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Attorneys for Plaintiff RAFAEL MARTINEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS SAN JOAQUIN

RAFAEL MARTINEZ, an individual, on
behalf of himself, other similarly situated
Aggrieved Employees and the State of
California

Plaintiff,

vs.

GUY YOCOM CONSTRUCTION, INC.;
and **DOES 1-50**,

Defendants.

Case No. STK-CV-UOE-2021-011181

[Assigned for all purposes to Hon. Jayne Lee,
Dept. 10C]

**PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT AGREEMENT AND
RELEASE**

Complaint filed: December 10, 2021

Trial Date: **None Set**

PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AND RELEASE

This Private Attorneys General Act Settlement Agreement and Release (“Settlement Agreement”) is made and entered into by and between RAFAEL MARTINEZ, on behalf of himself and all others similarly situated, and the State of California (collectively, “Plaintiff” or the “PAGA Employees”) and GUY YOCOM CONSTRUCTION, INC. (referred to as “Defendant”). Plaintiff and Defendant are collectively referred to herein as the “Parties” and may be individually referred to as a “Party.” This Settlement Agreement is contingent on the review and approval of the court as required under California Labor Code §2699(l)(2), in addition to the other contingencies set forth herein.

NOW THEREFORE, in consideration of and exchange for the promises, covenants, and releases contained in the Agreement and the other valuable consideration described herein, the sufficiency of which is hereby acknowledged by the Parties, the Parties subject to the Court’s review and approval pursuant to California Labor Code §2699(l)(2), mutually agree as follows:

1. DEFINITIONS:

1.1. **“Administrator” or “Settlement Administrator”:** Phoenix Settlement Administrators, the neutral entity the Parties have agreed to appoint to administer the Settlement.

1.2. **“Attorneys’ Fees and Attorneys’ Litigation Expenses Award”:** the amounts allocated to Plaintiff’s Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Lawsuit.

1.3. **“Court”:** The San Joaquin County Superior Court.

1.4. **“Defendant”:** Guy Yocom Construction, Inc.

1.5. **“Effective Date”:** The date the Court enters an order approving the Settlement.

1.6. **“Lawsuit”:** *Martinez v. Guy Yocom Construction, Inc.*, San Joaquin County Superior Court, Case No. STK-CV-UOE-2021-011181 filed on December 10, 2021.

1.7. **“LWDA”:** California Labor & Workforce Development Agency.

1.8. **“LWDA Payment”:** The amount payable to the State of California’s Labor and Workforce Development Agency pursuant to the PAGA.

1.9. **“Notice of PAGA Settlement”:** The Notice to be sent to PAGA Employees along

with their individual Settlement Check notifying them of the Settlement, which shall be substantially in the form of **Exhibit A** hereto.

1.10. **“PAGA”**: Private Attorneys General Act of 2004, California Labor Code §2698, *et seq.*

1.11. **“PAGA Employees”**: All current and former non-exempt hourly paid employees employed by Defendants in California who received break violation premium pay during one or more pay periods during the period September 23, 2020, to June 24, 2022.. Defendant represented that there are 95 such employees.

1.12. **“PAGA Employee Fund”**: 25% of the Settlement Sum.

1.13. **“PAGA List”**: A list of all PAGA Employees, including their full names, and most up-to-date contact information (physical and/or mailing address and social security numbers) possessed by Defendants.

1.14. **“PAGA Period”**: September 23, 2020, to June 24, 2022.

1.15. **“PAGA Representative” or “Plaintiff”**: Rafael Martinez.

1.16. **“Plaintiff’s Counsel”**: Jeremy F. Bollinger, Dennis F. Moss, Ari E. Moss and Jorge A. Flores of Moss Bollinger, LLP.

