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WILSHIRE LAW FIRM, PLC
3055 Wilshire Blvd, 12th Floor
Los Angeles, CA 90010-1137

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

JASON HAFFNER, on behalf of the State of California and other aggrieved persons,

Plaintiff,

v.

PRO-CRAFT CONSTRUCTION, INC., a California corporation; and DOES 1 through 10, inclusive,

Defendant.

Case No.: CIVSB2132110

PAGA REPRESENTATIVE ACTION

[Assigned for all purposes to Judge Joseph T. Ortiz, Dept. S-17]

~~[PROPOSED]~~ ORDER AND JUDGMENT GRANTING PLAINTIFF'S MOTION TO APPROVE PAGA SETTLEMENT

Date: November 6, 2024
Time: 9:00 a.m.
Dept.: S-17

Complaint filed: November 9, 2021
Trial date: Not Set

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[PROPOSED] ORDER AND JUDGMENT

This matter came on for hearing on November 6, 2024 at 9:00 a.m. in Department S-17 of the above-entitled Court, the Honorable Joseph T. Ortiz presiding. Based on the pleadings on record, all papers submitted in connection with Plaintiff's Notice of Motion and Motion to Approve PAGA Settlement (the "Motion"), and for good cause appearing, Plaintiff's Motion is GRANTED.

The Court herby approves the Amended PAGA Settlement Agreement ("Agreement") entered into by Plaintiff Jason Haffner ("Plaintiff") and Defendant Pro-Craft Construction, Inc. ("Pro-Craft") (Plaintiff and Pro-Craft, collectively, the "Parties"), which way fully executed by all Parties by November 29, 2022, and hereby ORDERS and ADJUDGES as follows:

1. Pro-Craft shall pay the Gross Settlement Amount of $275,000.00 according to the terms of the Agreement.

2. The Agreement is hereby incorporated into this Order and all terms therein defined carry the same meaning in this Order.

3. The First Amended PAGA Representative Action Complaint (the "Amended Complaint"), filed on April 16, 2024, is the operative complaint in this Action.

4. The Net Settlement Amount means the Gross Settlement Amount minus the following: (a) $91,666.67 allocated to the PAGA Counsel Fees Payment; (b) $17,000.00 allocated to the PAGA Counsel Litigation Expenses Payment; (c) $4,750.00 allocated to the Administration Expenses Payment; and (d) $10,000.00 allocated to Plaintiff as a PAGA Representative Award.

(a) The Court approves payment to PAGA Counsel, Wilshire Law Firm, for the PAGA Counsel Fees Payment in the amount of Ninety One Thousand Six Hundred Sixty Six Dollars and Sixty Seven Cents ($91,666.67), to be paid from the Gross Settlement Amount.

(b) The Court approves payment to PAGA Counsel, Wilshire Law Firm, for the PAGA Counsel Litigation Expenses Payment in the amount of Seventeen Thousand Dollars and Zero Cents ($17,000.00) to be paid from the Gross Settlement Amount.

(c) The Court approves payment to the Administrator, Phoenix Class Action Administration Solutions, for its Administration Expenses Payment in the amount of Four Thousand Four Hundred Seven Hundred Fifty Dollars and Zero Cents ($4,750.00) to be paid from the Gross Settlement Amount.

(d) The Court approves payment to Plaintiff for the PAGA Representative Award in the amount of Ten Thousand Dollars and Zero Cents ($10,000.00) to be paid from the Gross Settlement Amount.

5. The resulting Net Settlement Amount of $151,583.33 are the PAGA Penalties to be paid to the California Labor and Workforce Development Agency (the "LWDA") and Aggrieved Employees. Of the Net Settlement Amount, 75% is allocated to the LWDA PAGA Payment and 25% is allocated to the Individual PAGA Payments.

6. The "PAGA Period" is defined as the period from November 9, 2020, to the date of the Approval Order.

7. An "Aggrieved Employee" is defined as a person employed by Pro-Craft in California and classified as an hourly, non-exempt employee who worked for Pro-Craft during the PAGA Period.

