

1 **CLASS ACTION AND PAGA SETTLEMENT AGREEMENT**

2 This Class Action and PAGA Settlement Agreement and Release of Claims is entered
3 into by and between Plaintiff Arthur Walls, individually and on behalf of all others similarly
4 situated, and Defendant ABS Pipe, Inc., and is approved by their respective counsel of record,
5 subject to the terms and conditions hereof and the Court's approval.

6 **A. Definitions**

7 1. "Action" or "Lawsuit" means and refers to the cases entitled *Arthur Walls v. ABS*
8 *Pipe, Inc.*, San Joaquin County Superior Court Case No. STK-CV-UOE-2022-0000021.

9 2. "Aggrieved Employees" include all persons who are or were previously
10 employed by Defendant in California classified as a non-exempt or hourly employee at any time
11 from October 31, 2020, through July 31, 2023.

12 3. "Agreement," "Settlement Agreement," "Settlement," or "Stipulation" shall
13 mean this Class Action Settlement Agreement and Release of Claims, including any attached
14 Exhibits.

15 4. "Class Claims" or "Released Class Claims" will include all claims that were pled
16 in the operative Complaint or that could have been pled based on the facts alleged therein,
17 including claims for unpaid wages (including failure to pay full, regular, and overtime wages
18 and minimum wages and/or failure to pay such wages at the correct rate(s) of pay), meal and
19 rest break violations, failure to timely pay final wages, failure to provide accurate itemized
20 wage statements, failure to maintain records, and unfair and unlawful business practices.

21 5. "Class Counsel" refers to Leonard Emma of Emma Law, P.C.

22 6. "Class Data" means a complete list that Defendant will diligently and in good
23 faith compile from its records and provide to the Settlement Administrator on one spreadsheet
24 and shall include the Settlement Class Members' full names; last known addresses; telephone
25 numbers; Social Security Numbers; and dates of employment and/or number of Workweeks
26 Worked as non-exempt or hourly employees of Defendant during the Class Period and the
27 PAGA Period for each Settlement Class Member.

1 7. “Class Period” and “Class Release Period” shall mean January 4, 2018, through
2 July 31, 2023.

3 8. “Class Representative” or “Plaintiff” means and refers to Arthur Walls.

4 9. “Complaint” refers to the Class Action Complaint filed in the San Joaquin
5 County Superior Court action entitled *Arthur Walls v. ABS Pipe, Inc.*, San Joaquin County
6 Superior Court Case No. STK-CV-UOE-2022-0000021.

7 10. “Court” means the California Superior Court, County of San Joaquin or any
8 Court of competent jurisdiction.

9 11. “Defendant” means and refers to ABS Pipe, Inc.

10 12. “Defendant’s Counsel” or “Defense Counsel” means and refers to Kristen J.
11 Nesbit, Shaun J. Voigt, and Celine Ko of Fisher & Phillips LLP.

12 13. “Effective Date” means ten (10) calendar days following the date the Court
13 enters an order granting final approval of the Settlement, assuming no appeal is filed; or if a
14 timely appeal is filed, the date of final resolution of that appeal (including any requests for
15 rehearing and/or petitions for *certiorari*), resulting in final judicial approval of the Settlement.

16 14. “Final” means that the Settlement has been granted “Final Approval” by the
17 Court and the “Effective Date” has occurred.

18 15. “Final Approval” refers to the order of the Court granting final approval of this
19 Settlement Agreement and entering a judgment approving this Settlement on substantially the
20 same terms provided herein or as may be modified by subsequent agreement of the Parties or
21 order of the Court.

22 16. “Final Settlement Class” means, collectively, all Participating Class Members
23 and all Aggrieved Employees.

24 17. “Individual Settlement Amount” shall have the meaning ascribed to it in
25 Paragraph 48(d) below.

26 18. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph
27 48(c) below.

1 19. “Notice” means the notice of settlement of class action and PAGA Settlement
2 that will be sent to the Settlement Class Members.

3 20. “Notice Response Deadline” is 45 calendar days from the date the Notice is
4 mailed to the Settlement Class Members.

5 21. “Objecting Settlement Class Member” means a Settlement Class Member, other
6 than Plaintiff, who submits a valid and timely objection to the terms of this Agreement with
7 respect to the Class Claims pursuant to Paragraph 70(a) below.

8 22. “PAGA” shall refer to the California Labor Code Private Attorneys General Act
9 of 2004, California Labor Code Sections 2698 *et seq.*

10 23. “PAGA Claims” or “Released PAGA Claims” shall include any and all claims
11 for civil penalties pursuant to PAGA based on the allegations stated in the PAGA Notice and
12 that were pled in the operative Complaint or that could have been pled in the Complaint based
13 on the facts alleged therein and in the PAGA Notice, including claims for unpaid wages
14 (including failure to pay full, regular, and overtime wages and minimum wages and/or failure to
15 pay such wages at the correct rate(s) of pay), meal and rest break violations, failure to timely
16 pay wages during employment, failure to timely pay final wages, failure to provide accurate
17 itemized wage statements, failure to maintain records, and unfair and unlawful business
18 practices.

19 24. “PAGA Notice” shall refer to the notices sent by Plaintiff, by and through
20 counsel, on or about September 23, 2021, to the LWDA and to Defendant, alleging that
21 Defendant engaged in violations of the California Labor Code and California Wage Orders.

22 25. “PAGA Period” and “PAGA Release Period” shall mean October 31, 2020,
23 through July 31, 2023.

24 26. “Participating Class Member” means any and all Settlement Class Members who
25 are deemed to participate and receive an Individual Settlement Amount for the Class Claims and
26 who do not opt-out of the settlement of the Class Claims by submitting timely valid Requests
27 for Exclusion.
28

1 27. “Parties” or “Settling Parties” mean Plaintiffs, the Settlement Class Members,
2 the Aggrieved Employees, and Defendant, collectively.

3 28. “Preliminary Approval Date” means the date the Court preliminarily approves
4 the Settlement Agreement, and the exhibits thereto, and enters the Preliminary Approval Order.

5 29. “Preliminary Approval Order” means the judicial Order to be entered by the
6 Court, upon the application or motion of the Plaintiff, preliminarily approving this Settlement
7 and providing for the issuance of the Notice to the Settlement Class Members, an opportunity to
8 opt out of settlement of the Class Claims, an opportunity to submit timely objections to the
9 terms of this Settlement related to the Class Claims, and setting a hearing on the fairness of the
10 terms of Settlement, including approval of attorneys’ fees and costs.

11 30. “QSF” means the Qualified Settlement Fund set up by the Settlement
12 Administrator for the benefit of the Final Settlement Class, and from which the settlement
13 payments shall be made, and which is intended to be a fund that qualifies under Internal
14 Revenue Code Section 468.