1.17. **“Released Claims”**: Claims under PAGA for violations of the California Labor Code and/or Industrial Welfare Commission (“IWC”) Wage Orders which were alleged by Plaintiff, or reasonably could have been alleged by Plaintiff by reason of or in connection with the same set of operative facts set forth in the Lawsuit. Without limiting the foregoing release, the Released Claims shall include but are not limited to:

1.17.1. Claims for civil penalties under California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code section 2698 *et seq.* related to the following alleged Labor Code violations: (1) failure to keep accurate records in violation of Industrial Welfare Commission (“IWC”) Wage Orders 16; (2) failure to provide, authorize, and/or permit Plaintiff and other similarly situated employees meal periods within the first five hours in violation of Labor Code §§ 512 and 226.7 and Wage Order 16; (3) failure to provide a second meal period on shifts that lasted more than ten hours in violation of Labor Code §§ 512 and

226.7 and Wage Order 16; (4) failure to provide and make rest periods available to Plaintiff and other similarly situated in violation of Labor Code § 226.7 and Wage Order 16; (5) failing to pay all minimum and overtime wages in violation of Labor Code §§ 510 and 1197 and Wage Order 16; and (6) failure to timely pay all wages upon cessation of employment in violation of Labor Code §§ 201-203 (collectively “Released Claims”).

1.18. **“Releasees” or “Released Parties”**: Defendant Guy Yocom Construction, Inc. and each of Defendant’s respective past, present and future owners, parents, affiliates, subsidiaries, and all of their respective current, former, and future officers, directors, members, managers, employees, consultants, partners, shareholders, joint venturers, successors, assigns, accountants, insurers, or legal representatives.

1.20. **“Settlement Agreement” or “Settlement”**: The Private Attorneys General Act Settlement Agreement and Release memorialized herein.

1.21. **“Settlement Sum”**: The total inclusive gross sum of \$24,500.

2. **RECITALS**

2.1. WHEREAS, on December 10, 2021, Plaintiff filed the Lawsuit alleging violations of law entitling PAGA Employees to recovery under PAGA. The Lawsuit alleged violations of the Labor Code, including but not limited to §§201, 202, 203, 226.7, 510, 512, 1197, 1198 and the IWC Wage Orders, including IWC Wage Order 16, which allegedly gives rise to liability for civil penalties under PAGA. Prior to filing the Complaint, Plaintiff exhausted his administrative remedies under PAGA by giving notice to the LWDA and Defendant as required by law on September 23, 2021.

2.2. WHEREAS, Defendant denies all of the allegations in the Lawsuit and in the LWDA notice, and denies that it committed any misconduct, statutory or regulatory violation, wrongdoing, or any other actionable conduct.

2.3. WHEREAS, the Parties engaged in informal discovery. Defendant voluntarily provided substantial data concerning PAGA Employees, including records of pay periods when employees experienced alleged break violations for which they received break violation premium payments, relevant policies and handbooks, details regarding the number of employees

1 who experienced the alleged Labor Code violations during the PAGA Period, including payroll
2 and time sheet data. The data provided established that PAGA Employees did not experience the
3 alleged Labor Code violations during each pay period during the PAGA Period.

4 The Parties conducted independent analyses of the records and other information
5 provided to assess potential liability as well as assess strengths and weaknesses of the case.

6 2.4. WHEREAS, the Parties negotiated with the understanding that during the
7 PAGA Period, there were 89 PAGA employees who received break premiums during a
8 combined total of 247 pay periods during the PAGA Period .

9 2.5. WHEREAS, the Parties understand, acknowledge, and agree that this Settlement
10 Agreement constitutes a compromise of the claims asserted in the Complaint and that it is the
11 desire and intention of the Parties to effect a final and complete resolution of the claims asserted
12 in the Complaint that Plaintiff, the State, and all PAGA Employees have or could have against
13 Defendant arising under PAGA as of the Effective Date. The Parties further acknowledge that
14 this Settlement Agreement is an arms-length negotiated compromise between them, and that it is
15 intended to settle all claims under PAGA that were alleged by Plaintiff or reasonably could have
16 been alleged by Plaintiff by reason of or in connection with the facts set forth in the Lawsuit.

17 2.6. WHEREAS, the Parties recognize that there is inherent risk and uncertainty in the
18 outcome of the Lawsuit should litigation continue, inasmuch as Defendant denies and disputes
19 any and all of Plaintiff's claims and allegations and further denies that Plaintiff and PAGA
20 Employees have any cognizable claim(s) under PAGA, and even if there was a determination of
21 liability against Defendant after trial on the merits, the Court retains the ability to "award a lesser
22 amount than the maximum civil penalty" pursuant to California Labor Code §2699(e)(1).

