

1 **STIPULATION OF CLASS AND PAGA SETTLEMENT AND RELEASE**

2 This Stipulation of Class and PAGA Settlement and Release (“Settlement Agreement”) is made
3 by and between Plaintiff HUMBERTO ROLDAN (“Plaintiff”), individually and on behalf of all
4 persons who are members of the “Settlement Class” and “PAGA Employees” defined below, and
5 Defendant ZIM INDUSTRIES, INC. dba BAKERSFIELD WELL & PUMP CO. (“Defendant”).
6 Defendant, Plaintiff, the Settlement Class, and the PAGA Employees are referred to herein as the
7 “Parties.” This Settlement Agreement is intended to fully, finally, and forever compromise, release,
8 resolve, discharge, and settle the released claims subject to the terms and conditions set forth in this
9 Settlement Agreement. This Settlement Agreement provides for the settlement of claims on behalf of
10 the Settlement Class and PAGA Employees, as described further herein. Upon final approval of this
11 Settlement Agreement by the Court, and any related motions, the instant action shall be dismissed in
12 its entirety with prejudice.

13 **I. THE LAWSUIT**

14 **Section 1.1 Background and Procedural History**

15 On July 9, 2021, pursuant to California Private Attorneys General Act, Labor Code Section
16 2698 et seq. (“PAGA”), Plaintiff submitted a letter to the California Labor and Workforce Development
17 Agency (“LWDA”) and to Defendant notifying them of the alleged Labor Code violations at issue in
18 this case. On September 13, 2021, after the 65-day notice period expired, Plaintiff initiated this lawsuit
19 by filing his PAGA-only complaint against Defendant in Los Angeles County Superior Court, Case
20 No. 21PSCV0075, alleging a single cause of action under PAGA for wage and hour violations (the
21 “Los Angeles County Action”). Per the parties’ agreement, Plaintiff dismissed the Los Angeles County
22 Action without prejudice on May 27, 2022. On May 27, 2022, Plaintiff filed a Class Action Complaint
23 alleging various wage and hour claims on behalf of Plaintiff and other current and former employees
24 of Defendant, including: (1) failure to properly failure to provide meal periods, (2) failure to allow rest
25 periods, (3) failure to pay all minimum and overtime wages, (4) failure to issue accurate itemized wage
26 statements; (5) waiting time penalties, (6) failure to reimburse for business expenses, (7) unfair
27 competition (Bus. & Prof. Code §§ 17200 et seq.); and (8) penalties pursuant to PAGA (the “Lawsuit”
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1 or the “Operative Complaint”).

2 Defendant denies all of Plaintiff’s claims and allegations in this Lawsuit. Defendant expressly
3 denies any and all charges of wrongdoing or liability arising out of the acts, omissions, facts, matters,
4 transactions, or occurrences alleged, or that could have been alleged, in the Lawsuit. Defendant
5 contends that it has complied with applicable state and federal laws, including but not limited to paying
6 all wages owed to its non-exempt hourly employees, providing adequate meal breaks and making rest
7 periods available to its non-exempt hourly employees, issuing accurate, itemized wage statements, and
8 timely paying its non-exempt employees all wages owed upon termination. Defendant also denies that
9 it owes Plaintiff and/or the Settlement Class any additional wages, damages, penalties or any other
10 remedies. Defendant further denies that the asserted claims are appropriate for class action treatment
11 under California Code of Civil Procedure § 382, except pursuant to a settlement and only for the
12 purpose of the settlement, due to the intractable management problems and issues of individualized
13 proof that would have been associated with a class action and a class-wide trial.

14 **Section 1.2 Parties’ Statements and Recognition of the Benefits of the Settlement**

15 Class Counsel has investigated the facts of the Lawsuit and Plaintiff’s and Settlement Class
16 Members’ claims, through formal discovery, informal disclosures between the Parties, and other
17 investigations undertaken by Class Counsel. Furthermore, the Parties engaged in extensive arms-length
18 negotiations and exchanges of data, documents and information in mediation with the Hon. Stephen
19 Kane (ret.) on April 27, 2022. At the end of mediation, the mediator made a mediator’s proposal which
20 the Parties accepted. As a result, Class Counsel concluded that the Settlement Agreement is fair,
21 reasonable and adequate and is in the best interest of the Settlement Class in light of all known facts
22 and circumstances, including the likely damages, risk of significant delay, risk that the Lawsuit would
23 not proceed on a class action basis, defenses asserted by Defendant, and numerous potential appellate
24 issues.

25 While Defendant denies each and all of the claims in this Lawsuit, Defendant has concluded
26 that further conduct of the Lawsuit would be protracted and expensive. Defendant, therefore, has
27 determined that it is desirable and beneficial that the Lawsuit be settled in a manner and upon the terms

1 and conditions set forth in the Settlement Agreement. Neither this Settlement Agreement, nor any
2 document referred to or contemplated herein, nor any action taken to carry out this Settlement
3 Agreement is, may be construed as, or may be used as, an admission, concession, or indication by or
4 against Defendant of any fault, wrongdoing or liability whatsoever.

5 **II. TERMS OF THE SETTLEMENT AGREEMENT**

6 IT IS HEREBY STIPULATED AND AGREED by and among Plaintiff (for himself, the
7 Settlement Class and PAGA Employees) and Defendant, by and through their respective undersigned
8 attorneys, that: subject to final approval by the Court, the Lawsuit will be finally and fully
9 compromised, released, resolved, discharged, and settled, and will be dismissed in its entirety with
10 prejudice, subject to the terms and conditions of this Settlement Agreement, as follows:

11 **Section 2.1 Definitions**

12 As used in this Settlement Agreement, the following terms have the meanings specified below:

13 “Administrative Costs” means the estimated reasonable cost by the Settlement Administrator,
14 including for providing Notice, various efforts to locate Class Members, administering payments to
15 Plaintiff, to Verified Settlement Class Members, to PAGA Employees, to the Labor and Workforce
16 Development Agency (the “LWDA”), and to Class Counsel.

17 “Administrator” or “Settlement Administrator” means the class action administration firm that
18 will be selected by Defendant and Plaintiff to provide notice of this proposed class action settlement
19 to the Settlement Class, to PAGA Employees, and to perform other related functions to administer the
20 settlement contemplated by this Settlement Agreement as described herein. The Parties have solicited
21 a bid from Phoenix Settlement Administrators for administration of the Settlement and have agreed
22 that Phoenix Settlement Administrators will be the Settlement Administrator.

23 “Attorneys’ Fees and Costs” refers to the fees and costs to be paid to Class Counsel under
24 Section 2.4(b) of this Settlement Agreement.

25 “Class Counsel” means the attorneys representing Plaintiff in this Lawsuit: Jeremy Bollinger,
26 Esq., Dennis F. Moss, Ari E. Moss, Esq., and Jorge A. Flores, Esq., of Moss Bollinger, LLP, 15300
27 Ventura Boulevard, Suite 207, Sherman Oaks, California 91403.

1 “Class Period” shall mean the period from September 13, 2017 through the date of preliminary
2 approval.

3 “Court” shall mean the California Superior Court for the County of Madera where the Lawsuit
4 is pending, and any Court-appointed referee or agent of the Court or other judicial entity with
5 jurisdiction over this matter.

6 “Defendant” means Zim Industries, Inc. dba Bakersfield Well & Pump Co.

7 “Effective Date” means as follows: The “Effective Date” of this settlement shall be the later of
8 the time when either: (i) the Judgement of the Court granting final approval of the settlement is final
9 and no longer subject to appeal, if there are objections, or (ii) 20 days after Notice is provided by
10 Plaintiff to Defendant that the Court entered the order on final approval of the settlement, if there are
11 no objections. The occurrence of the Effective Date is a prerequisite to any distributions from the
12 Settlement Fund.

13 “Employer Payroll Taxes” means the employer portion of all applicable tax withholdings
14 including, but not limited to, FICA, FUTA, and other employment related taxes and withholding of
15 federal, state, and local income taxes.

16 “Final Fairness Hearing” means the hearing to be conducted by the Court, or any other
17 court taking jurisdiction of this matter, to determine whether to finally approve the settlement of the
18 Lawsuit.

19 “Individual PAGA Payment(s)” means each PAGA Employee’s share of the PAGA Fund, to
20 be distributed to the PAGA Employees.

21 “Individual Settlement Payment(s)” means the amounts to be paid to Verified Settlement Class
22 Members pursuant to the terms and conditions of this Settlement Agreement.

23 “Lawsuit” or “Action” means *Humberto Roldan v. Zim Industries, Inc. dba Bakersfield Well &*
24 *Pump Co.*, Case No. MCV087195 pending in the California Superior Court for the County of Madera.

25 “Maximum Settlement Amount” or “MSA” refers to Two Hundred Thirty-Five Thousand
26 Dollars (\$235,000.00) which is non-reversionary. In no event shall Defendant be required to pay more
27 than the Maximum Settlement Amount with the sole exception that Defendant shall remit the Employer
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1 Payroll Taxes, as provided herein, in addition to the Maximum Settlement Amount. The MSA will be
2 distributed in accordance with Section 2.4 of this Agreement. Defendant represented at mediation that
3 there were 40,473 workweeks worked by putative Class Members during the Class Period as of April
4 27, 2022. Those workweeks were calculated based on all hours worked by the class member during the
5 period of September 13, 2017 through April 27, 2022 divided by 40. If, by the time the Court grants
6 preliminary approval of the Settlement, the total number of workweeks increases by more than 10%
7 (or 4,047 weeks), the Parties agree that the Maximum Settlement Amount will be proportionately
8 increased on a pro rata basis for workweeks in excess of 44,520 through the date of preliminary
9 approval, and Defendant agrees to pay the increased MSA.

10 “Motion for Preliminary Approval” refers to the motion for preliminary approval of the
11 settlement described herein, including any and all supporting papers, which shall be filed by Plaintiff.

12 “Net Settlement Amount” shall be the Maximum Settlement Amount after the following
13 deductions are made: (a) all costs of settlement administration performed by Phoenix Settlement
14 Administrators; (b) Service Award (defined below) to Plaintiff; (c) the PAGA Fund (defined below);
15 and (d) Attorneys’ Fees and Costs for Plaintiff’s Counsel. The Net Settlement Amount shall be
16 available for Settlement Class Members, as defined below, who do not opt out of the Settlement Class.

17 “Notice of Settlement” refers to the official notice of settlement of class action, materially in
18 the form attached hereto as **Exhibit A**.

19 “Notice Period” refers to the time period of forty-five (45) days from the first mailing date
20 postmarked on the first Notice of Settlement mailed by the Settlement Administrator.

21 “Opt-Out Date” refers to the expiration of the Notice Period, by which time Settlement Class
22 Members who do not wish to be part of the settlement and who are permitted to opt out of this
23 Settlement must have timely and properly opted-out of the Settlement Class as described herein. Class
24 Members who are PAGA Employees shall not have the option of opting out of the PAGA Released
25 Claims or PAGA Payment.