15 31. “Release” shall mean the release and discharge of the Class Claims by Plaintiffs
16 and all of the Participating Class Members and the release and discharge of the PAGA Claims
17 by Plaintiffs and all of the Aggrieved Employees.

18 32. “Released Parties” shall refer to Defendant, its divisions, subsidiaries, affiliates,
19 parents, trusts, past and present, and each of them, as well as its and their directors, officers,
20 shareholders, partners, members, representatives, executors, trustees, administrators,
21 beneficiaries, assignees, successors, business managers, agents, contractors, insurers, attorneys,
22 and employees, past and present, and each of them and their marital community.

23 33. “Request for Exclusion” shall have the meaning ascribed to it in Paragraph 70(a)
24 below.

25 34. “Service Payment” or “Service Award” means the amount approved by the Court
26 to be paid to the Class Representative in addition to their Individual Settlement Amount as a
27 Participating Class Member.

35. “Settlement Administration Costs” means the costs payable from the Settlement Amount to the Settlement Administrator for administering this Settlement, including, but not limited to, printing, distributing, and tracking documents for this Settlement, translating the class notice into Spanish, tax reporting, due diligence, reporting and remittance obligations, distributing the Settlement Amount, and providing necessary reports and declarations, as requested by the Parties. The Settlement Administration Costs shall be paid from the Settlement Amount.

36. Settlement Administrator” means and refers to a settlement administrator mutually agreed to by the Parties, that will provide the Notice to the Class Members and distribute the settlement amounts as described in this Agreement.

37. “Settlement Amount” or “Gross Settlement Amount” shall have the meaning ascribed to it in Paragraph 48(a) below.

38. “Settlement Class Member” or “Class Member” refers to individual members of the Settlement Class.

39. “Settlement Class” and “Settlement Class Members” refers to all persons who are or were previously employed by Defendant in California classified as a non-exempt employee during the Class Period.

40. “Workweeks Worked” for each Settlement Class Member and Aggrieved Employee means any workweek during the Class Period and/or the PAGA Period, as applicable, in which the Settlement Class Member and/or Aggrieved Employee was employed by Defendant as a non-exempt employee in California and worked at least one shift during the workweek. Workweeks Worked will be calculated based on Defendant’s business records.

B. General Terms

41. On or about January 4, 2022, Plaintiff Arthur Walls filed a class and PAGA representative action complaint in the Court against Defendant, including allegations of: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) meal period violations, (4) rest period violations, (5) waiting time penalties, (6) wage statement violations, (7), failure to maintain records, (8) unfair competition, and (9) PAGA penalties based on the foregoing Labor

1 Code violations.

2 42. Defendant denies Plaintiff's claims and allegations and contend that the Action is
3 not suitable for class certification and/or representative treatment.

4 43. The Class Representative believes he can proceed with his representative and
5 class claims, that the Action is meritorious, and that class certification is appropriate.

6 44. The Parties have conducted a thorough investigation into the facts of the Action.
7 This includes conducting extensive exchange of informal discovery, including Defendant's
8 written policies and practices and the production of payroll and timekeeping records for
9 Settlement Class Members and Aggrieved Employees. Class Counsel is both knowledgeable
10 about and has done extensive research with respect to the applicable law and potential defenses
11 to the claims of the Settlement Class Members and Aggrieved Employees. Class Counsel has
12 diligently pursued an investigation of the Class Members' claims against Defendant. Based on
13 the foregoing data and on their own independent investigation and evaluation, Class Counsel is
14 of the opinion that the settlement with Defendant for the consideration and on the terms set forth
15 in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the
16 Settlement Class Members and Aggrieved Employees in light of all known facts and
17 circumstances, including the risk of significant delay and uncertainty associated with litigation,
18 various defenses asserted by Defendant, and numerous potential appellate issues.

19 45. On May 25, 2023, the Parties participated in mediation before Steve Pearl, Esq.,
20 a highly experienced class action mediator. The parties did not reach a resolution at mediation,
21 but continued to negotiate and ultimately reached a settlement.

22 46. The Parties agree that neither the Parties' Settlement, this Agreement, nor the
23 acts to be performed or judgments to be entered pursuant to the terms of the Settlement and
24 Agreement, shall be construed as an admission by Defendant of any wrongdoing or violation of
25 any statute or law or liability on the claims or allegations in the Action.

26 47. Stipulation for Class Certification and Representative Treatment. For settlement
27 purposes only, Defendant will stipulate that the Settlement Class Members described herein
28 who do not Request Exclusion from the Settlement Class may be conditionally certified as a

1 settlement class and that the Aggrieved Employees are appropriate for representative treatment
2 for purposes of settlement. This stipulation to certification and representative treatment is in no
3 way an admission by Defendant that class action certification and/or representative treatment is
4 proper and shall not be admissible in this or in any other action except for the sole purposes of
5 enforcing this Agreement. Should, for whatever reason, the Court fail to issue Final Approval,
6 the Parties' stipulation to class certification and representative treatment as part of the
7 Settlement shall become null and void *ab initio* and shall have no bearing on and shall not be
8 admissible in connection with the issue of whether or not class certification and/or
9 representative treatment would be appropriate in a non-settlement context. Defendant expressly
10 reserves its rights and declares that it will continue to oppose class certification, representative
11 treatment, and the substantive merits of the case should the Court fail to issue Final Approval.
12 Plaintiff expressly reserves his rights and declares that he will continue to pursue class
13 certification and representative treatment and a trial should the Court fail to issue Final
14 Approval.

15 **C. Terms of Settlement**

16 48. The financial terms of the Settlement are as follows:

17 (a) Gross Settlement Amount: The Parties agree to settle this Action for Two
18 Hundred Thousand Dollars (\$200,000) ("the Settlement Amount"). The Settlement Amount is
19 the maximum amount that will be paid by Defendant, and includes Individual Settlement
20 Amounts, attorneys' fees of Class Counsel, costs and expenses, the Service Payment to the
21 Class Representatives, all Settlement Administration Costs, and payment to the Labor
22 Workforce Development Agency (LWDA) for PAGA penalties. Defendant shall separately pay
23 the employers' share of applicable payroll taxes.

24 (b) The Settlement is based on Defendant's representation that there are
25 approximately 3,000 Workweeks Worked included in the Class Period. In the event that the
26 actual number of workweeks worked by all Settlement Class Members during this period
27 increases by 10% or more, then Defendant shall increase the QSF on a proportional basis in
28

1 excess of 10 percent (i.e., if there were an eleven percent (11%) increase in the number of
2 workweeks, then Defendant will increase the QSF by one percent (1%)).

