

1 DANIEL F. GAINES, ESQ. SBN 251488
daniel@gaineslawfirm.com
2 ALEX P. KATOFISKY, ESQ. SBN 202754
alex@gaineslawfirm.com
3 EVAN S. GAINES, ESQ. SBN 287668
evan@gaineslawfirm.com
4 **GAINES & GAINES, APLC**
4550 East Thousand Oaks Boulevard, Suite 100
5 Westlake Village, CA 91362
Telephone: (818) 703-8985
6 Facsimile: (818) 703-8984

7 Attorneys for Plaintiffs Ronnie Garcia, Peter Sumo, and
8 Thomas Tomlinson and Proposed Class Counsel

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SACRAMENTO**
11

12 RONNIE GARCIA, PETER SUMO,
13 THOMAS TOMLINSON, on behalf of
themselves and on behalf of all similarly
situated individuals,

14 Plaintiffs,

15 v.

16 SST CONSTRUCTION, LLC, a California
limited liability company, and DOES 1
17 through 10, inclusive,

18 Defendants.
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CASE NO: 34-2022-00320617

Assigned to Hon. Jill H. Talley, Dept. 27

CLASS ACTION

**DECLARATION OF DANIEL F. GAINES IN
SUPPORT OF UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: September 29, 2023

Time: 9:00 a.m.

Dept.: 27

Complaint Filed: July 2, 2021

1 I, DANIEL F. GAINES, hereby declare and state as follows:

2 1. I am an attorney duly admitted to the practice of law in the State of California. I
3 am a shareholder of Gaines & Gaines, APLC, counsel for Plaintiffs Ronnie Garcia, Peter Sumo,
4 and Thomas Tomlinson ("Plaintiffs") and proposed Class Counsel in this action. I have personal
5 knowledge of the facts set forth herein and if called as a witness to testify to them, I could and
6 would do so competently.

7 **Education and Experience:**

8 2. I obtained my BS degree from the University California at Berkeley in 2003. I
9 majored in Business Administration at the Haas School of Business.

10 3. Thereafter, I attended the University of Virginia School of Law. At Virginia, I
11 was a member of the editorial board of the Virginia Tax Review. I was also the recipient of the
12 Lacy Armour Scholarship, awarded to recognize academic excellence. At Virginia, I focused
13 my studies on tax and real estate. I earned my JD and became a member of the California Bar in
14 2007.

15 4. Since becoming a member of the Bar, and until his retirement, I practiced law with
16 my father, Kenneth, at Gaines & Gaines, APLC. Our practice specializes in litigation, with an
17 emphasis in employment disputes like this one. Over 95% of my practice is devoted to complex
18 employment litigation similar to the instant action.

19 5. My firm has represented employees in complex employment matters such as this
20 one, with an emphasis in wage and hour issues. I have participated in and have been certified as
21 class counsel in dozens of class action matters since my admission to the Bar. A list of the cases
22 in which I have been appointed as class counsel is attached hereto as **Exhibit A**.

23 **Factual and Procedural Background:**

24 6. On or about August 25, 2021, David Rhoe ("Rhoe"), a former employee of
25 Defendants, acting on behalf of the Plaintiffs and Aggrieved Employees, exhausted the pre-filing
26 requirements of the Labor Code Private Attorneys General Act of 2004, Labor Code sections
27 2698 *et seq.* ("PAGA").
28

1 7. On or about November 2, 2021, Rhoe and Defendants entered into an agreement to
2 toll the statute of limitations of Aggrieved Employees' alleged wage and hour claims.

3 8. On or about May 17, 2022, Plaintiffs further exhausted the pre-filing requirements
4 of the PAGA.

5 9. On or about May 17, 2022, Plaintiffs initiated the Action by filing a Complaint as
6 a class action, pursuant to California Code of Civil Code section 382, on behalf of themselves
7 and all other non-exempt California employees. Thereafter, on July 25, 2022, Plaintiffs filed
8 their First Amended Complaint ("FAC") as a class and representative action, pursuant to
9 California Code of Civil Code § 382 and PAGA, on behalf of themselves and all other non-
10 exempt California employees. The FAC asserts class and representative action claims against
11 Defendants for (1) failure to pay all minimum and overtime wages (Labor Code §§ 510, 1194,
12 and 1194.2); (2) failure to provide rest periods or compensation in lieu thereof (Labor Code §
13 226.7); (3) failure to provide meal periods or compensation in lieu thereof (Labor Code §§
14 226.7, and 512); (4) knowing and intentional failure to comply with itemized employee wage
15 statement provisions (Labor Code §§ 226(a), (e)); (5) failure to timely pay wages due at
16 separation of employment (Labor Code §§ 201-203); (6) failure to reimburse all business
17 expenses (Labor Code § 2802); (7) violation of Business and Professions Code § 17200; and (8)
18 penalties pursuant to Labor Code § 2699(f) for violations of Labor Code §§ 201-202, 226(a),
19 226.3, 226.7, 510, 512, 558, 1194, and 2802 (the "Complaint").

20 10. Defendants deny any liability or wrongdoing of any kind associated with the
21 claims alleged in the Action, and further deny that the Action is appropriate for class treatment
22 for any purpose other than this settlement. Defendants contend that they have complied at all
23 times with the California Labor Code. It is Defendants' position that, if this case were to be
24 litigated, class certification would be inappropriate because Plaintiffs are not adequate Class
25 Representatives, Plaintiffs' claims are not typical of putative class members, and individual
26 issues predominate over class issues. The Action, the negotiation and execution of this
27 Settlement Agreement, and all acts performed or documents executed pursuant to or in
28 furtherance of the Settlement Agreement (i) shall not be used as an admission or evidence of

wrongdoing on behalf of Defendants; (ii) shall not be an admission or evidence of fault on behalf of Defendants in any action before a civil, criminal, or administrative agency; and (iii) shall not be deemed to be, and may not be used as, an admission or evidence of the appropriateness of these or similar claims for class certification in the Action or with respect to any other proceeding.

11. The Class Representatives contend that Defendants violated the California Labor Code and that this case is appropriate for class certification.

Investigation and Settlement Discussions

12. My colleagues and I conducted a thorough investigation into the facts and law during the prosecution of this class action case, including the exchange of extensive informal discovery and the review and verification of statistical data and other facts and information provided by Defendants. My colleagues and I investigated the applicable law as applied to the facts discovered regarding the alleged claims of Plaintiffs and potential defenses thereto, and the damages claimed by Plaintiffs.

13. On April 10, 2023, the Parties participated in a full day mediation session with David Phillips, Esq., a respected mediator with extensive experience resolving employment actions. The Parties were able to agree to the basic terms of their Settlement Agreement with the assistance of Mr. Phillips.

Class Counsel's Assessment of the Fairness of the Settlement and the Risks of Continued Litigation:

14. Based on our independent investigation and evaluation, my colleagues and I are of the opinion that settlement for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the Settlement Class in light of all known facts and circumstances, including the risk of significant delay, the risk the Settlement Class will not be certified by the Court, and the defenses asserted by Defendants.

15. The Parties agree that the Settlement Class described in the Settlement may be certified for settlement purposes only and that any motion for approval seeking, *inter alia*, certification of the Settlement Class is for purposes of the settlement only. If for any reason the

1 settlement is not approved, the certification will have no force or effect and will immediately be
2 revoked. The Parties further agree that certification for purposes of the settlement is in no way
3 an admission that class certification is proper under the more stringent standard applied for
4 litigation and that evidence of this limited stipulation for settlement purposes only will not be
5 admissible for any purpose in this or any other proceeding.

6 16. The Parties have jointly prepared the Settlement Agreement and Release of Claims
7 (“Settlement,” “Stipulation,” or “Stip.”). All of the terms of the Parties’ settlement are contained
8 within the Settlement. At all times, the Parties’ settlement negotiations have been non-collusive,
9 adversarial, and at arm’s length. A true and correct copy of the Settlement is attached hereto as
10 **Exhibit B.**

11 17. The Parties have agreed upon a settlement class: all individuals who currently
12 work or previously worked for Defendants in California in a non-exempt position between
13 August 25, 2020 and the date the Court grants preliminary approval of the Settlement.

14 18. Defendants have represented that as of April 14, 2023, there are approximately
15 492 Class Members who worked 30,000 workweeks during the Class Period. Defendants will
16 provide a declaration under penalty of perjury confirming the number of Class Members and
17 workweeks they worked during the Class Period. Should the number of workweeks increase by
18 more than 10% (i.e. exceed 33,000), Defendants will have the option to either a) increase the
19 Gross Settlement Amount proportionally (i.e. \$45.45 for each workweek in excess of 33,000) or
20 b) shorten the Class Period and PAGA Period so that there are no more than 33,000 workweeks
21 encompassed in the Class Period, such that there would be no increase to the Gross Settlement
22 Amount.

23 **Settlement Notice Process:**

24 19. The Parties have agreed that Phoenix Settlement Administration (“Phoenix”), an
25 experienced and competent settlement administration company, will administer the settlement.
26 Phoenix’s credentials and administration bid are included in the concurrently filed Declaration of
27 Jodey Lawrence.

20. A true and correct copy of the proposed Notice of Pendency of Proposed Class Action Settlement and Final Hearing is attached to the Settlement as **Exhibit B-1**.

Class Counsel's Assessment of the Fairness of the Settlement and the Risks of Continued

Litigation:

21. Based on our independent investigation and evaluation, my colleagues and I believe that settlement for the consideration and on the terms set forth in the Stipulation of Settlement is fair, reasonable, and adequate and is in the best interest of the settlement class in light of all known facts and circumstances, including the risk of significant delay, the risk the settlement class will not be certified by the Court, and the defenses asserted by Defendants.

22. Prior to settlement, my office created a comprehensive damage analysis using sampling information obtained through informal discovery. This damage analysis reveals that the negotiated settlement falls within a realistic range of recovery on class members' claims.

23. Plaintiffs allege that Defendants failed to pay all minimum and overtime wages earned, in violation of Labor Code §§ 510, 558, 1194, and 1194.2. Plaintiffs and Class Members contend that they were required to perform work-related activities off-the-clock. An employer is obligated to pay the wages of an hourly employee for all time that the employee is under the control of the employer, and this includes all the time the employee is suffered or permitted to work, whether or not required to do so. When Class Members performed work-related activities off-the-clock, they were under the control of Defendants and required to be compensated for all hours worked. Defendants, however, allegedly failed to do so, in violation of Labor Code §§ 510, 558, 1194, and 1194.2. Plaintiffs contend that their supervisors required Class Members to clock out and continue working at a jobsite until the work was completed. Defendants also allegedly required Class Members to answer customers' questions via phone calls, prepare and finish reports, and send follow-up emails off-the-clock. Defendants also frequently contacted Class Members via their cell phones to ask them work-related questions, ask them to go back out into the field, or go pick up equipment. In advance of mediation, Defendants provided timecards which reflected that most time punches for each employee are evenly recorded on the quarter, half, or full hour, such that each employee regularly clocked in and out at the exact same time

1 every day and took an exactly 30-minute meal period at the same time every day. This is
2 consistent with Plaintiffs' position that they were required to spend time off-the-clock outside of
3 their pre-set shifts. Plaintiffs calculate damages on this claim at approximately \$3,333,000
4 (based on 5 hours of off-the-clock work per week per employee).