8. The Plaintiff, Aggrieved Employees, the State of California and PAGA Counsel will release claims against the Released Parties as outlined in Paragraph 5 of the Agreement. "Released PAGA Claims" is defined as any and all claims for civil penalties under PAGA arising from the pleaded claims in the Complaint and Amended Complaint for the entire duration of the PAGA Period, and from all other claims for civil penalties arising from, related to, or otherwise connected with the underlying factual allegations contained in the Complaint and Amended Complaint, that Plaintiff, on behalf of himself, the LWDA and the Aggrieved Employees, alleged or could allege against Defendant and the Released Parties. The Released PAGA Claims include, without limitation, all claims for civil penalties arising under California Labor Code Sections 210, 226.3, 1174.5, 1197.1 and 2699(f)(2), based on the facts set forth in Plaintiff's September 3, 2021 LWDA Letter and Plaintiff's Complaint and Amended Complaint, and further includes all claims seeking civil penalties for (1) failure to pay for all hours worked, including minimum wages, straight time

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wages, and overtime wages, (2) failure to provide meal periods, (3) failure to authorize and permit rest periods, (4) failure to pay all earned wages two times per month; (5) failure to maintain accurate records of hours worked and meal periods, (6) failure to pay all wages at termination, (7) failure to furnish accurate itemized wage statements, (8) failure to indemnify for necessary expenditures, (9) for failure to provide employment records, (10) failure to pay reporting time wages, (11) failure to pay split shift differential, and (12) failure to notify employees of sick leave time and accrual, and further including all claims for civil penalties pursuant to California Labor Code Sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 226.8, 246, 248.5, 432, 510, 512, 515, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 2753, 2802, 2699(a), (f)-(g) and 2699.3, California Code of Regulations 11050(4)(C) and (5)(A), as well as any applicable IWC Orders, arising during the PAGA Period. "Released Parties" is defined as Pro-Craft and each of its divisions, subsidiaries, partnerships, parents, affiliated companies, trusts, or other related entities, past and present, and each of them, as well as each of their directors, officers, shareholders, partners, members, representatives, executors, trustees, fiduciaries, administrators, beneficiaries, assignees, successors, business managers, agents, contractors, insurers, attorneys, and employees, past and present, and each of them and their marital community.

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9. This Order and Judgment shall have full equitable and collateral estoppel and res judicata effect and be final and binding upon Plaintiff, the LWDA, and the Aggrieved Employees regarding the Released PAGA Claims. Each Aggrieved Employee and the LWDA will be deemed to have made the foregoing Release as if by manually signing it.

10. "Effective Date" means the date by when both of the following have occurred: (a) the Court enters a Judgment on the Approval Order and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) the day the Court enters Judgment assuming no appeal is filed; or (b) if a timely appeal is filed, the date of final resolution of that appeal (including any requests for rehearing and/or petitions for writs of certiorari) resulting in final judicial approval of the Settlement.

11. The Court directs Pro-Craft to fully fund the Gross Settlement Amount by transmitting the funds to the Administrator within 60 days of the Effective Date, except as

otherwise noted in Paragraph 9.1 of the Agreement.

12. The amount of each Aggrieved Employee's Individual PAGA Payment will be calculated as follows: The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Pro-Craft for at least one day during the PAGA Period.

13. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

14. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

15. The Agreement represents a compromise and settlement of highly disputed claims. Nothing in the Agreement is intended nor should be construed as an admission by Pro-Craft that any of the allegations in the PAGA Notice, Complaint or Amended Complaint in the Action have merit or that Pro-Craft has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Pro-Craft's defenses in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only.

16. The Court directs the Parties and the Administrator to carry out all of the terms of the Settlement.

17. Under California Code of Civil Procedure section 664.6, the Court retains jurisdiction over the Parties to enforce the Settlement until performance in full of the Agreement's terms.

18. Plaintiff's counsel shall submit a copy of this Order to the LWDA within seven (7) days of the entry of the Order.

19. Plaintiff's Motion to Approve PAGA Settlement is hereby granted and the Court directs Judgment shall be entered in accordance with the terms of this Order.

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IT IS SO ADJUDGED AND ORDERED.

DATE: Nov. 6, 2024

Honorable Hon. Joseph T. Ortiz
San Bernardino County Superior Court Judge

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PROOF OF SERVICE
Haffner v. Pro-Craft Construction, Inc.
CIVSB 2132110

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I, Sandy S. Sespene, state that I am employed in the aforesaid County, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 3055 Wilshire Blvd., 12th Floor, Los Angeles, California 90010. My electronic service address is sandy.sespene@wilshirelawfirm.com.

