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Attorneys for Plaintiff, the Class, and Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA

TONY CATELLI, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

vs.

INNOVATIVE CONSTRUCTION
SOLUTIONS, a California corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: MSC21-01257

(Assigned for all purposes to the Honorable
Edward G. Weil, Department 39)

**DECLARATION OF LARRY W. LEE IN
SUPPORT OF PLAINTIFF’S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: TBD
Time: 9:00 a.m.
Dept.: 39

Complaint Filed: June 1, 2021
Trial Date: None Set

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1. I am an attorney at law, duly licensed to practice before all Courts in the State of California, and am with the law firm Diversity Law Group, counsel of record for Plaintiff Tony ("Plaintiff"). I have personal knowledge of the facts set forth below and if called to testify I and would do so competently.

2021, Plaintiff sent written notice to the California Labor & WDA”) pursuant to Labor Code section 2698, *et seq.* of the Act (“PAGA”), setting forth Plaintiff’s allegation that section 226(a). The LWDA did not respond to Plaintiff’s

4. The complaint is premised on the allegation that the inclusive dates of the payroll period were not identified on wage statements issued to Plaintiff and other employees. The PAGA claim is predicated on an underlying violation of Labor Code § 226. Defendant denies the allegations in the Action and is prepared to continue to defend the action vigorously.

6. After Plaintiff filed the complaint, Plaintiff and Defendant (together, the “Parties”) agreed to engage in informal settlement discussions. In connection therewith, Defendant provided payroll data for approximately 129 putative class members, including the number of allegedly deficient wage statements issued, which allowed Plaintiff to complete a damage analysis for the class and PAGA claims. Specifically, it was discovered that the alleged

violation only appeared on the very first (initial) physical wage statements the employer issued to its employees, and that all subsequent wage statements did not contain any of the alleged violations. After thorough investigation and evaluation of the facts and claims and negotiations conducted over the course of months, the Parties reached the current settlement.

7. In resolution of Plaintiff's class and PAGA claims, the Parties entered into the Joint Stipulation of Class Action and PAGA Settlement ("Settlement Agreement"), a true and correct copy of which is attached herewith as **Exhibit A**.

SUMMARY OF THE SETTLEMENT TERMS

8. The Settlement Agreement provides for a Maximum Settlement Amount of Thirty Thousand Dollars and Zero Cents (\$30,000.00). Settlement Agreement ¶ 17. Attorneys' fees of up to one-third (1/3) of the Maximum Settlement Amount (\$10,000.00) will be paid to Class Counsel along with costs of up to \$5,000.00. *Id.* ¶ 45. A Class Representative Enhancement Award of up to \$2,500.00 will be paid to Plaintiff. *Id.* ¶ 46. The Settlement Administrator will be paid up to \$4,250.00 for the costs of administering this settlement. *Id.* ¶ 47. The PAGA Allocation is Two Thousand Dollars (\$2,000.00), of which 75% (\$1,500.00) shall be paid to the LWDA and 25% (\$500.00) shall be paid to the PAGA Employees. *Id.* ¶ 48.

9. Based on the Net Settlement Amount, on a pure raw average, each Class Member will receive approximately \$48.45. Such amounts for each person could increase or decrease depending on a number of factors, including the number of opt outs received.

10. Funds represented by Individual Settlement Payment and Individual PAGA Payment checks remaining un-cashed for more than 120 days after issuance will be tendered to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500, *et seq.*, for the benefit of those Class Members and PAGA Employees who did not cash their checks until such time that they claim their property. Settlement Agreement ¶ 72.

POTENTIAL STATUTORY AND CIVIL PENALTIES

11. Plaintiff's counsel negotiated the settlement sum based on a clear understanding of the maximum exposure in this case.

1 12. Plaintiff calculated maximum exposure for Labor Code § 226 penalties to be
2 \$6,450.00 and derivative PAGA penalties of \$32,250.00 for a total of \$38,700.00.

3 13. With respect to Plaintiff's Labor Code § 226 claim, it arises from Plaintiff's
4 allegations that Defendant's wage statements failed to identify the inclusive dates of the payroll
5 period. As stated above, it was discovered that the alleged violation only appeared on the very
6 first (initial) physical wage statements the employer issued to its employees, and that all
7 subsequent wage statements did not contain any of the alleged violations.

8 14. Based on the above, the \$30,000.00 settlement comprises approximately 77.5% of
9 the realistic exposure, which is consistent with settlements approved by numerous courts.

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

11 15. Plaintiff believes that the Class could prevail at trial for all of the Labor Code
12 violations. However, Plaintiff also believes in the fairness of the settlement that is based on
13 factoring in the uncertainty and risks to Plaintiff involved in not prevailing on one or more of the
14 causes of action or theories alleged in the Complaint, the possibility of losing at trial, and
15 potential for appeals. Moreover, as Defendant adamantly disputes that it should be liable for the
16 full extent of the penalties, there is a possibility that Plaintiff and the Class would be awarded
17 less or no penalties at trial.

18 16. Based on their own independent investigation and evaluation, the Parties and their
19 respective counsel are of the opinion that settlement for the consideration and on the terms set
20 forth in the Settlement Agreement is fair, reasonable, and adequate and is in the best interests of
21 the Class and Defendant in light of all known facts and circumstances and the expenses and risks
22 inherent in litigation.

23 **ATTORNEY EXPERIENCE**

24 17. From the inception of the case, Class Counsel have zealously represented the
25 interests of the Class. For example, the informal discovery exchanged by the Parties was directed
26 towards class issues. Class Counsel engaged in significant meet and confer discussions with
27 opposing counsel to obtain informal data and documents and to discuss the merits of the claims
28 on behalf of the Class. This settlement was obtained for the benefit of the Class, as opposed to

1 the individual Class Representative.

2 18. Both Plaintiff's and Defendant's counsel have a great deal of experience in wage
3 and hour class action litigation. Plaintiff's counsel have been approved as class counsel in a
4 number of wage and hour class actions and have extensive litigation experience.

5 19. Based on my review of all the information, and based on my experience in class
6 action litigation, I believe this settlement to be fair, adequate, and reasonable.

7 20. I was retained based upon a contingency fee arrangement wherein Plaintiff's
8 counsel agreed to advance all costs and receive no fee unless a recovery was accomplished.
9 Specifically, had Plaintiff failed to prevail on these cases, counsel for Plaintiff would have spent
10 a significant amount of time, money and other resources without any benefit or return. In
11 addition, had Plaintiff also failed to prevail in the present cases, Defendant would have been able
12 to seek costs in connection with its defense of the case.

13 21. I am one of the primary attorneys on this matter. My qualifications are as follows:
14 I received my J.D. from Arizona State University College of Law in 2003. During law school, I
15 was a summer associate at the law firm of Brobeck, Phleger & Harrison. I graduated cum laude
16 from Arizona State University College of Law in the top 10% of my class. While I was in law
17 school, I was the Associate Managing Editor of the Arizona State University College of Law,
18 Law Journal. Upon graduation, I practiced law as an associate at the Los Angeles County offices
19 of Ogletree Deakins Nash Smoak & Stewart, P.C., a national employment defense law firm that
20 represents a significant number of Fortune 500 companies.

21 22. My firm's primary focus is employment law. I have handled a number of wage
22 and hour matters including class actions and multiple-plaintiff actions. I have a practice that
23 encompasses cases throughout the State of California, including but not limited to the Los
24 Angeles Superior Courts, the Orange County Superior Courts, the San Francisco County
25 Superior Courts, the San Diego County Superior Courts, and the United States District Courts for
26 the Central, Eastern, Northern, and Southern Districts of California.

27 23. I have been named as Class Counsel in a number of class actions that have been
28 granted final approval by the Superior Courts of Los Angeles County, Orange County, San

1 Francisco County, Alameda County, Contra Costa County, Monterey County, San Bernardino
2 County, Santa Clara County, Sonoma County, and other counties, as well as the United States
3 District Court for the Central, Eastern, and Northern Districts of California, including but not
4 limited to the following class actions: *Chan Lanier v. Citigroup, Inc. et al.*, San Francisco
5 Superior Court Case No. CGC-05-445143; *Naqvi v. Acoustic Home Loans et al.*, Orange County
6 Superior Court Case No. 05CC00263; *Ortega v. AIG*, Central District of California Case No. CV
7 06-0196-RSWL (PJWx); *Universal Protection Overtime Cases*, Orange County Superior Court,
8 Judicial Council Coordination Proceeding No. 4480; *Hernandez v. CVS Corp. et al.*, Judicial
9 Council Coordination Proceeding No. 4539; *Padilla v. Safeway*, San Benito County Superior
10 Court Case No. CU-16-00182; *Valles v. Community Hospital of the Monterey Peninsula*,
11 Monterey County Superior Court Case No. 17CV003452; *DirecTv Wage and Hour Cases*, Santa
12 Clara Superior Court Judicial Council Coordination Proceeding No. 4850; *Perez v. Standard*
13 *Drywall, Inc.*, Alameda County Superior Court Case No. RG15761142; and *Davis v. Nugget*
14 *Market, Inc.*, Yolo County Superior Court Case No. CV-18-558.

15 **NOTICE TO THE LWDA**

16 24. Concurrent with the filing of this Motion, Plaintiff uploaded this motion and
17 proposed order to the LWDA's website. A true and correct copy of the LWDA confirmation is
18 attached hereto as **Exhibit B**.

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

21 Executed on this 14th day of December 2022, at Los Angeles, California.

22 
23 _____
24 Larry W. Lee

EXHIBIT A

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Attorneys for Defendant
 Innovative Construction Solutions

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF CONTRA COSTA**

TONY CATELLI, as an individual and on
 behalf of all others similarly situated;

Plaintiffs,

vs.

INNOVATIVE CONSTRUCTION
 SOLUTIONS, a California corporation; and
 DOES 1 through 50, inclusive;

Defendants.

Case No.: MSC21-01257

Assigned for All Purposes To:
 Honorable Edward G. Weil
 Department 39

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

Complaint Filed: June 21, 2020
 Trial Date: None Set

1 This Joint Stipulation of Class Action and PAGA Settlement (the "Settlement," "Agreement"
2 or "Settlement Agreement") is made and entered into by and between Plaintiff Tony Catelli, on his
3 own behalf, on behalf of all similarly situated employees, and on behalf of all aggrieved employees
4 pursuant to the Private Attorneys General Act ("PAGA") ("Plaintiff" or "Class Representative"), on
5 one hand, and Defendant Innovative Construction Solutions, a California corporation
6 ("Defendant"), on the other. Plaintiff and Defendant are sometimes referred to individually as a
7 "Party" and collectively referred to as the "Parties." THE PARTIES STIPULATE AND AGREE as
8 follows:

9 DEFINITIONS

10 The following definitions are applicable to this Settlement Agreement. Definitions contained
11 elsewhere in this Settlement Agreement will also be effective.

