

1
2
3
4
5
6
7
8
9
10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF ALAMEDA**
13

14 RYAN IVIE, individually and on behalf of
15 others similarly situated,

16 **Plaintiff,**

17 **vs.**

18 EWING IRRIGATION PRODUCTS, INC., a
19 Nevada corporation; and DOES 1 through 50,
20 inclusive,

21 **Defendants.**
22
23
24
25
26
27
28

Case No.: RG20074231

*Assigned for all purposes to: Honorable
Stephen Kaus, Department 19*

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

Complaint Filed: September 14, 2020
Trial: None Set

JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT

This Joint Stipulation of Class Action and PAGA Settlement is entered into by and between Plaintiff Ryan Ivie individually and on behalf of the Settlement Class and Defendant Ewing Irrigation Products, Inc.

DEFINITIONS

1. “Agreement” or “Settlement Agreement” means this Joint Stipulation of Class Action and PAGA Settlement.

2. “Action” represents all causes of action, claims, and allegations in the operative complaint filed in *Ivie v. Ewing Irrigation Products, Inc.*, Case No. RG20074231, pending before the Alameda County Superior Court. The “Action” includes all claims and allegations in Plaintiff’s June 17, 2021 letter to the Labor and Workforce Development Agency. Prior to or in conjunction with the filing of Plaintiff’s Motion for Preliminary Approval, the Parties shall file a joint stipulation allowing Plaintiff to file a First Amended Complaint adding a claim for violation of California Labor Code § 2698.

3. “Class Counsel” means Protection Law Group, LLP.

4. “Class Counsel’s Fees and Costs” means attorneys’ fees for Class Counsel’s litigation and resolution of this Action and their expenses and costs incurred in connection with the Action, which shall be paid from the Gross Settlement Amount. Class Counsel will request attorneys’ fees not to exceed thirty-five percent (35%) of the Gross Settlement Amount (\$700,000.00) and the reimbursement of any costs and expenses associated with Class Counsel’s litigation and settlement of the Action, not to exceed Twenty Five Thousand Dollars (\$25,000.00), subject to the Court’s approval. Defendant has agreed not to oppose Class Counsel’s request for fees and reimbursement of costs and expenses in the amounts set forth above.

5. “Class List” means a complete list of all Class Members that Defendant will diligently and in good faith compile from its records and provide to the Settlement Administrator within fourteen (14) calendar days after Preliminary Approval of this Settlement. The Class List will be formatted in a readable Microsoft Office Excel spreadsheet containing

the following information for each Class Member: (1) full name; (2) last known home address; (3) last known telephone number; (4) social security number; (5) start and end dates of active employment as a non-exempt employee of Defendant in the State of California; (6) total Workweeks during the Class Period; (7) total Workweeks during the PAGA Period; and (8) any other information required by the Settlement Administrator in order to effectuate the terms of the Settlement.

6. “Class Members” or “Settlement Class” means all current and former employees of Defendant who worked for Defendant in California in a non-exempt position at any time during the Class Period that have not already signed a Separation Agreement and General Release with Defendant.

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

8. “Class Period” means the period between September 14, 2016 and October 14, 2021 or the date of Preliminary Approval, whichever date occurs earlier.

9. “Class Representative” means Plaintiff Ryan Ivie in his capacity as representative of the Participating Class Members.

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

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

12. “Defendant” means Ewing Irrigation Products, Inc.

13. “Effective Date” means the later of the following: (a) if no timely objections are filed or if all objections are withdrawn and no motion for intervention is filed, the date upon which the time to file a motion to vacate of the Court’s order of Final Approval has expired, but

no later than thirty (30) days after entry of the order of Final Approval; (b) if an objection and/or motion for intervention is filed and not withdrawn, the date on which the deadline for filing an appeal expires and no such appeal being filed; (c) if any timely motions to vacate and/or appeals are filed, the date of the final resolution (or withdrawal) of any such motion to vacate and/or appeal, including expiration of all deadlines to exhaust appellate remedies, and final orders are entered in a way that does not alter the terms of the Settlement.

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

15. “Gross Settlement Amount” means the sum of Two Million Dollars (\$2,000,000.00). The Gross Settlement is inclusive of all payments to Class Members, Class Counsel Fees and Costs, the Class Representative Enhancement Award, the Settlement Administrator Costs, and the PAGA Payment. Subject to a potential increase in the number of workweeks, as set forth below in paragraph 36, plus the employer-side payroll taxes, the Gross Settlement Amount is the maximum amount Defendant will be required to pay under this Settlement Agreement. The Gross Settlement Amount is non-reversionary; no portion of the Gross Settlement Amount will return to Defendant.

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

17. “Net Settlement Amount” means the funds available for payments to the Settlement Class, which shall be the amount remaining after the following amounts are deducted from the Gross Settlement Amount: (1) Class Counsel’s fees, (2) Class Counsel’s costs, (3) Settlement Administration Costs, (4) Class Representative Enhancement Award to Plaintiff, and (5) PAGA Payment to the California Labor and Workforce Development Agency (“LWDA”) and PAGA Members.

1 18. “PAGA” means the California Labor Code Private Attorneys General Act of
2 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”).

3 19. “PAGA Payment” means the amount that the Parties have agreed to allocate in
4 order to settle claims arising under PAGA. The Parties have agreed that Two Hundred
5 Thousand Dollars (\$200,000.00) of the Gross Settlement Amount will be allocated to the
6 resolution of Plaintiff’s PAGA claims. Seventy-five percent (75%) of the PAGA Payment (i.e.,
7 \$150,000.00) will be paid to the LWDA in accordance with Labor Code §§ 2698 *et seq.* The
8 remaining twenty-five percent (25%) of the PAGA Payment (i.e., \$50,000.00), will be
9 distributed to PAGA Members. PAGA Members will receive payment from the employee
10 portion of the PAGA Payment regardless of their decision to participate in the Settlement if the
11 PAGA Payment is approved by the Court.