5 24. Plaintiffs also contend that Defendants paid Class Members bonuses and other
6 forms of non-base hourly wages that were not included in their regular rate of pay for purposes
7 of computing the proper overtime and double-time rates, meal and rest period premiums, and
8 sick pay rate, in violation of Labor Code §§ 226.7, 246, 510, 512, 558, and 1194. Here, when
9 Class Members worked overtime and double-time hours, Plaintiffs contend that they were paid
10 at one and one-half times and two times the base hourly rate of pay. Plaintiffs calculate damages
11 on this claim at slightly under \$17,000.

12 25. Plaintiffs also argue that Defendants failed to permit or authorize Class Members
13 to take timely 30-minute meal periods for shifts greater than 5 hours in length, in violation of
14 Labor Code §§ 226.7, 512, 558, and 1194 and IWC Wage Order 16-2001. Labor Code § 512
15 provides that employers (like Defendants) may not employ an employee for a work period of
16 more than five hours without providing a 30-minute meal period starting no later than the end of
17 the fifth hour. Class Members contend that they were routinely unable to take a proper meal
18 period when they worked shifts in excess of 5 hours and a second meal period when they worked
19 shifts in excess of 10 hours.

20 26. Plaintiffs argue that Defendants' meal period practice clearly violates the Supreme
21 Court's mandate in *Brinker Restaurant Corp. v. Superior Court* (2014) 53 Cal.4th 1004, 1038-
22 39. In advance of mediation, Defendants provided timecards which reflected that most recorded
23 meal periods are exactly 30 minutes, indicating rounding or otherwise manipulated or inaccurate
24 records. Plaintiffs calculate damages on this claim at approximately \$400,000.

25 27. Plaintiffs contend that Defendants failed to pay Plaintiffs and Class Members
26 premium wages for missed, denied and unauthorized rest periods in violation of Labor Code §
27 226.7 and IWC Wage Order 16-2001. Plaintiffs argue that Class Members were required to
28 remain on the work premises during their rest periods. Plaintiffs also contend that due to the

1 busy nature of their work schedules, they were simply unable to take the vast majority of their
2 entitled rest periods. For each workday on which Class Members were denied a rest period, they
3 must be paid a one-hour premium as additional wages beyond earnings for actual hours worked.
4 See Wage Order No. 16 subdivision 11(d). According to the wage records produced in
5 discovery, Defendants never paid any rest period premiums. Plaintiffs calculate damages on this
6 claim at approximately \$2,037,000.

7 28. Plaintiffs also allege that Class Members were required to incur expenses in the
8 performance of their job duties for which they are not fully reimbursed, in violation of Labor
9 Code § 2802. Class Members were required to use their personal cell phones and vehicles, but
10 were not fully reimbursed by Defendant for these expenses. Despite providing Plaintiffs with a
11 company cellphone, Plaintiffs were still required and expected by Defendants to use their
12 personal cell phones for work-related matters, including, but not limited to, as a personal hotspot
13 for their company cell phone when their work phone did not have service. Also infrequent,
14 Defendants sometimes required employees to drive their personal vehicles at times, but did not
15 reimburse them for the operating costs associated therewith. Plaintiffs calculate damages on this
16 claim at \$62,520, comprised primarily of expenses related to cell phone use.

17 29. Defendants also allegedly failed to issue Class Members accurately itemized wage
18 statements, primarily on a derivative basis related to their unpaid wage claims. When Class
19 Members were not paid all wages due, as detailed above, their wage statements failed to
20 accurately state all gross wages earned, in violation of Labor Code § 226(a)(1), and net wages
21 earned, in violation of Labor Code § 226(a)(5). Separately, the wage statements issued to Class
22 Members purportedly failed to properly list the total hours worked, in violation of Labor Code §
23 226(a)(2). Plaintiffs calculate statutory penalties on this claim at \$317,600.

24 30. Defendants also allegedly failed to pay Class Members all wages due upon
25 separation of employment, in violation of Labor Code §§ 201-203. As Defendants failed to pay
26 them all wages due during the course of their employment, as described above, these wages were
27 due and owing upon separation of employment, yet went unpaid. Plaintiffs calculate statutory
28 penalties on this claim at \$1,511,184.

1 31. A discount on the maximum value of Class members' claims was required (and
2 warranted) to resolve the matter at this stage of the litigation. As to the merits of Plaintiffs'
3 claims, Defendants strongly argued that employees waived any missed meal and rest periods,
4 such that no premiums are due. They argued that employees were always afforded the right to
5 take their breaks, and as to rest periods, lulls in business allowed for ample time to take rest
6 periods. They argued that it adopted and enforced legally compliant policies and practices which
7 authorized meal and rest periods as required by law, and employees did not voice concern over
8 meal and rest periods being denied. They also vehemently deny that any employees worked off-
9 the-clock, all time worked was completely paid in full, and all expenses were reimbursed (and
10 any unreimbursed expenses were not reasonably and necessarily incurred).

11 32. The discount negotiated for settlement here is a reasonable compromise,
12 particularly considering that the risk of obtaining class certification on all or any of Plaintiffs'
13 claims involves a 50% or higher hurdle, especially with respect to the off-the-clock claims, meal
14 and rest period claims, and expense reimbursement claims to which Defendants maintain strong
15 arguments to defeat class certification (in addition to multiple defenses on the merits of the
16 claims). Class certification is a substantial risk in any class action case. Here, while Plaintiffs
17 maintain that the requirements of class certification are met, Defendants proffer various
18 arguments why class treatment is not appropriate, including but not limited to that individualized
19 inquiries among class members predominate over common ones. If Defendants were to defeat
20 Plaintiffs' class certification motion, there would be no class wide relief whatsoever, and most
21 class members would likely not file individual claims.

22 33. Plaintiffs also faced the risk of a loss on the merits on their claims. It is very
23 possible that the Court would agree with Defendants' position that their practices complied with
24 the requirements of California law or could not be certified. In such a case, the value of the
25 majority of Plaintiffs' claims would be zero.

26 34. Finally, Plaintiffs faced the risk that they would not obtain a maximum
27 damage/penalty award on all (or any of) their claims. For example, Plaintiffs' wage statement
28 claim and waiting time penalty claim are derivative of their unpaid wage claims. If they did not

1 prevail on those claims, they would not prevail on a claim for deficient wage statements or
2 failure to timely pay wages. In addition, Plaintiffs seek discretionary penalties pursuant to the
3 PAGA, which can be valued at more than \$448,800 (based on nearly 4,500 pay periods at issue,
4 and without stacking multiple violations in the same pay period). Even if Plaintiffs did prevail
5 on their claims, it is possible that the Court would not impose all such penalties pursuant to its
6 discretionary power to reduce them.

7 35. Defendants strongly contend that their policies and practices do not violate any
8 laws. They contend that they properly provided for all meal and rest periods and fully
9 compensated their employees for all time worked. They further contend that the wage
10 statements they provide to their employees are fully compliant with California law.

11 36. When the costs and risks of non-certification and loss on the merits are considered,
12 Plaintiffs' counsel are of the opinion that the settlement reached is clearly a favorable one.

13 37. The settlement for each Class Member is fair, reasonable and adequate, given the
14 inherent risk of litigation, the risk relative to class certification and the costs of pursuing such
15 litigation. The settlement shall finally resolve all claims of the Class Members as alleged in the
16 Action.

17 **Class Certification Requirements:**

18 38. To date, no class has been certified. The Stipulation of Settlement contains a
19 provision pursuant to which we stipulate to the Court's provisional certification of the
20 approximately 492-member Settlement Class, but do so for purposes of this settlement only.

21 39. In this case, the Class Members are identifiable from Defendants' records.
22 Further, the settlement class is sufficiently numerous to warrant certification. According to
23 Defendants' records, the Class is comprised of approximately 492 individuals.

24 40. The Class Members' claims all stem from a common source: all Class Members
25 allege that Defendants violated the same Labor Code and Wage Order provisions in connection
26 with their work for Defendants. The same Labor Code and Wage Order violations are alleged on
27 behalf of all persons encompassed in the settlement class, arising out of or which could be pled
28 based on the facts and the allegations set forth in the operative complaint in the Action, including

1 but not limited to claims for failure to pay for all hours worked, including overtime; failure to
2 provide meal periods; failure to authorize and permit rest periods; failure to reimburse expenses,
3 failure to timely pay all wages at termination; and failure to furnish accurate itemized wage
4 statements.

5 41. In this case, the named Plaintiffs and proposed Class Representatives Ronnie
6 Garcia, Peter Sumo, and Thomas Tomlinson are former non-exempt employees of Defendants
7 whom, Plaintiffs allege, were not paid for all hours worked, including overtime; were not
8 provided all meal periods; were not authorized and permitted all rest periods; were not
9 reimbursed business expenses; were not timely paid all wages at termination; and were not
10 furnished accurate itemized wage statements. Plaintiffs alleges the same claims as those that the
11 members of the Settlement Class would reasonably be expected to bring based on the course of
12 conduct alleged herein.

13 42. Plaintiffs have also demonstrated that they will aggressively and competently
14 assert the interests of the proposed Settlement Class; they have taken active roles in the litigation
15 and have no apparent conflicts with other class members.

16 **Settlement of Claims Pursuant to PAGA**

17 43. Concurrently with the filing of this Motion, my office is transmitting the
18 Settlement Agreement (and these approval documents) to the LWDA, in compliance with Labor
19 Code § 2699(1)(2). Evidence of submission is attached hereto as **Exhibit C**.

20 I declare, under penalty of perjury, under the laws of the State of California, that the
21 foregoing is true and correct. Executed this 10th day of August, 2023 at Westlake Village,
22 California.

23 *Daniel F. Gaines*
24 DANIEL F. GAINES
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EXHIBIT A

Adams v. Newell Rubbermaid, USDC – Central District of California (Los Angeles), Case No. EDCV 08-1499 JTM (CTx)

Adams v. Sam's West, Inc., San Bernardino County Superior Court, Case No. CIVDS1403987

Agredano v. GS Brothers, Inc., Los Angeles County Superior Court, Case No. BC445561

Allen v. Toms Sierra Company, Nevada County Superior Court, Case No. CU18-082823

Allen v. Valley Inventory Service, Inc., Solano County Superior Court, Case No. FCS034682

Alvarez v. Pilot Travel Centers, LLC, San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-4605

Alonzo v. Camblin Steel Service, Inc., Placer County Superior Court, Case No. SCV0034165

Amenhotep v. Google, Inc., Santa Clara County Superior Court, Case No. 17CV311528

Anaya v. Progressive Logistics Services, LLC, Riverside County Superior Court, Case No. RIC1308270

Andre v. Newell Rubbermaid, Inc., San Bernardino County Superior Court, Case No. CIVVS1200282

Anduha v. ABC Phones of North Carolina, Inc., Stanislaus County Superior Court, Case No. 2022729

Anslow v. Wellington Energy, Inc., USDC – Northern District of California (San Francisco), Case No. CV11-1596-JCS

Aranda, et al. v. Universal Lumpers of California, Inc., San Joaquin County Superior Court, Case No. STK-UOE-2017-7826

Armendariz v. Integrated Pain Management Medical Group, Inc., Kern County Superior Court, Case No. BCV-19-100267-SDS

Barrow, et al. v. Desmond Foods, L.P., Sacramento County Superior Court, Case No. 34-2015-00187227

Batmanghelich v. Sirius XM Radio Inc., USDC – Central District of California (Los Angeles), Case No. CV 09-9190 VBF (JCx)