3 (c) Net Settlement Amount: The “Net Settlement Amount” is defined as the
4 Settlement Amount less attorneys’ fees and litigation costs as approved and awarded by the
5 Court, the Service Payment to the Class Representative as approved and awarded by the Court,
6 the Settlement Administration Costs, as approved and awarded by the Court, and the Twenty
7 Thousand Dollars (\$20,000.00) allocated to payment for PAGA penalties. In the event that the
8 Court reduces the attorneys’ fees and litigation costs or, Service Awards, Settlement
9 Administration Costs, or either increases or decreases the amount allocated to PAGA penalties,
10 the Net Settlement Sum shall be increased or decreased accordingly.

11 (d) Individual Settlement Amounts for the Settlement Class: The Settlement
12 Administrator will use the Class Data provided by Defendant to calculate each Participating
13 Class Member’s and Aggrieved Employee’s Individual Settlement Amounts based on the
14 following formula:

15 i. PAGA Amount: \$20,000 of the Gross Settlement Amount has been
16 designated to the PAGA claims. Twenty-five percent (25%) of the \$20,000, or \$5,000, shall be
17 paid out to Aggrieved Employees. Each Aggrieved Employee shall receive a portion of the
18 \$5,000 proportionate to the number of Workweeks Worked by the Aggrieved Employees during
19 the PAGA Period compared to the total number of Workweeks Worked by all Aggrieved
20 Employees during the PAGA Period. Aggrieved Employees shall have their settlement amount
21 for the Released PAGA claims paid one hundred percent (100%) as civil penalties for which no
22 taxes will be withheld and for which a Form 1099 will be issued by the Settlement
23 Administrator.

24 ii. Class Amount: The Net Settlement Amount shall be allocated to each
25 Participating Class Member based on his or her proportionate Workweeks Worked during the
26 Class Period. This is determined by multiplying the Net Settlement Amount by a fraction, the
27 numerator which is the Participating Class Member’s total Workweeks Worked during the Class
28 Period, and the denominator of which is the total Workweeks Worked by all Participating Class

Members during the Class Period. If there are any timely submitted Requests for Exclusion, the Settlement Administrator shall proportionately increase the Individual Settlement Amounts for each Participating Class Member so that the amount actually distributed to Participating Class Members equals 100% of the Net Settlement Amount allocated toward Released Class Claims.

(e) Allocation of Individual Settlement Amounts: The Individual Settlement Amounts will be allocated for tax purposes based on the allegations in the Action as follows: twenty (20%) percent will be paid as wages subject to withholding of all applicable local, state, and federal taxes; and eighty percent (80%) will be paid as interest and as civil penalties (pursuant to, e.g., California Labor Code sections 203, 226) from which no taxes will be withheld. The Settlement Administrator will issue to each Participating Class Member an Internal Revenue Service Form W-2 and comparable state forms with respect to the wage allocation and a Form 1099 with respect to the civil penalties and interest allocations.

(f) Service Payment to Class Representatives: The amount awarded to the Class Representatives as a Service Payment will be set by the Court in its discretion, not to exceed \$10,000, if the Class Representatives do not take any action, directly or indirectly, to undercut this settlement. Defendant agrees not to oppose this request. The Service Payment to Class Representative will be paid out of the Gross Settlement Amount. The Class Representative will be issued IRS Form 1099 in connection with this payment. Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on this payment. The Parties agree that any amount awarded by the Court as the Service Payment to Plaintiff less than the requested amount shall not be a basis for Plaintiffs or Class Counsel to void this Stipulation. Should the Court approve a lesser amount for the Service Payment, the difference shall be added to the Net Settlement Amount to be distributed to the Participating Class Members and/or Aggrieved Employees. In the event of any appeal of the amount of the service awards (if any) approved by the Court, if, after the exhaustion of any such appellate review, additional amounts not awarded to Class Representatives shall be added to the Net Settlement Amount to be distributed to the Participating Class Members and/or Aggrieved Employees.

(g) Attorneys' Fees and Costs: Defendant agrees to not oppose a request by Class Counsel to the Court for an award of attorneys' fees of one-third (33.33%) of the Settlement Amount, plus reasonable litigation costs not to exceed \$10,000 ("Attorney's Fees and Cost Award"). For purposes of this Settlement, Defendant agrees not to oppose any contention by Class Counsel that attorneys' fees should be based on the common fund theory. The Attorney's Fee and Cost Award shall be paid from the Gross Settlement Amount, and except for this award, Defendant shall have no further obligation to pay any attorneys' fees, costs or expenses to Class Counsel. Should the Court approve a lesser amount than what is sought by Class Counsel, the difference shall be added to the Net Settlement Amount to be distributed to the Participating Class Members. Any Court order awarding less than the amount sought by Class Counsel shall not be grounds to rescind the Settlement Agreement or otherwise void the Settlement. In the event of any appeal of the amount of the awards of attorneys' fees and costs (if any) approved by the Court, final funding and administration of the portion of the attorneys' fees and/or costs award in dispute will be segregated and stayed pending the exhaustion of appellate review. If, after the exhaustion of any such appellate review, additional amounts not awarded to as attorneys' fees and costs shall be added to the Net Settlement Amount to be distributed to the Participating Class Members and/or Aggrieved Employees. The Settlement Administrator shall issue to Class Counsel an IRS Form 1099 reflecting the amount of attorneys' fees and costs awarded by the Court. Class Counsel agrees that any allocation of fees between or among Class Counsel and any other attorney representing or claiming to represent the Class Members shall be the sole responsibility of Class Counsel.

(h) Settlement Administration Costs: The fees and other charges of the Settlement Administrator will be paid from the Gross Settlement Amount, not to exceed \$7,500 subject to Court approval, unless approved by all Parties and the Court.

(i) PAGA Penalties: The Parties agree that \$20,000 is allocated to PAGA Penalties and is to be paid from the Gross Settlement Amount, subject to Court approval. Of this amount, \$15,000 (75%) shall be paid to the LWDA in satisfaction of Plaintiffs' claims for civil penalties under the Private Attorney General Act of 2004 ("PAGA") and \$5,000 (25%) will be included

1 in the Individual Settlement Amounts, payable to the Aggrieved Employees as set forth in
2 Paragraph 48(d).

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

16 (k) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS AGREEMENT
17 (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH
18 PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN
19 "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF
20 THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE
21 BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER
22 ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
23 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
24 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
25 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
26 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
27 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
28 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO

THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISOR'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

49. "Non-Reversionary" Settlement. This is a "non-reversionary" settlement. Under no circumstances will any portion of the Settlement Amount revert to Defendant. Final Settlement Class Members will not have to make a claim in order to receive an Individual Settlement Amount. Distributions, in the form of Individual Settlement Amounts, will be made directly to each Final Settlement Class Member. The Settlement Administrator shall be responsible for accurately and timely reporting any remittance obligations with respect to unclaimed funds as a result of a Final Settlement Class Member not cashing an Individual Settlement Amount by the check cashing deadline, as set forth herein.