12 20. “PAGA Period” means the period from September 14, 2019, through October 14,
13 2021 or the date of Preliminary Approval, whichever date occurs earlier.

14 21. “PAGA Members” means all current and former employees of Defendant who
15 worked for Defendant in California in a non-exempt position at any time during the PAGA
16 Period.

17 22. “Parties” means Plaintiff and Defendant, collectively, and “Party” shall mean
18 either Plaintiff or Defendant, individually.

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

21 24. “Plaintiff” means Ryan Ivie.

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

24 26. “Objection” means a Class Member’s valid and timely written objection to the
25 Settlement Agreement. For an Objection to be valid, it must include: (a) the objector’s full
26 name, address, telephone number, last four digits of the employee’s social security number or
27 employee ID number and (b) a written statement of all grounds for the objection accompanied
28 by legal support, if any, for such objection.

1 27. “Released Claims” means any and all claims, causes of action, damages, wages,
2 benefits, expenses, penalties, debts, liabilities, demands, obligations, attorneys’ fees, costs, and
3 any other form of relief or remedy in law, equity, or whatever kind of nature, arising from the
4 claims pled in the Action and any claims based on facts alleged in the operative complaint,
5 including, all claims for unpaid overtime, meal period violations, rest break violations, unpaid
6 minimum wage, failure to pay all wages during and at termination of employment, failure to
7 provide accurate wage statements, failure to maintain accurate records, failure to reimburse
8 necessary business expenses, and unlawful business practices under the California Labor Code
9 and/or the California Business and Professions Code, including all claims for restitution or
10 equitable relief, liquidated damages, penalties of any nature whatsoever, attorneys’ fees and
11 costs, asserted or that might have been asserted by any Class Member against the Released
12 Parties based on the facts or claims alleged in the Action during the Class Period. “Released
13 Claims” also includes claims under PAGA, for civil penalties based on any of the violations
14 alleged in this Action, which include civil penalties under PAGA for violations of the
15 provisions of the applicable IWC Wage Orders and the Labor Code. “Released Claims” also
16 includes claims meeting the above definition(s) under any and all applicable statutes, including
17 without limitation California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510,
18 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802; the California
19 Unfair Competition Act, and in particular, California Business and Professions Code §§ 17200
20 *et seq.* and PAGA.

21 28. “Released Parties” means Defendant Ewing Irrigation Products, Inc. as named by
22 Plaintiff in the operative complaint, and its current and former officers, directors, employees,
23 and agents, and the successors and assigns, of all such entities and individuals.

24 29. “Request for Exclusion” means a valid and timely written statement submitted
25 by a Class Member requesting to be excluded from the Action. To be effective, the Request for
26 Exclusion must contain (a) the Class Member’s name, address, telephone number, and the last
27 four digits of the Class Member’s Social Security number and/or the Employee ID number and
28 (b) a clear statement requesting to be excluded from the settlement of the class claims similar to

the following: “I wish to exclude myself from the class settlement reached in the matter of *Ivie v. Ewing Irrigation Products, Inc.* I understand that by excluding myself, I will not receive money from the class portion of the settlement.” To be effective, the Request for Exclusion must be post-marked by the Response Deadline and received by the Settlement Administrator.

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

31. “Settlement” means the disposition of the Action pursuant to this Agreement.

32. “Settlement Administrator” means ILYM Group, Inc. The Parties each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

33. “Settlement Administration Costs” means the costs payable from the Gross Settlement Amount to the Settlement Administrator for administering this Settlement, including, but not limited to, printing, distributing, and tracking documents for this Settlement, calculating/confirming the Class Members’ Workweeks from the information contained in the Class List, calculating each Participating Class Member’s Individual Settlement Payment, tax reporting, distributing the Gross Settlement Amount, providing necessary reports and declarations, and other duties and responsibilities set forth herein to process this Settlement, and

as requested by the Parties or the Court. Settlement Administration Costs shall not exceed Thirteen Thousand Dollars (\$13,000.00).

34. “Workweek” means any calendar week (i.e. a week beginning with Sunday and ending with Saturday) in which a Class Member or PAGA Member worked for Defendant at least one day.

TERMS OF AGREEMENT

35. Settlement Consideration. Defendant shall fully fund the Gross Settlement Amount following Final Approval by the Court and the occurrence of the Effective Date. The following will be paid out of the Gross Settlement Amount: the sum of the Individual Settlement Payments, the Class Representative Enhancement Award, Class Counsel’s Fees and Costs, the PAGA Payment, and the Settlement Administration Costs, as specified in this Agreement. Except for any employer-side payroll taxes due on the Individual Settlement Payments, or as a result of an increase in the number of workweeks as set forth below, Defendant shall not be required to pay more than the Gross Settlement Amount. The Gross Settlement Amount is non-reversionary; no portion of the Gross Settlement Amount will revert to Defendant. Defendant’s share of any employer-side payroll taxes will be paid separately from and in addition to the Gross Settlement Amount.

36. Potential Increase to the Gross Settlement Amount. Defendant has represented there are an estimated 40,000 Workweeks during the Class Period. Should the actual number of Workweeks increase by more than ten percent (10%) (i.e. increase by more than 4,000 Workweeks), the Gross Settlement Amount shall increase on a pro-rata basis equal to the percentage increase in the number of Workweeks worked by the Class Members above 10% (for example, if the number of Workweeks increases by 11%, the Gross Settlement Amount will increase by 1%).

37. Funding of the Gross Settlement Amount. Within fourteen (14) calendar days after the Effective Date of the Settlement, Defendant will deposit the Gross Settlement Amount, and all applicable employer-side payroll taxes, into a Qualified Settlement Fund (“QSF”) to be established by the Settlement Administrator. Defendant shall provide all information necessary

for the Settlement Administrator to calculate necessary payroll taxes including its official name, 8 digit state unemployment insurance tax ID number, and other information requested by the Settlement Administrator, no later than fourteen (14) calendar days of the Effective Date.