Bosser v. Hooked on Solar, Yolo County Superior Court, Case No. CVCV-2016-876

Bourland v. Horizon Personnel Services, Inc., Sacramento County Superior Court, Case No. 34-2014-00161365-CU-OE-GDS

Bowen v. IMI Material Handling Logistics, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-0000192

Branson v. Mladen Buntich Construction, San Bernardino County Superior Court, Case No. CIVDS1609129

Brandt v. Sacramento Auto Insurance Center, Inc., San Joaquin County Superior Court, Case No. 39-2009-00202938-CU-OE-STK

Brown v. 22nd District Agricultural Association, United States District Court, Southern District of California, Case No. 15-cv-2578-DHB

Brown v. Sierra Central Credit Union, Sutter County Superior Court, Case No. CVCS18-0002161

Burgess v. Blue Cross and Blue Shield of South Carolina, San Joaquin County Superior Court, Case No. 39-2012-00277449-CU-BT-STK

Burgess v. Strategic Retail Solutions, LLC, Los Angeles County Superior Court, Case No. BC413791

Calhoun v. Celadon Trucking Services, Inc., USDC – Central District of California (Los Angeles), Case No. 5:16-cv-01351-PSG-FFM

Caporicci v. Owens & Minor Distribution, Inc., San Joaquin County Superior Court, Case No. 39-2013-00295662-CU-OE-STK

Carl v. Advanced Call Center Technologies, LLC, Sacramento County Superior Court, Case No. 34-2013-00148310

Carlisle, et al. v. Professional Technical Security Services, Inc., Case No. CGC18569791

Carrete v. Gamestop, Inc., Imperial County Superior Court, Case No. ECU08501

Carrillo v. Bimbo Bakeries, Inc., San Bernardino County Superior Court, Case No. CIVDS1606813

Caudillo v. Aegis Treatment Centers, LLC, Merced County Superior Court, Case No. 18CV-0744

Cerami v. Metlife, Inc., USDC – Central District of California (Orange County), Case No. 11-CV-00681-CJC (MLGx)

Charles v. Aaron's Inc., Los Angeles County Superior Court, Case No. BC431468

Charles v. Nursefinders, LLC, Imperial County Superior Court, Case No. ECU07422

Cheifer v. JetBlue Airways Corporation, Los Angeles County Superior Court, Case No. BC451887

Cheifer, et al. v. WHGM, Inc., Los Angeles County Superior Court, Case No. LC104900

Chong, et al. v. Crescent Northwoods Inn, Inc., Del Norte County Superior Court, Case No. CVUJ-2018-1133

Church v. GameStop, Inc., et. al., USDC – Central District of California (Los Angeles), Case No. 11-CV-00132-VAP-RZ

Clothier v. Spar Marketing Services, Inc., Alameda County Superior Court, Case No: RG12-639317

Coleman v. Wireless Lifestyle, Inc., USDC – Western District of Missouri, Case No. 4:12-cv-00855-ODS

Colombo-Beyeler, et al. v. Viking River Cruises, Inc., San Bernardino County Superior Court, Case No. CIVDS1611608

Conlee v. Clark Pacific Corporation, Yolo County Superior Court, Case No. CV14-1409

Contreras v. Osmose Utilities Services, Inc., San Bernardino County Superior Court, Case No. CIVDS1513998

Contreras v. West American Service Corporation, Kings County Superior Court, Case No. 14C0280

Corona v. Yosemite Meat & Locker Service, Inc., Stanislaus County Superior Court, Case No. 2006828

Cortellessa v. Dotnext, Inc., Alameda County Superior Court, Case No. RG09429971

County v. Ingram Mirco, Inc., San Bernardino Superior Court, Case No. CIVRS 1304445

Covarrubias, et al. v. Petersendean Builder Group, Inc., Kern County Superior Court, Case No. BCV-16-101122

Cowen, et al. v. Evergreen Alliance Golf Limited, L.P., d/b/a Arcis Golf, San Bernardino County Superior Court, Case No. CIVDS1719283

Cruz-Garcia v. Lemonade Restaurant Group, LLC, Los Angeles County Superior Court, Case No. BC478205

Cunningham v. Performance Contracting, Inc., Contra Costa County Superior Court, Case No. C16-02157

Dabney v. Coneybeare, LLC, et al., Orange County Superior Court, Case No. 30-2018-00999989-CU-OE-CXC

Dabney, et al. v. Panera, LLC., San Bernardino County Superior Court, Case No. CIVDS1516030

Diaz, et al. v. Seaworld Entertainment, Inc., Imperial County Superior Court, Case No. ECU10046

Diggs v. Western Waterproofing Company, Inc., San Francisco County Superior Court, Case No. CGC-14-539281

Dismuke v. Rhodes Retail Services, Inc., Sacramento County Superior Court, Case No. 34-2011-00105001

Dorsette v. TA Operating, LLC, USDC – Central District of California (Los Angeles), Case No. EDCV 09-1350 PA (RZx)

Duran v. The Image of California, Inc., Kern County Superior Court, Case No. S-1500-CV-284056 DRL

Edwards v. Trans World Entertainment Corp., San Diego County Superior Court, Case No. 37-2010-00095123-CU-OE CTL

Esakhani v. Central Valley Gaming, Stanislaus County Superior Court, Case No. 2020667

Escobar v. SMSSI of California, Inc., San Francisco Superior Court, JCCP No. 4776

Espinosa v. Taltech Construction, et al., Los Angeles County Superior Court, Case No. BC590176

Espinosa v. Bodycote Thermal Processing, Inc., Los Angeles County Superior Court, Case No. BC501617

Espinoza v. Pabco Building Products, LLC, Los Angeles County Superior Court, Case No. VC065660

Estrada v. Net Source Communications, Inc., Los Angeles County Superior Court, Case No. BC431169

Estrada v. OS Restaurant Services, LLC, Santa Clara County Superior Court, Case No. 16CV293249

Estupinan v. Global Development Strategies, Inc., Santa Clara County Superior Court, Case No. 110CV178898

Fadhl. v. Siemens Healthcare Diagnostics Inc., Sacramento County Superior Court, Case No. 34-2017-00209518

Fernandez v. The Regents of the University of California, Los Angeles County Superior Court, Case No. BC656256

Ferrer v. Dish Network Corporation, Los Angeles County Superior Court, Case No. BC441354

Findora v. Barry Callebaut USA LLC, Napa County Superior Court, Case No. 19CV000219

Flores v. Cintas Corporation, Los Angeles County Superior Court, Case No. BC400422

Friel v. Midwest Construction Services, Inc., San Joaquin County Superior Court, Case No. 39-2015-00329204-CU-OE-STK

Gagnon v. Banc of California, Contra Costa County Superior Court, Case No. C 15-00196

Galarza v. Bayou Well Services, LLC, Kern County Superior Court, Case No. S-1500-CV-279372 DRL

Galarza v. C & H Testing Service LLC, Kern County Superior Court, Case No. BCV-15-100008 SPC

Garcia v. Old Dominion Freight Line, Inc., San Bernardino County Superior Court, Case No. CIVDS1404636

Geer v. Applied Aerospace Structures Corp., San Joaquin County Superior Court, Case No. 39-2014-00313702-CU-OE-STK

Getz v. California Cinema Investments, Inc., Ventura County Superior Court, Case No. 56-2013-00437706-CU-MC-VTA

Gibbs v. M. Lehmann Enterprises, Orange County Superior Court, Case No. 30-2013-00678538-CU-OE-CXC

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Hairston v. Stanislaus Surgical Hospital, Stanislaus County Superior Court, Case No. CV-19-000651

Hindman v. Service Quick, Inc., San Bernardino County Superior Court, Case No. CIVDS1724229

Hogan v. iMobile of CA LLC, San Bernardino County Superior Court, Case No. CIVDS1409263

Hogan v. Wireless Evolution Inc., Riverside County Superior Court, Case No. MCC1300669

Hogan v. Wireless That's It! LLC, Riverside County Superior Court, Case No. RIC1201997

Holmes v. Bottling Group, LLC, Stanislaus County Superior Court, Case No. 2022584

Hooper, et al. v. URS Midwest, Inc., et al., San Bernardino Superior Court, Case No. CIVDS1607489

Humphrey v. Freedomroads, LLC, Shasta County Superior Court, Case No. 178228

Hurtado v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC427672

Hyde v. Dent Wizard International Corporation, Sacramento County Superior Court, Case No. 34-2015-00173882

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Martinez v. Styles For Less, Inc., San Bernardino County Superior Court, Case No. CIVVS1203057

Mayne v. John Muir Behavioral Health, Contra Costa County Superior Court, Case No. C17-00998

Maze v. Bulldog Freightway, Inc., Imperial County Superior Court, Case No. ECU08716

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McCrary v. Campbell Soup Supply Company, San Joaquin County Superior Court, Case No. 39-2013-00297698-CU-OE-STK

McDaniel v. Vancary, Inc., Tulare County Superior Court, Case No. 268036

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Mendiola v. Tyco Electronics Corporation, Riverside County Superior Court, Case No. RIC1400721

Mettler v. Les Schwab Tire Centers of California, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-476

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Molina v. Berkshire Hathaway Energy Company, et al., Imperial County Superior Court, Case No. ECU000522

Moore v. Horizon Solar Power, Inc., San Bernardino County Superior Court, Case No. CIVDS1410001

Murray v. Select Media Services, LLC, Los Angeles County Superior Court, Case No. BC424506

Myles v. Central Transport LLC, San Bernardino County Superior Court, Case No. CIVDS1401434

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Perez v. Major Gloves and Safety, Inc., San Bernardino County Superior Court, Case No. CIVDS1710445

Perry v. Cardinal Health 200, LLC, Solano County Superior Court, Case No. FCS035303

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Pugh v. Wi Spa, LLC, Imperial County Superior Court, Case No. ECU07932

Quist v. Knight Transportation, Inc., San Bernardino Superior Court, Case No. CIVDS 1615414

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Sabala v. Econtactlive, Inc., Stanislaus County Superior Court, Case No. 684981

Sabatier v. Picture Perfect Installation, Inc., Riverside County Superior Court, Case No. RIC10004953

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Salazar v. Tag-3 Medical Investment Group, LLC, Los Angeles County Superior Court, Case No. BC527698

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Sanchez v. Don Roberto Jewelers, Inc., Imperial County Superior Court, Case No. ECU06819

Sanders v. Lionakis, Sacramento County Superior Court, Case No. 34-2017-00223601

Santana v. United Staffing Associates, LLC, Tulare County Superior Court, Case No. 249338

Schrader v. Adidas Promotional Retail Operations, Inc., Los Angeles County Superior Court, Case No. BC414168

Sebrell v. Pomeroy IT Solutions, San Bernardino County Superior Court, Case No. CIVDS1721560

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Solomon v. City of Los Angeles, Los Angeles County Superior Court, Case No. BC570345

Solano v. Vozzcom, Inc., Imperial County Superior Court, Case No. ECU09519

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Solowitz v. BakeMark USA LLC, Los Angeles County Superior Court, Case No. BC467838

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Tigas v. Ajilon Communications, Los Angeles County Superior Court, Case No. BC409737

Torres v. Coastal Employment Inc., Los Angeles County Superior Court, Case No. BC529207

Tran v. CSP Fiber Services, San Bernardino County Superior Court, Case No. CIVDS172758

Tripp v. California Guest Services, Inc., Plumas County Superior Court, Case No. CV16-00036

Valdez v. Diamond Landscaping, Inc., Los Angeles County Superior Court, Case No. BC497097