26 “Order Granting Preliminary Approval” refers to the Court order or statement of decision
27 granting preliminary approval to this Settlement Agreement.

1 “Order of Final Approval” and “Final Approval” mean an order that finally and unconditionally
2 grants certification of the Settlement Class for settlement purposes only, authorizes payments to the
3 Settlement Administrator, Verified Settlement Class Members, PAGA Employees, Plaintiff, the
4 LWDA, and Class Counsel as provided in this Agreement, and fully and finally extinguishes the
5 Released Claims of the Verified Settlement Class and the PAGA Released Claims of the PAGA
6 Employees as set forth herein, which the Parties shall submit in a mutually agreed upon form.

7 “PAGA Employees” means all non-exempt employees who worked for Defendant during the
8 PAGA Period.

9 “PAGA Fund” or “PAGA Payment” means the Six Thousand Dollars (\$6,000.00) allocated for
10 the settlement and full release of any and all claims for civil penalties that could have been made in
11 this Action by Plaintiff and/or any of the PAGA Employees under the California Private Attorneys
12 General Act (“PAGA”), Cal. Labor Code § 2698, *et seq.*, 75% of which (\$4,500.00) will be distributed
13 to the LWDA and 25% (\$1,500.00) will be distributed to PAGA Employees.

14 “PAGA Period” means the period from July 9, 2020 through the date of preliminary approval.

15 “PAGA Work Week Fund” means the Twenty-Five percent (25%), or One Thousand Five
16 Hundred Dollars (\$1,500), of the PAGA Payment that will be distributed to the PAGA Employees. The
17 Net PAGA Fund shall be treated as miscellaneous income which shall be reported on an IRS 1099
18 without withholdings.

19 “Plaintiff” means Plaintiff Humberto Roldan.

20 “Released Claims” means the claims released pursuant to Section 2.6 of this Settlement
21 Agreement.

22 “Released PAGA Claims” means all PAGA claims that were actually alleged or could have
23 been alleged based on the same set of operative facts as those set forth in the Lawsuit, or the claims
24 set forth in the Plaintiff’s LWDA letter on behalf of the State of California, himself, and PAGA
25 Employees, including for those claims listed under Released Claims.

26 “Released Parties” means Defendant Zim Industries. Inc. dba Bakersfield Well & Pump Co.,
27 Zim Industries, Inc., and each of their former, current and future agents, affiliates, related persons or
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1 entities, assigns, employees, owners, affiliates, directors, shareholders, partners, advisors, officers,
2 successors, holding companies, representatives, subsidiaries, insurers, and attorneys.

3 “Service Award” means a Court-approved sum to be paid to the Plaintiff in accordance with
4 Section 2.4(c).

5 “Settlement” means the disposition of the Lawsuit pursuant to this Agreement.

6 “Settlement Agreement” refers to this Joint Stipulation of Settlement and Release.

7 “Settlement Class” means all current and former non-exempt hourly paid employees of Zim
8 Industries, Inc. dba Bakersfield Well & Pump Co. who were employed in California at any time
9 between September 13, 2017 through the date of preliminary approval, excluding any person employed
10 by Defendant in a non-exempt office or administrative position. However, those persons employed by
11 Defendant in a non-exempt office or administrative position are included among the PAGA Employees
12 who will be releasing claims under PAGA.

13 “Settlement Class Member(s)” or “Class Member(s)” means the individuals in the Settlement
14 Class. Defendant represents there were 40,473 workweeks worked by putative Class Members during
15 the Class Period as of April 27, 2022. Workweeks are calculated based on all hours worked by the class
16 member during the period of September 13, 2017 through April 27, 2022 divided by 40. If the total
17 number of workweeks increases by more than 10% (or 4,047 weeks), the Parties agree that the
18 Maximum Settlement Amount will be proportionately increased on a pro rata basis for workweeks in
19 excess of 44,520 through the date of preliminary approval

20 “Verified Settlement Class” means Plaintiff and all Settlement Class Members who do not
21 timely opt-out/request for exclusion from the Settlement pursuant to Section 2.7 of this Settlement
22 Agreement.

23 “Verified Settlement Class Member(s)” or “Participating Class Member(s)” means the
24 individual in the Verified Settlement Class.

25 **Section 2.2 Settlement of the Lawsuit**

26 It is agreed by and among the Plaintiff, the Verified Settlement Class Members, the PAGA
27 Employees and Defendant that the Lawsuit, including any and all allegations in the Operative

1 Complaint and any and all claims, allegations, causes of action, requests for damages, or remedies
2 sought in the Operative Complaint, or that could have been alleged based on the pleadings, shall be
3 settled, compromised and released as between the Plaintiff, the Verified Settlement Class Members,
4 the PAGA Employees, the State of California and Defendant, subject to the terms and conditions set
5 forth in this Settlement Agreement and the approval of the Court, including through any Court-
6 appointed referee or agent of the Court or other judicial entity with jurisdiction over this matter. As
7 part of the motion for preliminary approval, the Parties will submit a proposed order to the Court.
8 Plaintiff will provide Defendant with drafts of the motion for preliminary approval and supporting
9 papers before filing mutually-agreeable documents with the Court.

10 **Section 2.3 Conditional Certification of the Settlement Class for Settlement Purposes Only**

11 (a) For settlement purposes only, the Parties stipulate to conditional certification of the
12 Settlement Class, contingent on final approval of the Settlement.

13 (b) The Parties stipulate that Humberto Roldan shall be appointed as Class Representative.

14 (c) The Parties stipulate that Moss Bollinger, LLP (attorneys Jeremy F. Bollinger, Dennis F.
15 Moss, Ari E. Moss, and Jorge A. Flores) shall be appointed as Class Counsel.

16 (d) The conditional certification of the Settlement Class and appointment of Class Counsel and
17 Class Representative by the Court shall be binding only with respect to the Settlement of this Lawsuit.
18 In the event that this Settlement Agreement is terminated pursuant to its terms or the Settlement is not
19 approved by the Court for any reason, the certification of the Settlement Class shall be vacated, the
20 Lawsuit shall proceed as though the Settlement Class had never been certified, any payments of the
21 MSA shall be returned to Defendant pursuant to paragraph 2.16(b) below, and this Settlement
22 Agreement shall be of no force or effect.

23 (e) The Parties agree that, for any claim that is not alleged in Plaintiff's Operative Complaint,
24 the statute of limitations has and will continue to run on those claims and no such claims will relate
25 back to the filing of any of the pleadings in this Lawsuit.

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1 **Section 2.4 Maximum Settlement Amount Distribution**

2 (a) Maximum Settlement Amount

3 In consideration for settlement of the Lawsuit and the release of all Released Claims of the
4 Verified Settlement Class Members, including Plaintiff, the release of all Released PAGA Claims of
5 PAGA Employees, Defendant agrees to pay the sum of Two Hundred Thirty-Five Thousand Dollars
6 (\$235,000.00) ("Maximum Settlement Amount") for Administrative Costs, Service Award, Individual
7 Settlement Payments, Attorneys' Fees and Costs, and the PAGA Fund. The Maximum Settlement
8 Amount is to be allocated to the Settlement Administrator, Class Counsel, Plaintiff, Verified Settlement
9 Class Members, PAGA Employees and the LWDA as described herein. The Maximum Settlement
10 Amount is the maximum total amount Defendant is required to pay for any and all purposes under this
11 Settlement Agreement, and in connection with the termination of this Lawsuit, except that Defendant's
12 share of payroll taxes and other required withholdings from individual settlement payments, paid as
13 wages, including, but not limited to, FICA and FUTA contributions, shall be paid separately by
14 Defendant and not from the Maximum Settlement Amount.

15 (b) Attorneys' Fees and Costs.

16 (1) Class Counsel will apply for an award of attorneys' fees in an amount up to
17 Eighty-Two Thousand Two Hundred Fifty Dollars (\$82,250.00), which is thirty-five percent of the
18 Maximum Settlement Amount and actual documented costs not to exceed Seven Thousand Five
19 Hundred Dollars (\$7,500.00) subject to approval by the Court, and will compensate Class Counsel for
20 the work already performed in the Lawsuit and the work remaining to be performed in documenting
21 the Settlement, securing Court approval of the Settlement, working with the Settlement Administrator
22 to administer the Settlement, obtaining dismissal of the Lawsuit with prejudice, and defending against
23 any appeals, as well as all associated expenses. Defendant does not object to Class Counsel's
24 application for fees up to Eighty-Two Thousand Two Hundred Fifty Dollars (\$82,250.00) and actual
25 documented costs up to Seven Thousand Five Hundred Dollars (\$7,500.00).

26 (2) Class Counsel, Plaintiff, PAGA Employees and Verified Settlement Class
27 Members will not apply to the Court for any payment of Attorneys' Fees and Costs that are in addition
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1 to or in excess of the foregoing. The Parties agree that, over and above the Court-approved Attorneys'
2 Fees and Costs awarded in this Lawsuit under this Settlement Agreement, each of the Parties, including
3 all Verified Settlement Class Members and PAGA Employees, shall bear their own fees and costs,
4 including, but not limited to, those related to the investigation, filing, prosecution, or settlement of the
5 Lawsuit; the negotiation, execution, or implementation of this Settlement Agreement; and/or the
6 process of obtaining, administering, or challenging a Certification Order and/or Final Approval.

7 (3) In the event the Court denies, modifies, or reduces Class Counsel's request
8 for Attorneys' Fees and Costs, then Plaintiff, Class Counsel, PAGA Employees and the Verified
9 Settlement Class Members may not seek modification or cancellation of this Agreement and will not
10 seek, request, or demand an increase in the Maximum Settlement Amount. If Class Counsel's
11 Attorney's Fees and Costs are reduced, the difference between the amounts set forth in this Agreement
12 and the reduced amounts awarded will be re-allocated to the Net Settlement Amount.

13 (4) If Class Counsel appeals the Court's ruling on their application for Attorneys'
14 Fees and Costs, the ruling of the appellate court (regardless of its substance) shall not constitute a
15 material alteration of a term of this Settlement Agreement.

16 (5) All claims for Attorneys' Fees, Costs or expenses that Class Counsel, Plaintiff,
17 PAGA Employees and the Settlement Class Members may possess against Defendant have been
18 compromised, released and resolved in this Settlement Agreement and shall not be affected by any
19 appeal that Class Counsel may file.

20 (6) The Administrator, within twenty (20) calendar days of Defendant's Funding of
21 Settlement (defined in Section 2.11), shall deliver any awards of Attorneys' Fees and Costs to Class
22 Counsel.