38. Distribution of the Gross Settlement Amount. Within seven (7) calendar days of the funding of the Settlement, the Settlement Administrator will issue payments for: (a) Individual Settlement Payments; (b) the PAGA Payment to the LWDA; (c) the Class Representative Enhancement Award; (d) Class Counsel's Fees and Costs and (e) Settlement Administration Costs. If the Settlement Administrator asks for the Parties' approval prior to distributing the court approved allocations and corresponding payments, the Parties shall provide their approval within three (3) business days. If either Party has an objection to the court approved allocations and disbursement schedule, it must seek *ex parte* relief from the Court about its objection, with the exception that both Parties may agree to an alternate date for distribution.

39. Attorneys' Fees and Costs. Defendant agrees not to oppose or impede any application or motion by Class Counsel for attorneys' fees of up to thirty-five percent (35%) of the Gross Settlement Amount (\$700,000.00) plus the reimbursement of costs and expenses associated with Class Counsel's litigation and settlement of the Action, in an amount not to exceed Twenty Five Thousand Dollars (\$25,000.00), both of which will be paid from the Gross Settlement Amount. Any portion of the requested fees or costs that is not awarded by the Court to Class Counsel shall be reallocated to the Net Settlement Amount and distributed to Participating Class Members as provided in this Agreement.

40. Class Representative Enhancement Award. Defendant agrees not to oppose or object to any application or motion by Plaintiff for a Class Representative Enhancement Award of Ten Thousand Dollars (\$10,000.00) to Plaintiff Ryan Ivie. The Class Representative Enhancement Award is in exchange for the General Release of Plaintiff's individual claims, and for Plaintiff's time, effort and risk in bringing and prosecuting the Action. Any adjustments made by the Court to the requested Class Representative Enhancement Award shall not be deemed a material modification of this Agreement. In the event that the Court reduces or does

not approve the requested Class Representative Enhancement Award, the Settlement Agreement remains in full force and effect, Plaintiff shall not have the right to revoke the Settlement Agreement for that reason, it shall remain binding, and any portion of the requested Class Representative Enhancement Award that is not awarded by the Court to the Class Representative shall be reallocated to the Net Settlement Amount and distributed to Participating Class Members as provided in this Agreement.

41. Settlement Administration Costs. The Settlement Administrator will be paid for the reasonable costs of administration of the Settlement and distribution of payments from the Gross Settlement Amount as further set forth in this Agreement. Settlement Administration Costs shall not exceed Thirteen Thousand Dollars (\$13,000.00).

42. PAGA Payment. Two Hundred Thousand Dollars (\$200,000.00) of the Gross Settlement Amount shall be allocated for settlement of claims for civil penalties under PAGA. The Settlement Administrator shall pay seventy-five percent (75%) of the PAGA Payment, or One Hundred Fifty Thousand Dollars (\$150,000.00), to the LWDA. The remaining twenty-five percent (25%) of the PAGA Payment, or Fifty Thousand Dollars (\$50,000.00), will be distributed to PAGA Members on a *pro rata* basis based on the total number of Workweeks worked by each PAGA Member during the PAGA Period. PAGA Members shall receive their portion of the PAGA Payment regardless of their decision to opt-out of the class settlement.

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

Gross Settlement Amount	\$	2,000,000.00
Class Representative Enhancement Award:	\$	10,000.00
Class Counsel's Fees:	\$	700,000.00
Class Counsel's Costs:	\$	25,000.00
PAGA Payment:	\$	200,000.00
Settlement Administration Costs:	\$	13,000.00

Estimated Net Settlement Amount: \$ 1,052,000.00

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

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

b) Calculation of PAGA Portion of Individual Settlement Payments. The Settlement Administrator will calculate the total Workweeks for all PAGA Members by adding the number of Workweeks worked by each PAGA Member during the PAGA Period. The amount that each PAGA Member will receive will be calculated by dividing each participating PAGA Member's individual Workweeks during the PAGA Period by the total Workweeks of all PAGA Members during the PAGA Period, and multiplying the resulting fraction by the 25% share of the PAGA Payment designated for distribution to PAGA Members. PAGA Members shall receive this portion of their Individual Settlement Payment regardless of whether they file a Request for Exclusion to "opt out" of the Settlement of the class claims.

c) Allocation of Individual Settlement Payments. All Individual Settlement Payments will be allocated as follows: twenty percent (20%) of each Individual Settlement Payment will be allocated as wages, eighty percent (80%) shall be allocated as expense reimbursement, penalties, and interest. The portion of the Individual Settlement Payment allocated to wages will be reported by the Settlement Administrator on an IRS Form W-2. The

1 remaining non-wage payments will be reported on an IRS Form-1099 by the Settlement
2 Administrator.

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

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

15 46(a) Establish and maintain a Qualified Settlement Fund.

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

19 46(c) Translate the Class Notice from English to Spanish.

20 46(d) Print and mail the Class Notice in English and Spanish.

21 46(e) Perform address searches as detailed herein, including conduct
22 additional address searches and skip traces for mailed Class Notices
23 that are returned as undeliverable.

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

27 46(g) Print and issue Settlement Payment Checks, prepare any IRS W2 and
28

1099 Tax Forms and any other filings required by any governmental taxing authority.

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

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

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

47. Delivery of the Class List. Within fourteen (14) calendar days of Preliminary Approval, Defendant will provide the Class List to the Settlement Administrator. This is a material term of the Agreement, and if Defendant fails to comply, Plaintiff shall have the right to void the Agreement, provided however, that Plaintiff shall not exercise the right to void the Agreement until Plaintiff provides written notice to Defendant of its failure to timely provide the Class List to the Settlement Administrator and Defendant fails to provide the Class List within five (5) business days of receipt of such notice.

