Defendant's records indicate that you may be eligible to take part in the class action settlement reached in the above-referenced matter.

You do not need to take any action to receive a settlement payment and, unless you request to be excluded from the settlement, your legal rights may be affected.

This Notice is designed to advise you of your rights and options with respect to the settlement.

By order of the Superior Court of California for the County of Los Angeles (the "Court" or "Los Angeles County Superior Court"), you are notified that: preliminary approval of a class action settlement reached between Plaintiff Eduardo China ("Plaintiff" or "Class Representative") and Defendant Southwestern Industries, Inc. ("Defendant"), was granted on [insert date], in the lawsuits entitled *Eduardo China v. Southwest Industries Inc.*, Los Angeles County Superior Court, Case No. 21STCV11874, and Los Angeles County Superior Court, Case No. 21CMCV00123 (together, the "Actions"), which may affect your legal rights.

If you are a Class Member (or member of the Class), you need not take any action to receive a settlement payment, but you have the opportunity to request exclusion from the Settlement (in which case you will not receive payment under the Settlement), object to the Settlement, and/or dispute the number of Workweeks credited to you, if you so choose, as explained more fully in Section III below.

I. IMPORTANT DEFINITIONS

"Class" or "Class Member(s)" refers to all current and former hourly-paid or non-exempt employees of Defendant in California employed during the Class Period.

"Class Period" means the time period from March 26, 2017 through October 31, 2022.

"Aggrieved Employees" means all current and former hourly paid or non-exempt employees of Defendant in California during the PAGA Period.

"PAGA Period" means the time period from March 16, 2020 through October 31, 2022.

II. BACKGROUND OF THE ACTION

On or about March 26, 2021, Plaintiff Eduardo China filed a Class Action Complaint for Damages ("Class Action") against Defendant Southwestern Industries, Inc. in the Superior Court of California for the County of Los Angeles, Case No. 21STCV11874. The Action alleges a causes of action for violations of the California Labor Code: Unpaid Overtime Wages (Lab. Code §§ 510 and 1198); Meal Period Violations (Lab. Code §§ 226.7 and 512); Rest Period Violations (Lab. Code § 226.7); Unpaid Minimum Wages (Lab. Code §§ 1194, 1197 and 1197.1); Failure to Timely Pay Final Wages (Lab. Code §§ 201 and 202); Failure to Timely Pay Wages During Employment (Lab. Code § 204); Non-Compliant Wage Statements (Lab. Code § 226); Failure to Maintain Payroll Records (Lab. Code § 1174); Failure to Reimburse Business Expenses (Lab. Code §§ 2800 and 2802); and Unfair Business Practices (Bus. & Prof. Code §§ 17200, *et seq.*).

On or about March 16, 2021, Plaintiff Eduardo China submitted a Private Attorneys General Act ("PAGA") Letter to the Labor and Workforce Development Agency ("LWDA") seeking civil penalties under PAGA, against Southwestern Industries, Inc. and any and all affiliates, subsidiaries, parents, directors, officers, and employees, on behalf of aggrieved employees in California, for alleged violations of the California Labor Code and Industrial Welfare Commission Wage Orders, including California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802, and Industrial Welfare Commission Wage Orders, inter alia, Wage Orders 4-2001 and 5-2001.

On or about May 21, 2021, Plaintiff Eduardo China filed a Complaint for Enforcement Under the Private Attorneys General Act, California Cal. Labor Code § 2698, *Et Seq.* (“PAGA Action”) (together with the Class Action, the “Actions”) against Defendant Southwestern Industries, Inc. in the Superior Court of California for the County of Los Angeles, Case No. 21CMCV00123, asserting a single cause of action for civil penalties under the Private Attorneys’ General Act (“PAGA”) on behalf of herself and all other aggrieved employees.

On or about December 16, 2022, by way of Court order, the Class Action and PAGA Action were consolidated, with the Class Action designated the lead action.