23 (c) Plaintiff's Service Award

24 (1) In addition to the Individual Settlement Payment determined to be due to the Plaintiff
25 as a Verified Settlement Class Member and Plaintiff's share of the PAGA Fund as a PAGA Employee
26 under this Settlement Agreement, Class Counsel and Plaintiff may petition the Court for a Service
27 Award for Plaintiff, in the total amount of no more than Ten Thousand Dollars (\$10,000.00). Any such

petition shall be filed concurrently with Class Counsel's application for Attorneys' Fees and Costs. Any Service Award approved by the Court in conjunction with the Settlement shall be paid solely from the Maximum Settlement Amount and not out of the Net Settlement Amount payable to the Verified Settlement Class Members. Defendant does not object to a Service Award to Plaintiff not to exceed Ten Thousand Dollars (\$10,000.00).

(2) The Service Award shall be distributed by the Settlement Administrator in accordance with Section 2.11 of this Settlement Agreement and shall be reported by the Settlement Administrator to state and federal taxing authorities as non-wage income on IRS Form 1099. Plaintiff will be solely responsible for correctly characterizing his Service Award for tax purposes and is solely responsible for paying any taxes owing on the Service Award. In addition, Plaintiff shall hold Defendant harmless and indemnify and defend Defendant and Released Parties for all taxes, interest, penalties, and costs incurred by Defendant or the Released Parties by any reason of any claims relating to the non-withholding of taxes from the Service Award.

(3) In the event that the Court denies, modifies, or reduces Plaintiff's request for a Service Award, Plaintiff may not seek modification or cancellation of this Settlement Agreement and will not seek, request, or demand an increase in the Settlement Amount. If Plaintiff's Service Award is reduced by the Court, the amount set forth in this Agreement and the reduced amount awarded will be re-allocated to the Net Settlement Amount.

(4) Plaintiff shall receive the Service Award payment and any other payments under this Settlement Agreement within twenty (20) calendar days of Defendant's Funding of Settlement (defined in Section 2.11). Such Service Award is also contingent upon Plaintiff agreeing to the terms herein.

(d) Settlement Administration Expenses

(1) The Settlement Administrator shall be paid, for the costs of administration of the Settlement, an estimated fee of Ten Thousand Dollars (\$10,000.00) based on 400 Class Members. These costs include without limitation the mailing of notice, establishing a toll-free telephone number, tracking requests for exclusion, disbursement of the Maximum Settlement Amount, and other duties

set forth below in Section 2.5. No fewer than twenty-one (21) court days prior to the Final Approval Hearing, the Settlement Administrator shall provide the Court and all counsel for the Parties with a declaration and statement detailing these Administrative Costs. The Parties agree to cooperate in the settlement administration process and to make all efforts to control and to minimize the costs and expenses incurred in the administration of this Settlement.

(e) PAGA Payment

(1) Six Thousand Dollars (\$6,000.00) of the Maximum Settlement Amount shall be allocated for the settlement and full release of any and all claims for civil penalties that could have been made in this Action by the PAGA Employees under PAGA, Cal. Labor Code § 2698, *et seq.* Pursuant to California Labor Code § 2699(i), 75% of the PAGA Payment, Four Thousand Five Hundred Dollars (\$4,500.00), shall be paid to the LWDA, and 25% of the PAGA Payment, One Thousand Five Hundred Dollars (\$1,500.00), shall be distributed to PAGA Employees from the Net Settlement Fund as set forth in Section 2.4.(f) below. The Administrator shall deliver payment to the LWDA within fifteen (15) calendar days after the Effective Date. Plaintiff will provide notice to the LWDA of this settlement at the time Plaintiff files his motion for Preliminary Approval.

(f) Distributions to Verified Settlement Class Members and PAGA Employees

(1) Individual Settlement Payments will be paid from the Net Settlement Amount and shall be paid pursuant to the settlement formula set forth herein. Settlement Class Members are not required to submit claim forms for their share of the Net Settlement Amount. Settlement checks will not be sent out to any Settlement Class Members whose Notice Packets are returned as undeliverable. Individual Settlement Payments shall be mailed by regular First Class U.S. Mail to Verified Settlement Class Members' last known mailing address within thirty (30) calendar days after the Effective Date. Any checks issued by the Settlement Administrator to Verified Settlement Class Members will be negotiable for one-hundred eighty (180) calendar days. After one-hundred eighty (180) calendar days from the date of mailing, the checks shall become null and void, and any monies remaining in the distribution account shall be distributed 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 Verified

Settlement Class members who did not cash their checks until such time that they claim their property. The Settling Parties agree that this disposition results in no “unpaid residue” under California Civil Procedure Code § 384, as the entire Settlement Payment will be paid out to Verified Settlement Class Members, whether or not they all cash their Settlement Checks. Therefore, Defendant will not be required to pay any interest on said amount.

(2) Verified Settlement Class Members will receive a pro-rated share of the Net Settlement Amount, less applicable withholdings, based on the total Class Work Weeks worked by a Verified Settlement Class Member during the Class Period, the total PAGA Work Weeks worked by a PAGA Employee, and their status as a current or former employee. Class Work Weeks and PAGA Work Weeks shall be calculated based on all hours worked by a Class Member (according to Defendant’s records) during the relevant periods divided by 40. Verified Settlement Class Members will receive their proportional share of the Net Settlement Amount, less the PAGA Fund, as follows: (a) Verified Settlement Class Members shall be allocated one (1) point of credit for each Class Work Week they worked within the Class Period and (b) Settlement Class Members who experienced a termination during the Class Period shall be allocated an additional fifteen (15) points of credit. To calculate each Settlement Class Member’s proportional share:

- Add all points of credit for all Verified Settlement Class Members;
- Divide the Net Settlement Amount (excluding PAGA Fund) by the total number of points for all Verified Settlement Class Members to get a per point value;
- To determine each Class Member’s individual share of the Net Settlement Amount, multiply the per point value by each Verified Settlement Class Member’s individual number of points.

Seventy-five percent of the PAGA Fund (\$4,500) shall constitute the 75% of the PAGA Payment that shall be distributed to the LWDA. The remaining twenty-five percent (\$1,500) of the PAGA Fund (the “PAGA Work Week Fund”) will be allocated among PAGA Employees on a proportional basis based on the number of Work Weeks worked during the PAGA Period as follows:

- Add all PAGA Work Weeks for all PAGA Employees;

- Divide the \$1,500 PAGA Work Week Fund by the total number of PAGA Work Weeks for all PAGA Employees to get a per PAGA Work Week value;
- To determine each PAGA Employee's individual share of the PAGA Work Week Fund, multiply the per PAGA Work Week value by the each PAGA Employee's individual number of PAGA Work Weeks.

(3) The Settlement Administrator will calculate the number of Class Work Weeks and PAGA Work Weeks worked by the Verified Settlement Class Members and PAGA Employees, and the amount to be paid to Verified Settlement Class Members and PAGA Employees based on information provided by Defendant.

(4) All workweek disputes will be resolved and decided by the Settlement Administrator, and the Settlement Administrator's decision on all workweek disputes will be final and non-appealable.

(5) The Settlement Administrator will calculate the estimated Individual Settlement Payments, including the PAGA portion (if applicable), prior to mailing the Notice of Settlement. The estimated Individual Settlement Payment, including the PAGA portion (if applicable), will be displayed in the Settlement Class Member's Notice of Settlement.

(6) Within thirty (30) calendar days of the close of the Notice Period, the Settlement Administrator will provide a copy of its calculations, without any name identifying data, for Defendant's counsel and Class Counsel to review before Individual Settlement Payments (including the PAGA portion) are made to Verified Settlement Class Members and PAGA Employees. The Parties may dispute the calculations only with respect to mathematical errors or an incorrect application of the above method of allocation. Such a dispute must be raised in writing within seven (7) calendar days after the Settlement Administrator provides the calculations in writing to Defendant and Class Counsel.

(g) Allocation and Taxability of Settlement Distributions.

(1) For tax purposes, Individual Settlement Payments will be allocated as twenty percent (20%) to wages for which IRS Forms W-2 will be issued by the Settlement Administrator, and eighty percent (80%) to interest for which IRS Forms 1099-MISC will be issued by the Settlement

1 Administrator. The entirety of the PAGA payments shall be treated as miscellaneous income which
2 shall be reported on an IRS 1099 withholdings form. Defendant shall pay the Employer Payroll Taxes
3 separately and not out of the Maximum Settlement Amount.

4 (2) The Individual Settlement Payments made to Participating Class Members under
5 this Settlement, as well as any other payments made pursuant to this Settlement, will not be utilized to
6 calculate any additional benefits under any benefit plans to which any Class Members may be eligible,
7 including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans,
8 vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties'
9 intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which
10 any Class Members may be entitled under any benefit plans. Neither this Settlement Agreement, nor
11 any of its attachments, should be interpreted to contain or constitute representations or advice regarding
12 any U.S. federal or state tax issue. Settlement Class Members and PAGA Employees will be
13 specifically informed that neither Defendant nor Class Counsel make any representations regarding the
14 tax implications of any amounts paid under this Settlement Agreement and that if any Settlement Class
15 Member or PAGA Employee has any questions regarding those implications, they can and should
16 consult a tax expert.

17 (3) The Settlement Administrator shall provide each Verified Settlement Class
18 Member and PAGA Employee who is entitled to an Individual Settlement Payment with a W-2 form
19 reflecting the wages and the taxes withheld from those wages and with a Form 1099 reflecting the non-
20 wage damages and interest paid. The Settlement Administrator shall also provide each Verified
21 Settlement Class Member and PAGA Employee who is entitled to an Individual Settlement Payment
22 with appropriate documentation setting forth the amount of any tax or other payment withheld and
23 employer contribution made, in accordance with state and federal tax requirements.

24 (4) Verified Settlement Class Members and PAGA Employees shall be solely and
25 exclusively responsible for remitting to state and/or federal taxing authorities any other applicable taxes
26 due and shall hold Defendant and the Released Parties harmless for any taxes, penalties, interest,
27 liabilities, costs and expenses caused by any such taxing authority relating in any way to the Verified
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Settlement Class Members' and PAGA Employees' tax treatment of payments made to them pursuant to this Settlement Agreement or failure to timely or properly pay any taxes owed on their respective Settlement Payments.

(5) **Circular 230 Disclosure.** Each party to this Settlement Agreement (for purposes of this section, the "Acknowledging Party"; and each party to this Settlement Agreement other than the Acknowledging Party, an "Other Party") acknowledges and agrees that (1) no provision of this Settlement Agreement, and no written communication or disclosure between or among the parties or their attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended); (2) the Acknowledging Party (a) has relied exclusively upon his, her, or its own, independent legal and tax advisers for advice (including tax advice) in connection with this Settlement Agreement, (b) has not entered into this Settlement Agreement based upon the recommendation of any other party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty that may be imposed on the Acknowledging Party; and (3) no attorney or adviser to any other party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the Acknowledging Party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Settlement Agreement.