48. Class Notice by First-Class U.S. Mail. Within seven (7) calendar days after receiving the Class List from Defendant, the Settlement Administrator will mail the Class Notice to all Class Members via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in the Class List. The Parties may not vary from the form of the Class Notice approved by the Court. If the Settlement Administrator asks for the Parties' approval prior to mailing the court approved Class Notice, the Parties shall provide their approval within three (3) business days. If either Party has an objection to the court approved form of the Class Notice, it must seek *ex parte* relief from the Court about its objection.

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

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

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

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

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

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

21 53. Request for Exclusion Procedures. Any Class Member wishing to opt-out from
22 the Action must sign and postmark a written Request for Exclusion to the Settlement
23 Administrator by the Response Deadline. The Request for Exclusion must include (a) the Class
24 Member's name, address, telephone number, and the last four digits of the Class Member's
25 Social Security number and/or the Employee ID number and (b) a clear statement requesting to
26 be excluded from the settlement of the class claims similar to the following: "I wish to exclude
27 myself from the class settlement reached in the matter of *Ivie v. Ewing Irrigation Products, Inc.* I
28 understand that by excluding myself, I will not receive money from the class portion of the

1 settlement.” The date of the postmark on the return mailing envelope will be the exclusive
2 means to determine whether a Request for Exclusion has been timely submitted. All Requests
3 for Exclusion will be submitted to the Settlement Administrator, who will certify jointly to
4 Class Counsel and Defendant’s Counsel the Requests for Exclusion that were timely submitted.
5 All Class Members who do not submit a valid and timely Request for Exclusion will be bound
6 by all terms of the Settlement Agreement if the Settlement is granted Final Approval.

7 54. Defendant’s Right to Rescind. If ten percent (10%) or more of the Class
8 Members (rounded to the next whole number) elect not to participate in the Settlement,
9 Defendant may, at its election, rescind the Settlement Agreement and all actions taken in
10 furtherance of it will be thereby null and void. Defendant must meet and confer with Class
11 Counsel prior to exercising this right and must make clear its intent to rescind the Agreement
12 within ten (10) calendar days of the Settlement Administrator notifying the Parties of the total
13 number of valid Requests for Exclusion, which the Settlement Administrator will do within
14 seven (7) calendar days after the Response Deadline. If Defendant exercises its right to rescind
15 the Agreement, Defendant shall be responsible for all Settlement Administration Costs incurred
16 to the date of rescission.

17 55. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class
18 Member who does not affirmatively opt-out of the Settlement by submitting a timely and valid
19 Request for Exclusion will be bound by all of its terms, including those pertaining to the
20 Released Claims, as well as any Judgment that may be entered by the Court if it grants Final
21 Approval of the Settlement. Class Members who submit a timely and valid Request for
22 Exclusion shall not be bound by the Settlement Agreement, including the release, or such
23 Judgment that may be entered by the Court. The names of Class Members who have submitted
24 a valid and timely Request for Exclusion shall be disclosed to the Counsel for Plaintiff and
25 Defendant and noted in the proposed Judgment submitted to the Court.

26 56. Objection Procedures. To object to the Settlement, a Participating Class Member
27 must postmark a valid Objection to the Settlement Administrator on or before the Response
28 Deadline. The Objection must be signed by the Participating Class Member and contain all

1 information required by this Settlement Agreement including the Class Member's full name,
2 address, telephone number, the last four digits of their social security number and/or Employee
3 ID number, and the specific reason including any legal grounds for the Participating Class
4 Member's objection. The postmark date will be deemed the exclusive means for determining
5 that the Objection is timely. A Class Member cannot submit both an Objection and a Request
6 for Exclusion. If a Class Member submits an Objection and a Request for Exclusion, the
7 Objection shall control and the Request for Exclusion will be deemed invalid. Any dispute
8 regarding the validity of an Objection falls solely within the discretion of the Settlement
9 Administrator unless both Parties stipulate otherwise. Participating Class Members who fail to
10 object in the manner specified above will be foreclosed from making a written objection, but
11 shall still have a right to appear at the Final Approval Hearing in order to have their objections
12 heard by the Court. At no time will any of the Parties or their counsel seek to solicit or
13 otherwise encourage Participating Class Members to submit written Objections to the
14 Settlement, appear at the Final Approval Hearing to objection, or appeal from or move to vacate
15 the Final Approval Order and Judgment. Class Counsel will not represent any Participating
16 Class Members with respect to any objections to this Settlement.

17 57. Certification Reports Regarding Individual Settlement Payment Calculations.

18 The Settlement Administrator will provide Defendant's Counsel and Class Counsel a weekly
19 report which certifies: (a) the number of Class Members who have submitted Requests for
20 Exclusion and Objections; (b) the number of re-mailed and/or undeliverable Class Notices; and
21 (c) whether any Class Member has submitted a dispute or challenge to any information
22 contained in the Class Notice. Additionally, the Settlement Administrator will provide to
23 counsel for all Parties any updated reports regarding the administration of the Settlement
24 Agreement as needed or requested. The Settlement Administrator will provide a declaration to
25 Class Counsel in advance of the hearing on Final Approval of the Settlement which Class
26 Counsel shall be responsible for reviewing and approving.

27 58. Uncashed Settlement Checks. Any checks issued by the Settlement
28 Administrator to Participating Class Members and PAGA Members will be negotiable for at

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

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

22 60. Tax Liability. Defendant makes no representation as to the tax treatment or legal
23 effect of the payments called for hereunder, and Plaintiff and Participating Class Members are
24 not relying on any statement, representation, or calculation by Defendant or by the Settlement
25 Administrator in this regard. Plaintiff and Participating Class Members understand and agree
26 that except for Defendant’s payment of the employer’s portion of any payroll taxes, they will be
27 solely responsible for the payment of any taxes and penalties assessed on the payments
28 described herein. Defendant’s share of any employer-side payroll taxes and other required

1 employer withholdings due on the Individual Settlement Payments, including, but not limited
2 to, Defendant's FICA and FUTA contributions, shall be paid separate and apart from the Gross
3 Settlement Amount.