12 1. "Action" means the above-captioned action, *Tony Catelli v. Innovative Constructive*
13 *Solutions*, Contra Costa County Superior Court Case No. MSC21-01257.

14 2. "Attorneys' Fees and Costs" means attorneys' fees and costs approved by the Court
15 for Class Counsel's litigation and resolution of the Action.

16 3. "Class Action Complaint" refers to the Complaint filed by Plaintiff in the Action on
17 June 1, 2021.

18 4. "Class Claims" refers to all claims in the Class Action Complaint, except for the
19 PAGA cause of action.

20 5. "Class Counsel" means Diversity Law Group, P.C. and Polaris Law Group LLP.

21 6. "Class List" means a complete list of all prospective Class Members that Defendant
22 will diligently and in good faith compile from its records and provide to the Settlement Administrator
23 within twenty-one (21) days after Preliminary Approval of this Settlement. The Class List will be
24 formatted in Microsoft Office Excel and will include the following information from Defendant's
25 records: each prospective Class Member's (a) full name; (b) last-known mailing address; (c) Social
26 Security Number; (d) dates of employment; (e) whether the prospective Class Member was an
27 employee in California who received an Initial Physical Wage Statement during the Class Period;
28

1 and (f) whether the prospective Class Member was an employee in California who receive an Initial
2 Physical Wage Statement during the PAGA Period.

3 7. "Class Member(s)" or "Class" means all current and former employees of Defendant
4 who worked in California and received an Initial Physical Wage Statement during the Class Period.
5 The Parties estimate that the prospective Class includes approximately 129 prospective Class
6 Members.

7 8. "Class Period" means the period from June 1, 2020, through April 26, 2021.

8 9. "Class Representative Enhancement Payment" means the amount approved by the
9 Court to be paid to Plaintiff in recognition of his contribution to the Action on behalf of Class
10 Members and PAGA Employees, to be paid from the Maximum Settlement Amount.

11 10. "Court" means the Superior Court of the State of California, County of Contra Costa.

12 11. "Defendant" means Innovative Construction Solutions, a California corporation.

13 12. "Defendant's Counsel" means Newmeyer & Dillion LLP.

14 13. "Effective Date" means: (a) the date of entry of the Court's order granting final
15 approval of the Settlement Agreement and judgment, if no Objections have been filed or if an
16 Objection was filed and later withdrawn; or (b) if an Objection to the Settlement Agreement is filed,
17 then the date when the time expires to file an appeal of the Court's granting of final approval of the
18 Settlement Agreement; or (c) if an Objection is filed, as well as a timely Notice of Appeal of the
19 Court's granting of final approval of the Settlement Agreement, then the date the appeal is finally
20 resolved, with the Final Approval unaffected. It is the intention of the Parties that the Settlement
21 shall not become effective until the Court's Order granting final approval approving the Settlement
22 has become completely final and judgment has been entered in accordance with the terms of the
23 Settlement, and no timely recourse remains for an appellant or objector to contest the Settlement.

24 14. "Individual PAGA Payment" means each PAGA Employee's individual share of the
25 portion of the PAGA Allocation allocated to the PAGA Employees, i.e., twenty-five percent (25%)
26 of \$2,000.00 or \$500.00 in the aggregate. PAGA Employees will automatically receive their
27 Individual PAGA Payments even if they opt out of the Settlement.
28

1 15. “Individual Settlement Payment” means each Class Member’s individual share of
2 the Net Settlement Amount. Class Members will automatically receive their Individual Settlement
3 Payments unless they opt out of the Settlement. Class Members are not required to submit claim
4 forms to receive their Individual Settlement Payments.

5 16. “Initial Physical Wage Statement” means the paper wage statement received by an
6 employee with his or her first paycheck.

7 17. “Maximum Settlement Amount” is the amount of \$30,000.00, which is the maximum
8 amount to be paid by Defendant pursuant to this Settlement Agreement. The Maximum Settlement
9 Amount includes all Individual Settlement Payments to Class Members, the Class Representative
10 Enhancement Payment to Plaintiff, all Attorneys’ Fees and Costs to Class Counsel, all Settlement
11 Administration Costs to the Settlement Administrator, and the PAGA Allocation as specified in this
12 Agreement. The Parties agree that Defendant will have no obligation to pay any amount in
13 connection with this Settlement Agreement apart from the Maximum Settlement Amount. The
14 Parties also agree none of the Maximum Settlement Amount will revert to Defendant.

15 18. “Net Settlement Amount” means the Maximum Settlement Amount less the Class
16 Representative Enhancement Payment, Attorneys’ Fees and Costs, Settlement Administration Costs,
17 and the PAGA Allocation, as specified in this Settlement Agreement.

18 19. “Notice of Settlement” means the Notice Class Action and PAGA Settlement
19 attached hereto as **Exhibit A**, to be mailed to all prospective Class Members upon Preliminary
20 Approval.

21 20. “Objection” means a timely written objection to this Settlement sent by a Class
22 Member to the Settlement Administrator as specified herein and in the Notice of Settlement. An
23 Objection to the Settlement must be sent to the Settlement Administrator within the time limitations
24 set forth in this Settlement Agreement and as ordered by the Court. Class Members and PAGA
25 Employees cannot object to the PAGA portion of the Settlement.

26 21. “PAGA” means the Labor Code Private Attorneys General Act of 2004, Cal. Lab.
27 Code §§ 2698 *et seq.*
28

22. "PAGA Action Complaint" refers to Plaintiff Tony Catelli's PAGA letter sent to the California Labor and Workforce Development Agency ("LWDA") on or about April 13, 2021.

23. "PAGA Allocation" means the portion of the Maximum Settlement Amount that the Parties have agreed to allocate to resolution of the Released PAGA Claim. The Parties have agreed that the PAGA Allocation will be Two Thousand Dollars and No Cents (\$2,000.00) from the Maximum Settlement Amount. Pursuant to PAGA, seventy-five percent (75%), or One Thousand Five Hundred Dollars and No Cents (\$1,500.00) of the PAGA Allocation will be paid to the LWDA, and twenty-five percent (25%) or Five Hundred Dollars and No Cents (\$500.00) of the PAGA Allocation will be paid to the PAGA Employees.

24. "PAGA Employees" means all current and former employees of Defendant who worked in California and received an Initial Physical Wage Statement during the PAGA Period. It is stipulated by the Parties that, for purposes of this Settlement, all PAGA Employees are "aggrieved employees" as defined pursuant to PAGA.

25. "PAGA Period" means the period from April 13, 2020, through April 26, 2021.

26. "PAGA Representative" means Plaintiff.

27. "Preliminary Approval" means the Court order granting preliminary approval of the Settlement.

28. "Request for Exclusion" means a timely written request by a prospective Class Member to be excluded from the Settlement. The Request for Exclusion must: (a) set forth the name, address, telephone number and last four digits of the Social Security Number of the prospective Class Member requesting exclusion; (b) be signed by the prospective Class Member; (c) be returned to the Settlement Administrator; (d) clearly state that the prospective Class Member does not wish to be included in the Settlement; and (e) be postmarked on or before the Response Deadline. Prospective Class Members and PAGA Employees cannot submit a Request for Exclusion from the PAGA portion of the Settlement.

29. "Response Deadline" means the deadline by which prospective Class Members must postmark to the Settlement Administrator their Requests for Exclusion and/or Class Members must postmark to the Settlement Administrator their Objections. The Response Deadline will be forty-

1 five (45) calendar days from the initial mailing of the Notice of Settlement by the Settlement
2 Administrator, unless the forty-fifth (45th) day falls on a Sunday or Federal holiday, in which case
3 the Response Deadline will be extended to the next day on which the U.S. Postal Service is open.

4 30. "Settlement Administrator" means Phoenix Settlement Administrators ("Phoenix"),
5 or any other third-party class action settlement administrator approved by the Parties and the Court
6 for the purposes of administering this Settlement. The Parties each represent that they do not have a
7 financial interest in the Settlement Administrator or otherwise have a relationship with the
8 Settlement Administrator that could create a conflict of interest.

9 31. "Settlement Administration Costs" includes all costs payable to the Settlement
10 Administrator for administering the Settlement, including, but not limited to: (a) printing,
11 distributing, translating into Spanish, and tracking notice and other documents for this Settlement;
12 (b) tax reporting; (c) setting up the interest-bearing Qualified Settlement Fund ("QSF");
13 (d) distributing all payments to be made from the QSF pursuant to this Settlement; and (e) providing
14 necessary reports and declarations as requested by the Parties. The Settlement Administration Costs
15 are not to exceed \$4,250.00.

16 STIPULATED BACKGROUND

17 32. On or about April 13, 2021, Plaintiff provided written notice under PAGA to the
18 LWDA and to Defendant of the provisions of the Labor Code he contends were violated and the
19 theories supporting his contentions.

20 33. As of June 17, 2021, the LWDA did not take any action to investigate or prosecute
21 the matters alleged in Plaintiff's April 13, 2021 written notice.

22 34. On June 1, 2021, Plaintiff filed a class and representative PAGA action complaint
23 against Defendant in the Contra Costa County Superior Court, Case No. MSC21-01257, alleging:
24 (a) failure to provide accurate itemized wage statements in violation of Labor Code section 226(a);
25 and (b) a derivative cause of action for alleged violations of PAGA.

26 35. Following service of Plaintiff's Complaint, the Parties engaged in settlement
27 negotiations and Defendant produced evidence that Plaintiff's allegations regarding failure to
28 provide accurate itemized wage statements – if provable at all – pertained only to the Initial Physical

1 Wage Statement received by 129 employees prior to April 26, 2021, and that all subsequent wage
2 statements received by Defendant's employees included both the beginning date and ending date of
3 each pay period and were otherwise compliant under Labor Code section 226(a). Accordingly, the
4 Parties agreed to settle and resolve the Class Claims and PAGA Claims under the terms of this
5 Settlement Agreement, including Defendant's payment of the Gross Settlement Amount of
6 \$30,000.00 in return for a release of Plaintiff's individual claims, Class Claims and PAGA Claims,
7 which are based upon the alleged incomplete Initial Physical Wage Statements received by 129
8 Class Members during the Class Period and/or PAGA Period. For purposes of this Settlement, the
9 Parties stipulate that each of the prospective Class Members and PAGA Employees received a non-
10 compliant wage statement (if at all), only with respect to his or her Initial Physical Wage Statement
11 after date of hire.