Section 2.5 Appointment and Duties of Settlement Administrator

(a) Appointment of the Settlement Administrator

(1) Subject to the approval of the Court, the Parties will agree to the appointment of a professional class action claims administration firm. Plaintiff shall elicit a bid from Phoenix Settlement Administrators. The Parties anticipate that the Administrator fees will not exceed Ten Thousand Dollars (\$10,000.00) based on 400 Class Members. The Administrator's fees shall be paid out of the Maximum Settlement Amount. Any savings shall be distributed to the Verified Settlement Class Members from the Net Settlement Fund.

(b) Duties of the Settlement Administrator: The Settlement Administrator shall be responsible for administering the settlement process, including:

(1) Finalizing and printing the Notice of Settlement attached to this Settlement Agreement as **Exhibit A**, as modified by the Court and/or by mutual agreement of the Parties.

(2) Mailing the Notice of Settlement in English and Spanish, and handling all mailings to Settlement Class Members and PAGA Employees pursuant to Section 2.9;

(3) Performing an address search and/or trace for returned or undeliverable mailings as set forth in Section 2.9(c);

(4) Recording and tracking responses to the Notice mailing by Settlement Class Members and the dates thereof (including recording the postmark date and identity of any Settlement Class Members who request exclusion or object and promptly forwarding such information to Defendant's counsel and Class Counsel using numbers instead of providing identifying information);

(5) Establishing a toll-free telephone number for Settlement Class Members and PAGA Employees to call during business hours to ask questions regarding the Settlement;

(6) Responding to inquiries made by the Settlement Class Members and PAGA Employees;

(7) Calculating and mailing Individual Settlement Payments (including the PAGA portion);

(8) Settling disputes from Settlement Class Members and PAGA Employees regarding the information from Defendant on which Individual Settlement Payments are calculated with the assistance of Defendant's counsel and Class Counsel;

(9) Posting any final judgment in the Action on any website associated with this Settlement;

(10) Preparing and filing any required tax forms associated with the Settlement Administrator's duties hereunder; and

(11) Other related tasks as mutually agreed to by the Parties and required by statute.

1 (c) The Settlement Administrator shall keep Defendant's counsel and Class Counsel timely
2 apprised of the performance of all Settlement Administrator responsibilities by weekly emails. All
3 disputes relating to the Settlement Administrator's performance of its duties will be referred to the
4 Court, if necessary, which will have continuing jurisdiction over this Settlement until all payments and
5 obligations contemplated by this Settlement Agreement have been fully carried out.

6 (d) At least twenty-one (21) days before the Final Fairness Hearing, the Settlement
7 Administrator shall prepare a declaration of compliance and due diligence and proof of mailing with
8 regard to the mailing and emailing of the Notice of Settlement, and any attempts by the Settlement
9 Administrator to locate Settlement Class Members and PAGA Employees, its receipt of timely and
10 valid requests for exclusion, and its inability to deliver the Notice of Settlement to Settlement Class
11 Members and PAGA Employees due to invalid addresses ("Due Diligence Declaration"), to Class
12 Counsel and Defendant's counsel for presentation to the Court. Class Counsel shall be responsible for
13 filing the Due Diligence Declaration with the Court.

14 **Section 2.6 Release of Claims by Plaintiff, Verified Settlement Class Members and PAGA**
15 **Employees**

16 (a) Release by Plaintiff, Verified Settlement Class Members and PAGA
17 Employees

18 (1) Upon the Effective Date, all Verified Settlement Class Members and PAGA
19 Employees, including their heirs, assigns, estates and representatives, shall be deemed to fully forever,
20 irrevocably and unconditionally release, and discharge Defendant and the Released Parties from any
21 and all claims under state, federal and local law arising out of the allegations made in the Lawsuit and
22 that reasonably arise or could have arisen out of the facts alleged in the Lawsuit as to the Class Members
23 only with regard to those claims for or related to alleged unpaid overtime and minimum wages, failure
24 to properly calculate and pay the regular rate of pay and/or the weighted average for any all purposes,
25 failure to pay for off-the-clock work, failure to comply with the IWC Wage order provisions as alleged
26 in the operative complaint, failure to comply with the wage determinations, failure to provide legally
27 compliant meal and rest periods, failure to pay prevailing wages, seventh day of rest violations, failure
28 to timely pay wages at separation, failure to reimburse business expenses, inaccurate wage statements,

1 failure to timely pay wages during employment, failure to keep accurate records, unfair competition,
2 and PAGA claims for civil penalties due to any of the same alleged Labor Code violations of
3 Defendants during the Class Period listed above, interest, fees, and costs, including, but not limited to,
4 as such claims are set forth in Labor Code sections 201-204, 226, 226.3, 226.7, 510, 512, 551-552,
5 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 1770-1784, 2802, 2698, et seq., the applicable
6 Industrial Welfare Commission (“IWC”) Wage Orders, including, Wage Order 16-2001, and Business
7 & Professions Code § 17200, et seq. (collectively “Released Claims”).

8 (2) The Parties intend and agree that this Settlement Agreement shall be binding on
9 all Verified Settlement Class Members and PAGA Employees, whether or not they actually receive a
10 payment pursuant to this Settlement Agreement. This Settlement Agreement shall constitute, and may
11 be pleaded as, a complete and total defense to any Released Claims and Released PAGA Claims raised
12 in the future.

13 (3) Plaintiff, Verified Settlement Class Members and PAGA Employees promise not to file
14 a lawsuit in any court alleging any Released Claims, Released PAGA Claims, or to participate as a
15 party or a class member in any administrative or other legal proceedings, in any forum, against
16 Defendant or the Released Parties, for any claims released under this Settlement Agreement. In
17 consideration for the promises made by Defendant in this Settlement Agreement, Plaintiff and each
18 Verified Settlement Class Member and PAGA Employee agrees never to institute any suit, complaint,
19 proceeding, grievance, or action of any kind at law, in equity, or otherwise in any court of the United
20 States, or of any state or municipality, or with any administrative agency, arbitration or other legal
21 forum, against Defendant or the Released Parties for any claim included in the Released Claims and
22 Released PAGA Claims. Plaintiff and each Verified Settlement Class Member and PAGA Employee
23 also agrees that he or she will not join, participate in, or consent to opt-in to any actions alleging that
24 he or she is similarly situated to any other employee with respect to any such Released Claims and
25 Released PAGA Claims, and that each will elect to opt-out of any such actions against Defendant or
26 the Released Parties of which he or she is made a member or party. If Plaintiff or any Verified
27 Settlement Class Member or PAGA Employee is joined in any class or collective lawsuits for any

Released Claims or Released PAGA Claims, he or she will receive no further compensation of any kind for such released claim or claims.

(b) General Release by Plaintiff

(1) In consideration for, inter alia, Defendant's agreement to pay the Service Award, Plaintiff, by signing this Settlement Agreement, hereby releases and discharges the Released Parties for any and all injuries, demands, losses, damages, costs, loss of service, expenses, compensation, claims, suits, causes of action, attorneys' fees, obligations or liabilities of any nature, type or description, whether known or unknown, suspected or unsuspected, whether administrative, civil or criminal, whether arising from statute, common law, regulation or other legal source, that relate to, are connected to, or arise out of any and all of the following: (1) his employment, (2) his dealings or interactions with the Released Parties (3) the claims asserted in the Lawsuit, (4) any claim that could have been asserted in the Lawsuit. In this regard, Plaintiff expressly waives and relinquishes to the fullest extent possible the provisions, rights and benefits of California Civil Code section 1542. Section 1542 provides:

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

Plaintiff further covenants not to initiate any court proceeding or administrative action, or to make any claim whatsoever, against the Released Parties relating in any manner to any claims he releases herein, to the full extent such a covenant is enforceable at law. This covenant shall not be deemed to apply or be construed to apply to any administrative proceeding or government enforcement action the future participation in which is not waivable by an individual as a matter of governing law.

Section 2.7 Opt-Out/Request for Exclusion Procedure

(a) Settlement Class Members, except Plaintiff who shall not be permitted to opt-Out, shall be entitled to "opt out" of this Settlement Agreement. The Notice Materials shall provide instructions to Settlement Class Members who wish to "opt out." To be valid, an individual requesting exclusion must timely submit a written request for exclusion containing all of the

1 information required in the Class Notice for excluding oneself from the settlement. Any such request
2 must be returned by U.S. Mail to the Settlement Administrator at the specified address and must be
3 postmarked no later than the last day of the Notice Period. If the Settlement Class Member submits a
4 request for exclusion that is not timely and/or valid then the Settlement Administrator will notify such
5 Settlement Class Member that the request is untimely or invalid. Any disputes regarding the timeliness,
6 validity or effectiveness of a request for exclusion shall be decided by the Administrator consistent
7 with the terms of this Settlement Agreement, with the Parties' input, if appropriate. The date of the
8 postmark on the mailing envelope for any request for exclusion shall be the exclusive means used to
9 determine whether the request for exclusion has been timely submitted. PAGA Employees shall not be
10 allowed to opt out of the PAGA portion of the Settlement. Notwithstanding the submission of a timely
11 request for exclusion, PAGA Employees will still be bound by the settlement and release of the
12 Released PAGA Claims. Requests for exclusion do not apply to the PAGA claims and will not be
13 effective to preclude the release of the PAGA claims.

14 (b) Any Settlement Class Member who does not properly and timely submit a request for
15 exclusion in the manner and by the deadline specified above in Section 2.7 will be a Verified Settlement
16 Class Member who is barred from opting out of the Settlement and is bound by all terms and conditions
17 of the Settlement and this Settlement Agreement, including the releases of claims pursuant to Section
18 2.6 of this Settlement Agreement, if the Settlement is approved by the Court, and will be bound by any
19 Final Approval Order, regardless of whether he or she has objected to the Settlement.

20 (c) A Settlement Class Member who properly and timely submits a request for exclusion in
21 the manner and by the deadline specified above in Section 2.7 will not be bound the Settlement
22 Agreement; will be barred from participating in or objecting to the Settlement; will not receive any
23 benefit from the Settlement; will remain free to contest any claim as to that individual that would have
24 been barred by this Settlement Agreement; and nothing in this Settlement or Settlement Agreement
25 will constitute or be construed as a waiver of any defense Defendant or the Released Parties have or
26 could have asserted against such a claim.

1 **Section 2.8 Procedures for Objecting to the Settlement**

2 (a) The Class Notice shall provide that Verified Settlement Class Members and persons
3 purporting to act on behalf of Verified Settlement Class Members who wish to object to the Settlement
4 Agreement must file with the Settlement Administrator a written statement objecting to the Settlement
5 Agreement. Such objection and any supporting briefs or other materials must be filed with the Court
6 and mailed, via First Class U.S. Mail, to counsel for the Parties and postmarked no later than the last
7 day of the Notice Period. Settlement Class Members who opt-out may not file and serve an objection
8 or otherwise object to this Settlement Agreement. The postmark date of the filing and service of an
9 objection shall be deemed the exclusive means for determining that the objection is timely. An
10 objection must be signed and state the Verified Settlement Class Member's name, current address and
11 telephone number, and the basis for the objection. The notice of objection must be signed by the
12 Verified Settlement Class Member. PAGA Employees shall not be allowed to object to the Settlement.