Valencia v. American Team Managers, Inc., Orange County Superior Court, Case No. 30-2016-00857365-CU-CR-CXC

Van Son v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC494747

Vasquez v. Schurman Fine Papers, San Joaquin County Superior Court, Case No. STK-CV-LMC-2015-10035

Velasquez v. Modesto Ventures, LLC, Sacramento County Superior Court, Case No. 32-2012-00126159

Victoria v. Bali Limousines Inc., San Mateo County Superior Court, Case No. CIV507774

Victorian v. Vision X, Inc., Los Angeles County Superior Court, Case No. BC400333

Wade v. Frito Lay, Kern County Superior Court, Case No. BCV-17-102014

Walls v. E. & J. Gallo, Stanislaus County Superior Court, Case No. 2015874

Warner v. Waterdrops Express Car Wash, LLC, Tulare County Superior Court, Case No. 265708

Waybright v. EAH, Inc., Stanislaus County Superior Court, Case No. 2011677

Weiss v. C.A.R. Enterprises, Inc., Riverside County Superior Court, Case No. RIC1113165

White v. Sally Beauty Supply, LLC, Imperial County Superior Court, Case No. ECU08177

Williams v. Dennis Dillon RV, LLC, San Bernardino County Superior Court, Case No. CIVDS 16006879

Williams v. Closet World, Inc., Los Angeles County Superior Court, Case No. BC400178

Williams v. Progress Rail Services Corporation, Kern County Superior Court, Case No. S-1500-CV-280236 DRL

Wing v. Three Group, Inc., Los Angeles County Superior Court, Case No. BC643883

Wilson v. ALSCO, Inc., Imperial County Superior Court, Case No. ECU07406

Wilson v. Michael C. Stead, Inc., Contra Costa Superior Court, Case No. C1400135

Winningham v. Storer Transportation Service, San Joaquin County Superior Court, Case No. 39-2015-00324708-CU-STK

Woody v. WBN Home Design, San Bernardino County Superior Court, Case No. CIVDS1613367

Woods, et al. v. F&B Innovations, LLC, San Bernardino County Superior Court, Case No. CIVDS1717765

Woodyard v. Bellus ALC Acquisition, LLC, USDC – Central District of California (Los Angeles), Case No. 2:13-cv-05285 SJO AGRx

Wright v. Social Vocational Services, Inc., Kern County Superior Court, Case No. BCV-15-101264

Ybarra v. New Legend, Inc., Sutter County Superior Court, Case No. CVCS-16-2097

Zaragoza v. Center Automotive, Inc., Los Angeles Superior Court, Case No. BC505194

EXHIBIT B

1 DANIEL F. GAINES, ESQ. SBN 251488
daniel@gaineslawfirm.com

2 ALEX P. KATOFISKY, ESQ. SBN 202754
alex@gaineslawfirm.com

3 EVAN S. GAINES, ESQ. SBN 287668
evan@gaineslawfirm.com

4 **GAINES & GAINES, APLC**
4550 East Thousand Oaks Boulevard, Suite 100
5 Westlake Village, CA 91362
Telephone: (818) 703-8985
6 Facsimile: (818) 703-8984

7 Attorneys for Plaintiffs Ronnie Garcia, Peter Sumo, and Thomas Tomlinson, on behalf of
8 themselves and on behalf of all similarly situated individuals

Kevin Jackson, Esq. SBN 278169
kjackson@foley.com

9 **FOLEY & LARDNER LLP**
10 1198 El Camino Real, Suite 400
San Diego, CA 92130
11 Telephone: (858) 847-6700
Facsimile: (858) 792-6773

12 Attorneys for Defendant SST CONSTRUCTION, LLC

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **FOR THE COUNTY OF SACRAMENTO**

15 **RONNIE GARCIA, PETER SUMO,**
16 **THOMAS TOMLINSON, on behalf of**
17 **themselves and on behalf of all similarly**
situated individuals,

18 **Plaintiffs,**

19 **v.**

20 **SST CONSTRUCTION, LLC, a California**
21 **limited liability company, and DOES 1**
22 **through 10, inclusive,**

23 **Defendants.**

CASE NO: 34-2022-00320617

Assigned to Hon. Jill H. Talley, Dept. 27

CLASS ACTION

**SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

Complaint Filed: May 26, 2022
FAC Filed: July 25, 2022

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

1 **SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

2 This Settlement Agreement and Release of Claims ("Settlement Agreement") is made and
3 entered into by and between Plaintiffs Ronnie Garcia, Peter Sumo, and Thomas Tomlinson
4 (collectively, "Plaintiffs" or "Class Representatives") individually and on behalf of all others
5 similarly situated, and Defendants SST Construction, LLC and its subsidiaries, affiliates, and
6 parents (collectively, "Defendants"), subject to the terms and conditions herein and the Court's
7 approval.

8 **A. Definitions.**

9 1. Plaintiffs and the Settlement Class (as defined below) and Defendants are
10 collectively referred to herein as "the Parties."

11 2. Daniel F. Gaines and Alex P. Katofsky of Gaines & Gaines, APLC are counsel of
12 record for Plaintiffs. For purposes of this settlement only, the firm of Gaines & Gaines, APLC
13 shall be designated as "Class Counsel."

14 3. The "Action" means the case entitled *Ronnie Garcia, et al. v. SST Construction,*
15 *LLC, et al.*, Case No. 34-2022-00320617, pending before the Superior Court of the State of
16 California for the County of Sacramento.

17 4. The "Settlement Class" shall be defined as "all individuals who currently work or
18 previously worked for Defendants in California in a non-exempt position between May 27, 2018
19 and the date the Court grants preliminary approval of the Settlement" (the "Class Period").
20 Defendants represent that this Class contains approximately 492 members. The Class Period may
21 be shortened pursuant to paragraph H(1) below.

22 5. The "Aggrieved Employees" shall be defined as "all individuals who currently
23 work or previously worked for Defendants in California in a non-exempt position between August
24 25, 2020 and the date the Court grants preliminary approval of the Settlement" (the "PAGA
25 Period").

26 6. Members of the Settlement Class shall collectively be referred to as a "Class
27 Member" or "Class Members." Any Class Member who files a timely request for exclusion, as
28 detailed below, will be excluded from the final Settlement Class.

1 7. The "Effective Date" is defined as the date the Court signs an order granting final
2 approval of the settlement and entering judgment thereon (the "Effective Date") If objections to
3 the settlement are filed, the Effective Date of the settlement is the sixty-fifth (65th) day after notice
4 of the final approval order is mailed, unless an appeal is filed, in which case the Effective Date is
5 the day after (1) the settlement is upheld by the Court of Appeals, or (2) all appeals are dismissed.

6 8. The "Released Parties" shall refer to Defendants SST Construction, LLC and its
7 subsidiaries, affiliates, and parents, including NovaSource Power Holdings, Inc.'s direct and
8 indirect subsidiaries and other affiliates, including without limitation Northstar Energy
9 Management, LLC.

10 **B. General.**

11 1. On or about August 25, 2021, David Rhoe ("Rhoe"), a former employee of
12 Defendants, acting on behalf of the Plaintiffs and Aggrieved Employees exhausted the pre-filing
13 requirements of the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698
14 *et seq.* ("PAGA").

15 2. On or about November 2, 2021, Rhoe and Defendants entered into an agreement to
16 toll the statute of limitations of Aggrieved Employees' alleged wage and hour claims.

17 3. On or about May 17, 2022, Plaintiffs further exhausted the pre-filing requirements
18 of the PAGA.

19 4. On or about May 17, 2022, Plaintiffs initiated the Action by filing a Complaint as a
20 class action, pursuant to California Code of Civil Code section 382, on behalf of themselves and
21 all other non-exempt California employees. Thereafter, on July 25, 2022, Plaintiffs filed their First
22 Amended Complaint ("FAC") as a class and representative action, pursuant to California Code of
23 Civil Code § 382 and PAGA, on behalf of themselves and all other non-exempt California
24 employees. The FAC asserts class and representative action claims against Defendants for (1)
25 failure to pay all minimum and overtime wages (Labor Code §§ 510, 1194, and 1194.2); (2) failure
26 to provide rest periods or compensation in lieu thereof (Labor Code § 226.7); (3) failure to provide
27 meal periods or compensation in lieu thereof (Labor Code §§ 226.7, and 512); (4) knowing and
28 intentional failure to comply with itemized employee wage statement provisions (Labor Code §§

1 226(a), (e)); (5) failure to timely pay wages due at separation of employment (Labor Code §§ 201-
2 203); (6) failure to reimburse all business expenses (Labor Code § 2802); (7) violation of Business
3 and Professions Code § 17200; and (8) penalties pursuant to Labor Code § 2699(f) for violations
4 of Labor Code §§ 201-202, 226(a), 226.3, 226.7, 510, 512, 558, 1194, and 2802 (the "Complaint").

5 5. Defendants deny any liability or wrongdoing of any kind associated with the claims
6 alleged in the Action, and further deny that the Action is appropriate for class treatment for any
7 purpose other than this settlement. Defendants contend that they have complied at all times with
8 the California Labor Code. It is Defendants' position that, if this case were to be litigated, class
9 certification would be inappropriate because Plaintiffs are not adequate Class Representatives,
10 Plaintiffs' claims are not typical of putative class members, and individual issues predominate over
11 class issues. The Action, the negotiation and execution of this Settlement Agreement, and all acts
12 performed or documents executed pursuant to or in furtherance of the Settlement Agreement (i)
13 shall not be used as an admission or evidence of wrongdoing on behalf of Defendants; (ii) shall not
14 be an admission or evidence of fault on behalf of Defendants in any action before a civil, criminal,
15 or administrative agency; and (iii) shall not be deemed to be, and may not be used as, an admission
16 or evidence of the appropriateness of these or similar claims for class certification in the Action or
17 with respect to any other proceeding.

18 6. The Class Representatives contend that Defendants violated the California Labor
19 Code and that this case is appropriate for class certification.

20 7. Class Counsel represent that they have conducted a thorough investigation into the
21 facts and law during the prosecution of this class action case, including the exchange of extensive
22 informal discovery and the review and verification of statistical data and other facts and information
23 provided by Defendants. Counsel for the Parties also represent that they have investigated the
24 applicable law as applied to the facts discovered regarding the alleged claims of Plaintiffs and
25 potential defenses thereto, and the damages claimed by Plaintiffs.

26 8. On April 10, 2023, the Parties participated in a full day mediation session with David
27 Phillips, Esq., a respected mediator with extensive experience resolving employment actions. The
28

1 Parties were able to agree to the basic terms of this Settlement Agreement with the assistance of
2 Mr. Phillips.

3 9. Based on their own independent investigation and evaluation, Class Counsel are of
4 the opinion (and will so represent to the Court) that settlement for the consideration and on the
5 terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best
6 interest of the Settlement Class in light of all known facts and circumstances, including the risk of
7 significant delay, the risk the Settlement Class will not be certified by the Court, and the defenses
8 asserted by Defendants. Defendants and their counsel also agree (and will so represent to the Court)
9 that this settlement is fair and in the best interest of the Settlement Class.

10 10. The Parties agree that the Settlement Class described herein may be certified for
11 settlement purposes only and that any motion for approval seeking, *inter alia*, certification of the
12 Settlement Class is for purposes of the settlement only. If for any reason the settlement is not
13 approved, the certification will have no force or effect and will immediately be revoked. The
14 Parties further agree that certification for purposes of the settlement is in no way an admission that
15 class certification is proper under the more stringent standard applied for litigation and that
16 evidence of this limited stipulation for settlement purposes only will not be admissible for any
17 purpose in this or any other proceeding.