12 36. Solely for purposes of settling the Action, the Parties and their respective counsel
13 stipulate and agree that the requirements for establishing class certification with respect to the Class
14 Members have been met and are met. More specifically, for settlement purposes only, the Parties
15 stipulate and agree that:

- 16 (a) The Class is ascertainable and so numerous as to make it impracticable to join
17 all Class Members.
- 18 (b) There are common questions of law and fact including, but not limited to, the
19 following: whether Defendant provided accurate and itemized Initial Physical
20 Wage Statements to the Class, which included the beginning and ending date of
21 the applicable initial pay period.
- 22 (c) Plaintiff's' claims are typical of the claims of the Class Members.
- 23 (d) Plaintiff and Class Counsel will fairly and adequately protect the interests of the
24 Class.
- 25 (e) The prosecution of separate actions by individual members of the Class would
26 create the risk of inconsistent or varying adjudications, which would establish
27 incompatible standards of conduct.
- 28 (f) With respect to the Class, questions of law and fact common to the Class

1 Members predominate over any questions affecting any individual Class
2 Member, and a class action is superior to other available means for the fair and
3 efficient adjudication of the controversy.

4 37. Should, for whatever reason, the Settlement not become effective, the fact that the Parties
5 were willing to stipulate to class certification as part of the Settlement shall have no bearing on, and shall
6 not be admissible in connection with, the issue of whether the Class Members and/or the Class Claims
7 should be certified in a non-Settlement context in this Action or in any other lawsuit. Defendant expressly
8 reserves its right to oppose class certification in the Action or in any other action should this Settlement
9 not become effective.

10 38. Defendant denies any liability or wrongdoing of any kind whatsoever associated with
11 the claims alleged in the Class Action Complaint and/or PAGA Action Complaint, and Defendant further
12 denies that, for any purpose other than settling the Action, that the Action is appropriate for class or
13 representative treatment. With respect to Plaintiff's claims, Defendant contends, among other things,
14 that Plaintiff, the Class Members, and the PAGA Employees were provided with accurate itemized wage
15 statements. Defendant also contends, among other things, that it has complied at all times with the Labor
16 Code and the applicable Wage Orders of the Industrial Welfare Commission.

17 39. It is the desire of the Parties to fully, finally, and forever settle, compromise, and
18 discharge all disputes and claims arising from or related to the Class Action Complaint, the PAGA
19 Action Complaint, and the Action.

20 40. Class Counsel has conducted a thorough investigation into the facts of the Action,
21 including an extensive review of relevant documents, and has diligently pursued an investigation of the
22 claims of the Class Members and PAGA Employees against Defendant. Based on their own independent
23 investigation and evaluation, Class Counsel is of the opinion that the Settlement with Defendant for the
24 consideration and on the terms set forth in this Joint Stipulation of Class Action and PAGA Settlement
25 is fair, reasonable, and adequate, and is in the best interest of the Class in light of all known facts and
26 circumstances, including the risk of significant delay, the risk the Class will not be certified by the Court,
27 defenses asserted by Defendant, and numerous potential appellate issues. Defendant and Defendant's
28 Counsel also agree that the Settlement is fair and in the best interest of the Class.

1 41. It is agreed by Plaintiff (on behalf of himself and the Class) and Defendant, that the
2 Action and any claims, damages, or causes of action arising out of the disputes that are the subject of the
3 Action, be settled and compromised as between Plaintiff, the Class and the PAGA Employees, on one
4 hand, and Defendant, on the other, subject to the terms and conditions set forth in this Settlement and
5 approval of the Court, as of the Effective Date.

6 42. The Parties agree to cooperate and take all steps necessary and appropriate to obtain
7 preliminary and final approval of this Settlement.

8 43. The Parties agree to stay all proceedings in the Action, except such proceedings
9 necessary to implement and complete the Settlement, pending the final approval hearing to be conducted
10 by the Court.

11 SETTLEMENT FUNDING AND DISTRIBUTION

12 44. Funding of the Maximum Settlement Amount. Defendant will make a single
13 payment of \$30,000.00 into the QSF, which the Settlement Administrator will manage and establish,
14 within ten (10) days of the Effective Date. The Settlement Administrator will notify Defendant's
15 Counsel of the account information to which Defendant will wire the payment into the QSF to fund
16 the Maximum Settlement Amount. Upon establishing the QSF, the Settlement Administrator will
17 maintain the fund through Preliminary Approval, settlement administration, and the final approval
18 process. The Maximum Settlement Amount will be used to pay: (a) all Individual Settlement
19 Payments to Class Members; (b) the Class Representative Enhancement Payment to Plaintiff; (c) all
20 Attorneys' Fees and Costs to Class Counsel; (d) the PAGA Allocation to the LWDA and the PAGA
21 Employees; and (e) all Settlement Administration Costs to the Settlement Administrator.

22 45. Attorneys' Fees and Costs. Class Counsel will seek an award of Attorneys' Fees and
23 Costs of not more than \$10,000.00 in attorney's fees (1/3 of the Maximum Settlement Amount), and
24 not more than \$5,000.00 in litigation costs. Defendant agrees not to oppose such application. All
25 Attorneys' Fees and Costs will be paid from the Maximum Settlement Amount. Plaintiff and Class
26 Counsel will not have the right to revoke this Settlement in the event the Court does not approve the
27 sum of Attorneys' Fees and Costs sought by Class Counsel. Any portion of the Attorneys' Fees and
28 Costs not awarded to Class Counsel from the Maximum Settlement Amount will be added to the Net

1 Settlement Amount. The amount of Attorneys' Fees and Costs approved by the Court will cover all
2 work performed and all fees and costs incurred to date, and all work to be performed and all fees
3 and costs to be incurred in connection with the approval by the Court of this Settlement and
4 administration of the Settlement. The Parties agree that there is no prevailing party, and the Class,
5 the PAGA Employees, and Class Counsel shall not be entitled to any fees or costs other than those
6 awarded out of and deducted from the Maximum Settlement Amount.

7 46. Class Representative Enhancement Payment. Plaintiff will apply to the Court for a
8 Class Representative Enhancement Payment of not more than \$2,500.00 for his effort and work in
9 prosecuting the Action on behalf of the Class and the PAGA Employees. Defendant agrees not to
10 oppose such application. The Class Representative Enhancement Payment, which will be paid from
11 the Maximum Settlement Amount, will be in addition to Plaintiff's right to an Individual Settlement
12 Payment and Individual PAGA Payment pursuant to this Settlement. Plaintiff will be solely and
13 legally responsible to pay any and all applicable taxes on the Class Representative Enhancement
14 Payment and will defend, indemnify and hold Defendant harmless from any claim or liability for
15 taxes, penalties, or interest arising as a result of the payment. Plaintiff will not have the right to
16 revoke this Settlement if the Court does not approve the amount sought by Plaintiff as a Class
17 Representative Enhancement Payment. Any portion of the Class Representative Enhancement
18 Payment not awarded to the Class Representative from the Maximum Settlement Amount will be
19 added to the Net Settlement Amount. Plaintiff agrees not to opt out of the Class or object to the
20 Settlement based upon the Class Representative Enhancement Payment approved by the Court.

21 47. Settlement Administration Costs. The Settlement Administrator will be paid for the
22 reasonable costs of administration of the Settlement and distribution of payments from the QSF.
23 These costs, which will be paid from the Maximum Settlement Amount, will include, *inter alia*:
24 (a) the required tax reporting on the Individual Settlement Payments and Individual PAGA
25 Payments; (b) the issuing of 1099 IRS Forms; (c) preparing, translating, and distributing the Notice
26 of Settlement; (d) setting up the QSF; (e) calculating and distributing all payments to be made
27 pursuant to the Settlement; and (f) providing necessary reports and declarations. The Settlement
28 Administration Costs are not to exceed \$4,250.00. All the Settlement Administration Costs shall be

1 paid from the Maximum Settlement Amount upon completion of all duties required to be performed
2 by the Settlement Administrator under the terms of this Settlement, or as otherwise required by the
3 Court. Any portion of the Settlement Administration Costs not awarded to the Settlement
4 Administrator from the Maximum Settlement Amount will be added to the Net Settlement Amount.
5 The costs of the Settlement Administrator for work done shall be paid regardless of the outcome of
6 the Settlement. If the Settlement does not become final and effective, the cost of the Settlement
7 Administrator will be shared equally by Plaintiff and Defendant.

8 48. PAGA Allocation. \$2,000.00 from the Maximum Settlement Amount will be
9 allocated to settlement of Plaintiff's claim for civil penalties under PAGA. The Settlement
10 Administrator will pay seventy-five percent (75%) of the PAGA Allocation (\$1,500.00) to the
11 LWDA, and twenty-five percent (25%) of the PAGA Allocation (\$500.00) to the PAGA Employees,
12 as described below. Each PAGA Employee's share of the \$500.00 will be his or her Individual PAGA
13 Payment. PAGA Employees will receive their Individual PAGA Payments even if they submit valid
14 and timely Requests for Exclusion from the Class.

15 49. Individual Class Settlement Payment Calculations. Individual Settlement Payments
16 to Class Members will be calculated and apportioned from the Net Settlement Amount (which is
17 estimated to be \$6,250.00), as follows:

18 (a) The Settlement Administrator will divide the Net Settlement Amount by the
19 total number of prospective Class Members who received an initial wage payment during the Class
20 Period to determine each prospective Class Member's equal share of the Net Settlement Amount.
21 Each prospective Class Member's equal share to the Net Settlement Amount will be his or her
22 Individual Settlement Payment.

23 (b) The entire Net Settlement Amount will be disbursed as Individual Settlement
24 Payments to the Class. If there are any valid and timely Requests for Exclusion received from
25 prospective Class Members, the Settlement Administrator shall proportionately increase the
26 Individual Settlement Payment for each Class Member, so that the amount distributed to the Class
27 equals one hundred percent (100%) of the Net Settlement Amount. Additionally, all interest accrued
28 from Defendant's payments into the QSF during the funding process and through distribution will

1 be added to the Net Settlement Amount and the Individual Settlement Payments will be
2 proportionally increased on a pro rata basis.

3 50. Individual PAGA Payment Calculations. Individual PAGA Payments to PAGA
4 Employees will be calculated and apportioned from the percentage of the PAGA Allocation allocated
5 to the PAGA Employees (*i.e.*, 25% of the PAGA Allocation or \$500.00), as follows: The Settlement
6 Administrator will divide the PAGA Allocation allocated to PAGA Employees by the total number
7 of PAGA Employees who received an initial wage payment during the PAGA Period to determine
8 each PAGA Employee's equal share of the PAGA Allocation allocated to PAGA Employee. Each
9 PAGA Employee's equal share to the PAGA Allocation allocated to PAGA Employees will be his or
10 her Individual PAGA Payment.