23 2.7. WHEREAS, the Parties reached an agreement to settle all claims in the Lawsuit.
24 The Parties believe and agree that this Settlement Agreement provides for a fair, adequate, and
25 reasonable resolution of the Lawsuit and have arrived at this Settlement after extensive, arm's
26 length negotiations, considering all relevant factors, present and potential.

27 2.8. WHEREAS, California Labor Code §2699(l)(2) requires Court approval of a
28 settlement of any action filed under PAGA.

1 2.9. WHEREAS, the Parties understand that upon entry of the Court's final order
2 approving this Settlement, Plaintiff, the State, and any and all PAGA Employees will release
3 Releasees from liability, if any, arising out of the Released Claims.

4 2.10. WHEREAS, the Parties understand Lawsuit will be dismissed with prejudice
5 upon entry of an order by the Court approving the Settlement, although the Court will retain
6 jurisdiction of the case pursuant to California Code of Civil Procedure §664.6 to enforce the
7 terms of this Agreement and approval order.

8 2.11. WHEREAS, the Parties submit this Settlement Agreement to the Court and
9 respectfully request that the Court approve the same pursuant to California Labor Code
10 §2699(1)(2).

11 **3. RELEASE:** Upon entry of an Order approving the Settlement Agreement, all PAGA
12 Employees release Releasees from all Released Claims. The Parties agree and acknowledge that,
13 to the maximum extent permitted by law, the final order entered pursuant to this Settlement
14 Agreement will bind all those who would be bound by a judgment if the Lawsuit had been
15 brought by the LWDA, including Plaintiff, the LWDA, and PAGA Employees, with respect to
16 the recovery of civil penalties for the Released Claims against the Releasees.

17 **4. IRS 1099:** With regard to settlement payments to PAGA Employees, to the extent
18 required by law, IRS Form 1099s will be issued. Nothing in this Settlement is intended to
19 constitute legal advice regarding federal, state, and/or local tax obligations. Plaintiff
20 acknowledges that he has not obtained tax advice from Defendant and that neither Defendant nor
21 its attorneys have made any representation concerning the tax consequences, if any, of the
22 Settlement Sum in this Settlement Agreement or any payment to be made pursuant to this
23 Settlement Agreement. Defendant and its attorneys and Plaintiff's Counsel have not made any
24 representation to any PAGA Employees concerning the tax consequences, if any, of the
25 Settlement Sum in this Settlement Agreement or any payment to be made pursuant to this
26 Settlement Agreement.

1 **5. NOTICE AND ADMINISTRATION**

2 5.1. The Settlement Administrator's duties shall include, without limitation: (i)
3 printing and mailing to the Notice of PAGA Settlement in English and Spanish as directed by the
4 Court; (ii) taking all steps reasonably necessary to ensure PAGA Employees receive the Notice
5 of PAGA Settlement and settlement checks; (iii) taking receipt of and safeguarding the
6 Settlement Sum; (iv) calculating and distributing settlement checks, the Service Award Payment,
7 and the Attorneys' Fees and Attorneys' Litigation Expenses Award, provided such amounts are
8 approved by the Court; (v) issuing IRS Forms 1099-MISC, as applicable; and (ix) filing such
9 other reports with the taxing authorities as required by law, together with such other tasks as the
10 Parties may mutually agree or the Court may order the Settlement Administrator to perform. The
11 Settlement Administrator shall take all reasonable steps to ensure that (a) the highest percentage
12 of PAGA Employees receive the Notice of PAGA Settlement and their settlement check; and (b)
13 it has the most current and accurate addresses for PAGA Employees, including, but not limited
14 to performing an initial National Change of Address database search on all PAGA Employees.
15 In addition, the Settlement Administrator shall perform a standard search, also known as "batch,"
16 "skip trace," or "credit header" searches, on all addresses returned as undeliverable. The
17 Settlement Administrator shall perform the skip trace and re-mail the Notice of PAGA
18 Settlement and settlement checks to all updated addresses obtained through its efforts to locate
19 the most current and accurate addresses for PAGA Employees within seven (7) calendar days of
20 the return of the Notice of PAGA Settlement and settlement check. The Settlement
21 Administrator shall also provide toll-free telephone support to PAGA Employees for any
22 questions they may have; maintain appropriate databases to fulfill its duties; receive, control and
23 account for all returned Notices and settlement checks; calculate the settlement payments; and
24 prepare and deliver a report to Plaintiff's Counsel and counsel for Defendant on the number of
25 Notices and settlement checks returned as undelivered. In addition to the duties identified above,
26 the Settlement Administrator shall prepare a final declaration to be submitted to the Court upon
27 the expiration of the date for PAGA Employees to deposit their settlement checks. The Parties
28 recognize that Defendant fully discharges its obligations to those PAGA Employees to whom