18 **C. Terms of Settlement.**

19 1. The financial terms of the settlement are as follows:

20 (a) **Gross Settlement Amount:** The Parties agree to settle this Action for a
21 Gross Settlement Amount of One Million Five Hundred Thousand U.S. Dollars (\$1,500,000) ("the
22 Gross Settlement Amount"). The Gross Settlement Amount includes the attorneys' fees of Class
23 Counsel, litigation costs and expenses (which includes, without limitation, all such fees and costs
24 incurred to date, as well as such fees and costs to be incurred in documenting the settlement,
25 providing any notices required as part of the settlement, securing Court approval of the settlement,
26 and obtaining judgment in the Action), the service awards to the Class Representatives, as approved
27 by the Court, the payment to the LWDA pursuant to the PAGA claims in the Action, and all costs
28 of administration, including, without limitation, settlement administration fees and expenses.

1 Defendants shall pay all employer payroll tax obligations due on wage payments made from the
2 Net Settlement Proceeds in addition to, and separate and apart from, the Gross Settlement Amount.

3 (b) **Net Settlement Proceeds:** "Net Settlement Proceeds" is defined as the
4 Gross Settlement Amount less the amounts approved and awarded by the Court for: attorneys' fees
5 and documented litigation costs and expenses incurred or advanced by Class Counsel, the service
6 awards to the Class Representatives, the payment to the LWDA pursuant to PAGA, and the costs
7 of administering the settlement.

8 (c) **Calculation of the Individual Payment Amounts:** "Individual Payment
9 Amount" means the portion of the Net Settlement Proceeds distributable to each Class Member
10 who participates in the Class Settlement (i.e., who does not submit a valid request for exclusion
11 form) and each Aggrieved Employee, whether they participate in the Class Settlement or not. As
12 to participating Class Members, the class portion of the Individual Payment Amount will be
13 determined by dividing the Net Settlement Proceeds, less the \$25,000 PAGA allocation, by the
14 total number of weeks worked by the entire Settlement Class during the Class Period, net of opt
15 outs, resulting in the class workweek value; and then multiplying the class workweek value by the
16 number of weeks worked by each participating Class Member during the Class Period. As to the
17 Aggrieved Employees, the PAGA portion of the Individual Payment Amount will be determined
18 by dividing the PAGA settlement amount (\$25,000) by the total number of weeks worked by all
19 Aggrieved Employees during the PAGA Period, resulting in the PAGA workweek value; and then
20 multiplying the PAGA workweek value by the number of weeks worked by each Aggrieved
21 Employee during the PAGA Period.

22 (d) For tax purposes, the class portion of each Individual Payment Amount will
23 be apportioned (a) 20% as wages (reported on an IRS Form W-2 and subject to applicable
24 withholdings); and (b) 80% equally as penalties and interest (reported on an IRS Form 1099, if
25 required). The PAGA portion of each Individual Payment Amount will be apportioned 100% as
26 penalties (reported on an IRS Form 1099, if required). All Individual Payment Amounts paid to
27 Class Members and Aggrieved Employees will be subject to any applicable wage garnishments,
28 liens, or other legally mandated treatment as required by law.

1 (e) **PAGA Payments:** The Parties agree that One Hundred Thousand Dollars
2 (\$100,000) shall be allocated to settle Plaintiffs' claims brought pursuant to PAGA. Of this amount,
3 Seventy-Five Percent (75%), or Seventy-Five Thousand Dollars (\$75,000) shall be paid to the
4 LWDA, and Twenty-Five Percent (25%), or Twenty-Five Thousand Dollars (\$25,000) shall be paid
5 to Aggrieved Employees as part of the Net Settlement Proceeds.

6 (f) **Service Awards to Class Representatives:** The amount awarded to each
7 Class Representative as a service award will be set by the Court in its discretion, not to exceed
8 Twelve Thousand Dollars (\$12,000) each. These amounts will be deducted from the Gross
9 Settlement Amount and will also compensate Plaintiffs for their general release of all claims. An
10 IRS Form 1099 will be issued to the Class Representatives for their service awards. Defendants
11 agree not to dispute or otherwise object to the service awards if Plaintiffs request \$12,000 or less.

12 (g) **Attorneys' Fees:** An award to Class Counsel of attorneys' fees will be
13 deducted from the Gross Settlement Amount in an amount to be set by the Court taking into account
14 the settlement award that has been made available for the Settlement Class by the efforts of Class
15 Counsel. The amount awarded shall not exceed 33-1/3% of the Gross Settlement Amount (i.e.,
16 Five Hundred Thousand Dollars (\$500,000) based on the current projected \$1,500,000 Gross
17 Settlement Amount). An IRS Form 1099 will be issued to Class Counsel with respect to its award
18 of attorneys' fees. Defendants agree not to dispute or otherwise object to the attorneys' fee award
19 requested by Class Counsel so long as the request does not exceed 33-1/3% of the Gross Settlement
20 Amount.

21 (h) **Attorneys' Costs and Expenses:** Class Counsel will be reimbursed from
22 the Gross Settlement Amount in an amount to be set by the Court for documented out-of-pocket
23 litigation costs and expenses, not to exceed Twenty-Five Thousand Dollars (\$25,000). An IRS
24 Form 1099 will be issued to Class Counsel with respect to its award of costs and expenses.
25 Defendants agree not to dispute or otherwise object to the attorneys' cost award requested by Class
26 Counsel so long as the request does not exceed \$25,000.

27 (i) **Settlement Administration Costs:** The fees and other charges of the
28 Settlement Administrator to administer the Settlement are expected to total no more than Fifteen

1 Thousand Dollars (\$15,000), and will be paid from the Gross Settlement Amount. These fees shall
2 include any costs associated with the required tax reporting on any Individual Payment Amounts,
3 and the issuing of any and all W-2 and 1099 forms. Subject to approval of the Court, the Parties
4 have agreed that Phoenix Settlement Administration will serve as a neutral third-party claims'
5 administrator ("Settlement Administrator") to perform all acts related to providing notice to the
6 Settlement Class. Settlement Administrator shall be responsible for (a) printing and distributing
7 the Court-approved Notice of Class Action Settlement ("Class Notice") to all Class Members; (b)
8 administering the settlement; (c) processing exclusions and objections; (d) resolving disputes; (e)
9 distributing the Gross Settlement Amount as directed by the Court and set forth herein; (f) tax
10 reporting; (g) providing necessary weekly status reports; and (h) other duties and responsibilities
11 set forth herein.

12 (j) **No Warranty by Defendants:** Plaintiffs understand and agree that
13 Defendants are not providing Plaintiffs or Class Members with tax or legal advice and that
14 Defendants make no representation regarding tax obligations or consequences, if any, related to
15 this Settlement Agreement.

16 **D. Release of Claims.**

17 1. Upon the Effective Date, and subject to Defendants' full payment of the Gross
18 Settlement Amount, the Released Parties shall be entitled to a release by participating Class
19 Members of all claims pled or that could have been pled based on the factual allegations contained
20 in the operative complaint and PAGA letters sent by Plaintiffs that occurred during the Class
21 Period during employment in a non-exempt position in California.

22 2. Aggrieved Employees will release all PAGA civil penalty claims pled or that could
23 have been pled based on the factual allegations contained in the operative complaint and PAGA
24 letters sent by Plaintiffs that occurred during the PAGA Period during employment in a non-
25 exempt position in California against Released Parties.

26 3. In addition to the Release of Claims in Paragraphs D(1) and D(2), above, in
27 exchange for their service awards, and subject to Defendants' full payment of the Gross Settlement
28 Amount, Plaintiffs make the additional following general release of all claims, known or unknown.

1 Plaintiffs hereby, for themselves and their respective spouse, heirs, current and former agent(s),
2 representatives, attorneys, executors, administrators, transferors, transferees, successors and
3 assigns, forever release Released Parties from any and all claims, demands, rights, liabilities, suits,
4 rights, costs, losses, debts, and expenses (including back wages, penalties, and attorneys' fees and
5 costs actually incurred) of any nature whatsoever, from the beginning of time through the date of
6 their signatures on this Agreement, known or unknown, suspected or unsuspected, including, but
7 not limited to, all claims arising out of, based upon, or relating to their employment with
8 Defendants or the compensation for, or termination of, such employment (the "General Release").

9 With respect to this General Release only, Plaintiffs stipulate and agree that, upon the
10 Effective Date, and subject to Defendants' full payment of the Gross Settlement Amount, Plaintiffs
11 shall be deemed to have, expressly waived and relinquished, to the fullest extent permitted by law,
12 the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar
13 provision under state law, with the exception of workers' compensation claims, which provides:

14
15 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS,**
16 **WHICH THE CREDITOR OR RELEASING PARTY DOES**
17 **NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**
18 **FAVOR AT THE TIME OF EXECUTING THE RELEASE,**
WHICH IF KNOWN BY HIM OR HER MUST HAVE
MATERIALLY AFFECTED HIS OR HER SETTLEMENT
WITH THE DEBTOR OR RELEASED PARTY.

19 Accordingly, if the facts relating in any manner to this Settlement are found hereafter to be
20 other than or different from the facts now believed to be true, the release of claims contained herein
21 shall be effective as to all unknown claims.

22 **E. Notice and Exclusion Process.**

23 1. Within seven (7) calendar days after entry of the order granting preliminary approval
24 of this Settlement, Defendants shall provide to the Settlement Administrator a list of all Class
25 Members, including their last known addresses, telephone numbers, social security numbers, and
26 their dates of employment in a non-exempt position in California during the Class Period
27 ("Settlement Class Information"). The names, addresses, telephone numbers, and Social Security
28 numbers will only be disclosed to the Settlement Administrator and not to Plaintiffs' Counsel. All

1 information provided to the Settlement Administrator will be marked CONFIDENTIAL. This
2 information shall be kept confidential and shall not be disclosed, either in writing or orally, by the
3 Settlement Administrator. The Settlement Administrator shall use due care with respect to the
4 storage, custody, use, and/or dissemination of the confidential information. Such information must
5 be stored in a secure fashion and all persons who access the data must agree to keep it confidential.

6 2. A notice of pendency of class action, proposed settlement and hearing date for Court
7 approval ("Class Notice") in the form attached hereto as Exhibit 1, and as approved by the Court,
8 shall be sent by the Settlement Administrator to the Class Members, by first class mail, within
9 fourteen (14) calendar days after entry of the order granting preliminary approval. Attached to the
10 Class Notice will be a request for exclusion form ("Request for Exclusion Form") in the form
11 attached hereto as Exhibit 2.

12 3. The Settlement Administrator will make reasonable efforts to ensure that the Class
13 Notice and Request for Exclusion Form are sent to all Class Members. It will conclusively be
14 presumed that if an envelope has not been returned within thirty (30) days of the mailing that the
15 Class Member received the Class Notice. In the event of returned or non-deliverable notices, the
16 Settlement Administrator will make reasonable efforts to locate Class Members and re-send the
17 notices.

18 4. Each Class Member will be fully advised of the settlement, the ability to object to
19 the settlement, and the ability to submit a Request for Exclusion Form. The Class Notice will
20 inform the Class Members of the Court-established deadlines for filing objections and a Request
21 for Exclusion Form.