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

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

25 63. Release by Participating Class Members, PAGA Members, the LWDA and the
26 State of California. Upon the funding of the Gross Settlement Amount and all applicable
27 employer-side payroll taxes by Defendant, Participating Class Members shall fully release and
28 discharge the Released Parties from any and all Released Claims for the Class Period. This

1 release shall be binding on all Participating Class Members. All PAGA Members, the LWDA,
2 and the State of California shall release claims under PAGA for the PAGA Period. All PAGA
3 Members shall release claims arising under PAGA and such claims will be barred consistent
4 with principles of res judicata under California law regardless of whether they submit a Request
5 for Exclusion or not.

6 64. Release of Additional Claims & Rights by Plaintiff. Upon the funding of the
7 Gross Settlement Amount, Plaintiff will agree to the additional following General Release: In
8 consideration of Defendant's promises and agreements as set forth herein, Plaintiff, for himself
9 and his heirs, successors and assigns, hereby waives, releases, acquits, and forever discharges
10 the Released Parties from all claims, demands, rights, liabilities, damages, losses, obligations,
11 and causes of action of every nature and description whatsoever, known or unknown, asserted
12 or that might have been asserted, whether in tort, contract, or for violation of any state or federal
13 statute, rule or regulation arising out of, relating to, or in connection with any act or omission by
14 or on the part of any of the Released Party committed or omitted prior to the execution
15 thereof. Specifically, Plaintiff will expressly waive and relinquish, to the fullest extent permitted
16 by law, the provisions, rights and benefits afforded of section 1542 of the California Civil Code,
17 or any other provision under federal or state law, which provides:

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

24 Plaintiff warrants that he has read this Settlement, including this waiver of California
25 Civil Code § 1542, and that Plaintiff has consulted with or had the opportunity to consult with
26 counsel of Plaintiff's choosing about this Settlement and specifically about the waiver of §
27 1542, and that Plaintiff understand this Settlement and the § 1542 waiver, and so Plaintiff freely
28 and knowingly enters into this Settlement. Plaintiff further acknowledges that Plaintiff later may

1 discover facts different from or in addition to those Plaintiff now knows or believes to be true
2 regarding the matters released or described in this Settlement, and even so Plaintiff agrees that
3 the releases and agreements contained in this Settlement shall remain effective in all respects
4 notwithstanding any later discovery of any different or additional facts. This release specifically
5 excludes claims for unemployment insurance, disability, social security, and workers'
6 compensation (with the exception of claims arising pursuant to California Labor Code sections
7 132(a) and 4553).

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

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

1 67. Preliminary Approval Hearing. Plaintiff will obtain a hearing before the Court to
2 request Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary
3 Approval Order for: (a) conditional certification of the Settlement Class for settlement purposes
4 only, (b) Preliminary Approval of the proposed Settlement Agreement, and (c) setting a date for
5 a Final Approval/Settlement Fairness Hearing. The Preliminary Approval Order will provide for
6 the Class Notice to be sent to all Class Members as specified herein. In conjunction with the
7 Preliminary Approval hearing, Plaintiff will submit this Agreement, which sets forth the terms
8 of the Settlement, and will include the proposed Class Notice attached as Exhibit A. Defendant
9 shall either file a notice of non-opposition that states it joins in Plaintiff's Motion for
10 Preliminary Approval or not file any response to Plaintiff's unopposed Motion for Preliminary
11 Approval. This is a material term of the Settlement Agreement and any opposition by Defendant
12 will be grounds for Plaintiff to withdraw from the Settlement Agreement. Any failure by the
13 Court to fully and completely approve the material terms of the Agreement as to the Action, or
14 the entry of any Order by another Court with regard to any of the Action which has the effect of
15 preventing the full and complete approval of the material terms of this Settlement Agreement as
16 written and agreed to by the Parties, will result in this Settlement Agreement and the
17 Memorandum of Understanding entered into by the Parties, and all obligations under this
18 Settlement Agreement and the Memorandum of Understanding being nullified and voided.
19 However, Class Counsel Attorneys' Fees and Costs and Class Representative Enhancement
20 Award are not material terms of this Agreement and any modification by the Court or another
21 Court to such terms shall not affect the enforceability of the Settlement Agreement and shall
22 not render it or Memorandum of Understanding null and void.

23 68. Final Settlement Approval Hearing and Entry of Judgment. Upon completion of the
24 Class Notice process, including the expiration of the deadlines to postmark Requests for
25 Exclusion or Objections to the Settlement Agreement, a Final Approval/Settlement Fairness
26 Hearing will be conducted to determine the Final Approval of the Settlement Agreement along with the
27 amounts properly payable for: (a) Individual Settlement Payments; (b) the PAGA Payment to the
28

1 LWDA; (c) Class Counsel's Attorneys' Fees and Costs; (d) the Class Representative Enhancement
2 Award; and (e) the Settlement Administration Costs. Any failure by the Court to fully and
3 completely approve the material terms of the Settlement Agreement as to all of the Action, or
4 the entry of any Order by another Court with regard to any of the Action which has the effect of
5 modifying material terms of this Agreement or preventing the full and complete approval of the
6 Settlement Agreement as written and agreed to by the Parties, will result in this Agreement and
7 all obligations under this Agreement being null and void. However, Class Counsel Attorneys'
8 Fees and Costs and Class Representative Enhancement Award are not material terms of this
9 Agreement and any modification by the Court or another Court to such terms shall not affect
10 the enforceability of the Settlement Agreement and shall not render it or Memorandum of
11 Understanding null and void. Defendant agrees it shall not oppose the granting of the Motion
12 for Final Approval, provided Defendant has not exercised its right to rescind pursuant to the
13 terms of this Agreement.