11 51. No Credit Toward Benefit Plans. All settlement payments to Class Members and
12 PAGA Employees shall be deemed to be paid to such Class Members and PAGA Employees solely
13 in the year in which such payments actually are received by the Class Member or PAGA Employee.
14 It is expressly understood and agreed that the Individual Settlement Payments made to Class
15 Members and Individual PAGA Payments made to PAGA Employees under this Settlement, as well
16 as any other payments made pursuant to this Settlement, will not be used to calculate any additional
17 benefits under any benefit plans to which any Class Members or PAGA Employees may be eligible,
18 including, but not limited to: (a) profit-sharing plans; (b) bonus plans; (c) 401(k) plans; (d) stock
19 purchase plans; (e) vacation plans; (f) sick leave plans; (g) PTO plans; and (h) any other benefit plan.
20 It is the Parties' intention that this Settlement will not affect any rights, contributions, or amounts to
21 which any Class Members or PAGA Employees may be entitled under any benefit plans.

22 PRELIMINARY APPROVAL HEARING

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

1 the Preliminary Approval hearing, Plaintiff will submit this Settlement Agreement, which sets forth
2 the terms of the Settlement, along with the proposed Notice of Settlement. Plaintiff will also serve
3 notice of the PAGA Settlement on the LWDA at or before the time Plaintiff files the motion for
4 Preliminary Approval.

5 **ADMINISTRATION OF SETTLEMENT AND NOTICE**

6 53. Settlement Administration Process. The Parties agree to cooperate in the
7 administration of the Settlement and to make all reasonable efforts to control and minimize the costs
8 and expenses incurred in administration of the Settlement. Defendant agrees to fund the QSF by
9 making the above-described payment through the Settlement Administrator. The Parties intend in
10 this Settlement for the QSF to be fully funded at the point in time following the Effective Date when
11 distribution of payments to Class Member and PAGA Employees has been approved and ordered by
12 the Court.

13 54. Delivery of the Class List. Within twenty-one (21) calendar days of entry of the
14 Court's Order Granting Preliminary Approval, Defendant will provide the Class List to the
15 Settlement Administrator. Absent mutual written agreement of counsel for all Parties or Court order,
16 the Settlement Administrator will keep the Class List confidential and secure and use it only for the
17 purposes described herein.

18 55. Confirmation of Contact Information in the Class List and Undeliverable Notices.
19 Prior to mailing the Notice of Settlement, the Settlement Administrator will perform a search based
20 on the National Change of Address Database for information to update and correct for any known
21 or identifiable address changes. Any Notice of Settlement returned to the Settlement Administrator
22 as non-deliverable on or before the Response Deadline will be sent promptly via regular First-Class
23 U.S. Mail to the forwarding address affixed thereto, and the Settlement Administrator will indicate
24 the date of such re-mailing on the Notice of Settlement. If no forwarding address is provided, the
25 Settlement Administrator will promptly attempt to determine the correct address using an Accurint
26 search/skip-trace and will perform a single remailing.

27 56. Notice by First-Class U.S. Mail. Within ten (10) days after the Settlement
28 Administrator receives the Class List from Defendant, the Settlement Administrator will mail a

1 Notice of Settlement in English and in Spanish to all prospective Class Members via regular First-
2 Class U.S. Mail, using the most current, known mailing addresses identified in the Class List or
3 through the confirmation process described above.

4 57. Notice of Settlement. All prospective Class Members will be mailed a Notice of
5 Settlement. The Notice of Settlement will set forth the material terms of the proposed Settlement,
6 along with instructions about how to object or request exclusion from the proposed Class Action
7 Settlement. For each Class Member and PAGA Employee, there will be pre-printed information on
8 the Notice of Settlement, based on Defendant's records, stating the estimated total settlement
9 payment, including the prospective Class Member's estimated Individual Settlement Payment and
10 Individual PAGA Payment. The Notice of Settlement will be provided in English and in Spanish. If
11 there is any ambiguity between the English and Spanish translations, the English version will be
12 controlling.

13 58. Disputed Information in the Notice of Settlement. Class Members and PAGA
14 Employees will have an opportunity to dispute the information provided in their Notice of
15 Settlement. To the extent Class Members or PAGA Employees dispute their estimated Individual
16 Settlement Payment or Individual PAGA Payment, they must submit their dispute regarding such
17 information to the Settlement Administrator, in writing, and postmarked on or before the Response
18 Deadline, along with evidence showing that such information provided in the Notice of Settlement
19 is inaccurate. Unless a disputing Class Member or PAGA Employee submits documentary evidence
20 in support of his or her dispute, the records of Defendant will be determinative. The Settlement
21 Administrator will advise the Parties of such dispute, allow Defendant five (5) business days to
22 respond with any additional information or records, and then decide the dispute. Defendant's records
23 will be presumed correct, but the Settlement Administrator will evaluate the evidence submitted by
24 the Class Member, PAGA Employee, and Defendant, and the Settlement Administrator will make
25 the final decision as to the merits of the dispute.

26 **OBJECTIONS TO SETTLEMENT**

27 59. Objection Procedures. The Notice of Settlement will state that Class Members who
28 wish to object to the Settlement may do so by submitting an Objection to the Settlement

1 Administrator, postmarked on or before the Response Deadline (no less than 45 calendar days from
2 the initial mailing of the Notice of Settlement by the Settlement Administrator). The postmark date
3 of the Objection will be deemed the exclusive means for determining that the Objection is timely.
4 However, Class Members are not required to appear at the hearing for final approval to have their
5 Objections considered. The Objection must be signed by the Class Member and contain any and all
6 reasons for the Objection. The Settlement Administrator will promptly provide any Objections to
7 the Parties' counsel upon receiving them. Class Counsel will include all Objections received, and
8 Plaintiff's response(s) thereto, with Plaintiff's motion for final approval of the Settlement. Class
9 Members may also have a right to have their Objections heard at the Final Approval/Settlement
10 Fairness Hearing. Class Counsel will not represent any Class Members with respect to any such
11 Objections. Any prospective Class Members who requests exclusion from the Settlement (as
12 provided below) will not have standing to object to the Settlement. If a Class Member objects to the
13 Settlement, the Class Member will remain a member of the Class. If the Court approves the
14 Settlement, the objecting Class Member will be deemed a member of the Class and will be bound
15 by the terms of the Settlement upon final approval in the same way and to the same extent as a Class
16 Member who did not object.

17 60. PAGA Portion of the Settlement. Class Members and PAGA Employees cannot object
18 to the PAGA portion of the Settlement.

19 REQUESTS FOR EXCLUSION

20 61. Requests for Exclusion. Any prospective Class Member wishing to opt-out from the
21 Settlement (other than the PAGA portion of the Settlement) must sign and send a valid and written
22 Request for Exclusion to the Settlement Administrator, which is postmarked on or before the
23 Response Deadline (no less than 45 calendar days from the initial mailing of the Notice of Settlement
24 by the Settlement Administrator). The postmark date will be the exclusive means to determine
25 whether a Request for Exclusion has been timely submitted. The Parties and their counsel will not
26 solicit or encourage any prospective Class Member, directly or indirectly, to opt out of the
27 Settlement. The Request for Exclusion must (a) set forth the name, address, telephone number and
28 last four digits of the Social Security Number of the prospective Class Member requesting exclusion;

(b) be signed by the prospective Class Member; (c) be returned to the Settlement Administrator postmarked on or before the Response Deadline; and (d) clearly state that the prospective Class Member does not wish to be included in the Settlement. A prospective Class Member who properly submits a valid and timely request to be excluded from the Action will not receive an Individual Settlement Payment, will not be bound by the class action releases of the Settlement (as provided in paragraph 85, below), and will not have standing to object to the Settlement. A Request for Exclusion must be mailed to the Settlement Administrator at the address to be provided in the Notice of Settlement. The Settlement Administrator will promptly transmit all Requests for Exclusion to the Parties' counsel. Class Counsel will include all Requests for Exclusion received with Plaintiff's motion for final approval of the Settlement. Prospective Class Members submitting a Request for Exclusion will nevertheless receive their Individual PAGA Payments and will be bound by the release given by all PAGA Employees (as provided in paragraph 84, below). If the Court approves the compromise of the PAGA Action Complaint, all PAGA Employees are bound by the Court's resolution of that claim, regardless of whether they submitted timely and valid Requests for Exclusion as Class Members. A prospective Class Member who submits a valid and timely Request for Exclusion will still receive his or her Individual PAGA Payment if he or she is also a PAGA Employee.

62. Defective Requests for Exclusion. If a prospective Class Member's Request for Exclusion is timely but defective as to the content requirements listed above, the prospective Class Member will be given an opportunity to cure the defect(s). Specifically, the Settlement Administrator will mail to the prospective Class Member a cure letter within three (3) business days of receiving the defective submission to advise the prospective Class Member that his or her submission is defective and that the defect must be cured to render the Request for Exclusion valid. The prospective Class Member will have until the later of (a) the Response Deadline or (b) fifteen (15) calendar days from the date of the cure letter, whichever date is later, to postmark a revised Request for Exclusion. If the revised Request for Exclusion is not postmarked within that period, it will be deemed untimely, the prospective Class Member will not be excluded from the Settlement, and the prospective Class Member will become a Class Member for all purposes.

63. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any prospective Class Member who does not affirmatively opt out of the Settlement by submitting a timely and valid Request for Exclusion will become a Class Member for all purposes and will be bound by all terms of the Settlement, including those pertaining to the released claims, as well as any judgment that may be entered by the Court if it grants final approval.

64. Settlement Administrator Reports. The Settlement Administrator will provide the Parties' counsel a weekly report of the number of prospective Class Members who have submitted valid Requests for Exclusion, the number of Class Member who have submitted Objections, and any disputes regarding estimated Individual Settlement Payment or Individual PAGA Payment calculations. The Settlement Administrator will also provide to Parties' counsel updated reports regarding the administration of the Settlement Agreement as needed or requested.

DEFENDANT'S OPTION TO REVOKE SETTLEMENT

65. Defendant's Option to Revoke Settlement. If, after the Response Deadline, the number of prospective Class Members who submit timely and valid written Requests for Exclusion is at least five percent (5%) of the total number of prospective Class Members, Defendant shall have, in its sole discretion, the option to terminate this Settlement. If Defendant exercises the option to terminate this Settlement, Defendant shall (a) provide written notice to Class Counsel within seven (7) calendar days after the Response Deadline; and (b) pay all Settlement Administration Costs incurred up to the date or because of the termination. The Parties shall proceed in all respects as if this Settlement Agreement had not been executed.

ESCALATOR CLAUSE

66. Escalator Clause. Defendant has represented that as of April 26, 2021, there were approximately 129 prospective Class Members. Defendant will provide a declaration under penalty of perjury confirming the number of prospective Class Members. The Maximum Settlement Amount will increase proportionally with the number of prospective Class Members if that number is more than ten percent (10%) greater than the estimated number. In other words, if the number of prospective Class Members exceeds 142, the Maximum Settlement Amount shall be increased by the actual percentage over 129.