payment is made through the mailing of a check, regardless of whether such checks are actually received and/or negotiated by PAGA Employees.

5.2. No later than 21 calendar days after the Effective Date, Defendant shall provide the Settlement Administrator with the PAGA List.

5.2. The PAGA List, and any other data provided by Defendant to the Settlement Administrator shall be treated as confidential and shall not be used by the Settlement Administrator for any purpose other than as permitted by the Settlement Agreement, and the Settlement Administrator shall use commercially reasonable efforts to secure the data provided by Defendant at all times so as to avoid inadvertent or unauthorized disclosure or use of such data other than as permitted by the Settlement Agreement.

5.3. The PAGA List shall state the PAGA Employees' first name and last name, the last known home address for each such employee, each employee's social security number, the PAGA Employees' respective total number of pay periods worked during the PAGA Period in which he or she had received a break premium payment.

5.4. The Settlement Administrator shall calculate payments due to PAGA Employees and the LWDA, disburse payments as outlined in this Agreement, and other related functions to administer the settlement contemplated by this Settlement Agreement as described herein. The Settlement Administrator shall, within seven (7) days of receiving the PAGA List, circulate to counsel for the Parties a spreadsheet containing the estimated individual settlement payments to each of the PAGA employees and obtain approval from counsel of all Parties of the calculations before mailing individual payments to the PAGA Employees.

5.5. The Settlement Administrator shall mail the Notice of PAGA Settlement along with settlement checks to PAGA Employees no later than fifteen (15) calendar days following the payment of the Settlement Sum to the Settlement Administrator, as set forth in Subsection 6.1.5.

5.6. All costs incurred by the Settlement Administrator in connection with its administration of the Settlement, including mailing of the Notice of PAGA Settlement, whether foreseen or not, shall be paid out of the Settlement Sum agreed to as described below.

5.7. Plaintiff's Counsel shall provide notice of the Settlement and any Court order entering Judgment to the LWDA in accordance with the PAGA.

6. PAGA SETTLEMENT PAYMENT PROCEDURES:

6.1. In exchange for the dismissal of the Lawsuit and Plaintiff's release as to the Releasees of the Released Claims, Defendant agrees to pay, in accordance with the terms specified below and within fifteen (15) calendar days of when the Settlement Administrator calculates payments due to PAGA Employees, the Settlement Sum, to the Settlement Administrator for the benefit of the State of California and PAGA Employees.

6.1.1 **LWDA ALLOCATION:** Seventy-five percent (75%) of the Civil Penalties shall be allocated to the California Labor and Workforce Development Agency ("LWDA"). From the LWDA's allocation, the Settlement Administrator shall pay (1) the amount of Attorneys' Fees awarded by the Court to Plaintiff's Counsel; (2) Attorneys' Litigation Expenses awarded by the Court to Plaintiff's Counsel; (3) the Service Payment to Plaintiff approved by the Court; and (4) the costs of administration,; and the balance to the LWDA.