14
15 69. Judgment and Continued Jurisdiction. Upon Final Approval of the Settlement by
16 the Court or after the Final Approval/Settlement Fairness Hearing, the Parties will present the
17 Judgment to the Court for its approval. After entry of the Judgment, the Court will have
18 continuing jurisdiction solely for purposes of addressing: (a) the interpretation and enforcement
19 of the terms of the Settlement, (b) Settlement administration matters, and (c) such post-
20 Judgment matters as may be appropriate under court rules or as set forth in this Settlement.

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

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

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

1 interest.

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

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

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

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

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

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

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

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

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

1 compliance with, federal, state, local or other applicable law.

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

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

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

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

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

22 87. Cooperation and Execution of Necessary Documents. The Parties agree to
23 cooperate to promote participation in the Settlement, and in seeking court approval of the
24 Settlement. The Parties and their counsel agree not to take any action to encourage any Class
25 Members to opt out of and/or object to the Settlement. Defendant agrees not to obtain any
26 settlement agreement waivers, Pick Up Stix agreements or arbitration agreements from any
27 Class Member prior to the funding of the Gross Settlement Amount concerning claims released
28 via this Agreement, or enter into any arbitration agreement with any Class Member that covers

1 the claims released via this Agreement during the Settlement approval process prior to the
2 funding of the Gross Settlement Amount and that the Parties will work in good faith to reach an
3 agreement approved by the Court.

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

12 89. Voluntary Agreement. The Parties acknowledge that they have entered into this
13 Settlement Agreement voluntarily, on the basis of their own judgment and without coercion,
14 duress, or undue influence of any Party, and not in reliance on any promises, representations, or
15 statements made by the other Parties other than those contained in this Settlement Agreement.
16 Each of the Parties hereto expressly waives any right she/it might ever have to claim that this
17 Settlement Agreement was in any way induced by fraud.

18 90. Confidentiality. The Parties and their counsel agree to keep the terms of the
19 Settlement confidential until the filing of Plaintiff's Motion for Preliminary Approval. Plaintiff,
20 and Class Counsel agree that they will not issue any press releases, initiate any contact with the
21 press, respond to any press inquiry or have any communication with the press about the Action
22 and/or the fact, amount or terms of the Settlement. In addition, Plaintiff and Class Counsel agree
23 that they will not engage in any advertising or distribute any marketing materials relating to the
24 Settlement, including but not limited to any postings on any websites maintained by Class
25 Counsel; provided, however, that Class Counsel may state that it has settled a class action claim
26 against a company so long as neither Defendant, nor the Plaintiff are identified. In addition,
27 Class Counsel may list the case name, number, and a brief description of the claims in their
28 declarations in support of qualifications as class counsel in future filings. Notwithstanding

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

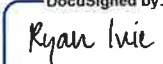
91. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding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

[Remainder Of Page Intentionally Left Blank]

APPROVED AS TO FORM AND CONTENT:

Dated: 9/27/2021

PLAINTIFF

By: 
399898147A3B4E4...

Ryan Ivie

Dated: 10/5/2021

**DEFENDANT EWING IRRIGATION
PRODUCTS, INC.**

By: 

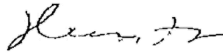
Name: RONN ALEXANDER

Title: DIRECTOR OF TALENT MANAGEMENT

1 APPROVED AS TO FORM ONLY:
2

3 Dated: September 27, 2021
4

PROTECTION LAW GROUP, LLP

5 By: 
6

7 Heather Davis, Esq.
8 Amir Nayebdadash, Esq.
9 S. Emi Minne, Esq.
10 Attorneys for Plaintiff

11 Dated: _____
12

SNELL & WILMER L.L.P.

13 By: _____
14

15 Christy D. Joseph, Esq.
16 Erin D. Leach, Esq.
17 Anne E. Dwyer, Esq.
18 Attorneys for Defendant
19
20
21
22
23
24
25
26
27
28

1 APPROVED AS TO FORM ONLY:
2

3 Dated: _____
4

PROTECTION LAW GROUP, LLP

5 By: _____
6

7 Heather Davis, Esq.
8 Amir Nayebdadash, Esq.
9 S. Emi Minne, Esq.
10 Attorneys for Plaintiff

11 Dated: 10/06/2021
12

SNELL & WILMER L.L.P.

13 By: _____
14

15 
16 Christy D. Joseph, Esq.
17 Erin D. Leach, Esq.
18 Anne E. Dwyer, Esq.
19 Attorneys for Defendant
20
21
22
23
24
25
26
27
28

Exhibit A

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Ivie v. Ewing Irrigation Products, Inc.

Alameda County Superior Court, Case No. RG20074321

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

To:	All current and former employees of Ewing Irrigation Products, Inc. who worked for Ewing Irrigation Products, Inc. in California in a non-exempt position at any time between September 14, 2016 and [October 14, 2021 or the date of Preliminary Approval, whichever date occurs earlier].
------------	--

BASIC INFORMATION

1. What is this settlement about?

A lawsuit was commenced by Ryan Ivie (“Plaintiff”), a former employee of Defendant Ewing Irrigation Products, Inc. (“Defendant”) on September 14, 2020. The case is currently pending in the Alameda County Superior Court, Case No. RG20074321.

The lawsuit claims that Defendant violated sections of the California Labor Code and California Business and Professions Code. Specifically, Plaintiff alleges that Defendant failed to provide compliant meal and rest periods and associated premium pay, did not properly pay employees all wages owed for time worked, including minimum wage and overtime, did not provide accurate wage statements, did not timely pay all wages owed during and at termination of employment, failed to reimburse employees for necessary business expenses, and maintained unfair business practices. The lawsuit also seeks to recover penalties pursuant to the California Private Attorneys General Act (“PAGA”). The lawsuit claims that the Defendant violated the California Labor Code and the California Business and Professions Code, entitling Class Members to, *inter alia*, damages, penalties and restitution. Defendant denies all alleged violations and denies that it owes Class Members any remedies. The Court has not made a ruling on the merits of the case.