FINAL APPROVAL AND ENTRY OF JUDGMENT

67. Final Settlement Approval Hearing. Upon expiration of the deadline to postmark Requests for Exclusion or Objections, and with the Court's permission, a Final Approval/Settlement Fairness Hearing will be conducted to determine the final approval of the Settlement Agreement along with the amounts properly payable for: (a) Individual Settlement Payments; (b) Individual PAGA Payments; (c) the Class Representative Enhancement Payment; (d) Attorneys' Fees and Costs; and (e) Settlement Administration Costs. The Final Approval/Settlement Fairness Hearing will be held no earlier than thirty (30) days after the Response Deadline. Class Counsel will be responsible for drafting all documents necessary to obtain final approval. Class Counsel will also be responsible for drafting the attorneys' fees and costs application to be heard at the Final Approval/Settlement Fairness Hearing.

68. Nullification of Settlement Agreement. If (a) the Court does not finally approve the Settlement as provided herein; or (b) the Settlement does not become final for any other reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be null and void. Any order or judgment entered by the Court in furtherance of this Settlement Agreement will likewise be treated as void from the beginning.

69. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by the Court and after the Final Approval/Settlement Fairness Hearing, the Parties will present a judgment to the Court for its approval. The Settlement Administrator will post the final judgment approving the Settlement on a website maintained by the Settlement Administrator for a period of not less than ninety (90) days after the judgment is entered by the Court. The address of the website will be included in the Notice of Settlement. After entry of the judgment, the Court will have continuing jurisdiction solely for purposes of addressing: (a) interpretation and enforcement of the terms of the Settlement; (b) Settlement administration matters; and (c) such post-judgment matters as may be appropriate under court rules or as set forth in this Settlement Agreement.

DISPOSITION OF SETTLEMENT PAYMENTS; UNCASHED CHECKS

70. Distribution and Timing of Payments: Within thirty (30) days of the Effective Date, and after Defendant has fully funded the QSF with the Maximum Settlement Amount, the Settlement

1 Administrator will issue the following payments: (a) Individual Settlement Payments to all Class
2 Members (*i.e.*, prospective Class Members who have not submitted a valid and timely Requests for
3 Exclusion), including any Class Members whose notice was returned as undeliverable; (b) Individual
4 Members (*i.e.*, prospective Class Members who have not submitted a valid and timely Requests for
5 Exclusion), including any Class Members whose notice was returned as undeliverable; (c) Class Representative Enhancement Payment to
6 (75%) of the PAGA Allocation, *i.e.*, \$1,500.00, to the LWDA. The Settlement Administrator will
7 also issue a payment to itself for Court-approved services performed in connection with the
8 Settlement. The Settlement Administrator will pay Individual Settlement Payments from the Net
9 Settlement Amount to all Class Members who have not timely requested exclusion. The Settlement
10 Administrator will also pay Individual PAGA Payments from the twenty-five percent (25%) portion
11 of the PAGA Allocation (\$500.00) to the PAGA Employees in Individual PAGA Payments. The
12 Settlement Administrator will make these payments by sending a check in the appropriate amount
13 to the Class Member and/or PAGA Employee at the address indicated in the Class List provided by
14 Defendant, or as subsequently determined by the Settlement Administrator to be correct.

15 71. Mailing of Settlement Checks. The Settlement Administrator will cause the
16 settlement checks to be mailed to the Class Members and PAGA Employees as provided herein,
17 within thirty (30) days of the Effective Date. Individual Settlement Payments and Individual PAGA
18 Payments may be combined in one check.

19 72. Uncashed Settlement Checks. Class Members will receive checks for their
20 Individual Settlement Payments and PAGA Employees will receive checks for their Individual
21 PAGA Payments. All such checks will remain negotiable for one hundred twenty (120) calendar
22 days. Any check not cashed within one hundred twenty (120) calendar days will be void. No later
23 than ten (10) calendar days after the expiration of the 120-day period, the Settlement Administrator
24 will deposit the total amounts contained in the uncashed settlement checks, and all interest that has
25 accrued thereon, to the State Controller's Unclaimed Property Fund. The Settlement Administrator
26 will provide a declaration of deposit with the State Controller's Unclaimed Property Fund, which
27 will be served on Class Counsel and Defendant's Counsel, within ten (10) calendar days of payment
28 of the residual to such beneficiary. Any costs associated with administering the remaining funds

1 under this paragraph or payments to the State Controller's Unclaimed Property Fund (e.g., bank
2 stop-payment charges, settlement administration costs associated with any reserve amount) will be
3 deducted before the deposit into the State Controller's Unclaimed Property Fund.

4 73. Certification of Completion. Upon completion of its calculation of the Individual
5 Settlement Payments and Individual PAGA Payments and mailing of the settlement checks, the
6 Settlement Administrator will provide the Parties' counsel with a report listing the amounts of all
7 payments made to Class Members and PAGA Employees (to be identified anonymously by
8 employee number or other identifier). A declaration attesting to completion of all payment
9 obligations will be provided to Class Counsel and Defendant's Counsel and filed with the Court by
10 Class Counsel.

11 TAX TREATMENT OF SETTLEMENT PAYMENTS

12 74. Tax Allocation of Individual Settlement Payments. All Individual Settlement
13 Payments will be allocated for tax purposes as one hundred percent (100%) penalties and interest.
14 Additionally, all interest accrued from Defendant's payment into the QSF during the funding process
15 and through distribution will be added to the Net Settlement Amount, and Individual Settlement
16 Payments will be proportionally increased on a pro rata basis. The Settlement Administrator will be
17 responsible for issuing to Class Members an IRS Form 1099 for all Individual Settlement Payments.

18 75. Tax Allocation of Individual PAGA Payments. All Individual PAGA Payments will
19 be allocated as one hundred percent (100%) penalties. The Settlement Administrator will be
20 responsible for issuing to PAGA Employees an IRS Form 1099 for all Individual PAGA Payments.

21 76. Administration of Taxes by the Settlement Administrator. The Settlement
22 Administrator will be responsible for issuing to Plaintiff, Class Members, PAGA Employees, and
23 Class Counsel, all tax forms as may be required by law for all amounts paid pursuant to this
24 Settlement.

25 77. Tax Liability. Defendant and Defendant's Counsel make no representation as to the
26 tax treatment or legal effect of the payments called for hereunder, and Plaintiff, the Class Members,
27 and the PAGA Employees are not and cannot rely on any statement, representation, or calculation
28 by Defendant, Defendant's Counsel, or by the Settlement Administrator in this regard. Plaintiff, the

1 Class Members, and the PAGA Employees will be solely responsible for the payment of any taxes
2 and penalties assessed on the payments described herein and will defend, indemnify, and hold
3 Defendant free and harmless from and against any claims resulting from treatment of such payments
4 as non-taxable damages.

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

1 **RELEASE BY PLAINTIFF, CLASS MEMBERS AND PAGA EMPLOYEES**

2 79. Release by Plaintiff, Class Members, and PAGA Employees. Upon final approval
3 by the Court of this Settlement and Defendant's payment of all sums due pursuant to this Settlement,
4 and except as to such rights or claims as may be created by this Settlement, Plaintiff, the Class, each
5 Class Member, and each PAGA Employee, will release claims as follows:

6 80. Identity of Released Parties. The "Released Parties" are Defendant, together with its
7 officers, directors, employees, and agents (collectively, the "Released Parties").

8 81. Date Releases Becomes Active. The Released Class Claims, Released PAGA Claims,
9 and Plaintiff's Released Claims (as defined below) will be released upon the later of (a) the Effective
10 Date, or (b) the satisfaction of Defendant's obligation to provide to the Settlement Administrator the
11 Maximum Settlement Amount pursuant to this Settlement and the Court's order of final approval. Class
12 Members, PAGA Employees and Plaintiff will not release the Released Class Claims, Released PAGA
13 Claims, or Plaintiff's Released Claims until the Effective Date has occurred, **and** Defendant has paid all
14 amounts owing under the Settlement.

15 82. Released PAGA Claims. Plaintiff, on his own behalf and as representative of the State
16 of California, hereby releases the Released Parties from the following claims that arose during the PAGA
17 Period (the "Released PAGA Claims"):

18 (a) All claims for statutory penalties that could have been sought by the Labor
19 Commissioner based upon Defendant's alleged failure to provide the beginning and/or
20 ending dates on the PAGA Employees' Initial Physical Wage Statements. Plaintiff and
21 the State of California do not release any PAGA Employees' individual claims for wages
22 or damages. By virtue of this Agreement, the PAGA Employees shall be deemed to have,
23 and by operation of the final judgment approved by the Court, shall have, fully, finally,
24 and forever settled and released all of the Released PAGA Claims.

25 (b) The res judicata effect of the judgment with respect to the PAGA Employees will
26 be the same as that of the Released PAGA Claims. The Released PAGA Claims expressly
27 exclude all other claims by the PAGA Employees, including claims for vested benefits,
28 wrongful termination, unemployment insurance, disability insurance, social security,

workers' compensation, and claims outside of the PAGA Period.

(c) The Parties understand and agree that the scope of the release described in this section: (1) is a material part of the consideration for this Agreement; (2) was critical in justifying the agreed upon economic value of this settlement and without it Defendant would not have agreed to the consideration provided; and (3) is narrowly drafted and necessary to ensure that Defendant is obtaining peace of mind regarding the resolution of claims that were or could have been alleged based on the facts, causes of action, and legal theories contained in the Class Action Complaint and PAGA Action Complaint.

8: Released Class Claims. Each and every Class Member, on behalf of such Class Member and such Class Member's heirs and assigns, hereby releases the Released Parties from the following claims that arose during the Class Period (the "Released Class Claims"):

(a) All causes of action and factual or legal theories that were alleged in the Class Action Complaint based upon Defendant's alleged failure to provide the beginning and/or ending dates on the Class Members' Initial Physical Wage Statements. This release includes all claims for damages, penalties, liquidated damages, interest, attorneys' fees and costs, and other amounts recoverable under said claims, causes of action or legal theories of relief.

(b) This waiver and release will be final and binding on the Effective Date and will have every preclusive effect permitted by law. Plaintiff and the Class Members may hereafter discover facts or legal arguments in addition to or different from those they now know or currently believe to be true with respect to the Released Class Claims. The discovery of new facts or legal arguments shall in no way limit the scope or definition of the Released Class Claims. By virtue of this Agreement, Plaintiff and the Class Members shall be deemed to have, and by operation of the final judgment approved by the Court, shall have, fully, finally, and forever settled and released all of the Released Class Claims.

(c) The res judicata effect of the judgment with respect to Class Members will be the same as that of the Released Class Claims. Released Class Claims expressly exclude

1 all other claims by Class Members, including claims for vested benefits, wrongful
2 termination, unemployment insurance, disability insurance, social security, workers'
3 compensation, and claims outside of the Class Period.