50. Class Counsel and Plaintiffs believe that the Settlement is fair and reasonable, and adequate, and will so represent same to the Court.

D. Release by Plaintiff and the Final Settlement Class

51. Upon the Effective Date of this Settlement, Plaintiff and each Participating Class Member, for themselves and for their respective spouses, domestic partners, marital community, children, estates, trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, assigns, and representatives, will forever completely release and discharge the Released Parties from the Released Class Claims for the Class Release Period.

1 52. Each Participating Class Member will be deemed to have made the foregoing
2 Release as if by manually signing it.

3 53. Upon the Effective Date of this Settlement, Plaintiff, the LWDA, and each
4 Aggrieved Employee, for themselves and for their respective spouses, domestic partners,
5 marital community, children, estates, trusts, attorneys, heirs, successors, beneficiaries, devisees,
6 legatees, executors, administrators, trustees, conservators, guardians, assigns, and
7 representatives, will forever completely release and discharge the Released Parties from the
8 Released PAGA Claims for the PAGA Release Period.

9 54. Each Aggrieved Employee and the LWDA will be deemed to have made the
10 foregoing Release as if by manually signing it.

11 55. Plaintiff and Defendant intend that the Settlement described in this Agreement
12 will release and preclude any further claim, whether by lawsuit, administrative claim or action,
13 arbitration, demand, or other action of any kind, by each and all of the Participating Class
14 Members to obtain a recovery based on, arising out of, and/or related to any and all of the
15 Released Class Claims. The Settlement Class Members shall be so notified in the Notice. This
16 paragraph does not apply to any Settlement Class Member who timely and validly opts out of
17 the Settlement.

18 56. Plaintiffs and Defendant intend that the Settlement described in this Agreement
19 will release and preclude any further claim, whether by lawsuit, administrative claim or action,
20 arbitration, demand, or other action of any kind, by each and all of the Aggrieved Employees
21 and the LWDA to obtain a recovery based on, arising out of, and/or related to any and all of the
22 Released PAGA Claims. The Aggrieved Employees and the LWDA shall be so notified in the
23 Notice.

24 57. Class Representative, on behalf of himself and the Participating Settlement Class
25 Members, acknowledges and agrees that the claims for unpaid wages and unreimbursed
26 expenses in the Action, misclassification claims and untimely payment of wages in the Action,
27 are disputed, and that the payments set forth herein constitute payment of all sums allegedly due
28 to them. Class Representative, on behalf of himself and the Participating Settlement Class

Members, acknowledges and agrees that California Labor Code Section 206.5 is not applicable to the Parties hereto. Section 206.5 provides in pertinent part as follows:

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

E. Release by Class Representative

58. As a material inducement to Defendant to enter into this Settlement Agreement, in addition to the Class Representative's release of the Released Class Claims and Released PAGA Claims, as discussed in Paragraphs 51 and 53 above, Class Representative does hereby, for himself and for his spouse, domestic partner, marital community, children, estates, trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, assigns, and representatives, forever completely release and discharge the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, contracts, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, and expenses (including for back wages, statutory penalties, civil penalties, liquidated damages, exemplary damages, interest, attorneys' fees, and costs) of any nature whatsoever, from the beginning of time through the execution of this Stipulation, whether known or unknown, suspected or unsuspected, concealed or hidden, including but not limited to all claims arising out of, based upon, or relating to Class Representatives' employment with Defendant or the remuneration for or termination of such employment (collectively, the "Class Representatives' Claims").

59. Without limiting the generality of the foregoing, Class Representative also expressly releases all claims or rights against Released Parties arising out of or relating to alleged violations of any contracts, express or implied (including but not limited to any contract of employment); any contract or covenant of good faith and fair dealing (express or implied); any tort, including but not limited to, negligence, fraud, misrepresentation and violation of California Labor Code section 970, negligent infliction of emotional distress, intentional infliction of emotional distress, defamation, "retaliation" claims and claims for violation of

1 public policy, any claim for improper or unauthorized wage deductions, failure to pay the
 2 applicable wage, unpaid wages, unpaid vacation benefits, penalties, liquidated damages, other
 3 damages, overtime, and alleged “off the clock” work under federal and state law, including, but
 4 not limited to, California Labor Code Sections 204 and 558, waiting time penalties pursuant to
 5 California Labor Section 203, damages or penalties pursuant to California Labor Code Section
 6 226, meal period and rest break payments and penalties pursuant to California Labor Code
 7 Sections 226.7 and 512, failure to provide itemized wage statements pursuant to California
 8 Labor Code Section 226, statutory or civil penalties pursuant to California Labor Code Sections
 9 210, failure to indemnify for business expenses pursuant to Labor Code section 2802, failure to
 10 provide one day of rest in seven pursuant to California Labor Code Sections 551 and 552, unfair
 11 competition and unfair business practices pursuant to Business and Professions Code Section
 12 17200 et seq., interest and costs pursuant to California Civil Code Section 3287 and California
 13 Labor Code Section 218.6, statutory or common law rights to attorneys’ fees and costs,
 14 including those pursuant to California Labor Code Section 1194 *et seq.*; claims under the
 15 Private Attorneys General Act of 2004, Labor Code section 2699 *et seq.*, and the alleged
 16 violation or breach of any other state or federal statute, rule and or regulation; including all
 17 applicable Industrial Welfare Commission Wage Orders, and all similar causes of action,
 18 including but not limited to, any claim for restitution, equitable relief, interest, penalties, costs
 19 or attorneys’ fees in connection with any of the foregoing, negligent infliction of emotional
 20 distress, intentional infliction of emotional distress, and defamation; any “wrongful discharge,”
 21 “constructive discharge,” and “retaliation” claims; any claims relating to any breach of public
 22 policy; any legal restrictions on Defendant’s right to discharge employees; and any federal,
 23 state, or other governmental statute, regulation, or ordinance, including, without limitation: (1)
 24 Title VII of the Civil Rights Act of 1964 (race, color, religion, sex, and national origin
 25 discrimination or harassment, including retaliation for reporting discrimination or harassment);
 26 (2) 42 U.S.C. § 1981 (discrimination); (3) Equal Pay Act, 29 U.S.C. § 209(d)(1) and California
 27 Labor Code 1197.5 (equal pay); (4) Americans with Disabilities Act, 42 U.S.C. § 12100 et seq.
 28 (disability discrimination); (5) Family and Medical Leave Act, 29 U.S.C. § 2601 et