2. Why is this a class action?

In a class action, one or more people called the Class Representative (in this case Plaintiff Ryan Ivie), sue on behalf of people who appear to be similarly situated such that they may have similar claims (in this case all current and former employees of Defendant who worked for Defendant in California in a non-exempt position at any time between September 14, 2016 and [October 14, 2021 or the date of preliminary approval, whichever date occurs earlier] that have not already signed a Separation Agreement and General Release with Defendant). All these people are referred to here as Class Members. In a class action one court resolves the issues for all Class Members in one lawsuit, except for those who exclude themselves from the Class. The Alameda County Superior Court is in charge of this class action. Defendant denies this lawsuit is suitable for class treatment. The Court has not made a ruling regarding whether this lawsuit is suitable for class treatment.

3. Why is there a settlement?

The Court has not decided in favor of Plaintiff or Defendant. Instead, both sides agreed to a settlement which is memorialized in the Joint Stipulation of Class Action and PAGA Settlement (“Settlement Agreement” or “Settlement”). On [DATE OF PRELIMINARY APPROVAL], the Court granted preliminary approval of the

Settlement, appointed Plaintiff Ryan Ivie as the Class Representative, and appointed his attorneys at Protection Law Group as counsel for the Class (“Class Counsel”).

The Class Representative and Class Counsel think the Settlement is in the best interests of the Class.

WHO IS IN THE SETTLEMENT?

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

You are part of the Settlement, and a Class Member, if you were an employee of Defendant who worked for Defendant in California in a non-exempt position at any time between September 14, 2016 and **[October 14, 2021 or the date of preliminary approval, whichever date occurs earlier]** and have not already signed a Separation Agreement and General Release with Defendant.

THE SETTLEMENT BENEFITS—WHAT YOU GET

5. What does the settlement provide?

The Settlement provides that Defendant will pay a maximum of Two Million Dollars (\$2,000,000.00) (“Gross Settlement Amount”). This includes all costs and attorneys’ fees for Class Counsel.

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

- A. **Attorneys’ Fees to Class Counsel** not to exceed 35% of the Gross Settlement Amount or Seven Hundred Thousand Dollars (\$700,000.00);
- B. **Litigation Costs/Expenses to Class Counsel** not to exceed Twenty-Five Thousand Dollars (\$25,000.00);
- C. **Enhancement Award to the Class Representative** not to exceed Ten Thousand Dollars (\$10,000.00);
- D. **Settlement Administration Costs** not to exceed Thirteen Thousand Dollars (\$13,000.00); and
- E. **PAGA Payment** in the amount of Two Hundred Thousand Dollars (\$200,000.00) for the settlement of claims arising under PAGA. Seventy-Five percent (75%) of this amount (\$150,000.00) shall be paid to the Labor Workforce Development Agency (“LWDA”). The remaining twenty-five percent (25%) (\$50,000.00) will be distributed to PAGA Members (current and former employees of Defendant who worked for Defendant in California in a non-exempt position at any time between September 14, 2019, through **[October 14, 2021 or the date of preliminary approval, whichever date occurs earlier]** (“PAGA Period”)) for the release of claims arising under PAGA.

The amount you are eligible to receive from the settlement, your “Individual Settlement Payment” will be determined on a *pro rata* basis, based on the number of weeks (“Workweeks”) you worked in California for Defendant in a non-exempt position between September 14, 2016 and **[October 14, 2021 or the date of preliminary approval, whichever date occurs earlier]** (“Class Period”). Your Individual Settlement Payment includes both your estimated share of the Net Settlement Amount and, if eligible, your share of the PAGA Payment.

Your Individual Settlement Payment will be apportioned as twenty percent (20%) wages and eighty percent (80%) expense reimbursement, penalties, and interest. The wage portion of the Individual Settlement Payment will be subject to withholding for the employee taxes and will be reported on a W-2 Form. Employer-side payroll taxes shall

be paid by Defendant separately from and in addition to the Gross Settlement Amount. The penalties and interest portions of each Class Member's settlement payment will not be subject to any withholdings and will be reported on an IRS Form 1099.

Based on Defendant's records, you worked XXX workweeks during the Class Period and XXX workweeks during the PAGA Period. Your Individual Settlement Payment is \$XXX.XX. The amount of the payment may change depending on the number of timely and valid requests for exclusions submitted in the Settlement, if any.

This Amount was determined based on Defendant's record of your employment between September 14, 2016 and [October 14, 2021 or the date of preliminary approval, whichever date occurs earlier], and is presumed correct. If you dispute the accuracy of Defendant's records as to the number of weeks worked during the Class Period, you must contact the Settlement Administrator and provide any documentation you have supporting such dispute by [DATE]. All disputes regarding your workweeks will be resolved and decided by the Parties or if the Parties cannot agree, the Settlement Administrator or the Court, after you submit evidence to the Settlement Administrator. The Settlement Administrator's contact information is listed below:

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

HOW TO GET A PAYMENT FROM THE SETTLEMENT

6. How can I get a payment?

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

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

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

The "Released Parties" include Defendant Ewing Irrigation Products, Inc. as named by Plaintiff in the operative complaint, and its current and former officers, directors, employees, and agents, and the successors and assigns, of all such entities and individuals.

The "Released Claims" means any and all claims, causes of action, damages, wages, benefits, expenses, penalties, debts, liabilities, demands, obligations, attorneys' fees, costs, and any other form of relief or remedy in law, equity, or whatever kind of nature, arising from the claims pled in the Action and any claims based on facts alleged in the operative complaint, including, all claims for unpaid overtime, meal period violations, rest break violations, unpaid minimum wage, failure to pay all wages during and at termination of employment, failure to provide accurate wage statements, failure to maintain accurate records, failure to reimburse necessary business expenses, and unlawful business practices under the California Labor Code and/or the California Business and Professions Code, including all claims for restitution or equitable relief, liquidated damages, penalties of any nature whatsoever, attorneys' fees and costs, asserted or that might have been asserted by any Class Member against the Released Parties based on the facts or claims alleged in the Action during the Class Period. "Released Claims" also includes claims under PAGA, for civil penalties based on any of the violations alleged in this Action, which include civil penalties under PAGA for violations of the provisions of the applicable IWC Wage Orders and the Labor Code. "Released Claims" also

includes claims meeting the above definition(s) under any and all applicable statutes, including without limitation California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802; the California Unfair Competition Act, and in particular, California Business and Professions Code §§ 17200 *et seq.* and PAGA.