4 (d) The Parties understand and agree the scope of the Released Class Claims
5 described: (1) is a material part of the consideration for this Agreement; (2) was critical
6 in justifying the agreed upon economic value of this settlement and without it Defendant
7 would not have agreed to the consideration provided; and (3) is narrowly drafted and
8 necessary to ensure that Defendant is obtaining peace of mind regarding the resolution
9 of claims that were or could have been alleged based on the facts, causes of action, and
10 legal theories contained in the operative complaints in the Action.

11 84. Release by Plaintiff and Class Representative. Plaintiff, on behalf of himself, his heirs
12 and assigns, hereby releases the Released Parties, as follows ("Plaintiff's Released Claims"):

13 (a) Plaintiff hereby fully and finally releases and discharges the Released Parties
14 from any and all of the Released PAGA Claims (as defined above) and any and all
15 Released Class Claims (as defined above) and from any and all other claims, charges,
16 complaints, liens, demands, agreements, contracts, covenants, actions, suits, causes of
17 action, penalties, wages, obligations, debts, expenses, damages, attorneys' fees, costs,
18 judgments, orders, and liabilities, of whatever kind or nature, in law, equity, or otherwise,
19 known or unknown, suspected or unsuspected, that Plaintiff had, now has, or may
20 hereafter claim to have against the Released Parties, arising out of, or relating in any way
21 to, Plaintiff's hiring by, employment with, or separation from employment with
22 Defendant, or any other transactions, occurrences, acts or omissions or any loss, damage
23 or injury whatsoever, known or unknown, suspected or unsuspected, resulting from any
24 act or omission by or on the part of any Released Party, arising or accruing from the
25 beginning of time up through the date of the final approval order and judgment issued
26 by the Court. Plaintiff's Released Claims include, but are not limited to, any and all tort
27 claims, contract claims, wage claims, wrongful termination claims, disability claims,
28 benefit claims, public policy claims, retaliation claims, statutory claims, personal injury

1 claims, emotional distress claims, invasion of privacy claims, defamation claims, fraud
2 claims, quantum meruit claims, and any and all claims arising under any federal, state or
3 other governmental statute, law, regulation or ordinance, including but not limited to any
4 claims arising under the California Labor Code; the Wage Orders of the Industrial
5 Welfare Commission; California Business and Professions Code sections 17200, *et seq.*;
6 the Fair Employment and Housing Act, Cal. Gov't Code sections 12900, *et seq.*; the
7 Healthy Workplaces, Healthy Families Act, Cal. Labor Code sections 245, *et seq.*, Title
8 VII of the Civil Rights Act of 1964, 42 U.S.C. sections 2000e, *et seq.*; the Americans
9 with Disabilities Act, 42 U.S.C. sections 12101, *et seq.*; the Employee Retirement
10 Income Security Act of 1974, 29 U.S.C. sections 1001, *et seq.*; the Fair Labor Standards
11 Act, 29 U.S.C. sections 201, *et seq.*, the Portal to Portal Act, 29 U.S.C. sections 251, *et*
12 *seq.*, and the Families First Coronavirus Response Act, and/or any other federal, state or
13 other governmental statute, law, regulation or ordinance.

14 (b) Plaintiff acknowledges that he has read section 1542 of the California Civil
15 Code, which provides as follows:

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

21 Plaintiff further warrants that he understands that section 1542 gives Plaintiff the right
22 not to release existing claims of which Plaintiff is not now aware, unless he voluntarily
23 chooses to waive this right. Having been so apprised, Plaintiff nevertheless voluntarily
24 waives the rights described in section 1542, and elects to assume all risks and to release
25 the claims set forth in this subsection that now exist in his favor, whether known or
26 unknown.

27 (c) The res judicata effect of the judgment with respect to Plaintiff will be the same
28 as that of Plaintiff's Released Claims. Plaintiff's Released Claims expressly excludes

claims that cannot be waived, including claims for unemployment insurance and workers' compensation.

(d) The Parties understand and agree that the scope of the Plaintiff's Released Claims described in this subsection: (1) is a material part of the consideration for this Agreement; (2) was critical in justifying the agreed upon economic value of this settlement and without it Defendant would not have agreed to the consideration provided; and (3) is narrowly drafted and necessary to ensure that Defendant is obtaining peace of mind regarding the resolution of claims that were or could have been alleged based on the facts, causes of action, and legal theories contained in the operative complaints in the Action.

85. No Unalleged Claims. Plaintiff and Class Counsel represent that they are not currently aware of any (a) unalleged claims in addition to, or different from, those which are finally and forever settled and released against the Released Parties by this Settlement; and/or (b) unalleged facts or legal theories upon which any claims or causes of action could be brought against Defendant, except such facts and theories resolved pursuant to this Settlement. Plaintiff and Class Counsel further represent that, other than the instant Action, they have no current intention of asserting any other claims against Defendant or Released Parties in any judicial or administrative forum. Plaintiff and Class Counsel further represent that they do not currently know of or represent any persons who have expressed any interest in pursuing litigation or seeking any recovery against Defendant or Released Parties. The Parties acknowledge, understand, and agree the representations described in this paragraph are essential to the Settlement and that this Settlement would not have been entered into were it not for this representation.

DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL

86. The Parties shall submit this Joint Stipulation of Class Action and PAGA Settlement to the Court in support of Plaintiff's unopposed Motion for Preliminary Approval for determination by the Court as to its fairness, adequacy, and reasonableness. Upon execution of this Joint Stipulation of Class Action and PAGA Settlement, the Parties shall apply to the Court for the entry of an order:

(a) Scheduling a Final Approval/Settlement Fairness Hearing on the question of

whether the proposed Settlement, including payment of the Attorney's Fees and Costs, and the Class Representative Enhancement Payment, should be finally approved as fair, reasonable, and adequate as to the Class Members;

- (b) Conditionally certifying the Class for settlement purposes only;
- (c) Approving as to form and content the proposed Notice of Settlement;
- (d) Directing the mailing of the Notice of Settlement by the Settlement Administrator;
- (e) Preliminarily approving the Settlement subject only to the objections of Class Members and final review by the Court;
- (f) Conditionally appointing Plaintiff and Class Counsel as representatives of the proposed Class Members; and,
- (g) Appointing Phoenix Settlement Administrators as the Settlement Administrator.

DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL

101. In conjunction with the hearing of a motion for final approval by the Court as provided for in this Joint Stipulation of Class Action and PAGA Settlement, Class Counsel will provide to Defendant's Counsel for review and approval and then submit to the Court a proposed final order and judgment containing provisions sufficient to accomplish the following:

- (a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;
- (b). Approving Class Counsel's application for Attorneys' Fees and Costs;
- (c) Approving the Class Representative Enhancement Payment to the Class Representative;
- (d) Adjudging the Settlement Administrator has fulfilled its initial notice and reporting duties under the Settlement.
- (e) Adjudging Plaintiff and Class Counsel have adequately represented the Class for the purpose of entering into and implementing the Settlement;
- (f) Entering a final judgment in the action;

(g) Adjudging that any prospective Class Member's valid and timely request for exclusion as a Class Member does not affect the applicability of the Released PAGA Claims provision (paragraph 84, above); and

(h) Directing the posting of the final judgment on a website maintained by the Settlement Administrator for a period of not less than ninety (90) days after entry of final judgment.

Any revised final judgment will also be provided to Defendant's Counsel for review and approval before submission to the Court.

PUBLICITY

102. Publicity Agreement. Plaintiff and Class Counsel agree not to disclose or publicize the Settlement, including the fact of the Settlement, its terms or contents, and the negotiations underlying the Settlement, in any manner or form, directly or indirectly, to any person or entity, except to the prospective Class Members as required to effectuate the terms of the Settlement. For the avoidance of doubt, this paragraph means Plaintiff and Class Counsel agree not to issue press releases, communicate with, or respond to any media or publication entities, publish information in any manner or form, whether printed or electronic, on any medium, or otherwise communicate, whether by print, video, recording or any other medium, with any person or entity concerning the Settlement, including the fact of the Settlement, its terms or contents and the negotiations underlying the Settlement, except as shall be contractually required to effectuate the terms of the Settlement. For the limited purpose of allowing Class Counsel to prove adequacy as class counsel in other actions, Class Counsel may disclose the name of the Parties and the venue/case number of the Action (but not any other settlement details).

GENERAL PROVISIONS

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

103. Entire Agreement. This Agreement and the attached Exhibit constitute the entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements may

1 be deemed binding on the Parties. This provision has no application or impact on any arbitration
2 agreements, confidentiality agreements, employee handbooks or policies executed by any
3 prospective Class Member, Class Member or PAGA Employee, during his or her employment with
4 Defendant, which remain in full force and effect.

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

9 105. Amendment or Modification. This Settlement Agreement may be amended or
10 modified only by a written instrument signed by the Parties' counsel or their successors-in-interest.

11 106. Authorization to Enter Into the Settlement Agreement. The Parties' counsel warrant
12 and represent they are expressly authorized by the Parties whom they represent to negotiate this
13 Settlement and to take all appropriate action required or permitted to be taken by such Parties
14 pursuant to this Settlement to effectuate its terms and to execute any other documents required to
15 effectuate the terms of this Settlement. The Parties and their counsel will cooperate with each other
16 and use their best efforts to effect the implementation of the Settlement.

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

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

21 109. Execution and Counterparts. This Settlement Agreement is subject only to the
22 execution of all Parties. However, the Settlement may be executed in one or more counterparts. All
23 executed counterparts and each of them, including facsimile, electronic signatures, DocuSign and
24 scanned copies of the signature page, will be deemed to be one and the same instrument if the Parties'
25 counsel will exchange among themselves original signed counterparts.

26 110. Acknowledgement that the Settlement Agreement is Fair and Reasonable. The
27 Parties believe this Settlement is a fair, adequate, and reasonable settlement of the Action and have
28 arrived at this Settlement after arm's-length negotiations and in the context of adversarial litigation,

1 considering all relevant factors, present and potential. The Parties further acknowledge that they are
2 each represented by competent counsel and that they have had an opportunity to consult with their
3 counsel regarding the fairness and reasonableness of this Settlement.

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

8 112. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to
9 class certification for purposes of this Settlement only. Plaintiff or Class Counsel may appeal any
10 reduction in Attorneys' Fees and Costs that are below the amount they request from the Court, and
11 either Party may appeal any court order that materially alters the Settlement Agreement's terms.

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

26 114. Waiver. No waiver of any condition or covenant contained in this Settlement or
27 failure to exercise a right or remedy by any of the Parties will be considered to imply or constitute a
28 further waiver by such Party of the same or any other condition, covenant, right or remedy.