1 seq.(family/medical leave); (6) California Fair Employment and Housing Act, Cal. Government
2 Code § 12900 et seq. (discrimination or harassment in employment and/or housing, including
3 discrimination or harassment based on race, religious creed, color, national origin, ancestry,
4 disability, marital status, sex (including pregnancy), or age, including retaliation for reporting
5 discrimination or harassment); (7) California Family Rights Act, Cal. Government Code §
6 12945.1 et seq. (family/medical leave); (8) California Labor Code, including Section 1720 et
7 seq., or any Industrial Welfare Commission Wage Order; (9) Executive Order 11246 (race,
8 color, religion, sex, and national origin discrimination or harassment); (10) Executive Order
9 11141 (age discrimination); (11) Sections 503 and 504 of the Rehabilitation Act of 1973
10 (handicap discrimination); (12) the Fair Labor Standards Act; (13) Employee Retirement
11 Income Security Act, 29 U.S.C. § 1000 et seq. (employee benefits); (14) the California Civil
12 Code; (15) the California Labor Code; (16) the California Constitution; (17) the National Labor
13 Relations Act; and (18) any other federal, state, or local statute or legislation.

14 60. Class Representative expressly waives and relinquishes all rights and benefits
15 afforded by Section 1542 of the Civil Code of the State of California and do so understanding
16 and acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil
17 Code of the State of California states:

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

24 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
25 full and complete release and discharge of all parties, Class Representative and Class Counsel
26 expressly acknowledge that this Settlement Agreement is intended to include in its effect,
27 without limitation, all claims that Class Representative knew of, as well as all claims that they
28 do not know or suspect to exist in their favor against the Released Parties, or any of them, for
the time period from the beginning of time to the execution of this Settlement Agreement, and

1 that this Settlement Agreement contemplates the extinguishment of any such Class
2 Representative's claims.

3 **F. Interim Stay of Proceedings**

4 61. Pending completion of all of the prerequisites necessary to effectuate this
5 Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the
6 Action except such as may be necessary to effectuate the Settlement, including amending the
7 operative complaint.

8 **G. Notice Process**

9 62. Appointment of Settlement Administrator. The Parties have agreed to the
10 appointment of the Settlement Administrator to perform the duties of a settlement administrator,
11 including mailing the Notice, using standard devices to obtain forwarding addresses,
12 independently reviewing and verifying documentation associated with any claims or opt-out
13 requests, resolving any disputes regarding the calculation or application of the formula for
14 determining the Individual Settlement Amounts, drafting and mailing the settlement checks to
15 Final Settlement Class Members, issuing W-2 and 1099 Tax Forms, reporting to taxing
16 authorities, due diligence, reporting and remittance obligations, and performing such other tasks
17 as set forth herein or as the Parties mutually agree or that the Court orders.

18 63. Disputes Regarding Settlement Administration. Any and all disputes relating to
19 administration of the Settlement by the Settlement Administrator (except for disputes regarding
20 Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction
21 over the terms and conditions of this Settlement Agreement, until Plaintiffs and Defendant
22 notify the Court that all payments and obligations contemplated by this Settlement Agreement
23 have been fully carried out. Prior to presenting any issue to the Court, counsel for the Parties
24 will confer in good faith to resolve the dispute without the necessity of Court intervention. The
25 Settlement Administrator shall also be responsible for issuing to Plaintiffs, Final Settlement
26 Class Members, and Class Counsel any W-2, 1099, or other Tax Forms as may be required by
27 law for all amounts paid pursuant to this Agreement. The Settlement Administrator shall also
28

1 be responsible for setting up all necessary tax accounts and forwarding all payroll taxes and
2 penalties to the appropriate government authorities.

3 64. Class Data. Within fifteen (15) days after entry of the Preliminary Approval
4 Order, Defendant shall provide the Class Data to the Settlement Administrator. The Settlement
5 Administrator will run a check of the Class Members' addresses against those on file with the
6 U.S. Postal Service's National Change of Address List. The Class Data provided to the
7 Settlement Administrator will not be provided to Class Counsel and it will remain confidential,
8 it shall be used solely to administer the Settlement, and it will not be used or disclosed to
9 anyone, except as required by applicable tax authorities, pursuant to Defendant's express
10 written consent, or by order of the Court. The Claims Administrator may be required to sign
11 and provide to Defendant a Certification Regarding Confidential Discovery Materials.

12 65. Notice. The Notice, as approved by the Court, shall be sent by the Settlement
13 Administrator to the Settlement Class Members, by first class mail, in English and Spanish,
14 within ten (10) calendar days following the Settlement Administrator's receipt of the Class
15 Data. The Settlement Administrator shall use standard devices, including a skip trace, to obtain
16 forwarding addresses of Settlement Class Members if any envelopes are returned.

17 66. Returned Notices. The Settlement Administrator will take steps to ensure that
18 the Notice is received by all Settlement Class Members, including utilization of the National
19 Change of Address Database maintained by the United States Postal Service to review the
20 accuracy of and, if possible, update a mailing address. Notices will be re-mailed to any
21 Settlement Class Member for whom an updated address is located within ten (10) calendar days
22 following both the Settlement Administrator learning of the failed mailing and its receipt of the
23 updated address. The Notice shall be identical to the original Notice, except that it shall notify
24 the Settlement Class Member that the exclusion (opt-out) request or objection must be returned
25 by the later of the Notice Response Deadline or fifteen (15) days after the remailing of the
26 Notice.

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

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

23 69. Declaration of Due Diligence. The Settlement Administrator shall provide
24 counsel for the Parties, at least twenty-five (25) days prior to the final approval hearing, a
25 declaration of due diligence and proof of mailing with regard to the mailing of the Notice.

26 70. Settlement Class Members' Rights. Each Settlement Class Member will be fully
27 advised of the Settlement, the ability to object to the provisions in the Settlement related to the
28 Class Claims, and the ability to opt-out or request exclusion from the Class Claims provisions of

1 the Settlement. The Notice will inform the Settlement Class Members of the Court-established
2 deadlines for filing objections or requesting exclusion from the Class Claims provisions of the
3 Settlement in accordance with the following guidelines:

4 (a) Requests for Exclusion from Participating Settlement Class. Any
5 Settlement Class Member, other than Plaintiff, may request to be excluded from the
6 Participating Settlement Class by submitting a "Request for Exclusion" to the Settlement
7 Administrator, postmarked on or before the Notice Response Deadline. The Request for
8 Exclusion should state in words to this effect:

9 "I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN
10 THE WALLS V. ABS PIPE LAWSUIT. I UNDERSTAND THAT IF I
11 ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL
12 NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THE
CLASS CLAIMS IN THIS LAWSUIT.