6.1.2. **PAGA EMPLOYEE FUND:** The PAGA Employee Fund shall consist of twenty-five percent (25%) of the Settlement Sum, or \$6,125. The PAGA Employee Fund shall constitute the share of PAGA penalties recoverable by the PAGA Employees pursuant to Section 2699(i) of PAGA. PAGA Employees do not need to make a claim to participate in the Settlement. The Settlement Administrator shall pay a share from the PAGA Employee Fund as calculated based on the provisions of Subsection 6.1.5 to each PAGA Employee.

6.1.3. **ATTORNEYS' FEES:** Plaintiff's Counsel's attorneys' fees, subject to Court approval, to be paid from the LWDA's allocation shall equal 33.34% of the Settlement Sum, \$8,330. Court approval of the Settlement shall not be contingent on the Court's approval of attorney's fees. Defendant agrees not to dispute or otherwise object to Plaintiff's request for attorney's fees in an amount not to exceed 33.34% of the Settlement Sum in addition to reimbursement of actual litigation costs. The attorneys' fees awarded by the Court shall be paid to Plaintiff's Counsel no later than fifteen (15) calendar days following the payment of the Settlement Sum to the Settlement Administrator.

6.1.4. **ATTORNEYS' LITIGATION EXPENSES:** Plaintiff's Counsel, subject to Court approval, will be reimbursed from the LWDA's allocation documented out-of-pocket litigation costs and expenses, not to exceed one thousand two hundred fifty dollars (\$1,250). Defendant agrees not to object or dispute Plaintiff's requests for costs in an amount of up to \$1,250. The attorneys' litigation expenses awarded by the Court shall be paid to Plaintiff's Counsel no later than fifteen (15) calendar days following the payment of the Settlement Sum to the Settlement Administrator.

6.1.5. **PAYMENT TO PAGA EMPLOYEES:** The PAGA Employee Fund shall be paid to PAGA Employees no later than fifteen (15) calendar days following the payment of the Settlement Sum to the Settlement Administrator in accordance with the following methodology:

(A) For every pay period worked by a PAGA Employee during the PAGA Period in which a violation occurred, the PAGA Employee will receive one (1) "Net Settlement Share".

(B) The Settlement Administrator shall then divide each PAGA Employee's total Net Settlement Shares by the total Net Settlement Shares for all PAGA Employees in order to determine the "Percentage Share" of each PAGA Employee;

(C) Each PAGA Employee shall be entitled to receive a settlement award equal to his or her Percentage Share of the PAGA Employee Fund.

Payments to PAGA Employees shall be mailed by First Class U.S. Mail, and shall be accompanied by the Notice of PAGA Settlement, in both English and Spanish, submitted herewith as **Exhibit A**.

6.1.6. The PAGA Employee Fund shall be distributed to PAGA Employees in an amount calculated pursuant to Subsection 6.1.5 and in the form of a mailed check that shall remain valid for one hundred eighty (180) calendar days from issuance. For any PAGA Employee whose check remains uncashed ninety (90) calendar days from issuance, the

Settlement Administrator shall mail a reminder notice that the check will only remain valid for one hundred eighty (180) calendar days from issuance. Thereafter, all uncashed checks shall be voided and any remaining monies from the PAGA Employee Fund shall be paid to the LWDA.

6.1.7. The LWDA Payment shall be paid to the LWDA no later than fifteen (15) days following the payment of the Settlement Sum to the Settlement Administrator.

6.1.8. Within 15 calendar days of receiving approval from the Parties' counsel of the payment calculations, the Settlement Administrator will provide an accounting under oath to the Parties of the amounts paid from the Settlement Sum.

6.1.9. **SETTLEMENT ADMINISTRATOR PAYMENT:** The Settlement Administrator's payment shall not exceed Twenty Nine Hundred Fifty Dollars (\$2,950) based on 89 PAGA Employees. The Settlement Administrator's payment shall be paid from the LWDA Payment amount in accordance with subsection 6.1.1.

6.1.10. **SERVICE AWARD TO PLAINTIFF:** Plaintiff's counsel shall apply to the Court for a Service Award in the amount of \$1,000 to be paid to the PAGA Representative, which will be paid from the LWDA Payment amount in accordance with subsection 6.1.1. Defendant takes no position on the reasonableness of the Service Award sought by Plaintiff's counsel for the Plaintiff and, therefore, will not oppose such a request. Should the Court award less than the full amount of the Service Award requested, the difference shall revert to the Settlement Sum for distribution to the LWDA. Any Service Award approved by the Court shall be paid to Plaintiff no later than fifteen (15) calendar days following the payment of the Settlement Sum to the Settlement Administrator.