Plaintiff seeks, among other things, recovery of unpaid wages and meal and rest period premiums, restitution, declaratory relief, penalties, interest, and attorneys’ fees and costs.

Defendant denies all the allegations in the Actions or that they violated any law and contends that at all times they have fully complied with all applicable federal, state, and local laws.

The Parties participated in a full-day mediation session with a respected class action mediator, and as a result, the Parties reached a settlement. The Parties have since entered into the Joint Stipulation of Settlement and Release (“Settlement” or “Settlement Agreement”), which was preliminarily approved by the Court on **[Preliminary Approval Date]**. The Court has appointed Phoenix Settlement Administrators as the administrator of the Settlement (“Settlement Administrator”), Plaintiff Eduardo China as representative of the Class (“Class Representative”), and the following law firm as counsel for the Class (“Class Counsel”):

Edwin Aiwarzian, Esq.
Arby Aiwarzian, Esq.
Joanna Ghosh, Esq.
Brian J. St. John, Esq.
Lawyers for Justice, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Telephone: (818) 265-1020 / Fax: (818) 265-1021

The Settlement represents a compromise and Settlement of highly disputed claims. Nothing in the Settlement is intended or will be construed as an admission by Defendant that the claims in the Actions have merit or that Defendant has any liability to Plaintiff or to Class Members. Plaintiff and Defendant, and their respective counsel, have concluded and agree that, in light of the risks and uncertainties to each side of continued litigation, the Settlement is fair, reasonable, and adequate, and that the Settlement is in the best interests of the Class Members.

III. SUMMARY OF THE PROPOSED SETTLEMENT

A. Settlement Formula

The Total Settlement Amount is One Million Nine Hundred Thousand Dollars (\$1,900,000.00) (the “Total Settlement Amount”). The portion of the Total Settlement Amount that is available for payment to Class Members who do not opt out of this Settlement (“Participating Class Members”) is referred to as the “Net Settlement Amount.” The Net Settlement Amount will be the Total Settlement Amount less the following payments which are subject to approval by the Court: (1) attorneys’ fees in an amount of up to one-third (1/3) of the Total Settlement Amount (i.e., up to \$633,333.33) and reimbursement of litigation costs and expenses in an amount of up to Twenty Thousand Dollars (\$20,000.00) to Class Counsel (together, “Attorneys’ Fees and Costs”); (2) enhancement payment in an amount not to exceed Ten Thousand Dollars (\$10,000) to Plaintiff Eduardo China for his services (“Class Representative Enhancement”); (3) settlement administration costs in an amount not to exceed Nine Thousand Dollars (\$9,000.00) to the Settlement Administrator (“Settlement Administration Expenses”); and (4) the allocation of Three Hundred Thousand Dollars (\$300,000.00) to settle all claims under PAGA (“PAGA Penalty Amount”), of which 75%, or \$225,000.00, will be paid to the Labor and Workforce Development Agency (“LWDA”) and the remaining 25%, or \$75,000.00, will be distributed *pro rata* to Aggrieved Employees.

Class Members are eligible to receive a *pro rata* share of the Net Settlement Amount (“Individual Settlement Share”)

based on the number of workweeks during which they worked for Defendant as an hourly-paid or non-exempt employee in California during the Class Period (“Workweeks”). Each Aggrieved Employee’s *pro rata* share of the 25% portion of the PAGA Penalty Amount (“Individual PAGA Payment”) will be based on the number of Workweeks during which they worked for Defendant during the PAGA Period.

Each Individual Settlement Share will be allocated as twenty percent (20%) to wages (which will be reported on an IRS Form W2), and eighty percent (80%) to interest, penalties, and other non-wage damages (which will be reported on an IRS Form 1099, if applicable). Each Individual Settlement Share will be subject to reduction for the employee’s share of taxes and withholdings with respect to the wage portion of the Individual Settlement Share. The net payment of each Participating Class Member’s Individual Settlement Share (after reduction for the employee’s share of taxes on the wage portion) is referred to as their “Individual Settlement Payment.” Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties and will be reported on IRS Form-1099 (if applicable) by the Settlement Administrator.