22 5. Each Class Notice will contain personalized information setting forth the number of
23 weeks each Class Member worked for Defendants in California during the Class Period and PAGA
24 Period and their estimated Individual Payment Amount. To the extent a Class Member disputes
25 any of the information listed on his or her Class Notice, the Class Member may produce evidence
26 to the Settlement Administrator showing such information the Class Member contends should be
27 reflected in the Class Notice. Defendants' records will be presumed determinative, however, and
28

1 the Settlement Administrator's decision on these matters will be final. The Class Notice will also
2 set forth IRS W-9 information if required.

3 6. All Class Members who do not submit a Request for Exclusion Form will be eligible
4 to receive an Individual Payment Amount and all Aggrieved Employees will be eligible to receive
5 a share of the PAGA allocation from the Net Settlement Proceeds, which shall be mailed to them
6 if and when the Effective Date occurs.

7 7. In order to elect not to participate in the Settlement, a Class Member must submit a
8 Request for Exclusion Form, and mail it to the Settlement Administrator no later than forty-five
9 (45) calendar days after the initial mailing of the Class Notice and Request for Exclusion Form to
10 Class Members, unless the Court requires a longer period, in which case the Court ordered
11 exclusion period will apply. The date of the postmark shall be deemed the date of submission. The
12 timeliness of submitted Request for Exclusion Forms will be determined by valid postmark. If the
13 45th day falls on a Sunday or federal holiday, the time to request exclusion will be extended to the
14 next day on which the U.S. Postal Service is open.

15 8. The deadline for submission of Exclusion Forms shall be extended once by 30 days
16 for those Class Members whose Class Notice and Exclusion Form are returned as "undeliverable."
17 If the 30th day falls on a Sunday or federal holiday, this deadline will be extended to the next day
18 on which the U.S. Postal Service is open.

19 9. The Settlement Administrator will search for additional addresses on returned mail
20 and will re-mail the Class Notice and Exclusion Form to an updated address (if any) within 15 days
21 of receipt of the returned mail. The 30-day extended time limit will run from the date of the second
22 mailing for those Class Members. To the extent a Class Notice from the initial mailing is not
23 returned within 30 days, it shall be deemed to have been sent to a valid address even if it is thereafter
24 returned. It is the intent of the Parties that reasonable, but not extraordinary, efforts be used to
25 locate Class Members. If the initial Class Notice and Request for Exclusion Form is returned, the
26 Settlement Administrator will search using the social security number for a more current address.
27 If no address is found within 10 days, no further action is required.
28

1 10. The Settlement Administrator will notify the Parties of the total number of valid
2 Request for Exclusion Forms within ten (10) calendar days after the deadline for receipt of the
3 Request for Exclusion Forms (fifty-five (55) days following the initial mailing of the Class Notice
4 and Request for Exclusion Forms to Class Members).

5 11. In order to object to the settlement, a Class Member must mail his or her objection
6 to the Settlement Administrator no later than forty-five (45) calendar days after the mailing of the
7 Class Notice and Request for Exclusion Form to Class Members, unless the Court requires a longer
8 period, in which case the Court ordered objection period will apply. If the 45th day falls on a
9 Sunday or federal holiday, the time to object to the settlement will be extended to the next day on
10 which the U.S. Postal Service is open.

11 12. The Settlement Administrator shall provide to the Parties, at least twelve (12)
12 calendar days prior to the final approval hearing, or as otherwise ordered by the Court, a declaration
13 of due diligence and proof of mailing with regard to the mailing of the Class Notice and Request
14 for Exclusion Forms. The Settlement Administrator will also provide to the Parties, at least twelve
15 (12) calendar days prior to the final approval hearing, or as otherwise ordered by the Court, a report
16 listing the amount of all payments to be made to each Class Member without names or personal
17 identifying information.

18 13. Defendants shall deposit the Gross Settlement Amount with the Settlement
19 Administrator no later than fifteen (15) calendar days after the Effective Date, but no earlier than
20 January 1, 2024.

21 14. The Settlement Administrator shall disburse the Gross Settlement Amount within
22 fifteen (15) calendar days after its receipt thereof. Class Members and Aggrieved Employees must
23 cash each of their Individual Payment Amount checks within one hundred eighty (180) calendar
24 days after they are mailed by the Settlement Administrator. The value of any checks uncashed
25 more than one hundred eighty (180) days after mailing shall be paid to the State of California
26 Controller's Office – Unclaimed Property Fund, to be held in the name of the respective Class
27 Member or Aggrieved Employee.

1 **F. Duties of the Parties Prior to Court Approval.**

2 1. Promptly after execution of this Settlement Agreement, Plaintiffs shall move the
3 Court for preliminary approval of this settlement and entry of an order accomplishing the
4 following:

- 5 (a) scheduling a fairness hearing on the question of whether the proposed
6 settlement should be finally approved as fair, reasonable and adequate as
7 to the Class Members;
- 8 (b) approving as to form and content the proposed Class Notice;
- 9 (c) approving as to form and content the proposed Request for Exclusion
10 Form;
- 11 (d) preliminarily certifying the Settlement Class for purposes of settlement;
- 12 (e) preliminarily approving the PAGA payment of \$75,000 to the LWDA;
- 13 (f) preliminarily setting attorneys' fees and costs payable to Class Counsel;
- 14 (g) preliminarily setting the service awards to the Class Representatives; and
- 15 (h) preliminarily approving Phoenix Settlement Administration as the
16 Settlement Administrator and its estimated fees and costs of \$15,000.

17 The Parties shall submit this Settlement Agreement to the Court and the LWDA in support
18 of Plaintiffs' unopposed motion for preliminary approval of the settlement.

19 **G. Duties of the Parties in Connection with and Following Final Court Approval.**

20 1. In connection with the hearing on final approval of the settlement provided for in
21 this Settlement Agreement, the Parties will submit a proposed final order no later than ten (10)
22 calendar days prior to the scheduled date of the hearing on final approval (unless otherwise ordered
23 by the Court):

- 24 (a) approving the settlement, adjudging the terms thereof to be fair, reasonable
25 and adequate, and directing consummation of its terms and provisions;
- 26 (b) approving Class Counsel's application for an award of attorneys' fees and
27 reimbursement of documented litigation costs and expenses, the service
28

1 awards to the Class Representatives, the payment to the LWDA, and the
2 costs of administering the settlement; and

3 (c) Entering judgment in this Action in accordance with this Stipulation,
4 pursuant to Cal. Rules of Court, Rule 3.769(h).

5 2. Class Counsel shall file an application for attorneys' fees and reimbursement of
6 costs and expenses no later than ten (10) calendar days prior to the scheduled date of the hearing
7 on final approval (unless otherwise ordered by the Court).

8 **H. Miscellaneous Provisions:**

9 1. **Escalator Provision.**

10 Defendants have represented that as of April 14, 2023, there are approximately 492 Class
11 Members who worked 30,000 workweeks during the Class Period. Defendants will provide a
12 declaration under penalty of perjury confirming the number of Class Members and workweeks they
13 worked during the Class Period. Should the number of workweeks increase by more than 10% (i.e.
14 exceed 33,000), Defendants will have the option to either a) increase the Gross Settlement Amount
15 proportionally (i.e. \$45.45 for each workweek in excess of 33,000) or b) shorten the Class Period
16 and PAGA Period so that there are no more than 33,000 workweeks encompassed in the Class
17 Period, such that there would be no increase to the Gross Settlement Amount.

18 2. **Voiding the Agreement.**

19 A failure of the Court to approve any material condition of this Settlement Agreement which
20 effects "a fundamental change of the Parties' settlement," or if the settlement is reversed or
21 materially modified on appellate review, shall render the entire Stipulation of Settlement voidable
22 and unenforceable as to all Parties herein at the option of any Party.

23 3. **Parties' Authority.**

24 The signatories hereto represent that they are fully authorized to enter into this Settlement
25 Agreement and bind the Parties hereto to the terms and conditions hereof.

26 4. **Mutual Full Cooperation.**

27 The Parties agree to fully cooperate with each other to accomplish the terms of this
28 Stipulation of Settlement, including but not limited to, execution of such documents and such other

1 action as may reasonably be necessary to implement the terms of this Settlement Agreement. The
2 Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated
3 by this Settlement Agreement and any other efforts that may become necessary by order of the
4 Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As
5 soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the
6 assistance and cooperation of Defendants and their counsel, take all necessary steps to secure the
7 Court's preliminary and final approval of the settlement.

8 **5. No Prior Assignments.**

9 The Parties hereto represent, covenant, and warrant that they have not directly or indirectly,
10 assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or
11 entity any portion of any liability, claim, demand, action, cause of action or rights released and
12 discharged by this Stipulation of Settlement.

13 **6. No Admission.**

14 Nothing contained herein, nor the consummation of this Stipulation of Settlement, is to be
15 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part
16 of Defendants or any of the other Released Parties. Each of the Parties hereto has entered into this
17 Settlement Agreement with the intention of avoiding further disputes and litigation with the
18 attendant inconvenience and expenses. This Settlement Agreement is a settlement document and
19 shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408
20 and/or any other similar law, be inadmissible in evidence in any proceeding, except an action or
21 proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 7. **Notices.**

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

6 **To Plaintiffs and the Settlement Class:**

7 Daniel F. Gaines, Esq.
8 Alex P. Katofsky, Esq.
9 GAINES & GAINES, APLC
 4550 E. Thousand Oaks Blvd., Suite 100
 Westlake Village, CA 91362

10 **To Defendants:**

11 Kevin Jackson, Esq.
12 FOLEY & LARDNER LLP
13 1198 El Camino Real, Suite 400
 San Diego, CA 92130

14 8. **Construction.**

15 The Parties hereto agree that the terms and conditions of this Settlement Agreement are the
16 result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement
17 Agreement shall not be construed in favor of or against any Party by reason of the extent to which
18 any Party or their counsel participated in the drafting of this Settlement Agreement.

19 9. **Captions and Interpretations.**

20 Paragraph titles or captions contained herein are inserted as a matter of convenience and for
21 reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement
22 or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a
23 recital.

24 10. **Modification.**

25 This Settlement Agreement may not be changed, altered, or modified, except in writing and
26 signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not be
27 discharged except by performance in accordance with its terms or by a writing signed by each of
28 the Parties hereto on their attorneys.

1 **11. Integration Clause.**

2 This Settlement Agreement contains the entire agreement between the Parties relating to
3 the settlement and transactions contemplated hereby, and all prior or contemporaneous agreements,
4 understandings, representations, and statements, whether oral or written and whether by a Party or
5 such Party's legal counsel, are merged herein. No rights hereunder may be waived except in
6 writing.

7 **12. Binding on Assigns.**

8 This Settlement Agreement shall be binding upon and insure to the benefit of the Parties
9 hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

10 **13. Governing Law.**

11 All terms of this Settlement Agreement and its exhibits shall be governed by and interpreted
12 according to the laws of the State of California, without giving effect to any conflict of law
13 principles or choice of law principles.

14 **14. Signatures of All Class Members Unnecessary to be Binding.**

15 It is agreed that, because the members of the Settlement Class are numerous, it is impossible
16 or impractical to have each Class Member execute this Settlement Agreement. The Class Notice,
17 attached hereto as Exhibit 1, will advise all Class Members of the binding nature of the release
18 provided herein and such shall have the same force and effect as if this Settlement Agreement was
19 executed by each Class Member.