7. **COURT APPROVAL:** Should the Court not approve this Settlement Agreement, the Parties shall request leave and work jointly to attempt to revise the Settlement Agreement in order to obtain the Court's approval. If, despite the Parties best efforts, the Court still does not approve the Settlement Agreement, this Settlement Agreement shall become null and void and have no force and effect.

8. **CONTINGENCIES:** This Settlement Agreement is contingent on the review and approval of the Court as required under California Labor Code §2699(1)(2).

1 **9. REPRESENTATIONS AND WARRANTIES:** In further consideration for payment by
2 Defendant of the Settlement Sum, Plaintiff represents and warrants that he has the right and
3 exclusive authority to execute this Settlement Agreement. Each Party to this Settlement
4 Agreement also represents and warrants the following:

5 9.1. Each Party has carefully read, and knows and understands the full contents of this
6 Settlement Agreement and is voluntarily entering into this Settlement Agreement after having
7 received independent legal advice from his or its attorneys with respect to the advisability of
8 making the Settlement provided for herein.

9 9.2. In executing this Settlement Agreement, no Party relies or has relied on any
10 statement, representation, omission, inducement, or promise of any other Party (or any officer,
11 agent, employee, representative, or attorney for any other Party), except as expressly stated in
12 this Settlement Agreement.

13 9.3. Each Party to this Settlement Agreement has investigated the facts relevant to this
14 Settlement and this Settlement Agreement, and all matters pertaining thereto, to the full extent
15 that each Party deems necessary.

16 9.4. Each separately numbered term of this Settlement Agreement is contractual, not
17 merely a recital. All recitals stated herein are illustrative of the purposes and intentions of the
18 Parties with respect to this Settlement Agreement and shall be relevant and admissible for
19 purposes of interpreting this Settlement Agreement should such interpretation become necessary.

20 9.5. Each of the Parties has participated in the drafting of all provisions of this
21 Settlement Agreement, has had an adequate opportunity to read, review, and consider the effect
22 of the language of this Settlement Agreement, and has agreed to its terms.

23 **10. CHOICE OF LAW AND VENUE:** The rights and obligations of the Parties under this
24 Settlement Agreement shall be construed and enforced in accordance with, and governed by, the
25 laws of the State of California. California law shall govern the interpretation of this Settlement
26 Agreement even if a choice of law analysis under state or federal law would dictate that another
27 forum's law be applied. The proper venue for in any action relating to, connected to, involving,
28 or arising out of this Settlement Agreement shall be San Joaquin County, California.

1 **11. COOPERATION:** Each Party agrees that they will abide by this Settlement Agreement
2 and will do all such acts, and prepare, execute, and deliver all such documents, as may be
3 reasonably required to carry out the stated objectives of this Settlement Agreement.

4 **12. SEVERANCE:** If any provision of this Settlement Agreement is held to be invalid by a
5 court of competent jurisdiction, that provision shall be deemed severed and deleted from this
6 Settlement Agreement, and neither that provision nor its severance and deletion shall affect the
7 validity of the remaining provisions. Notwithstanding the foregoing, no portion of any release
8 contained herein may be deemed severed or deleted from this Settlement Agreement, except
9 upon waiver in writing by the applicable Released Party. However, if the Court, prior to
10 approving this Settlement Agreement, indicates the need to sever any provision of this
11 Settlement Agreement to obtain the Court's approval, the Parties shall meet and confer regarding
12 the proposed severance, and each shall have the right to declare null and void the Settlement
13 Agreement in its entirety if the proposed severing is unsatisfactory to them.