13 (b) Any Verified Settlement Class Member who fails to file and serve a timely and complete
14 objection in the manner specified above in Section 2.8(a) may be entitled to be heard at the Final
15 Approval Hearing (whether individually or through counsel) or to object to the Settlement at the
16 discretion of the Court.

17 (c) If a Settlement Class Member timely submits both an objection and a request for
18 exclusion ("opt out" under Section 2.7), the request for exclusion shall supersede the objection, and the
19 objection shall therefore be waived.

20 (d) Counsel for the Parties shall file any responses to any objections at least seven (7)
21 calendar days before the Final Approval Hearing.

22 (e) Defendant shall not be responsible for the fees, costs, or expenses incurred by Plaintiff,
23 Class Counsel, or the Verified Settlement Class Members arising from or related to Verified Settlement
24 Class Members who submit objections or otherwise purport to object to the Settlement Agreement or
25 related to any appeals thereof.
26
27
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1 **Section 2.9 Preparation and Mailing of Notice to the Class**

2 (a) Within fourteen (14) calendar days of entry of the Order Granting Preliminary Approval
3 of Settlement, but subject to the Settlement Administrator providing adequate and contractual
4 assurances with respect to confidentiality and data security, Defendant shall provide the Settlement
5 Administrator with the following information for the Settlement Class Members in the form of an Excel
6 spreadsheet or similar sortable electronic format: names, address, telephone number, social security
7 number, the hours worked by each Settlement Class Member for Defendant during the Class Period
8 and the PAGA Period, and whether the Settlement Class Member experienced a termination during the
9 Class Period. Class Counsel and Plaintiff will not be provided identifying or contact information or
10 social security numbers for any Settlement Class Members in connection with this Settlement or
11 Settlement Agreement. The data provided to the Administrator will remain confidential and will not be
12 disclosed to anyone, except as required to applicable tax authorities, or pursuant to the express written
13 consent of Defendant, or by order of the Court. The data provided under this Section 2.9(a) shall be
14 used only for the purpose of administering this Settlement.

15 (b) The Notice of Class Action Settlement and Hearing Date for Court Approval (“Notice
16 of Settlement”), materially in the form attached hereto as **Exhibit A** and as approved by the Court,
17 shall be sent by the Settlement Administrator to the Settlement Class Members, by First Class Mail (in
18 English and Spanish) to those addresses provided as soon as practicable but in any event within fifteen
19 (15) calendar days after receipt of their contact information from Defendant. The Notice of Settlement
20 shall set forth a brief description of the Lawsuit, provide the definition of the Settlement Class, inform
21 Settlement Class Members of the nature and scope of the settlement and release of claims, set forth the
22 requested Attorneys’ Fees and Costs, disclose the Service Award to Plaintiff, inform Settlement Class
23 Members of their opportunity to be heard at the Final Fairness Hearing, inform Settlement Class
24 Members of their right to submit an objection to any term of the settlement, to submit a claim, and/or
25 to request exclusion from or to opt-out of the settlement and the procedures for doing so, and explain
26 the *res judicata* effects of not doing so. The Notice of Settlement will also include or attach the
27 respective Settlement Class Member’s Class Work Weeks and PAGA Work Weeks during the Class

1 Period, estimated Individual Settlement Payment (including the PAGA portion), and instruct the
2 Settlement Class Member to submit any disputes to the Settlement Administrator within forty-five (45)
3 calendar days from the date the Notice of Settlement was mailed to Settlement Class Members. The
4 Settlement Administrator will consult Class Counsel and Counsel for Defendant regarding any such
5 dispute(s) but will remain the ultimate arbiter and make the final decision regarding any such dispute(s).
6 Also, the Notice of Settlement will set forth contact numbers for Class Counsel and counsel for
7 Defendant but will direct Settlement Class Members to call the toll-free number established by the
8 Settlement Administrator to answer any questions that Settlement Class Members may have.

9 (c) The Settlement Administrator will attempt to locate any Settlement Class Member
10 whose Notice of Settlement is returned by the Post Office by performing a National Change of Address
11 (NCOA) search, and if needed, by conducting one skip trace search regarding any returned Notice of
12 Settlement.

13 (d) If an envelope or email has not been returned within twenty-one (21) days of the
14 mailing, it shall be conclusively presumed that the Settlement Class Member received the Notice of
15 Settlement.

16 **Section 2.10 Final Fairness Hearing**

17 (a) The Parties will request the Court to conduct a Fairness Hearing on or about the date set
18 forth in the Order of Preliminary Approval to determine if the Settlement is fair, reasonable, and
19 adequate, and if so, to enter a final order and judgment granting Final Approval of Settlement, which
20 will (1) approve the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and
21 directing consummation of its terms and provisions; (2) approve in whole or in part Class Counsel's
22 application for an award of Attorneys' Fees and Costs; (3) approve in whole or in part the Plaintiff's
23 Service Award; (4) permanently bar and enjoin all Verified Settlement Class Members from
24 prosecuting any Released Claims against Defendant and/or any Released Parties. Plaintiff will provide
25 notice to the LWDA of the final order and judgment in accordance with California Labor Code section
26 2699(1)(3).

1 **Section 2.11 Funding the Maximum Settlement Amount and Distribution of Payments**

2 (a) Defendant shall deposit the following with the Settlement Administrator within fifteen
3 (15) calendar days of the Effective Date (“Funding of Settlement”): the Maximum Settlement Amount
4 (including any awards of Attorneys’ Fees and Costs, any Service Award payment to Plaintiff; the
5 PAGA Fund; the Settlement Administration Costs; and the Individual Settlement Payments to Verified
6 Settlement Class Members.) Within five (5) business days of written notification from the Settlement
7 Administrator of the names of any Settlement Class Members who have opted out of the Settlement
8 Class, Defendant shall pay the Employer Payroll Taxes.

9 (b) The Settlement Administrator, within fifteen (15) calendar days of Defendant’s Funding
10 of Settlement, shall mail the Individual Settlement Payments to Verified Settlement Class Members
11 PAGA Employees and, within twenty (20) calendar days of Defendant’s Funding of Settlement, shall
12 deliver any awards of Attorneys’ Fees and Costs to Class Counsel, the Service Award to Plaintiff, and
13 the portion of the PAGA Payment due to the LWDA. The approval and denial of an Individual
14 Settlement Payment to any Verified Settlement Class Member and PAGA Employee under the terms
15 of this Settlement Agreement will be conclusive and binding, subject to the dispute resolution
16 provisions of this Settlement Agreement as set forth in Section 2.17. All payments called for under
17 Section 2.11 shall be made solely from the Maximum Settlement Amount. Defendant’s payment of
18 Employer Payroll Taxes shall be in addition to the Maximum Settlement Amount.

19 **Section 2.12 Actions on Released Claims**

20 (a) The Parties agree that in any proceeding, claim or action brought subsequent to Final
21 Approval that: (i) challenges the validity of or arises out of this Settlement Agreement; and/or (ii) seeks
22 to allege against Defendant or the Released Parties any of the Released Claims and Released PAGA
23 Claims, this Settlement Agreement, and/or any related order of the Court shall constitute, and may be
24 pleaded as, a complete and total defense to any such dispute or claim.

25 **Section 2.13 Duties of the Parties Prior to Court Approval**

26 (a) Once finalized, the Parties shall promptly submit this Settlement Agreement to the Court
27 for preliminary approval and determination by the Court as to its fairness, adequacy, and
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1 reasonableness. Promptly upon execution of this Settlement Agreement, Plaintiff will prepare, send to
2 Defendant's counsel for comment and then, when it is mutually-agreeable, file a Motion for
3 Preliminary Approval seeking the following:

4 (1) Approval of the proposed settlement as fair, reasonable, and adequate as to
5 Settlement Class Members;

6 (2) Approval as to form and content of the proposed Notice of Settlement;

7 (3) Approval of the Maximum Settlement Amount's distribution;

8 (4) Directing the Settlement Administrator to mail the Notice of Settlement by First
9 Class Mail to Settlement Class Members;

10 (5) Conditionally certifying the Settlement Class for settlement purposes only;

11 (6) Appointing Class Counsel, Plaintiff as Class Representative, and Phoenix
12 Settlement Administrators as Settlement Administrator;

13 (7) Preliminarily approving this Settlement Agreement; and

14 (8) Scheduling a Final Fairness Hearing on the question of whether the proposed
15 settlement should be finally approved.

16 (b) Prior to the Final Fairness Hearing, Class Counsel (in conjunction with Defendant's
17 counsel) will submit a proposed final order:

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

20 (2) Approving Class Counsel's application for an award of Attorneys' Fees and
21 Costs in whole or in part. These amounts for Attorneys' Fees and Costs shall be paid from the
22 Maximum Settlement Amount; and

23 (3) Seeking judgment to be entered in this Action.

24 **Section 2.14 Communications**

25 (a) Except for disclosures that are authorized by Defendant, that are required by law for
26 Defendant to make, or that are necessary to prepare the Motion for Preliminary Approval, the terms of
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1 this Settlement shall remain confidential until they are presented to the Court in connection with the
2 Motion for Preliminary Approval.

3 (b) Following preliminary approval, the Parties and their counsel will direct inquiries from
4 Settlement Class Members to the Settlement Administrator to ensure consistent and accurate
5 communication with Settlement Class Members. The Parties will make no efforts to solicit requests for
6 exclusion or opt-outs or objections to this Settlement. Notwithstanding anything to the contrary in this
7 Section 2.14 or elsewhere in this Settlement Agreement, Defendant and Class Counsel shall be
8 permitted to disclose the Settlement in order to comply with any state or federal law. Nothing in this
9 Section 2.14 shall limit Defendant from communicating with its counsel regarding this Settlement
10 Agreement or Plaintiff from communicating with Class Counsel regarding this Settlement Agreement.

11 (c) Defendant, Defendant's Counsel, Plaintiff, and Plaintiff's Counsel agree to limit public
12 comment on this settlement, the case, and the claims to stating that the matter has been resolved to the
13 satisfaction of both parties. Neither side will initiate public comment. Defendant agrees to provide a
14 neutral reference, stating nothing more than Plaintiff's dates of employment and position(s) held, in
15 response to any inquiry from prospective employers regarding Plaintiff. Nothing in this Section 2.14
16 shall be construed as prohibiting the Parties or their counsel from responding to an inquiry issued under
17 court order, subpoena or other request issued under the law. Nothing in this Section 2.14 shall preclude
18 Class Counsel from referencing this Settlement in pleadings to other courts for the purposes of being
19 appointed class counsel.