20 **15. Counterparts.**

21 This Settlement Agreement may be executed in counterparts, and when each Party has
22 signed and delivered at least one such counterpart, each counterpart shall be deemed an original,
23 and when taken together with other signed counterparts, shall constitute one fully-signed Settlement
24 Agreement, which shall be binding upon and effective as to all Parties.

25 **16. Confidentiality**

26 Until Plaintiffs files his motion for preliminary approval of the class action settlement, the
27 Parties and their Counsel agree to maintain confidentiality as to the Settlement, including the
28 amount and terms of the Settlement, except as to spouses, tax or financial advisors, attorneys, taxing

1 agencies, or as otherwise required by law.

2 **17. No Publicity**

3 Plaintiffs and their Counsel will not contact the media about the settlement or respond to
4 any inquiries by the media regarding the Settlement, other than to state that the matter was amicably
5 settled, and the Court did not find Defendants liable. Plaintiffs and their Counsel also will not post
6 any information about the settlement on social media or their firms' websites.

7 **18. Disputes**

8 Any dispute between the Parties as to the remaining terms of the settlement agreement shall
9 be presented to the mediator for resolution.

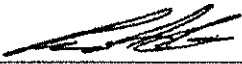
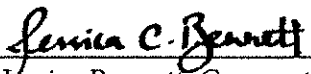
10 **19. Court Filings**

11 The Parties agree not to object to any Court filings consistent with this Agreement. The
12 Parties further agree that upon signing the litigation will be stayed for all purposes.

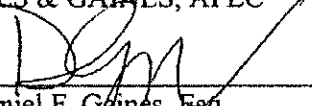
13 **20. Continuing Jurisdiction; Tolling of Five-Year Rule**

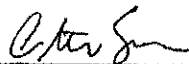
14 The Parties agree that the Court shall retain continuing jurisdiction over this case under CCP
15 Section 664.6 to ensure the continuing implementation of the provisions of this settlement and that
16 the time within which to bring this action to trial under CCP Section 583.310 shall be extended for
17 a period of not less than one (1) year starting from the date of the signing of this Agreement by all
18 parties until the entry of the final approval order and judgment or if not entered the date this
19 agreement shall no longer be of any force or effect.

20 *[SIGNATURES ON FOLLOWING PAGE]*

1 Dated: 07 / 18 / 2023, 2023 By: 
2 RONNIE GARCIA
3 Plaintiff and Class Representative
4 Dated: _____, 2023 By: _____
5 PETER SUMO
6 Plaintiff and Class Representative
7 Dated: _____, 2023 By: _____
8 THOMAS TOMLINSON
9 Plaintiff and Class Representative
10 Dated: July 20th, 2023 SST CONSTRUCTION, LLC
11 By: _____
12 
13 Its: Jessica Bennett, Corporate Secretary

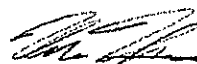
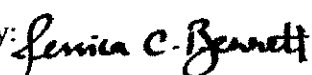
14 **APPROVED AS TO FORM AND CONTENT:**

15 Dated: 7/19/2023, 2023 GAINES & GAINES, APLC
16 By: 
17 Daniel F. Gaines, Esq.
18 Alex P. Karofsky, Esq.
19 Counsel for Plaintiffs and Class
Representatives
20 Dated: _____, 2023 FOLEY & LARDNER LLP
21 By: _____
22 Kevin Jackson, Esq.
23 Counsel for Defendants
24
25
26
27
28

1 Dated: _____, 2023 By: _____
2 RONNIE GARCIA
3 Plaintiff and Class Representative
4 Dated: 07 / 18 / 2023, 2023 By: 
5 PETER SUMO
6 Plaintiff and Class Representative
7 Dated: _____, 2023 By: _____
8 THOMAS TOMLINSON
9 Plaintiff and Class Representative
10 Dated: July 20th, 2023 SST CONSTRUCTION, LLC
11
12 By: 
13 Its: Jessica Bennett, Corporate Secretary

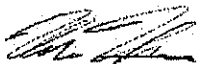
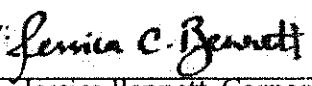
14 **APPROVED AS TO FORM AND CONTENT:**

15 Dated: _____, 2023 GAINES & GAINES, APLC
16
17 By: _____
18 Daniel F. Gaines, Esq.
19 Alex P. Katofsky, Esq.
20 Counsel for Plaintiffs and Class
21 Representatives
22 Dated: _____, 2023 FOLEY & LARDNER LLP
23
24 By: _____
25 Kevin Jackson, Esq.
26 Counsel for Defendants
27
28

1 Dated: _____, 2023 By: _____
2 RONNIE GARCIA
3 Plaintiff and Class Representative
4 Dated: _____, 2023 By: _____
5 PETER SUMO
6 Plaintiff and Class Representative
7 Dated: 07 / 18 / 2023, 2023 By: 
8 THOMAS TOMLINSON
9 Plaintiff and Class Representative
10 Dated: July 20th, 2023 SST CONSTRUCTION, LLC
11 By: 
12 Its: Jessica Bennett, Corporate Secretary
13

14 **APPROVED AS TO FORM AND CONTENT:**

15 Dated: _____, 2023 GAINES & GAINES, APLC
16 By: _____
17 Daniel F. Gaines, Esq.
18 Alex P. Katofsky, Esq.
19 Counsel for Plaintiffs and Class
20 Representatives
21 Dated: _____, 2023 FOLEY & LARDNER LLP
22 By: _____
23 Kevin Jackson, Esq.
24 Counsel for Defendants
25
26
27
28

1 Dated: _____, 2023 By: _____
2 RONNIE GARCIA
3 Plaintiff and Class Representative
4 Dated: _____, 2023 By: _____
5 PETER SUMO
6 Plaintiff and Class Representative
7 Dated: 07 / 18 / 2023, 2023 By: 
8 THOMAS TOMLINSON
9 Plaintiff and Class Representative
10 Dated: July 20th, 2023 SST CONSTRUCTION, LLC
11 By: 
12 Its: Jessica Bennett, Corporate Secretary
13

14 **APPROVED AS TO FORM AND CONTENT:**

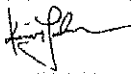
15 Dated: _____, 2023 GAINES & GAINES, APLC
16 By: _____
17 Daniel F. Gaines, Esq.
18 Alex P. Katofsky, Esq.
19 Counsel for Plaintiffs and Class
Representatives
20 Dated: August 8., 2023 FOLEY & LARDNER LLP
21 By: 
22 Kevin Jackson, Esq.
23 Counsel for Defendants
24
25
26
27
28

EXHIBIT 1

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

RONNIE GARCIA, PETER SUMO, THOMAS
TOMLINSON, on behalf of themselves and on
behalf of all similarly situated individuals,

Plaintiffs,

v.

SST CONSTRUCTION, LLC, a California
limited liability company, and DOES 1 through
10, inclusive,

Defendants.

CASE NO: 34-2022-00320617

Assigned to Hon. Jill H. Talley, Dept. 27

**NOTICE OF PENDENCY OF PROPOSED
CLASS ACTION SETTLEMENT AND
FINAL HEARING**

**YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A SETTLEMENT
PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED.**

A California court authorized this notice. This is not a solicitation from a lawyer.

- A settlement will provide \$1,500,000 to pay claims to all individuals who currently work or previously worked for Defendants SST Construction, LLC or its subsidiaries, affiliates, and parents, including NovaSource Power Holdings, Inc.'s direct and indirect subsidiaries and other affiliates, including without limitation Northstar Energy Management, LLC (collectively, "Defendants") in California in a non-exempt position between May 27, 2018 and _____ (the "Class Period") and all non-exempt employees in California at any time between August 25, 2020 and _____ (the "PAGA Period").
- The settlement resolves a lawsuit alleging that Defendants failed to pay all minimum and overtime wages; provide compliant meal and rest periods, or premium compensation in lieu thereof; reimburse all business expenses; timely issue final wages upon separation of employment; and issue accurate and complete itemized wage statements. The Settlement avoids costs and risks of continuing the lawsuit; pays money to employees; and releases Defendants from liability from the claims asserted in this lawsuit.
- Lawyers for the employees will ask the Court to award them up to \$500,000 as attorneys' fees and \$25,000 as expenses for investigating the facts, litigating the case, and negotiating the settlement. This will be paid from the settlement amount.
- Defendants deny liability and believe all appropriate wages were paid and that they otherwise complied with any Labor Code obligations. The Parties disagree on how much money could have been awarded if employees won at trial. After investigating the claims at issue, and the possible defenses to those claims, the Parties have agreed to settle this case in order to avoid the cost and risk of further litigation. In view of the costs and risks that continued litigation would entail, Plaintiffs and their counsel believe the Settlement is in the best interests of all parties.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing	You do not need to take any action if you wish to receive your settlement payment. If the settlement is approved by the Court, you will automatically be mailed a settlement check at the address on file with the Settlement Administrator. If your address has changed, you must notify the Settlement Administrator of your new address. In exchange for the settlement payment, you will release claims against the Defendants, as detailed below.
Exclude Yourself	To exclude yourself, you must send a written Request for Exclusion to the Settlement Administrator by the applicable deadline, as detailed below. If you request exclusion, you may receive no money from the Settlement . This is the only option that allows you to ever be part of any other lawsuit against Defendants about the legal claims that were brought in this case. Note that if you exclude yourself and you are an Aggrieved Employee, you will still receive a payment for PAGA penalties and be bound by the settlement of the PAGA claims.
Object	Write to the Settlement Administrator about why you don't like the settlement by the applicable deadline, as detailed below, and/or appear at the Final Approval Hearing to make an oral objection.
Go to a Hearing	Ask to speak in Court about the fairness of the settlement, as detailed below.

WHY DID YOU RECEIVE THIS NOTICE?

This notice explains a proposed settlement of a class action lawsuit, and informs you of your legal rights under that proposed settlement. You are receiving this notice because you may be a member of the Class on whose behalf this class action lawsuit has been brought.

WHAT IS THIS LAWSUIT ABOUT?

On May 26, 2022, Plaintiffs Ronnie Garcia, Peter Sumo, and Thomas Tomlinson ("Plaintiffs"), former employees of SST Construction, LLC, filed this lawsuit in the Sacramento County Superior Court. The lawsuit alleges violations of the California Labor Code and California Business and Professions Code. The lawsuit seeks to certify a class of all current and former non-exempt California employees of Defendants at any time between May 27, 2018 and _____. Specifically, the lawsuit alleges that members of the Class were not paid all minimum and overtime wages; were not provided compliant meal and rest periods, or premium compensation in lieu thereof; were not reimbursed for all business expenses; were not timely issued final wages upon separation of employment; and were not issued accurate and complete itemized wage statements. The Settlement seeks recovery of wages, damages, interest, statutory and civil penalties, restitution, attorneys' fees and costs. Defendants deny all of the material allegations in the lawsuit and deny that they owe Class Members any remedies. The Court has not made a ruling on the merits of the case.