14 **13. NON-ADMISSION OF WRONGDOING:** The Parties agree that this Settlement
15 Agreement does not constitute an admission of Defendant or any Releasee of any of the matters
16 alleged in the Lawsuit or of any violation by any of them of any federal, state or local law,
17 ordinance or regulation, or of any violation of any policy or procedure, or of any liability or
18 wrongdoing whatsoever. Neither this Settlement Agreement nor anything in this Settlement
19 Agreement shall be construed to be or shall be admissible in any proceeding as evidence of
20 liability or wrongdoing of the Releasees.

21 **14. ADDITIONAL TERMS:**

22 14.1. This Settlement Agreement is binding upon and shall inure to the benefit of, the
23 Parties hereto and their respective agents, employees, representatives, officers, directors, parents,
24 subsidiaries, assigns, heirs, executors, administrators, insurers, and successors in interest.

25 14.2. Given that all Parties hereto had the opportunity to draft, review, and edit the
26 language of this Settlement Agreement, no presumption for or against any Party arising out of
27 drafting all or any part of this Settlement Agreement may be applied in any action relating to,
28 connected to, involving, or arising out of this Settlement Agreement. Accordingly, the Parties

1 hereby waive the benefit of any legal principle or rule providing that, in cases of uncertainty, the
2 language of a contract should be interpreted against the Party who caused the uncertainty to
3 exist.

4 14.3. This Settlement Agreement may be executed in counterparts. A signature by way
5 of e-mail, facsimile, or Doc-u-Sign shall serve as an original for all purposes.

6 14.4. Headings in this Settlement Agreement are included solely for convenience and
7 shall not control the meaning or interpretation of any provision of this Settlement Agreement.

8 14.5. This Settlement Agreement may not be amended, altered, or modified except in
9 writing and signed by the Parties hereto, their successors in interest, or their duly authorized
10 representatives/counsel, and approved by the Court.

11 14.6. The Parties shall each bear their own costs, attorneys' fees, and other fees
12 incurred in connection with this Settlement Agreement and the Lawsuit, except as otherwise set
13 forth specifically herein.

14 14.7. No waiver of any condition or covenant contained in this Settlement Agreement
15 or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or
16 constitute a further waiver by such Party of the same or any other condition, covenant, right, or
17 remedy. No waiver of any condition or covenant contained in this Settlement Agreement shall be
18 valid unless stated in writing and signed by the waiving party and/or his/its counsel.

19 **15. ENTIRE AGREEMENT:** This Settlement Agreement sets forth the entire agreement
20 between the Parties hereto and fully supersedes any and all prior and/or supplemental
21 understandings, whether written or oral, between the Parties concerning the subject matter of this
22 Settlement Agreement. Plaintiff acknowledged that he has not relied on any representations,
23 promises or agreements of any kind made to them in connection with their decision to accept the
24 terms of this Settlement Agreement, except for the representations, promises, and agreements
25 herein. Any modification to this Settlement Agreement must be in writing and signed by Plaintiff
26 and an authorized agent of Defendant in order to take effect and bind the Parties.

1 **IN WITNESS WHEREOF**, the parties knowingly and voluntarily executed this Private
2 Attorneys General Act Settlement Agreement and Release subject to court review and approval,
3 as of the date set forth below.

4 Dated: 12/1/2022

DocuSigned by:



29819A88CC70417
6 Plaintiff RAFAEL MARTINEZ, on behalf of
7 himself and all others similarly situated, and on
8 behalf of the general public and the State of
California

9 Dated: 12/2/2022



10 Defendant GUY YOCOM CONSTRUCTION,
11 INC.

12 By: GEOFF WILSON, President

13
14
15 **APPROVED AS TO FORM ONLY:**

16 Dated: 12/1/2022

MOSS BOLLINGER LLP

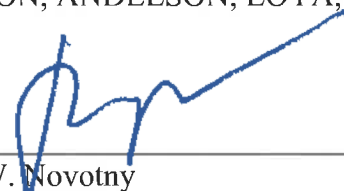
DocuSigned by:

18 By: Dennis F. Moss

19 Dennis F. Moss
20 Attorneys for Plaintiff

21 Dated: December 2, 2022

22 ATKINSON, ANDELSON, LOYA, RUDD &
23 ROMO

24 By: 
25 Ronald W. Novotny
26 Attorneys for Defendant
27
28