20 **Section 2.15 Continuing Jurisdiction of the Court**

21 (a) The Parties agree that the Court shall retain jurisdiction over the Parties, and
22 over this Settlement Agreement, in order to: (1) monitor and enforce compliance with this Settlement
23 Agreement, Order of Final Approval and/or any related order of this Court; and/or (2) resolve any
24 disputes over this Settlement Agreement or the administration of the benefits of this Settlement
25 Agreement, including disputes over entitlement to payments sought by Class Counsel.

1 **Section 2.16 Voiding the Settlement Agreement**

2 (a) If any of the conditions set forth in the preceding paragraphs are not met and materially
3 satisfied, this Settlement Agreement shall, at the option of either party, be ineffective, void, and of no
4 further force and effect and shall not be used nor be admissible in any subsequent proceeding either in
5 this Court or in any other court or forum. The Parties may exercise their option, only on the terms
6 provided herein, to void this settlement by giving notice, in writing, to the other party and to the Court
7 at any time prior to the Effective Date. In such an event, (1) nothing in this Settlement Agreement shall
8 be construed as a determination, admission, or concession of any issue in the Lawsuit, and nothing in
9 this Settlement Agreement may be offered into evidence in any trial on the merits of the claims asserted
10 in the complaints filed in the Lawsuit or in any subsequent pleading; (2) the Parties expressly reserve
11 their rights with respect to the prosecution and defense of the Lawsuit as if this Settlement Agreement
12 never existed; and (3) the Party or Parties who exercised the option to void the Settlement Agreement
13 shall be responsible for any settlement administration costs incurred by the Settlement Administrator
14 through that date, provided that such costs shall be recoverable in the event that the Party who incurred
15 them is a prevailing party in the Lawsuit.

16 (b) In the event that the Court does not execute and file an Order of Final Approval;
17 that any such Order of Final Approval does not become final for any reason, or is modified in any
18 material respect (other than a modification, reduction, or denial of Class Counsel's application for
19 Attorneys' Fees and Costs or a modification, reduction, or denial of the application for Plaintiff's
20 Service Award); that the Effective Date does not occur; or that any of the conditions set forth above do
21 not occur, this Settlement Agreement shall be deemed null and void and shall be of no force or effect
22 whatsoever, and shall not be referred to or utilized for any purpose whatsoever. Any settlement funds
23 paid by Defendant shall be returned to Defendant within five (5) business days after the Court issues
24 an order denying final approval.

25 **Section 2.17 Parties' Authority**

26 (a) The signatories hereto hereby represent that they are fully authorized to enter into this
27 Settlement Agreement and to bind the Parties to the terms and conditions of the Settlement Agreement.

1 **Section 2.18 Mutual Full Cooperation**

2 (b) The Parties agree to fully cooperate with each other to accomplish the terms of this
3 Settlement Agreement, including without limitation to execute such documents and to take such other
4 action as may reasonably be necessary to implement the terms of this Settlement Agreement. The
5 Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated by
6 this Settlement Agreement and any other efforts that may become necessary by order of the Court, or
7 otherwise, to effectuate the terms of this Settlement Agreement. As soon as practicable after execution
8 of this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of Defendant
9 and its counsel, take all necessary steps to secure the Court's Final Approval of this Settlement
10 Agreement. Class Counsel will also notify counsel for Defendant if Class Counsel are subpoenaed or
11 receive any other request for documents or information regarding any other action filed or potential
12 action against the Released Parties that covers or includes any Settlement Class Members.

13 **Section 2.19 No Prior Assignments**

14 (a) The Parties represent, covenant, and warrant that they have not directly or indirectly,
15 assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity
16 any portion of any liability, claim, demand, action, cause of action or rights herein released and
17 discharged except as set forth herein.

18 **Section 2.20 No Admission**

19 (a) Nothing contained herein, nor the negotiation, consummation or performance of this
20 Settlement Agreement, is to be construed or deemed an admission of liability, culpability, negligence,
21 or wrongdoing on the part of Defendant and/or any of the Released Parties, and they expressly deny
22 liability or wrongdoing. Defendant further deny, for any purpose other than settling this Lawsuit, that
23 this Lawsuit is appropriate for class, or representative treatment. This Settlement Agreement is not,
24 shall not be deemed to be, and may not be used as, an admission or evidence of the appropriateness of
25 this or similar claims for class action certification or administration other than for the purposes of
26 administering this Settlement Agreement. Each of the Parties has entered into this Settlement
27 Agreement with the sole purpose and intention to avoid further disputes and litigation with the attendant

1 inconvenience and expenses. In the event this Settlement Agreement is not approved by the Court or
2 otherwise does not become final, Defendant do not waive any defenses or rights, including without
3 limitation, that this case is not suitable for class treatment, and the Parties agree that the Settlement
4 Class will be decertified. This Settlement Agreement is a settlement document and shall, pursuant to
5 Federal Rule of Evidence 408 and any and all analogous state laws, be inadmissible as evidence in any
6 proceeding, except an action or proceeding to approve, interpret, or enforce this Settlement Agreement.

7 (b) Whether or not the Settlement is finally approved, neither the Settlement Agreement,
8 nor any of its terms, nor any document, statement, proceeding or conduct related to this Settlement
9 Agreement including without limitation the motions for preliminary and final approval of the
10 Settlement and any documents submitted in support of such motions, nor any reports or accounts
11 thereof, shall in any event be disclosed, referred to or offered or received in evidence against any of
12 the Parties, in any further proceedings in this Lawsuit, or any other civil, criminal or administrative
13 action or proceeding except for purposes of settling this Lawsuit or enforcing the Released Claims
14 contained herein pursuant to the terms of this Settlement Agreement.

15 **Section 2.21 Notices**

16 (a) Unless otherwise specifically provided herein, all notices, demands, or other
17 communications shall be in writing and shall be deemed to have been duly given as of the third business
18 day after mailing by United States registered or certified mail, return receipt requested, addressed as
19 follows:

20 To Plaintiff and the Settlement Class:

21 MOSS BOLLINGER, LLP
22 Jeremy F. Bollinger, Esq.
23 Ari Moss, Esq.
24 Dennis F. Moss, Esq.
15300 Ventura Boulevard, Ste. 207
Sherman Oaks, California 91403

25 //

26 //

27 //

28 30

To Defendant:

HATMAKER LAW GROUP
Susan K. Hatmaker
7522 N. Colonial Avenue Suite 105
Fresno, California 93711

Section 2.22 Construction

(a) The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms-length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or his, her or its counsel participated in the drafting of this Settlement Agreement.

Section 2.23 Captions and Interpretations

(a) Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any of its provisions. Each term of this Settlement Agreement is contractual and not merely a recital.

Section 2.24 Modification

(a) This Settlement Agreement may not be changed, altered, or modified, except in writing and signed by Defendant and the Plaintiff, or their counsel acting on their behalf, hereto. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

Section 2.25 Integration Clause

(a) This Settlement Agreement contains the entire agreement between the Parties relating to the Settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements relating to this Settlement and the transaction contemplated hereby, whether oral or written and whether by a party or such party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

Section 2.26 Binding on Assigns

(a) The provisions of this Settlement Agreement shall run in perpetuity. This Settlement Agreement shall be binding upon the Parties hereto and their spouses, heirs, administrators, representatives, executors, successors and assigns, and shall inure to the benefit of Defendant and the

Released Parties, and their predecessors, successors, affiliates, subsidiaries, parent companies, partners, current and past employees, officers, directors, shareholders, insurers, agents, legal representatives, and benefit plans, each of which is entitled to enforce this Settlement Agreement.

Section 2.27 Signatories

(a) It is agreed that because the members of the Settlement Class are so numerous, it is impossible or impractical to have each member of the Settlement Class execute this Settlement Agreement. It is agreed that this Settlement Agreement may be executed on behalf of the Settlement Class by Class Counsel and Plaintiff and shall have the same force and effect as if executed by each member of the Settlement Class, who will be notified of the Settlement by the Notice of Settlement.

Section 2.28 Incorporation of Exhibits

(a) All exhibits attached hereto are incorporated by reference and are a material part of this Settlement Agreement. Any notice, order, judgment, or other exhibit that requires approval of the Court must be approved without material alteration from its current form in order for this Settlement Agreement to become effective.

Section 2.29 Reasonableness of Settlement Agreement

(a) The Parties jointly warrant that this is a fair, reasonable, and adequate Settlement and have arrived at this Settlement through arms-length negotiations, involving an experienced and well-regarded mediator, taking into account all relevant factors, present and potential.

Section 2.30 California Law and Interpretation

(a) All terms of this Settlement Agreement and its exhibits will be governed and interpreted by and according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles. If the Court determines that the Release of Claims in Section 2.6 above is unenforceable, for whatever reason, this entire Settlement Agreement will become null and void *ab initio*.

Section 2.31 Counterparts

(a) This Settlement Agreement may be executed in counterparts and/or by facsimile or electronic signature (“counterpart”), and when each party has signed and delivered at least one such

1 counterpart, each counterpart shall be deemed an original, and, when taken together with other signed
2 counterparts, shall constitute one fully-executed Settlement Agreement, which shall be binding upon
3 and effective as to all Parties.

4 **Section 2.32 Confidential Documents**

5 (a) Plaintiff and Class Counsel agree that none of the documents and information provided
6 to them in discovery or at any other time during this Lawsuit shall be used for any purposes other than
7 prosecution of this Lawsuit. Class Counsel shall not refer to, rely upon, or otherwise utilize any
8 documents or information obtained during this Lawsuit to prosecute a separate action against
9 Defendant and/or any Released Parties; however, nothing in this Section will be construed as a restraint
10 on the right of any counsel to practice, or a limitation on the rights that any Settlement Class Member
11 or Class Counsel may have under any applicable federal, state, or local law to separately obtain
12 documents or information from Defendant.

13 **Section 2.33 Entire Agreement**

14 (a) After this Settlement Agreement is fully executed by the Parties, it will
15 constitute the entire agreement of the Parties. No oral representations, warranties, inducements,
16 or writings have been made by any Party concerning this Settlement Agreement, other than those
17 expressly stated herein.

18 IN WITNESS WHEREOF, Plaintiff and Defendant and their respective undersigned counsel
19 have executed this Settlement Agreement as of the date(s) indicated on the lines below.

20 [ALL SIGNATURES ON NEXT PAGE]
21
22
23
24
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27
28

1 Dated: 7/27/2022
2 _____

PLAINTIFF HUMBERTO ROLDAN

3 DocuSigned by:
By: 
4 D4871CB6D10F164
HUMBERTO ROLDAN

7 Dated: _____
8

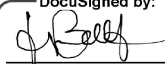
DEFENDANT ZIM INDUSTRIES, INC. DBA
BAKERSFIELD WELL AND PUMP CO.