The lawyers for the parties are:

Plaintiffs' Attorneys

Daniel F. Gaines, Esq.
Alex P. Katofsky, Esq.
GAINES & GAINES, APLC
4550 E. Thousand Oaks Blvd., Suite 100
Westlake Village, CA 91362
Phone: (866) 550-0855

Defendants' Attorneys

Kevin Jackson, Esq.
FOLEY & LARDNER LLP
1198 El Camino Real, Suite 400
San Diego, CA 92130

SUMMARY OF THE SETTLEMENT

A. Why is there a Settlement?

The Court did not decide in favor of Plaintiffs or Defendants. Plaintiffs believe they would have prevailed on their claims at a trial. Defendants do not believe that Plaintiffs would have won anything from a trial. There has been no trial. Instead, both sides agreed to a settlement, which is memorialized in the Settlement Agreement and Release of Claims ("Settlement" or "Settlement Agreement"), in order to avoid the further costs, risks, and uncertainty of a trial. Plaintiffs and Plaintiffs' Attorneys believe the settlement is fair, reasonable, adequate, and in the best interests of all Class Members and Aggrieved Employees.

B. Who is in the Settlement Class?

The Settlement encompasses a class composed of all individuals who worked for SST Construction, LLC or its subsidiaries, affiliates, and parents, including NovaSource Power Holdings, Inc.'s direct and indirect subsidiaries and other affiliates, including without limitation Northstar Energy Management, LLC as a non-exempt employee in California at any time between May 27, 2018 and _____, and, with regard to the PAGA Claims, all non-exempt California employees who worked between August 25, 2020 and _____.

C. What does the Settlement provide?

1. Gross Settlement Amount.

The Settlement provides that Defendants will pay \$1,500,000 (the "Gross Settlement Amount") to settle the lawsuit.

2. Net Settlement Proceeds.

The "Net Settlement Proceeds" is the portion of the Gross Settlement Amount that will be available for distribution to Class Members who do not submit timely and valid requests for exclusion in exchange for the release of their class claims. The Net Settlement Proceeds is the Gross Settlement Amount less the following amounts that will be requested at the Final Approval Hearing and are subject to comment or objection by Participating Class Members. The Court will fix these amounts at the Final Approval Hearing.

(a) **Class Counsel's Attorneys' Fees** in an amount set by the Court, not to exceed 33-1/3% of the Gross Settlement Amount (i.e. \$500,000);

(b) **Class Counsel's Documented Litigation Costs/Expenses** in an amount set by the Court, not to exceed \$25,000;

(c) **Service Awards to the Class Representatives** in an amount set by the Court, not to exceed \$12,000 each for their service in the lawsuit;

(d) **Settlement Administration Costs** which are currently estimated to not exceed \$15,000, for administering the settlement; and

(e) **PAGA Payment** in the total amount of \$100,000 for the settlement of claims arising under the California Private Attorneys General Act ("PAGA"). 75%, or \$75,000, shall be paid to the California Labor and Workforce Development Agency. The remaining 25%, or \$25,000, will be distributed to non-exempt California employees who worked for Defendants from August 25, 2020 to _____ ("Aggrieved Employees"), for the release of their claims arising under PAGA.

3. Individual Payment Amount.

Your share of the Net Settlement Proceeds will be determined by the formula detailed in section E below. Your Individual Payment Amount includes both your estimated share of the Net Settlement Proceeds and, if eligible, your share of the PAGA Payment.

D. What Are You Giving Up To Get A Payment Or Stay In The Class?

Upon the Effective Date, and subject to Defendants' full payment of the Gross Settlement Amount, Defendants shall be entitled to a release by participating Class Members of all claims pled or that could have been pled based on the factual allegations contained in the operative complaint and PAGA letters sent by Plaintiffs that occurred during the Class Period during employment in a non-exempt position in California.

Upon the Effective Date and subject to Defendants' full payment of the Gross Settlement Amount, Aggrieved Employees will release all PAGA civil penalty claims pled or that could have been pled based on the factual allegations contained in the operative complaint and PAGA letters sent by Plaintiffs that occurred during the PAGA Period during employment in a non-exempt position in California against Defendants.

E. How Is My Share Of The Settlement Calculated?

Each participating Class Member (those who do not opt out of the Settlement) and all Aggrieved Employees shall receive an "Individual Payment Amount," which is distributable to each Class Member who participates in the Settlement (i.e., who does not submit a valid request for exclusion form) and is a portion of the PAGA Payment distributable to each Aggrieved Employee, even if they request exclusion from the class settlement.

As to participating Class Members, the class portion of the Individual Payment Amount will be determined by dividing the Net Settlement Proceeds, less the \$25,000 PAGA allocation, by the total number of weeks worked by the entire Settlement Class during the Class Period, net of opt outs, resulting in the class workweek value; and then multiplying the class workweek value by the number of weeks worked by each participating Class Member during the Class Period.

As to the Aggrieved Employees, the PAGA portion of the Individual Payment Amount will be determined by dividing the PAGA settlement amount (\$25,000) by the total number of weeks worked by all Aggrieved Employees during the PAGA Period, resulting in the PAGA workweek value; and then multiplying the PAGA workweek value by the number of weeks worked by each Aggrieved Employee during the PAGA Period.

For tax purposes, the class portion of each Individual Payment Amount will be apportioned (a) 20% as wages (reported on an IRS Form W-2 and subject to applicable withholdings); and (b) 80% equally as penalties and interest (reported on an IRS Form 1099, if required). The PAGA portion of each Individual Payment Amount will be apportioned 100% as penalties (reported on an IRS Form 1099, if required). All Individual Payment Amounts paid to Class Members and Aggrieved Employees will be subject to any applicable wage garnishments, liens, or other legally mandated treatment as required by law.

According to the records of Defendants, you worked [] weeks while employed in a non-exempt position in California from May 27, 2018 to _____ and you worked [] weeks while employed in a non-exempt position in California from August 25, 2020 through _____. Based on these weeks worked, you are entitled to an Individual Payment Amount of approximately \$[]. This amount is subject to change based on the final ruling of the Court.

Please be advised that the individual data above is presumed to be correct unless you submit documentation proving otherwise. If you disagree with the data, please submit an explanation and evidence in support of your position to the Settlement Administrator no later than _____, 2023. In the event of a dispute, the Settlement Administrator will attempt to resolve the challenge with input from the Defendants. Unresolved disputes will be presented to the Court for its review.

THE SETTLEMENT HEARING

The Court will conduct a final fairness hearing regarding the proposed settlement (the "Final Settlement Hearing") on _____, at _____, in the Courtroom of Judge Jill H. Talley of the Sacramento County Superior Court, Department 27, located at 720 9th St, Sacramento, CA 95814. The Court will determine: (i) whether the lawsuit should finally be certified as a class action for settlement purposes; (ii) whether the settlement should be given the Court's final approval as fair, reasonable, adequate and in the best interests of the Settlement Class Members and Aggrieved Employees; (iii) whether the Settlement Class Members should be bound by the terms of the settlement; (iv) the amount of the attorneys' fees and costs to be awarded to Plaintiffs' Attorneys; and (v) the amount that should be awarded to Plaintiffs as service awards. At the Final Settlement Hearing, the Court will hear all properly filed objections, as well as arguments for and against the proposed settlement. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, or to enter an appearance and represent yourself.

WHAT ARE YOUR OPTIONS?

- **OPTION 1 – DO NOTHING AND PARTICIPATE IN THE SETTLEMENT**

IF YOU TAKE NO ACTION IN RESPONSE TO THIS NOTICE, YOU WILL AUTOMATICALLY RECEIVE YOUR SHARE OF THE SETTLEMENT IF IT IS APPROVED BY THE COURT. YOU ARE NEVER REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE. If you move, you must update your address with the Settlement Administrator. If you disagree with pre-printed data indicated in section E above, you must submit an explanation and/or documentation to the Settlement Administrator to justify your position, postmarked no later than _____. The Settlement Administrator's address is [Settlement Administrator address].

• **OPTION 2 – OBJECT TO THE SETTLEMENT**

If you wish to remain a Settlement Class Member, but you object to the proposed settlement (or any of its terms) and wish the Court to consider your objection at the Final Settlement Hearing, you may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing, either in person or through an attorney at your own expense. All written objections, supporting papers, and/or notices of intent to appear at the Final Approval Hearing must clearly identify the case name and number and be mailed to the Settlement Administrator at [Settlement Administrator address]. Written objections must be postmarked no later than _____.

• **OPTION 3 – EXCLUDE YOURSELF FROM THE SETTLEMENT**

You have a right to exclude yourself ("opt out") from the Settlement Class, but if you choose to do so, you will not receive any benefits from the proposed settlement, although you will be bound by the PAGA Claims. You will not be bound by a class judgment in this case, and you will have the right to file your own lawsuit against the Defendants and pursue your own claims in a separate suit. You can opt out of the Class by completely filling out and mailing the enclosed Request for Exclusion Form to the Settlement Administrator at the above-stated address, such that it is postmarked no later than _____.

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you should review the detailed "Settlement Agreement and Release of Claims" which is on file with the Clerk of the Court. The pleadings and other records in the Lawsuit may be examined at any time during regular business hours at the Office of the Clerk of the Sacramento County Superior Court, located at 720 9th St, Sacramento, CA 95814.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at [address], [telephone number], or Gaines & Gaines, APLC, Counsel for the Class, at (866) 550-0855.

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

**BY ORDER OF THE SUPERIOR COURT OF
THE STATE OF CALIFORNIA**

EXHIBIT 2

REQUEST FOR EXCLUSION

ONLY COMPLETE THIS REQUEST FOR EXCLUSION FORM IF YOU WANT TO OPT OUT OF (NOT PARTICIPATE IN) THE SETTLEMENT OF THE ACTION KNOWN AS *Ronnie Garcia, Peter Sumo, and Thomas Tomlinson v. SST Construction, LLC, and Does 1 Through 10, Inclusive, Defendants*, Sacramento County Superior Court, Case No. 34-2022-00320617. **IF YOU OPT OUT OF THE SETTLEMENT, YOU WILL NOT RECEIVE ANY PORTION OF THE SETTLEMENT AMOUNT.**

I confirm that I was employed by Defendants SST Construction, LLC or its subsidiaries, affiliates, and parents, including NovaSource Power Holdings, Inc.'s direct and indirect subsidiaries and other affiliates, including without limitation Northstar Energy Management, LLC as a non-exempt, hourly employee from May 27, 2018 through [Class Period End Date].

I do not wish to receive any payment under the terms of the proposed class action settlement or to otherwise participate in the proposed settlement.

Date: _____

Signature: _____

Print Name: _____

Residence Street Address: _____

City, State and Zip Code: _____

IN ORDER TO BE VALID, THIS REQUEST FOR EXCLUSION FORM MUST BE COMPLETED, SIGNED, MAILED BY FIRST CLASS MAIL, AND POSTMARKED ON OR BEFORE **[45 days after mailing of Notice]**. Send this signed request for exclusion form to the Settlement Administrator:

SST Construction, LLC Claims Administrator
c/o _____ [claims admin]

Title	Sumo Garcia v SST Settlement Agreement Final
File name	Sumo v SST - Sett...with exhibits.pdf
Document ID	507d711a46a114c34eb5f890a0c188de6c0080e0
Audit trail date format	MM / DD / YYYY
Status	* Signed

Document history

 SENT	07 / 18 / 2023 20:10:05 UTC	Sent for signature to Ronnie Garcia [REDACTED] from office@gaineslawfirm.com
 VIEWED	07 / 18 / 2023 20:41:20 UTC	Viewed by Ronnie Garcia [REDACTED] [REDACTED]
 SIGNED	07 / 18 / 2023 20:45:44 UTC	Signed by Ronnie Garcia [REDACTED] [REDACTED]
 COMPLETED	07 / 18 / 2023 20:45:44 UTC	The document has been completed.

EXHIBIT C