115. Notices. Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed as follows:

CLASS COUNSEL	DEFENDANT'S COUNSEL
Larry W. Lee Kwanporn "Mai" Tulyathan DIVERSITY LAW GROUP, P.C. 515 S. Figueroa Street, Suite 1250 Los Angeles, California 90071	NEWMAYER & DILLION LLP Michael J. Studenka Thomas H. Reilly 895 Dove Street, 2nd Floor Newport Beach, CA 92660
William L. Marder POLARIS LAW GROUP LLP 501 San Benito Street, Suite 200 Hollister, CA 95023	

116. Enforcement Action. If one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

117. Class Counsel Signatures. It is agreed because the Class Members are so numerous, it is impossible or impractical to have each Class Member execute this Settlement. The Notice of Settlement will advise all Class Members of the binding nature of the Released Class Claims and Released PAGA Claims, and the release shall have the same force and effect as if this Settlement were executed by each Class Member.

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

119. Representation By Counsel. The Parties acknowledge they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement and that this

1 Settlement has been executed with the consent and advice of counsel. Further, Plaintiff and Class
2 Counsel warrant and represent that there are no liens on the Settlement.

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

5 121. Cooperation and Execution of Necessary Documents. All Parties will cooperate in
6 good faith and execute all documents to the extent reasonably necessary to effectuate the terms of
7 this Settlement Agreement.

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

13
14
15 [SIGNATURE PAGE FOLLOWS]
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28

1 SO AGREED AND STIPULATED.

2 PLAINTIFF

3
4 Dated: 11/7/2022

DocuSigned by:
3 Tony Catelli

6 DEFENDANT

7
8 Dated: 11/10/2022

Innovative Construction Solutions
By: Hiran Emadi
Its: President

10
11 Dated: 11/7/2022

12 DIVERSITY LAW GROUP, P.C.

13 By 
14 Larry W. Lee
15 Kwanporn "Mai" Tulyathan
16 Attorneys for Plaintiff Tony Catelli,
17 the Class, and the Aggrieved Employees

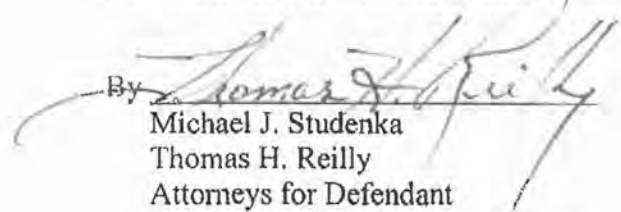
18
19 Dated: 11/7/2022

20 POLARIS LAW GROUP LLP

21 DocuSigned by:
22 William Marder
23 By 0CED7A92B88B4D2
24 William L. Marder
25 Attorneys for Plaintiff Tony Catelli,
26 the Class, and the Aggrieved Employees

27
28 Dated: 11/10/22

NEWMEYER & DILLION LLP

By 
Michael J. Studenka
Thomas H. Reilly
Attorneys for Defendant
Innovative Construction Solutions

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EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA

NOTICE OF CLASS ACTION AND PAGA SETTLEMENT

PLEASE READ CAREFULLY AS
THIS NOTICE MAY AFFECT YOUR RIGHTS

TONY CATELLI, as an individual and on behalf of all others similarly situated; Plaintiffs, vs. INNOVATIVE CONSTRUCTION SOLUTIONS, a California corporation; and DOES 1 through 50, inclusive; Defendants.	CASE NO.: MSC21-01257 <u>Assigned for All Purposes To:</u> Honorable Edward G. Weil Department 39 NOTICE OF CLASS ACTION AND PAGA SETTLEMENT
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I. WHY DID I GET THIS NOTICE?

This notice explains the settlement that has been reached in the case entitled *Tony Catelli v. Innovative Construction Solutions*, (Contra Costa County Superior Court Case No. MSC21-01257) (the "Action").

You are receiving this notice because the records of Innovative Constructive Solutions ("Defendant") indicate that you are a current or former employee of Defendant, who received an initial physical paycheck from Defendant during the period from June 1, 2020, through April 26, 2021 (the "Class Period"). As a result, you are eligible to receive a portion of the class action settlement amount and may be eligible to receive a portion of the Private Attorneys General Act ("PAGA") settlement amount, as discussed below.

This is not a notice of a lawsuit against you. **You are not being sued.** Your participation in the settlement will not affect your employment with Defendant in any way whatsoever.

The Court has ordered that this notice be sent to you because Defendant's records indicate that you are or were employed by Defendant during of the Class Period. The purpose of this notice is to inform you of the proposed settlement of the Action. This notice also: (a) describes the settlement, including how the settlement funds will be allocated and how the settlement may affect you; and (b) advises you of your rights and options with respect to the settlement. Please read it carefully.

II. WHAT IS THIS CLASS ACTION AND PAGA LAWSUIT ABOUT?

On April 13, 2021, Plaintiff Tony Catelli ("Plaintiff"), a former employee of Defendant, provided written notice to the California Labor and Workforce Development Agency ("LWDA") and to Defendant of provisions of the Labor Code he contends were violated and the theories supporting his contentions. On June 1, 2021, Plaintiff filed the Action against Defendant as a class action and representative action under PAGA, alleging claims for: (a) failure to provide accurate itemized wage statements in violation of Labor Code section 226(a); and (b) a derivative cause of action for alleged violations of PAGA.

Following service of Plaintiff's Complaint in the Action, the Parties engaged in settlement negotiations and Defendant produced evidence that Plaintiff's allegations regarding failure to provide accurate itemized wage statements – if provable at all – pertained only to the initial physical wage statements received by approximately 129 employees prior to April 26, 2021, and that all subsequent wage statements received by Defendant's employees included both the beginning date and ending dates of each pay period and were otherwise compliant under Labor Code section 226(a). Accordingly, Plaintiff and Defendant entered into a Settlement Agreement in which they agreed that in return for Defendant's payment of the Gross Settlement Amount of \$30,000.00, Defendant would be released from Plaintiff's individual claims and class action claims that are based upon alleged incomplete initial wage statements received by approximately 129 Class Members during the Class Period, along with Plaintiff's derivative PAGA claims.

Defendant denies that it violated the law in any way and further denies that the Action is appropriate for class treatment for any purpose other than this settlement. Nothing in this Notice of Class Action and PAGA Settlement, or the settlement itself, or any actions to carry out the terms of the settlement, are an admission by Defendant of any fault, guilt, negligence, wrongdoing, or liability whatsoever. This settlement is not an admission by Defendant of any liability.

The Court has not ruled on whether Plaintiff's allegations have any merit. By granting preliminary approval of the settlement, the Court has only determined there is sufficient evidence to suggest that the proposed settlement appears to be fair, adequate, and reasonable and any final determination of issues in this Action will be made at the final hearing. A final determination of the reasonableness of the settlement will be made by the Court at the final approval hearing, scheduled for _____, 2023.

To avoid the time and expense of further litigation, the ultimate outcome of which is uncertain, and to provide a fair and reasonable resolution of this legal dispute, the Parties have agreed to resolve this matter for the amount of \$30,000.00, which will be allocated to the Class Action Settlement, the PAGA Settlement, Plaintiff's attorneys' fees and costs, an enhancement payment to Plaintiff, and the costs of administering the settlement. Prospective Class Members have the choice of remaining Class Members and receiving a portion of the Class Action Settlement or requesting exclusion from the Class Action. Prospective Class Members who exclude themselves from the Class will not receive a portion of Class Action Settlement, but will remain eligible to receive a portion of the PAGA Settlement.

III. WHO IS INCLUDED IN THIS CLASS ACTION AND PAGA ACTION SETTLEMENT?

Under the Parties' settlement, "Class Members" are defined as all current and former employees of Defendant who worked in California and received an initial physical wage statement during the Class Period from June 1, 2020, through April 26, 2021, and who do not submit a timely and valid Request for Exclusion. All prospective Class Members are receiving this Notice. Class Members who do not submit a timely and valid Request for Exclusion are entitled to receive an Individual Settlement Payment as discussed below.

Under the Parties' settlement, "PAGA Employees" are defined as all current and former employees of Defendant, who worked in California and received an initial physical wage statement during the PAGA Period from April 13, 2020, through April 26, 2021. PAGA Employees are entitled to an Individual PAGA Payment as discussed below, regardless of whether they request to be excluded as Class Members.

IV. WHAT PAYMENTS DOES THE PROPOSED SETTLEMENT REQUIRE?

The following payments will occur when settlement administration is completed and the Court grants final approval to the settlement:

A. Defendant will pay \$30,000 to settle the claims of all Class Members and PAGA Employees (the "Maximum Settlement Amount"). Defendant will make a single payment of \$30,000 into an interest-bearing Qualified Settlement Fund, which the Settlement Administrator will manage and establish within ten (10) days of the Effective Date. The Effective Date is: (a) the date of entry of the Court's order granting final approval of the settlement and judgment, if no Objections have been filed or if an Objection was filed and later withdrawn; or (b) if an Objection to the settlement is filed, then the date when the time expires to file an appeal of the Court's grant of final approval of the settlement; or (c) if an Objection is filed, as well as a timely Notice of Appeal of the Court's grant of final approval of the settlement, then the date the appeal is finally resolved, with the final approval unaffected.

B. A Settlement Administrator has been appointed by the Court to administer the Qualified Settlement Fund and make authorized payments from the fund. The Settlement Administrator will pay the following out of the Maximum Settlement Amount:

- 1) Class Counsel's attorneys' fees of up to \$10,000.00;
- 2) Class Counsel's litigation costs and expenses incurred of up to \$5,000.00;
- 3) the Settlement Administration Costs of up to \$4,250.00;
- 4) the Class Representative Enhancement Payments of up to \$2,500.00 to Plaintiff; and
- 5) the PAGA Allocation of \$2,000.00 to resolve Plaintiff's claims under PAGA, with seventy-five percent (75%) paid to the LWDA, and twenty-five percent (25%) distributed to the PAGA Employees as Individual PAGA Payments as discussed below.

C. The Net Settlement Amount refers to the Maximum Settlement Amount less the above-described Attorneys' Fees and Costs, Settlement Administration Costs, Class Representative Enhancement Payment, and the PAGA Allocation. The Net Settlement Amount is estimated to be \$6,250.00, and it will be distributed in its entirety through the Individual Settlement Payments that will be sent to the Class Members, as described in detail below.

V. WHAT WILL BE THE INDIVIDUAL SETTLEMENT PAYMENTS TO CLASS MEMBERS?

Individual Settlement Payments to Class Members will be calculated and apportioned from the Net Settlement Amount by dividing the Net Settlement Amount by the number of Class Members. In other word, all Class Member who do not exclude themselves from the Class will receive an equal distribution from the Net Settlement Amount as an Individual Settlement Payment. The Individual Settlement Payments are estimated to be \$ _____ on the low end and \$ _____ on the high end.