10 By: _____
11 CURT ZIMMERER,
12 ON BEHALF OF DEFENDANT ZIM
13 INDUSTRIES, INC. DBA BAKERSFIELD
14 WELL AND PUMP CO.

14 APPROVED AS TO FORM AND CONTENT ON BEHALF OF THE NAMED PLAINTIFF AND
15 AS A SUBSTANTIVE RECOMMENDATION TO THE COURT ON BEHALF OF THE
16 SETTLEMENT CLASS:

16 Dated: 7/27/2022
17 _____

MOSS BOLLINGER, LLP

18 DocuSigned by:
By: 
19 4D110576CE04103
Jeremy F. Bollinger
20 Counsel for Plaintiff, Class
21 Representative and the Class

22 APPROVED AS TO FORM AND CONTENT

23 Dated: _____
24

HATMAKER LAW GROUP

25 By: _____
26 Susan K. Hatmaker
27 Counsel for Defendant Zim Industries, Inc. dba
28 Bakersfield Well and Pump Co..

1 Dated: _____

PLAINTIFF HUMBERTO ROLDAN

3 By: _____
4 HUMBERTO ROLDAN

6
7 Dated: 7/27/2022

DEFENDANT ZIM INDUSTRIES, INC. DBA
BAKERSFIELD WELL AND PUMP CO.

9
10 By:  _____
11 CURT ZIMMERER,
12 ON BEHALF OF DEFENDANT ZIM
13 INDUSTRIES, INC. DBA BAKERSFIELD
14 WELL AND PUMP CO.

14 APPROVED AS TO FORM AND CONTENT ON BEHALF OF THE NAMED PLAINTIFF AND
15 AS A SUBSTANTIVE RECOMMENDATION TO THE COURT ON BEHALF OF THE
16 SETTLEMENT CLASS:

16 Dated: _____

MOSS BOLLINGER, LLP

17
18 By: _____
19 Jeremy F. Bollinger
20 Counsel for Plaintiff, Class
21 Representative and the Class

22 APPROVED AS TO FORM AND CONTENT

23 Dated: 07-28-22

HATMAKER LAW GROUP

24
25 By:  _____
26 Susan K. Hatmaker
27 Counsel for Defendant Zim Industries, Inc. dba
28 Bakersfield Well and Pump Co..

EXHIBIT A

to

**STIPULATION OF
CLASS AND PAGA
SETTLEMENT AND
RELEASE**

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**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MADERA**

HUMBERTO ROLDAN, an individual, on behalf
of himself and other similarly situated employees
and the State of California,

Plaintiff,

vs.

**ZIM INDUSTRIES, INC. dba BAKERSFIELD
WELL & PUMP CO.**, a California corporation;
and **DOES 1-50**,

Defendants.

Case No. MCV087195

**NOTICE OF PENDENCY OF CLASS
ACTION AND PAGA SETTLEMENT**

[IMAGED FILE]

Hon. XXXXX

Dept. XX

FINAL APPROVAL HEARING DATE:

XXXXXXXX, 2022

TIME: XX:XX a.m.

A court approved this notice. This is not an advertisement.

NOTICE

**IF YOU WORK OR WORKED AS A NON-EXEMPT HOURLY-PAID EMPLOYEE OF
ZIM INDUSTRIES, INC. dba BAKERSFIELD WELL & PUMP CO. (“ZIM INDUSTRIES”
OR “DEFENDANT”) IN CALIFORNIA AT ANY TIME FROM SEPTEMBER 13, 2017
THROUGH [INSERT PRELIMINARY APPROVAL DATE], YOU MAY BE ELIGIBLE TO
RECEIVE MONEY FROM A CLASS ACTION AND PAGA SETTLEMENT.**

**ZIM INDUSTRIES’S RECORDS INDICATE THAT YOU WORKED AS A NON-EXEMPT
HOURLY-PAID EMPLOYEE OF ZIM INDUSTRIES IN CALIFORNIA AT SOME TIME
BETWEEN SEPTEMBER 13, 2017 THROUGH [INSERT PRELIMINARY APPROVAL
DATE]. BASED ON DEFENDANT’S RECORDS THE ESTIMATED AMOUNT OF YOUR
PAYMENT IS: \$ [REDACTED].**

You are NOT being sued. However, your legal rights are affected whether you act or not.

Zim Industries **will not** fire, punish, retaliate, or otherwise discriminate against any employee
because he or she chooses to participate in this settlement, chooses not to participate, or objects to
the settlement.

PLEASE READ THIS NOTICE

WHAT INFORMATION IS IN THIS NOTICE

1.	Why It Is Important To Read This Notice:.....	2
2.	What The Case Is About:	2
3.	What Is The Class Action Settlement?	3
4.	Why Did Defendant Join in This Notice?	3
5.	Who Are The Plaintiffs in This Class Action?	3
6.	Who Are The Attorneys Representing The Parties?	3
7.	What Do I Need To Do To Get Money From This Settlement?	3
8.	How Do I Remove Myself From This Settlement?	4
9.	What If I Disagree With The Terms Of The Settlement?	4
10.	How Does The Settlement Affect My Rights?	5
11.	How Much Can I Expect To Receive?	6
12.	How Will the Attorneys for the Class and Class Representative Be Paid?	7

1. Why It Is Important To Read This Notice:

The Superior Court of the State of California in and for the County of Madera (the “Court”) has granted Preliminary Approval to a proposed settlement (the “Settlement”) of a class action and PAGA lawsuit regarding wage and hour claims of persons who were employed by Zim Industries as hourly, non-exempt employees in California. Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

Defendant’s records show that you were employed by Zim Industries in California as an hourly, non-exempt employee sometime between September 13, 2017 and [INSERT PRELIMINARY APPROVAL DATE]. Therefore, you are a “Class Member” in this Lawsuit.

Some “Class Members” are also PAGA Employees. PAGA Employees means all Class Members who worked for Defendants during the PAGA Period. The PAGA Period runs from July 9, 2020 through [INSERT PRELIMINARY APPROVAL DATE]

The purpose of this Notice is to provide you with a brief description of the class action lawsuit, what investigation of the claims has taken place, and, finally, to inform you of the terms of the proposed Settlement and to discuss your rights and options in connection with the lawsuit and the Settlement.

2. What The Case Is About:

A former Zim Industries employee filed a lawsuit against Zim Industries alleging that it failed to pay minimum wages and overtime wages, failed to properly calculate and pay the regular rate of pay and/or the weighted average for any all purposes, failed to pay for off-the-clock work, failed to comply with the IWC Wage order provisions as alleged in the operative complaint, failed to comply with the wage determinations, failed to provide legally compliant meal and rest periods, failed to pay prevailing wages, failed to provide a seventh day of rest, failed to timely pay wages at separation, failed to reimburse business expenses, provided inaccurate wage statements, failed to timely pay wages during employment, and failed to keep accurate records in violation of the California Labor Code and applicable Industrial Welfare Commission Wage Orders, and sought such related and derivative claims under California Business & Professions Code section 17200 et seq. and Labor Code sections 2698 et seq. (“Private Attorneys General Act”).

1 Defendant denies Plaintiff's allegations and asserts that it has no liability for any of Plaintiff's or
2 the Class Members' claims under any statute, wage orders, common law, or equitable theory.

3 Notwithstanding Defendant's denial of liability, it has chosen to resolve the matter based upon the
4 terms and conditions set forth in the settlement agreement now before the Court for approval.

5 **3. What Is The Class Action Settlement?**

6 The Court must approve the terms of the class action and PAGA settlement described below as fair
7 and reasonable to the class. The Settlement will affect all members of the class, including PAGA
8 Employees. This Notice will explain the terms of the Settlement and the amount of money you may
9 get.

10 **4. Why Did Defendant Join in This Notice?**

11 The Defendant does not admit to any of the claims alleged in the lawsuit and denies that it owes
12 money for or related to alleged unpaid wages, failure to timely pay wages at separation, any claim
13 for failure to provide meal and rest periods or pay meal and rest period premiums, failure to provide
14 accurate and itemized wage statements, reimburse business expenses or any derivative claims for
15 any of the above under Business & Professions Code sections 17200 et seq. and Labor Code sections
16 2698 et seq. The Defendant is settling the class action lawsuit as a compromise. The Defendant
17 reserves the right to object to any claim if for any reason the Settlement fails. The Court file has the
18 settlement documents with more information on the lawsuit.

19 **5. Who Are The Plaintiffs in This Class Action?**

20 Humberto Roldan is the Plaintiff and Class Representative in this class action and PAGA lawsuit.
21 He is acting on behalf of himself and on behalf of all other non-exempt hourly paid employees
22 employed by Zim Industries in California.

23 **6. Who Are The Attorneys Representing The Parties?**

Attorneys for Plaintiff & the Class	Attorneys for Defendant
MOSS BOLLINGER, LLP Jeremy F. Bollinger Dennis F. Moss Jorge A. Flores 15300 Ventura Boulevard, Suite 207 Sherman Oaks, California 91403 Telephone: (310) 982-2984	HATMAKER LAW GROUP Susan K. Hatmaker 7522 N. Colonial Avenue Suite 105 Fresno, California 93711 Telephone: xxx-xxx-xxx

26 **7. What Do I Need To Do To Get Money From This Settlement?**

27 For purposes of the class action and PAGA settlement, the Class Members are defined as all current
28 and former non-exempt hourly paid employees of Zim Industries, Inc. dba Bakersfield Well & Pump

1 Co. who were employed in California at any time between September 13, 2017 through [INSERT
2 date of preliminary approval], excluding any person employed by Defendant in a non-exempt office
or administrative position.

3 PAGA Employees means all non-exempt employees who worked for Zim Industries, Inc dba
4 Bakersfield Well & Pump Co. at any time between July 9, 2020 through [INSERT date of
preliminary approval]

5 Class Members do not need to take any action to receive their share of the settlement fund. All
6 Class Members who do not timely and effectively exclude themselves from the Settlement
7 (“Verified Settlement Class Members”) will receive their share of the settlement fund. PAGA
Employees, including Class Members who are also PAGA Employees, shall not be allowed to opt
out of the PAGA portion of the Settlement.

8 Defendant will fund the settlement within fifteen calendar days after the Effective Date. Distribution
9 of Individual Settlement Payments, including the PAGA portion will be made to the Verified
10 Settlement Class Members and PAGA Employees within 15 calendar days after Defendant’s
funding of the Settlement is complete. It is important to update any changes to your mailing address
between now and [REDACTED], 2022, by contacting the Settlement Administrator.

11 **8. How Do I Remove Myself From This Settlement?**

12 **Excluding Yourself from the Settlement.**

13 If you do not wish to take part in the Settlement, you must submit a written request to the Settlement
14 Administrator to be excluded from the Settlement. The written request must: (a) state your name,
15 address, telephone number, and last four digits of your Social Security Number; (b) clearly state that
16 you wish to be excluded from the Settlement; (c) be addressed to the Settlement Administrator,
Phoenix Settlement Administrators; and (d) be postmarked on or before [REDACTED], 2022 [45
DAYS FROM MAILING OF NOTICE].