If the Court grants final approval of the Settlement, Defendants will deposit the Total Settlement Amount thirty days after the Settlement is granted final approval and will deposit the remaining fifty percent (50%) eight months after funding the first installment.

If the Court grants final approval of the Settlement, Individual Settlement Payments will be mailed to Participating Class Members at the address that is on file with the Settlement Administrator by way of check and Individual PAGA Payments will be mailed to Group Members at the address that is on file with the Settlement Administrator by way of check following the funding of the Total Settlement Amount. **If the address to which this Notice was mailed is not correct, or if you move after you receive this Notice, you must provide your correct mailing address to the Settlement Administrator as soon as possible to ensure your receipt of payment that you may be entitled to.**

B. Your Pay Periods Based on Defendants’ Records

According to Defendant’s records:

From March 26, 2017 through October 31, 2022, you worked for Defendant Southwestern Industries, Inc. as an hourly-paid or non-exempt employee in California for [REDACTED] Workweeks.

From March 16, 2020 through October 31, 2022, you worked for Defendant Southwestern Industries, Inc. as an hourly-paid or non-exempt employee in California for [REDACTED] PAGA Workweeks.

If you wish to dispute the number of Workweeks during the Class Period and/or PAGA Period credited to you, you must submit a written letter to the Settlement Administrator. The written dispute must include information and/or attach documentation demonstrating that the number of Workweeks that you contend should be credited to you is correct; and (f) be mailed to the Settlement Administrator at the address listed in Section IV.B below, postmarked **on or before [Response Deadline]**.

C. Your Estimated Individual Settlement Share and Individual PAGA Payment

As explained above, your estimated Individual Settlement Share is based on the number of Workweeks during the Class Period credited to you.

Under the terms of the Settlement, your Individual Settlement Share is estimated to be \$[REDACTED]. The Individual Settlement Share is subject to reduction for the employee’s share of taxes and withholding with respect to the wage portion of the Individual Settlement Share.

Individual Settlement Payments (i.e., the net payment of the Individual Settlement Share after reduction for the employee’s share of taxes on the wage portion) will only be distributed if the Court approves the Settlement and after the Settlement goes into effect.

As explained above, your estimated Individual PAGA Payment is based on the number of Workweeks during the PAGA Period credited to you.

Under the terms of the Settlement, your Individual PAGA Payment is estimated to be \$ [REDACTED].

The Settlement approval process may take multiple months. Your Individual Settlement Share and Individual PAGA Payment in this Notice is only an estimate. Your actual Individual Settlement Share and Individual PAGA Payment may be higher or lower.

D. Released Claims

Upon the Effective Date, each of the Participating Class Members (including all the Class Representatives) will be deemed to have, and by operation of the Judgment will have fully, finally, and forever agreed to release, discharge, hold harmless, and covenant not to sue each and all the Released Parties for the Released Class Claims and each PAGA Group Member will be deemed have, and by operation of the Judgment will have fully, finally, and forever agreed to release, discharge, hold harmless, and covenant not to sue each and all the Released Parties for the Released PAGA Claims.

“Released Class Claims” means any and all claims under state, federal, or local law, arising out of the facts alleged in the Class Complaint, arising during the Class Period, including but not limited to claims under the California Labor Code, Industrial Welfare Commission Wage Orders, regulations, and/or other provisions of law for failure to pay overtime wages and/or failure to pay such wages at the correct rates of pay, failure to provide compliant meal periods and associated premiums, failure to provide compliant rest periods and associated premiums, failure to pay minimum wages, failure to timely pay wages upon termination and associated waiting time penalties, failure to timely pay wages during employment and associated waiting time penalties, failure to provide compliant wage statements, failure to keep requisite payroll records, failure to reimburse necessary business expenses, and violation of California’s unfair competition law.