This release of these claims pertains to the Class Period between September 14, 2016 and [October 14, 2021 or the date of preliminary approval, whichever date occurs earlier].

All PAGA Members will be deemed to have fully, finally and forever released, settled, compromised, relinquished, and discharged any and all Released Claims arising under PAGA with respect to all of the Released Parties, and such claims shall be barred consistent with principles of res judicata, irrespective of whether a Class Member submits a request for exclusion.

EXCLUDING YOURSELF FROM THE RELEASE OF NON-PAGA CLAIMS

If you want to keep the right to sue or continue to sue Defendant with respect to the Released Claims (other than those which arise under the Private Attorneys General Act (California Labor Code sections 2698 *et seq.*), then you must submit a request for exclusion in conformity with the requirements set forth herein. If you exclude yourself, you will not receive payment from the Net Settlement Amount. However, if eligible, you will still receive a payment in an amount equal to your estimated *pro rata* share of the PAGA Payment because the Request for Exclusion does not apply to this claim.

8. How can I not participate in the settlement?

To exclude yourself from the release of Released Claims you must submit a written request for exclusion. You must include your name, address, telephone number and the last four digits of your social security number and/or Employee ID number. Your request for exclusion must also include a statement that you do not wish to be included in this action similar to the following: I wish to exclude myself from the class settlement reached in the matter of *Ivie v. Ewing Irrigation Products, Inc.* I understand that by excluding myself, I will not receive money from the class portion of the settlement.”

The written request for exclusion must be mailed to the Settlement Administrator at the address listed below, post-marked by [DATE]. You cannot exclude yourself by phone.

[Settlement Administrator]

[Address]

[Telephone No.]

[Fax No.]

If you ask to be excluded, you will not receive payment of any portion of the Net Settlement Amount and you cannot object to the Settlement. You will not be legally bound by the release of Released Claims (except for Released Claims that arise under the Private Attorneys General Act (California Labor Code sections 2698 *et seq.*)).

You may, however, be able to sue Defendant and/or the Released Parties or continue any suit you have pending against Defendant and/or the Released Parties, regarding the Released Claims (except for Released Claims that arise under the Private Attorneys General Act (California Labor Code sections 2698 *et seq.*)).

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

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

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

No, except if you worked between September 14, 2019 and [October 14, 2021 or the date of preliminary approval, whichever date occurs earlier], in which case you will still receive the portion of your Individual Settlement Payment for Released Claims that arise under PAGA, you will not receive your portion of the Net Settlement.

THE LAWYERS REPRESENTING YOU

11. Do I have a lawyer in this case?

The Court has approved Protection Law Group LLP as Class Counsel. The firm's contact information is:

PROTECTION LAW GROUP LLP

Heather Davis, Esq.
Amir Nayebdadash, Esq.
237 California Street
El Segundo, California 90245
Telephone: (424) 290-3095
Facsimile: (866) 264-7880

Class Counsel will ask the Court for attorneys' fees of up to \$700,000.00 and reimbursement of litigation cost/expenses of up to \$25,000.00. These amounts are subject to Court approval and the Court may award less than these amounts.

OBJECTING TO THE SETTLEMENT

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

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

If you are a Class Member, you can object to the Settlement and you can give reasons for why you think the Court should not approve it. The Court will consider your views. To object, you must mail your objection to the Settlement Administrator no later than [DATE]. Your objection must include your full name, address, telephone number, the last four digits of your social security number or employee ID number, and the specific reason for your objection. You may also come to the Final Approval Hearing on [DATE] and make an objection at that time, regardless of whether you submitted a written objection.

13. What is the difference between objecting and excluding?

Objecting is simply telling the Court that you do not like something about the Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement. If you exclude yourself, you have no basis to object because the case no longer affects you. You cannot submit both an objection and a request for exclusion. If you submit both, the objection will control and the request for exclusion will be deemed invalid.

THE COURT'S FAIRNESS HEARING

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

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

The Court will hold the Final Approval Hearing at [REDACTED] a.m./p.m. on [REDACTED], at the Alameda Superior Court, located at 1221 Oak Street, Oakland, CA 94612.

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

15. Do I have to come to the hearing?

No. If you agree to the Settlement you do not have to come to Court to talk about it. However, you may attend. You may also retain your own lawyer at your expense to attend on your behalf. You may attend in person, but you may also attend remotely if you wish. Please see <http://www.alameda.courts.ca.gov/Pages.aspx/Remote-Appearances-BlueJeans-> or <http://www.alameda.courts.ca.gov/Pages.aspx/Remote-Appearances-Zoom-> for more information on remote appearances.

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

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

IF YOU DO NOTHING

17. What happens if I do nothing at all?

If you do nothing, you will receive your share of the Settlement, and you will release the Released Claims. You will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendant and/or the Released Parties about the Released Claims, ever again. Your Individual Settlement Payment will be mailed to you and remain valid and negotiable for 180 days. If you do not cash your settlement check within 180 days, these funds will be transferred to the Controller of the State of California's Unclaimed Property Fund. You may then claim these funds from there.

GETTING MORE INFORMATION

18. How do I get more information?

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement by viewing the settlement located on the Settlement Administrator's website at [www.\[REDACTED\]](http://www.[REDACTED]) or by contacting the Settlement Administrator or Class Counsel.

WHAT IF MY INFORMATION CHANGES?

19. What if my contact information changes?

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

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