17 The Settlement Administrator is:

18 Phoenix Settlement Administrators
19 P.O. Box [INSERT]
[INSERT], CA 9[INSERT]

20 The Judgment following approval of the class action and PAGA settlement by the Court will bind
21 all Class Members who do not request exclusion from the class action settlement. Any Class
22 Member who does not request exclusion may, if they wish, enter an appearance personally or
through his or her own lawyer.

23 **9. What If I Disagree With The Terms Of The Settlement?**

24 **Objecting to the Settlement**

25 If you wish to object to the Settlement, you shall file your objection with the Settlement
26 Administrator. The objection should include your reasons for why the Court should not approve the
27 Settlement, your name, address, and phone number, and/or the name, address and phone number of
28 the attorney representing you at your costs, if you have one. For an objection to be considered timely
the Settlement Administrator must receive it no later than DATE [45 DAYS FROM MAILING OF

1 **NOTICE**. PAGA Employees, including Class Members who are PAGA Employees, shall not be
2 allowed to object to the PAGA portion of the Settlement. Counsel for the parties may oppose your
3 objection in writing or orally at the hearing on Final Approval. Whether or not you appear at the
4 hearing on Final Approval, the Court will consider all timely filed Objections. Please note, that
5 Objections served later than **DATE [45 DAYS FROM MAILING OF NOTICE]** shall be considered
6 untimely and waived. If you fail to file and serve a timely and complete objection in the manner
7 specified above you may be entitled to be heard at the Final Approval Hearing (whether individually
8 or through counsel) or to object to the Settlement at the discretion of the Court.

6 **DO NOT TELEPHONE THE COURT.**

7 You may also, if you wish, appear at the Settlement Fairness Hearing set for
8 **2022**, at **.m.** in Dept. of the Madera County Superior Court and
9 discuss your objections with the Court and the Parties.

10 ***10. How Does The Settlement Affect My Rights?***

11 Attorneys for the Class, also known as “Class Counsel,” appointed and approved by the Court for
12 settlement purposes only, will represent you.

13 If the proposed settlement is approved by the Court, a Judgment will be entered by the Court. The
14 Judgment following approval of the settlement by the Court will bind all Class Members who do
15 not request exclusion from the class action and PAGA settlement. Any member who does not
16 request exclusion may, if they wish, enter an appearance personally or through his or her own
17 lawyer. Notwithstanding the submission of a timely request for exclusion, PAGA Employees will
18 still be bound by the settlement and release of the Released PAGA Claims¹. Requests for exclusion
19 do not apply to the PAGA claims and will not be effective to preclude the release of the PAGA
20 claims.

21 If the Settlement is approved and you choose not to exclude yourself from the settlement, you will
22 be forever barred from asserting any of the claims arising out of or relating to the lawsuit (“Released
23 Claims”²) against Defendant and each of its former, current and future agents, affiliates, related
24

20 ¹ “Released PAGA Claims” means all PAGA claims that were actually alleged or could have been
21 alleged based on the same set of operative facts as those set forth in the Lawsuit, or the claims set
22 forth in the Plaintiff’s LWDA letter on behalf of the State of California, himself, and PAGA
23 Employees, including for those claims listed under Released Claims.

24 ² “Released Claims” means any and all claims under state, federal and local law arising out of the
25 allegations made in the Lawsuit and that reasonably arise or could have arisen out of the facts alleged
26 in the Lawsuit as to the Class Members only with regard to those claims for or related to alleged
27 unpaid overtime and minimum wages, failure to properly calculate and pay the regular rate of pay
28 and/or the weighted average for any all purposes, failure to pay for off-the-clock work, failure to
comply with the IWC Wage order provisions as alleged in the operative complaint, failure to comply
with the wage determinations, failure to provide legally compliant meal and rest periods, failure to
pay prevailing wages, seventh day of rest violations, failure to timely pay wages at separation,
failure to reimburse business expenses, inaccurate wage statements, failure to timely pay wages
during employment, failure to keep accurate records, unfair competition, and PAGA claims for civil
penalties due to any of the same alleged Labor Code violations of Defendants during the Class
(footnote continued)

persons or entities, assigns, employees, owners, affiliates, directors, shareholders, partners, advisors, officers, successors, holding companies, representatives, subsidiaries, insurers, and attorneys (“Released Parties”).

11. How Much Can I Expect To Receive?

Defendant will pay a class settlement amount of \$235,000.00 (“Maximum Settlement Amount”) to cover: (1) settlement payments to Verified Settlement Class Members; (2) approximately \$10,000 for the costs of administering the settlement; (3) Class Representative Service Award to the Plaintiff in the amount of \$10,000; (4) PAGA Fund payment of \$6,000, of which \$4,500.00 will be distributed to the California Labor and Workforce Development Agency (“LWDA”) for its portion of the PAGA penalties and \$1,500 will be distributed to PAGA Employees; and (5) the Class Counsel Fees and Costs in the amount not to exceed \$82,250 and \$7,500, respectively. Defendant shall remit its share of the employer’s payroll taxes separate from the Maximum Settlement Amount. All wages paid to Class Members shall be reflected on such Class Members’ W-2 forms unless such forms are unavailable, in which case a form 1099 shall be used.

The Net Settlement Amount will be apportioned among Settlement Class Members based on the number of workweeks worked during the Class Period and PAGA Period and whether a Settlement Class Member experienced a termination during the Class Period. The estimated Net Settlement Amount is \$[REDACTED].

The Individual Settlement Payments for each Verified Settlement Class Member shall be determined on a pro-rata basis based on the total Class Work Weeks worked by a Verified Settlement Class Member during the Class Period, and their status as a current or former employee. Class Work Weeks shall be calculated based on all hours worked by a Class Member (according to Defendant’s records) during the relevant periods divided by 40.

Each Verified Settlement Class Member’s Individual Settlement Payment will be allocated as follows: 20% to satisfaction of claims for unpaid wages (subject to required wage withholdings and deductions) and 80% to the satisfaction of claims for interest.

An “Individual Settlement Payment” for each Verified Settlement Class Member will then be determined as follows: (a) Verified Settlement Class Members shall be allocated one point of credit for each Class Work Week they worked within the Class Period and (b) Settlement Class Members who experienced a termination during the Class Period shall be allocated an additional fifteen points of credit. To calculate each Settlement Class Member’s proportional share: (1) Add all points of credit for all Verified Settlement Class Members; (2) Divide the Net Settlement Amount (excluding PAGA Fund) by the total number of points for all Verified Settlement Class Members to get a per point value; (3) To determine each Class Member’s individual share of the Net Settlement Amount, multiply the per point value by each Verified Settlement Class Member’s individual number of

Period listed above, interest, fees, and costs, including, but not limited to, as such claims are set forth in Labor Code sections 201-204, 226, 226.3, 226.7, 510, 512, 551-552, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 1770-1784, 2802, 2698, et seq., the applicable Industrial Welfare Commission (“IWC”) Wage Orders, including, Wage Order 16-2001, and Business & Professions Code § 17200, et seq.

1 points.

2 Seventy-five percent of the PAGA Fund (\$4,500) shall constitute the 75% of the PAGA Payment
3 that shall be distributed to the LWDA. The remaining twenty-five percent (\$1,500) of the PAGA
4 Fund (the "PAGA Work Week Fund") will be allocated among PAGA Employees on a proportional
5 basis based on the number of Work Weeks worked during the PAGA Period as follows: (1) Add all
6 PAGA Work Weeks for all PAGA Employees; (2) Divide the \$1,500 PAGA Work Week Fund by
7 the total number of PAGA Work Weeks for all PAGA Employees to get a per PAGA Work Week
8 value; (3) To determine each PAGA Employee's individual share of the PAGA Work Week Fund,
9 multiply the per PAGA Work Week value by the each PAGA Employee's individual number of
10 PAGA Work Weeks.

11 Employee taxes will be withheld from the wages portion only in accordance with the most recent
12 W-4 or withholding instructions provided to Defendant, unless none is available, in which case a
13 Form 1099 shall be used. Defendant's employer contributions of all federal, state, and local taxes
14 (including, but not limited to, FICA, FUTA, and SDI) in regard to the wage portion of the Individual
15 Settlement Payments shall be paid by Defendant in addition to the Maximum Settlement Amount.
16 To the extent necessary to ensure the payment of all such tax obligations on the Individual
17 Settlement Payments, the Individual Settlement Payments will be reduced by any such required tax
18 obligations for wages for each Settlement Class Member. All wages paid to Settlement Class
19 Members shall be reflected on their individual W-2 forms. All remaining portions of any Individual
20 Settlement Payments made to Settlement Class Members shall, if required by applicable state and/or
21 federal law, be reported on a federal form 1099 that shall be provided to the Individual Class
22 Members.

23 **Defendant's records indicate that you worked for a total of [REDACTED] Class Work Weeks and a
24 total of [REDACTED] PAGA Work Weeks workweeks during the Class and PAGA Periods.**

25 **Based on the preceding information and whether you experienced a termination during the
26 Class Period, your estimated settlement payment is \$[REDACTED].**

27 **If you dispute the number of workweeks stated above, Defendant's records will control unless
28 you are able to provide documentation to the Settlement Administrator that establishes
otherwise, and that Defendant's records are mistaken. If there is a dispute about Defendant's
information, you must contact the Settlement Administrator. If the dispute cannot be resolved
informally, the dispute will be resolved by the Settlement Administrator.**

29 **The Final Approval or Final Fairness Hearing will be on [DATE]. You are welcome to attend
30 and be heard by the Court. The Court may change the date/time of the hearing, so you should
31 consult the Court's website [ADDRESS] as the date approaches, if you want to appear. It is
32 unnecessary to file an objection with the Court to be heard on matters unrelated to an
33 objection. If you exclude yourself from the Settlement, you may not be heard at the Final
34 Approval Hearing.**

35 ***12. How Will the Attorneys for the Class and Class Representative Be Paid?***

36 The attorneys for the Representative Plaintiff and the Class will be paid from the Maximum
37 Settlement Amount. The actual amount of attorneys' fees awarded will be determined by the Court,
38 but will not exceed \$82,500.00, plus reasonable actual costs not to exceed \$7,500. Additionally,
Plaintiff will seek reimbursement for his services as Class Representative in an amount not to exceed

1 \$10,000.

2 IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may call Class
3 Counsel at Moss Bollinger, LLP, Jeremy Bollinger, 15300 Ventura Boulevard, Suite 207, Sherman
4 Oaks, California 91403, (310) 982-2984, or the Settlement Administrator at the telephone number
listed below, toll free.

Roldan v. Zim Industries, Inc.

Settlement Administrator

c/o

Phoenix Settlement Administrators.

P.O. Box [INSERT]

[INSERT], CA 9[INSERT]

Phone: [INSERT PHONE NUMBER]

10 **PLEASE DO NOT TELEPHONE THE COURT FOR INFORMATION ABOUT THIS**
11 **SETTLEMENT OR THE CLAIMS PROCESS.**

12 **DATE:** _____
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