13 Any Request for Exclusion must include the full name, address, telephone number, last
14 four digits of the social security number or date of birth, and signature of the Settlement Class
15 Member requesting exclusion. The Request for Exclusion must be returned by mail to the
16 Settlement Administrator at the specified address. Any such Request must be made in
17 accordance with the terms set forth in the Notice. A Request for Exclusion will be timely only
18 if postmarked by the Notice Response Deadline, unless the Parties otherwise agree in writing.
19 Any Settlement Class Member who timely requests exclusion in compliance with these
20 requirements: (i) will not have any rights under this Agreement with respect to the Class
21 Claims, including the right to object, appeal or comment on the Settlement; (ii) will not be
22 entitled to receive any payments under this Agreement with respect to Class Claims; and (iii)
23 will not be bound by this Agreement, or the Judgment with respect to the Class Claims.

24 (b) Binding Effect on Final Settlement Class Members. Except for those
25 Settlement Class Members who exclude themselves in compliance with the procedures set forth
26 above, all Settlement Class Members will: (i) be deemed to be Final Settlement Class Members
27 for all purposes under this Agreement; (ii) will be bound by the terms and conditions of this
28 Agreement, the Judgment, and the releases set forth herein; and (iii) except as otherwise

provided herein, will be deemed to have waived all objections and oppositions to the fairness, reasonableness, and adequacy of the Settlement.

(c) Objections to Settlement of Class Claims. Any Settlement Class Member, other than Plaintiff, may object to the terms of this Agreement with respect to the Class Claims and may appear at the Final Approval Hearing and object whether or not they have filed a written objection as outlined herein. To object, a Settlement Class Member shall inform the Settlement Administrator, in writing, of his or her objection, which must be postmarked by the Notice Response Deadline at the address set forth in the Notice. Such objection shall include the full name, address, telephone number, dates of employment with Defendant of the Objecting Settlement Class Member, the case name and number, the basis for the objection, including any legal support and each specific reason in support of the objection, as well as any documentation or evidence in support thereof, and, if the Objecting Settlement Class Member is represented by counsel, the name and address of his or her counsel. If any Objecting Settlement Class Member wishes to speak at the Final Approval Hearing with respect to the Class Claims, that Objecting Settlement Class Member's written submission should include a request to be heard, and the Court will determine whether Objecting Settlement Class Members will be permitted to speak. The Settlement Administrator shall provide objections, if any, to Class Counsel and Defense Counsel within three (3) days of receipt, and the Settlement Administrator shall attach the same to its declaration of due diligence it files with the Court prior to the Final Approval Hearing. Any Participating Class Member who files an objection remains eligible to receive monetary compensation from the Settlement. Plaintiff and Defendant shall not be responsible for any fees, costs, or expenses incurred by any Class Member and/or his or her counsel related to any objections to the Settlement. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment under Code of Civil Procedure § 663. Settlement Class Members and Aggrieved Employees may not object to or opt-out of the Settlement with respect to the PAGA Claims.

1 (d) Failure to Object. Any Settlement Class Member who desires to object
2 with respect to the Class Claims but fails to timely submit a written objection waives any right
3 to object, will be foreclosed from making any objection to this Settlement. Any Settlement
4 Class Member who does not timely and properly become a party of record by intervening or
5 filing a motion to vacate the judgment waives any and all rights to appeal from the Judgment,
6 including all rights to any post-judgment proceeding and appellate proceeding, such as a motion
7 to vacate judgment, motion for new trial, a motion under California Code of Civil Procedure
8 section 473, and extraordinary writs.

9 (e) Responses to Objections. Counsel for the Parties may file a response to
10 any objections submitted by Objecting Settlement Class Members at least five (5) court days
11 before the date of the Final Approval Hearing.

12 71. Settlement Class Members will have until the Notice Response Deadline to
13 object or submit a Request for Exclusion to the Settlement Administrator by U.S. Mail. The
14 Settlement Administrator shall disclose jointly to Class Counsel and Defendant's counsel what
15 objections or Requests for Exclusion were timely submitted on a weekly basis, and upon the
16 request of Class Counsel or Defense Counsel.

17 72. Funding of the Settlement Amount. Defendant shall make a one-time deposit
18 into the QSF of the Settlement Amount that is necessary to make all payments required under
19 this Settlement, within ten (10) days after the Effective Date, plus Defendant shall separately
20 pay its share of employer payroll taxes as calculated and directed by the Settlement
21 Administrator.

22 73. Distribution of Funds. No later than ten (10) calendar days after deposit of the
23 payment into the QSF, the Settlement Administrator will mail the payments to the Participating
24 Class Members, the payment for the attorneys' fees and costs to Class Counsel, any Service
25 Payment to the Class Representative, the payment to the LWDA for PAGA penalties, and will
26 pay itself the Settlement Administration Costs.

27 74. Deadline for Cashing Settlement Checks. Final Settlement Class Members shall
28 have 180 calendar days after mailing by the Settlement Administrator to cash their settlement

checks. If any Final Settlement Class Member's check is not cashed within that period, the check will be void and a stop-payment will be issued. All unclaimed funds shall be sent to the California Unclaimed Property Fund in the name of the class member. The release will be binding upon all Final Settlement Class Members who do not cash their checks within the 180-day period. In the event that any settlement check is returned to the Settlement Administrator within 180 days of mailing, the Settlement Administrator will, within five (5) business days of receipt of the returned settlement check, perform a skip trace to locate the individual. If a new address is located by these means, the Administrator will have ten (10) business days to re-issue the check and will notify Defense Counsel and Class Counsel that a re-issued check has been sent. Neither Defendant, Defense Counsel, Class Counsel, Plaintiffs, nor the Settlement Administrator will have any liability for lost or stolen settlement checks, forged signatures on settlement checks, or unauthorized negotiation of settlement checks. Without limiting the foregoing, in the event a Final Settlement Class Member notifies the Settlement Administrator that he or she believes that a settlement check has been lost or stolen, the Settlement Administrator shall immediately stop payment on such check. If the check in question has not been negotiated prior to the stop payment order, the Settlement Administrator will issue a replacement check.

75. No person shall have any claim against Defendant (or its designee), Defendant's Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on mailings, distributions, payments or reports made in accordance with or pursuant to this Agreement. This provision does not, however, prevent a Party from seeking enforcement of this Agreement.

76. Without prejudice to any other remedies, the Settlement Administrator shall agree to be responsible for any breach of its obligations (whether committed by the Settlement Administrator or its agents) and to indemnify and hold the Parties and their counsel harmless from and against all liabilities, claims, causes of action, costs and expenses (including legal fees and expenses) arising out of any breach committed by the Settlement Administrator or its agents.