“Released PAGA Claims” means any and all claims for civil penalties pursuant to PAGA, arising out of the facts alleged in the PAGA Notice, arising during the PAGA Period, including but not limited to claims for failure to pay minimum and overtime wages and/or failure to pay such wages at the correct rate(s) of pay, failure to provide compliant meal and rest breaks and associated premiums, failure to provide compliant wage statements, failure to timely pay all wages upon separation of employment and associated waiting-time penalties, failure to timely pay wages during employment and associated waiting time penalties, failure to keep requisite payroll records, failure to reimburse business expenses, and unfair and unlawful business practices in violation of California Business and Professions Code section 17200, *et seq.*

“Released Parties” means Defendant, and all of its present and former parent companies, subsidiaries, affiliates, and divisions, and their principals, shareholders, directors, officers, agents, representatives, employees, attorneys, insurers, successors, and assign.

E. Attorneys’ Fees and Costs to Class Counsel

Class Counsel will seek attorneys’ fees in an amount of up to one-third (1/3) of the Total Settlement Amount (i.e., up to \$633,333.33) and reimbursement of litigation costs and expenses in an amount of up to Twenty Thousand Dollars (\$20,000), to be paid from the Total Settlement Amount, subject to approval by the Court. Class Counsel has been prosecuting the Actions on behalf of Plaintiff and Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses.

F. Class Representative Enhancement to Plaintiff

Plaintiff will seek the amount of Ten Thousand Five Hundred Dollars (\$10,000) as an Class Representative Enhancement to Plaintiff Eduardo China in recognition of his services in connection with the Actions. The Class Representative Enhancement will be paid from the Total Settlement Amount subject to approval by the Court, and if awarded, it will be paid to Plaintiff in addition to his Individual Settlement Payment that she is entitled to under the Settlement.

G. Settlement Administrator Expenses to the Settlement Administrator

Payment to the Settlement Administrator is estimated not to exceed Nine Thousand Dollars (\$9,000) for the costs of the notice and settlement administration process, including and not limited to, the expense of notifying the Class Members of the Settlement, receiving and reviewing requests for exclusion, objections, and/or disputes, if any, submitted by Class Members, calculating Individual Settlement Payments, and distributing payments and tax forms under the Settlement, and will be paid from the Gross Settlement Amount subject to approval by the Court.

IV. WHAT ARE YOUR RIGHTS AND OPTIONS AS A CLASS MEMBER?

A. Participate in the Settlement

If you want to receive money from the Settlement, you do not have to do anything. You will automatically be issued your Individual Settlement Payment unless you decide to exclude yourself from the Class Settlement. Unless you elect to exclude yourself from the Class Settlement, you will be bound by the terms of the Class Settlement and any judgment that may be entered by the Court based thereon, and you will be deemed to have released the Released Parties for the Released Claims, as described in Section III.D above. As a Class Member, you will not be separately responsible for the payment of attorney's fees or litigation costs and expenses, unless you retain your own counsel, in which event you will be responsible for your own attorney's fees and expenses. If you qualify as a Aggrieved Employee, you will be bound to the release of Released PAGA Claims and will be issued your Individual PAGA Payment, irrespective of whether you exclude yourself from the Class Settlement.

B. Request Exclusion from the Settlement

If you do not wish to participate in the Class Settlement, you may seek exclusion from (or "opt out" of) the Class Settlement by submitting a timely, written request for exclusion from the Settlement to the Settlement Administrator at the following address:

[Settlement Administrator]
[Address]

The request for exclusion must: (a) include your full name, address, telephone number, and the last four digits of your Social Security Number; (b) include the name and case number of the Actions (*Eduardo China v. Southwestern Industries, Inc.*, Case No. 21STCV11874 and Case No. 21CMCV00123); (c) include a clear and unequivocal statement that you wish to be excluded from the Settlement; (d) include your signature; and (e) be mailed to the Settlement Administrator at the address listed above, postmarked **no later than [Response Deadline]**.