If you do not opt out of the settlement, you will be eligible to receive an Individual Settlement Payment. **Based upon the Parties estimate of the approximate number of Class Members, your estimated Individual Settlement Payment is:** \$ _____.

VI. WHAT IS A REPRESENTATIVE PAGA ACTION?

A representative PAGA action is a type of representative lawsuit authorized by the Labor Code Private Attorneys General Act of 2004, which allows aggrieved employees to file lawsuits to recover civil penalties on behalf of themselves, other employees, and the State of California, for alleged violations of the Labor Code. An aggrieved employee is any person who was employed by the subject employer, and against whom one or more of the alleged Labor Code violations was committed during the applicable time period. An employee who files a representative

PAGA action is acting as an agent of California's labor law enforcement agencies, who have the power to initiate an enforcement action directly.

A representative PAGA action is different from a class action in that an employee filing a representative PAGA action is not resolving the claims of other similarly situated employees but is instead acting as an agent of the State of California to obtain penalties for themselves and the aggrieved employees for Labor Code violations allegedly committed against those employees. Penalties awarded in a representative PAGA action are measured by the number of Labor Code violations committed by the employer, a portion of which (75%) must be paid to the State of California, and the remainder of which (25%) is paid to the aggrieved employees.

Members of a class action have the right to opt out of, or exclude themselves from, the class action. Class members who opt out are not bound by the terms of any judgment issued by the Court in the class action. Class members who do not opt out are bound by the terms of the judgment issued and are precluded from bringing claims that were or that could have been brought against the employer in the lawsuit in which the individual was a class member. Conversely, aggrieved employees do not have the right to opt out of a representative PAGA action but retain the right to pursue other claims and/or recover other remedies available under state or federal law.

VII. WHAT WILL BE THE INDIVIDUAL PAGA PAYMENTS TO PAGA EMPLOYEES?

As discussed above, under the Parties' settlement, "PAGA Employees" means all current and former non-exempt or hourly paid employees of Defendant, who worked in California and received an initial wage statement during the PAGA Period from April 13, 2020, through April 26, 2021.

The settlement allocates \$2,000.00 to resolution of the PAGA claims (the "PAGA Allocation"). As required by law, seventy-five percent (75%) of the PAGA Allocation will be paid to the LWDA, and twenty-five percent (25%) of the PAGA Allocation (a total of \$500.00) will be distributed to the PAGA Employees (the "Individual PAGA Payments"). A PAGA Employee's share of the PAGA Allocation will be calculated by dividing the PAGA Allocation allocated to PAGA Employees by the total number of PAGA Employees who received an initial wage payment during the PAGA Period to determine each PAGA Employee's share of the PAGA Allocation allocated to PAGA Employee. In other word, all PAGA Employees will receive an equal distribution from the PAGA Allocation allocated to PAGA Employees. The actual Individual PAGA Payments are estimated to be \$ _____ on the low end and \$ _____ on the high end.

Based upon the Parties estimate of the approximate number of PAGA Employees, your estimated Individual PAGA Payment is: \$ _____.

PAGA Employees will receive their Individual PAGA Payments even if they opt out of the class action portion of the settlement. In other words, Class Members and PAGA Employees cannot exclude themselves from or object to the PAGA portion of the settlement.

VIII. WHAT CLAIMS WILL BE RELEASED BY CLASS MEMBERS AND PAGA EMPLOYEES?

If the Court approves the Settlement, the Court will enter judgment and the Parties' Settlement Agreement and the Court's judgment will bind all Class Members who have not opted out of the Settlement and bar all Class Members from bringing certain claims against Defendant as described below.

The settlement includes a release by all Class Members of Defendant, together with its officers, directors, employees, and agents (collectively "Released Parties").

Each Class Member, on behalf of such Class Member and such Class Member's heirs and assigns, releases the Released Parties from all causes of action and factual or legal theories that were alleged against the Released

Parties in the Plaintiff's Complaint based upon Defendant's alleged failure to provide the beginning and/or ending dates on the Class Member's initial physical wage statement. The release includes all claims for damages, penalties, liquidated damages, interest, attorneys' fees and costs, and other amounts recoverable under said claims, causes of action or legal theories of relief.

Plaintiffs and the State of California release the Released Parties from all claims for statutory penalties that arose during the PAGA Period and could have been sought by the California Labor Commissioner for violations alleged in Plaintiff's Complaint, based upon Defendant's alleged failure to provide the beginning and/or ending dates on the PAGA Employees' initial physical wage statements.

The releases given by Class Members and by the PAGA Employees do not include claims for vested benefits, wrongful termination claims, unemployment insurance, disability insurance, social security, workers' compensation, and/or claims outside of the applicable Class Period or PAGA Period.

IX. WHAT ARE MY OPTIONS?

A. *You may accept your share of the Maximum Settlement Amount and be bound by the release of Class Claims described above.* Individual Settlement Payments will be paid to Class Members by check after the settlement is given final approval by the Court. The checks will be mailed to you by the Settlement Administrator. Your check will remain valid and negotiable for one hundred twenty (120) calendar days from the date on which it is issued. After the one hundred twenty (120) calendar days expire, the check will become void and the funds from the uncashed checks shall be distributed by the Settlement Administrator to the State Controller's Unclaimed Property Fund; or

B. *You may exclude yourself from the Class Action settlement, in which case you will not receive your Individual Settlement Payment, and you will not be bound by the class action portion of the settlement.* If you choose to be excluded from the Class, by no later than [ENTER DATE] (45 calendar days after the initial mailing of this Notice Packet), you must submit a written letter requesting to be excluded (the "Request for Exclusion"). Specifically, the Request for Exclusion must (a) set forth your name, address, telephone number and last four digits of your Social Security Number; (b) be signed by you; (c) be returned to the Settlement Administrator; and (d) clearly state that you do not wish to be included in the Settlement. To be timely and valid, your Request for Exclusion must be postmarked on or before _____.

As stated above, Class Members and PAGA Employees cannot opt out of the PAGA portion of the settlement, meaning that prospective Class Members who submit timely and valid Requests for Exclusion from the Class Action will still receive their Individual PAGA Payments and will be bound by the PAGA release.

C. *You may object to the class action portion of the settlement.* Class Members who wish to object to the Settlement may do so by submitting an Objection to the Settlement Administrator, postmarked on or before [ENTER DATE]. A detailed explanation of how to object is provided below in Section XII of this Notice.

X. WHAT WILL BE THE PROCEDURES FOR PAYMENT?

A. The Settlement Administrator will calculate your share of the settlement and will issue you a check. Your Individual Settlement Payment from the Net Settlement Amount and Individual PAGA Payment from the PAGA Allocation (if you are also a PAGA Employee) will be paid out in a single payment.

B. While the Settlement Administrator will make its best effort to ensure that you receive your Individual Settlement Payment and Individual PAGA Payment, you are encouraged to notify the Settlement Administrator and Class Counsel, regarding any changes to your contact information.

C. All Individual Settlement Payments will be allocated as one hundred percent (100%) penalties and interest. The Settlement Administrator will be responsible for issuing to Class Members an IRS Form 1099 for the entire amount of their Individual Settlement Payments. Class Members are solely responsible for paying the correct amount of taxes on their Individual Settlement Payments.

D. All Individual PAGA Payments will be allocated as one hundred percent (100%) penalties. The Settlement Administrator will be responsible for issuing PAGA Employees an IRS Form 1099. Again, PAGA Employees are solely responsible for paying the correct amount of taxes.

E. It is important for the Settlement Administrator to have your current address to be able to send you other mailings regarding the Action. You should contact the Settlement Administrator to report any change of your address after you receive this notice. Failure to report a change of address may result in you not receiving your share of the settlement money.

XI. WHEN IS THE FINAL FAIRNESS HEARING ON THE PROPOSED SETTLEMENT

A Final Approval/Settlement Fairness Hearing will be held before the Court on _____, 2023, at _____, in Department 39 of the Superior Court of California, County of Contra Costa, located at 725 Court Street, Martinez, CA 94553, to decide whether the proposed settlement is fair, reasonable, and adequate. The Court may adjourn or continue the hearing without further notice to you.

You are not required to attend the hearing. Class Counsel will answer any questions the Court may have. However, you are welcome to attend the hearing at your own expense.

XII. WHAT ARE THE PROCEDURES FOR OBJECTING TO SETTLEMENT?

If you believe the settlement is unfair, and you want to tell the Court and the proponents of the settlement why you oppose it, you have a right to object to the settlement and tell the Court the reasons why you do not agree with the settlement or some part of it. When you object to the settlement, you have an opportunity to explain to the judge why you believe the settlement is unfair and should not be finally approved. These procedures are your only opportunity to object to the settlement and ask the Court to listen to your point of view. You may object to the class action portion of the settlement, but not the PAGA portion of the settlement.

To object, you must fill out and timely submit a written letter to the Settlement Administrator, specifying any and all reasons you are objecting, and the letter must be signed by you. If you object to the settlement, you will also have the right to appear at the final approval hearing. However, you are not required to appear at the final approval hearing to have your objection considered. You must either mail or fax the Objection to the Settlement Administrator, Phoenix Settlement Administrators, located at P.O. Box 7208, Orange, CA 92863. The Settlement Administrator's fax number is _____. If you mail the Objection, it must be postmarked by _____, 2022 (45 calendar days after the initial mailing of this Notice Packet). If you fax the Objection Form, it must be received by the Settlement Administrator on or before _____, 2022 (45 calendar days after the initial mailing of the Notice Packet). Objection forms that are not timely will not be considered.

XIII. HOW CAN I EXAMINE THE COURT PAPERS OR ASK QUESTIONS?

This Notice summarizes the settlement. For more detailed information, you may view a complete copy of the settlement and any papers filed in the Action, which are on file with the Clerk of the Court, Superior Court of California, County of Contra Costa, Case No. MSC21-01257. The pleadings and all other records from the Action may be examined by inspecting the Court file in the filing department of the Superior Court of California, County of Contra Costa, located at 725 Court Street, Martinez, CA 94553. You can find the settlement agreement (the "Joint Stipulation of Class Action and PAGA Settlement") by accessing the Court's website at <https://www.cc->

courts.org/. The most recent version of the settlement agreement was attached to the Declaration of _____
In Support of Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement, which was filed
with the Court on _____

After the Final Approval/Settlement Fairness Hearing and after judgment is entered by the Court, the Settlement
Administrator will post the final Judgment approving the Settlement for not less than ninety (90) days at
_____.com.

If you have any questions, you may call the Settlement Administrator, Phoenix Settlement Administrators,
at (800) 523-5773. You may also contact Class Counsel at the address or telephone number listed below.

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PLEASE DO NOT CALL THE COURT REGARDING THIS SETTLEMENT

EXHIBIT B