///

1 **H. Duties of the Parties Prior to the Court's Approval**

2 77. Plaintiff will move the Court for Preliminary Approval of this Settlement and
3 entry of the Preliminary Approval Order accomplishing the following:

4 (a) Scheduling the Final Approval Hearing on the issue of whether this
5 Settlement should be finally approved as fair, reasonable and adequate as to the Class Members
6 and a hearing on fees, costs and the Service Payment;

7 (b) Approving as to form and content the proposed Notice;

8 (c) Directing the mailing of the Notice by first class mail to the Settlement
9 Class Members;

10 (d) Preliminarily approving this Settlement; and

11 (e) Preliminarily certifying the class for purposes of this Settlement.

12 78. Reallocation of Settlement Proceeds. In the event the Court fails, on its first
13 hearing, to approve this Agreement because the amount of the PAGA penalties is not adequate,
14 then the Parties shall cooperate in good faith to reallocate the total settlement proceeds, within
15 this Agreement, in order to try to achieve Final Approval of the Agreement upon any
16 subsequent Court hearings.

17 **I. Duties of the Parties Following Court's Final Approval**

18 79. In connection with the Final Approval Hearing provided for in this Settlement
19 Agreement, Class Counsel shall submit a proposed Final Approval Order:

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

22 (b) Approving Class Counsel's application for an award of attorneys' fees and
23 reimbursement of litigation costs and expenses, the Service Payment to the Class
24 Representative, and the payment to the Settlement Administrator for costs of administering the
25 settlement; and

26 (c) Entering judgment approving settlement, thereby permanently barring all
27 Participating Class Members from prosecuting any Released Class Claims against any of the
28

Released Parties and permanently barring all Aggrieved Employees and the LWDA from prosecuting any Released PAGA Claims against any of the Released Parties.

J. Voiding the Agreement

80. If the Court fails or refuses to issue the Final Approval Order or fails to approve any material condition of this Settlement Agreement which effects a fundamental change of the Settlement, the entire Settlement Agreement shall be rendered voidable and unenforceable as to all Parties herein at the option of either Party.

81. If ten percent (10%) or more of the Settlement Class Members timely submit a Request for Exclusion, Defendant shall have the option of terminating or modifying this Agreement without prejudice to its pre-settlement positions and defenses in the Action. If Defendant exercises such option, under this paragraph it shall be relieved of any obligation to pay the Settlement Amount or any other obligations from the Settlement by giving notice to Plaintiffs' Counsel and the Settlement Administrator within ten (10) days of the Notice Response Deadline. If Defendant exercises its option under this paragraph, Defendant shall be solely responsible for all Settlement Administration Costs incurred.

82. If the Settlement is voided or fails for any reason, Plaintiff and Defendant will have no further obligations under the Settlement, including any obligation by Defendant to pay the Settlement Amount, or any amounts that otherwise would have been owed under this Settlement.

83. If the Settlement is voided or fails for any reason, any costs incurred by the Settlement Administrator shall be borne equally by Defendant and Plaintiff, unless otherwise specified in this Agreement.

K. Other Terms

84. Publicity. Class Representative agrees that he has not and will not publish the Settlement. By way of this Settlement, Class Representative directs his counsel not to issue any press releases or press statements regarding the Settlement or to have any communications with the press or media about the Settlement. Nothing in this provision shall be construed as preventing the Parties from taking following actions: (a) Class Counsel shall be allowed to refer

1 to the Settlement in other litigation to support his adequacy to represent a putative class or
2 PAGA group, or to justify an award of attorneys' fees; (b) the Parties shall have the right to
3 disclose the Settlement as may be required under federal or state tax and/or securities laws or
4 under Generally Accepted Accounting Principles; (c) the Parties shall have the right to disclose
5 the Settlement to third parties without identifying the case name, case number, or names of any
6 of the Parties or Released Parties; (d) Class Counsel shall have the right to disclose the
7 existence of the case to third parties (including the case name, case number, or names of any of
8 the Parties or Released Parties) without revealing the details of the Settlement and instead
9 representing that "the matter has been resolved"; (e) the Parties may refer to the Settlement,
10 describe its terms, and file the settlement agreement with the Court, the LWDA, and the
11 Settlement Administrator in connection with any proceedings which are reasonably necessary to
12 obtain approval of the Settlement; and (f) the Parties or their representatives may communicate
13 with accountants or legal advisors regarding the Settlement. Except for the previously listed
14 exceptions, in response to any inquiries about the Settlement, the Parties may state that "the
15 matter has been resolved."

16 85. Full and Complete Defense. This Agreement may be pleaded by any Released
17 Party as a full and complete defense to and may be used as the basis for an injunction against,
18 any action, suit or other proceeding that has been or may be instituted, prosecuted or attempted,
19 asserting any Released Claim.

20 86. Waiver. The waiver by one Party of any breach of this Agreement by another
21 Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

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

25 88. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
26 accomplish the terms of this Settlement Agreement, including but not limited to, the drafting
27 and execution of such documents and to take such other action as may reasonably be necessary
28 to implement the terms of this Settlement Agreement. The Parties to this Settlement Agreement

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

7 89. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
8 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,
9 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
10 cause of action or rights released and discharged by this Settlement Agreement.

11 90. No Admission. Defendant denies any and all liability to Plaintiff and/or any
12 Settlement Class Member in this Action, as to any and all causes of action that were asserted or
13 that might have been asserted in this Action. Nonetheless, Defendant wishes to settle and
14 compromise the matters at issue in the Complaint to avoid further substantial expense and the
15 inconvenience and distraction of protracted and burdensome litigation. Defendant also has
16 taken into account the uncertainty and risks inherent in litigation, and without conceding any
17 infirmity in the defenses that it has asserted or could assert against Plaintiff, has determined that
18 it is desirable and beneficial that Plaintiff's claims be settled in the manner and upon the terms
19 and conditions set forth in this Agreement.

20 91. Inadmissibility of Agreement. Whether or not the Court issues the Final
21 Approval Order, nothing contained herein, nor the consummation of this Settlement Agreement,
22 is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing
23 on the part of Defendant or any of the other Released Parties. Each of the Parties hereto has
24 entered into this Settlement Agreement with the intention of avoiding further disputes and
25 litigation with the attendant inconvenience and expenses. This Settlement Agreement is a
26 settlement document, and it, along with all related documents such as the notices, and motions
27 for preliminary and final approval, shall, pursuant to California Evidence Code section 1152
28 and/or Federal Rule of Evidence 408, be inadmissible in evidence in any proceeding, except an

1 action or proceeding to approve the settlement, and/or interpret or enforce this Settlement
2 Agreement. The stipulation for class certification as part of this Settlement Agreement is for
3 settlement purposes only and if, for any reason the settlement is not approved, the stipulation
4 will be of no force or effect.