If the Court grants final approval of the Settlement, any Class Member who submits a timely and valid request for exclusion from the Class Settlement will not be entitled to receive an Individual Settlement Payment from the Settlement, will not be bound by the Class Settlement (and the release of Released Class Claims stated in Section III.D above), and will not have any right to object to, appeal, or comment on the Settlement. Any Class Members who do not submit a timely and valid request for exclusion from the Settlement will be deemed Participating Class Members and will be bound by all terms of the Settlement, including those pertaining to the release of Released Class Claims stated in Section III.D above, as well as any judgment that may be entered by the Court based thereon.

Notwithstanding the above, all Aggrieved Employees will receive their share of the 25% share of the PAGA Penalty Amount (i.e., Individual PAGA Payment) and will be bound to the Released PAGA Claims, irrespective of whether they submit a Request for Exclusion

C. Object to the Settlement

You can object to the terms of the Settlement as long as you have not submitted a request for exclusion from the Settlement, by submitting a written objection ("Notice of Objection") to the Settlement Administrator or by orally presenting your objection at the Final Approval Hearing (you may appear at the Final Approval Hearing and make an oral objection without submitting a written objection).

A written Notice of Objection must: (a) include your full name, address, telephone number, and the last four digits of your Social Security Number; (b) include the name and case number of the Actions (*Eduardo China v. Southwestern*

Industries, Inc., Case No. 21STCV11874 and Case No. 21CMCV00123); (c) contain a written statement of all grounds for the objection accompanied by any legal support for such objection; (d) include your signature; (e) attach copies of any papers, briefs, or other documents upon which the objection is based; and (f) be filed or postmarked **no later than [Response Deadline]**.

V. FINAL APPROVAL HEARING

The Court will hold a hearing (the “Final Approval Hearing”) in Department 10 of the Los Angeles County Superior Court, located at the Stanley Mosk Courthouse at 111 North Hill Street, Los Angeles, California 90012 on **DATE, at TIME**, to determine whether the Settlement should be finally approved as fair, reasonable, and adequate and whether the attorneys’ fees and costs to Class Counsel, Class Representative Enhancement to Plaintiff, and Settlement Administrator Expenses to the Settlement Administrator should be awarded. If the Court enters an order and judgment granting final approval of the Settlement, a copy of this order and judgment will be posted on the Settlement Administrator’s website; to access it you will need to navigate to the following web URL: **[insert]**

The hearing may be continued without further notice to the Class Members. It is not necessary for you to appear at the Final Approval Hearing, although you may appear if you wish to regardless of whether you submitted a Notice of Objection.

Personal appearances and telephonic appearances are an option. You can find information regarding appearing remotely online at: <https://my.lacourt.org/laccwelcome>. Please note that there may be deadlines to reserve a remote appearance and fees or charges may apply.

VI. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement Agreement, you should review the detailed Settlement Agreement and other papers which are on file with the Court.

You may view the Settlement Agreement by going to Stanley Mosk Courthouse, 111 North Hill Street, Los Angeles, California, 90012, during the court’s business hours of each court day and requesting to look at paper records. You can also access documents filed in the Actions, to the extent they have been imaged for online access, as well as basic information regarding hearing dates and filings in the Actions by looking the case up on the Case Access Portal of the Court’s website (www.lacourt.org/casesummary/ui/). Fees may apply for accessing and/or obtaining copies of documents from the Court in person or online. To look up and access documents and information on the Court’s systems, you will need to use the case number.

Please note, due to the COVID-19 pandemic, there may be limitations on access to court facilities. Please visit the following link for the Court’s most current social distancing procedures and information regarding accessing court facilities: <https://www.lacourt.org/courthouse/info/la>.

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

IF YOU HAVE ANY QUESTIONS, YOU MAY CALL THE SETTLEMENT ADMINISTRATOR AT THE FOLLOWING TOLL-FREE NUMBER: **[INSERT], OR YOU MAY ALSO CONTACT CLASS COUNSEL.**