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

9 To the Settlement Class Members and Aggrieved Employees:

10
11 Leonard Emma
12 *lemma@employment-lawyers.com*
13 1999 Harrison Street, 18th Floor
14 Oakland, CA 94612
Tel: (415) 362-1111; Fax: (415) 362-1112

15 To Defendant:

16
17 Shaun J. Voigt
18 *svoigt@fisherphillips.com*
19 444 South Flower Street, Suite 1500
20 Los Angeles, California 90071
Tel: (213) 330-4500; Fax: (213) 330-4501

21 93. Construction. The Parties hereto agree that the terms and conditions of this
22 Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the
23 Parties and that this Settlement Agreement shall not be construed in favor of or against any
24 Party by reason of the extent to which any Party or her or its counsel participated in the drafting
25 of this Settlement Agreement. Plaintiff and Defendant expressly waive the common-law and
26 statutory rule of construction that ambiguities should be construed against the drafter of an
27 agreement and further agree, covenant, and represent that the language in all parts of this
28 Agreement shall be in all cases construed as a whole, according to its fair meaning.

1 94. Captions and Interpretations. Paragraph titles or captions contained herein are
2 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or
3 describe the scope of this Settlement Agreement or any provision hereof. Each term of this
4 Settlement Agreement is contractual and not merely a recital.

5 95. Modification. This Settlement Agreement may not be changed, altered, or
6 modified, except in writing and signed by the Parties hereto, and approved by the Court. This
7 Settlement Agreement may not be discharged except by performance in accordance with its
8 terms or by a writing signed by all of the Parties hereto.

9 96. Dispute Resolution. Prior to instituting legal action to enforce the provisions of
10 this Agreement or to declare rights and/or obligations under this Agreement, a Party shall
11 provide written notice to the other Party and allow an opportunity to cure the alleged
12 deficiencies. The prevailing party in any such legal action instituted pursuant to this section
13 shall be entitled to recover attorneys' fees and costs. This provision shall not apply to any legal
14 action or other proceeding instituted by any person or entity other than Plaintiff or Defendant.

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

20 98. Enforceability. Pursuant to California Evidence Code Section 1123(a) and (b),
21 this Agreement is intended by the Parties to be, and shall be, enforceable, binding and
22 admissible in a court of law.

23 99. Choice of Law. This Settlement Agreement shall be governed by and construed,
24 enforced and administered in accordance with the laws of the State of California, without regard
25 to its conflicts-of-law rules.

26 100. Integration Clause. This Settlement Agreement contains the entire agreement
27 between the Parties relating to the settlement and transaction contemplated hereby, and all prior
28 or contemporaneous agreements, understandings, representations, and statements, whether oral

or written and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

101. Binding On Assigns. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

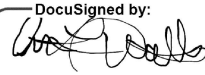
102. Signatures of All Class Members Unnecessary to be Binding. It is agreed that, because the members of the Settlement Class are numerous, it is impossible or impractical to have each Final Class Member execute this Settlement Agreement. The Notice will advise all Settlement Class Members of the binding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

103. Counterparts. This Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully signed Settlement Agreement, which shall be binding upon and effective as to all Parties. Electronic signatures shall have the same force and effect as an original.

APPROVAL AND EXECUTION BY PARTIES:

Dated: 9/30/2023, 2023

CLASS REPRESENTATIVE:

DocuSigned by:

 F43E45E093C842E...
 Arthur Walls

Dated: _____, 2023

DEFENDANT:

ABS PIPE, INC.

By _____
 Title _____

APPROVED AS TO FORM:

CLASS COUNSEL

Dated: _____, 2023

EMMA LAW, P.C.

Leonard Emma
Attorneys for Plaintiffs

Dated: _____, 2023

DEFENDANT'S COUNSEL:

FISHER & PHILLIPS LLP

Kristen Nesbit
Shaun J. Voigt
Celine Ko
Attorneys for Defendant,
ABS Pipe, Inc.

1 or written and whether by a Party or such Party's legal counsel, are merged herein. No rights
2 hereunder may be waived except in writing.

3 101. Binding On Assigns. This Settlement Agreement shall be binding upon and
4 inure to the benefit of the Parties hereto and their respective heirs, trustees, executors,
5 administrators, successors, and assigns.

6 102. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
7 because the members of the Settlement Class are numerous, it is impossible or impractical to
8 have each Final Class Member execute this Settlement Agreement. The Notice will advise all
9 Settlement Class Members of the binding nature of the releases provided herein and such shall
10 have the same force and effect as if this Settlement Agreement were executed by each Final
11 Settlement Class Member.

12 103. Counterparts. This Settlement Agreement may be executed in counterparts, and
13 when each Party has signed and delivered at least one such counterpart, each counterpart shall
14 be deemed an original, and, when taken together with other signed counterparts, shall constitute
15 one fully signed Settlement Agreement, which shall be binding upon and effective as to all
16 Parties. Electronic signatures shall have the same force and effect as an original.

17 **APPROVAL AND EXECUTION BY PARTIES:**

18 Dated: _____, 2023 **CLASS REPRESENTATIVE:**

19
20
21 _____
Arthur Walls

22
23 Dated: 10/23 /2023 **DEFENDANT:**

24 ABS PIPE, INC.

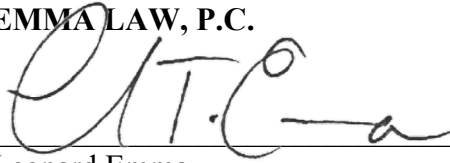
25
26 
27 By John Maw
28 Title CFO

1 **APPROVED AS TO FORM:**

2 **CLASS COUNSEL**

3 Dated: September 29, 2023

4 **EMMA LAW, P.C.**

5 

6 Leonard Emma
7 Attorneys for Plaintiffs

8 Dated: _____, 2023

9 **DEFENDANT'S COUNSEL:**

10 **FISHER & PHILLIPS LLP**

11
12 _____
13 Kristen Nesbit
14 Shaun J. Voigt
15 Celine Ko
16 Attorneys for Defendant,
17 ABS Pipe, Inc.
18
19
20
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23
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25
26
27
28

1 **APPROVED AS TO FORM:**

2 **CLASS COUNSEL**

3 Dated: _____, 2023

EMMA LAW, P.C.

4
5
6 _____
Leonard Emma
Attorneys for Plaintiffs

7
8 Dated: October 23, 2023

DEFENDANT'S COUNSEL:

9 **FISHER & PHILLIPS LLP**

10 

11 _____
12 Kristen Nesbit
13 Shaun J. Voigt
14 Celine Ko
15 Attorneys for Defendant,
16 ABS Pipe, Inc.