On September 4, 2024, I served the foregoing **[PROPOSED] ORDER AND JUDGMENT GRANTING PLAINTIFF'S MOTION TO APPROVE PAGA SETTLEMENT**, on the interested parties by placing a true copy thereof, enclosed in a sealed envelope by following one of the methods of service as follows:

David A. Wimmer, Esq. (SBN 155792)
dwimmer@swerdlowlaw.com
Allison R. Musante, Esq. (SBN 172255)
amusante@swerdlowlaw.com
Leslyn Sellers
lsellers@swerdlowlaw.com
SWERDLOW FLORENCE SANCHEZ SWERDLOW & WIMMER, ALC
10877 Wilshire Boulevard, Suite 1650
Los Angeles, CA 90024
Telephone: (310) 288-3980
Facsimile: (424) 281-2578

Attorneys for Defendant Pro-Craft Construction, Inc.

(X) **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known email address or e-mail of record in this action.

(X) **BY UPLOAD:** I hereby certify that the documents were uploaded by my office to the State of California Labor and Workforce Development Agency Online Filing Site.

I declare under the penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed on September 4, 2024, at Los Angeles, California.

[signature]
Sandy S. Sespene

AMENDED PAGA SETTLEMENT AGREEMENT

This Amended PAGA Settlement Agreement ("Agreement") is made by and between plaintiff Jason Haffner ("Plaintiff") and defendant Pro-Craft Construction, Inc. ("Pro-Craft"). The Agreement refers to Plaintiff and Pro-Craft collectively as "Parties," or individually as "Party."

1. DEFINITIONS.

1.1 "Action" means the Plaintiff's lawsuit under the Labor Code Private Attorneys General Act ("PAGA") alleging wage and hour violations against Pro-Craft captioned Jason Haffner v. Pro-Craft Construction, Inc., CIV SB 2132110, initiated on November 9, 2021, and pending in Superior Court of the State of California, County of San Bernardino, including the Complaint and Amended Complaint.

1.2 "Administrator" means Phoenix Settlement Administrators ("Phoenix" or "Administrator"), the neutral entity the Parties have agreed to appoint to administer the Settlement.

1.3 "Administration Expenses Payment" means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator's "not to exceed" bid submitted to the Court in connection with approval of this Settlement.

1.4 "Aggrieved Employee" means a person employed by Pro-Craft in California and classified as an hourly, non-exempt employee who worked for Pro-Craft during the PAGA Period.

1.5 "Aggrieved Employee Data" means Aggrieved Employee identifying information in Pro-Craft's possession including the Aggrieved Employee's name, last-known mailing address, Social Security number, and number of PAGA Pay Periods.

1.6 "Aggrieved Employee Address Search" means the Administrator's investigation and search for current Aggrieved Employee mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Aggrieved Employees.

1.7 "Approval Order" means the Court Order Granting Approval of PAGA Settlement."

1.8 "Amended Complaint" shall refer to the First Amended Complaint to be filed by Plaintiff in the Action, which will include additional claims for civil penalties under the California Labor Code Private Attorneys General Act ("PAGA") as discussed in Paragraph 2.5. Plaintiff's counsel will work diligently to complete the Amended Complaint so it can be submitted as part of the Motion for Approval of the Settlement, as set forth in Paragraphs 2.5 and 6.1.

1.9 "Court" means the Superior Court of California, County of San Bernardino.

1.10 "Defense Counsel" means Attorneys David A. Wimmer and Allison R. Musante at Swerdlow Florence Sanchez Swerdlow & Wimmer, A Law Corporation.

1.11 "Effective Date" means the date by when both of the following have occurred: (a) the Court enters a Judgment on the Approval Order and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) the day the Court enters Judgment assuming no appeal is filed; or (b) if a timely appeal is filed, the date of final resolution of that appeal (including any requests for rehearing and/or petitions for writs of certiorari) resulting in final judicial approval of the Settlement.

1.12 "Gross Settlement Amount" means Two Hundred Seventy Five Thousand Dollars and Zero Cents ($275,000.00), which is the total amount Pro-Craft agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, the PAGA Representative Award, and the Administrator's Expenses Payment.

1.13 "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.

1.14 "Judgment" means the judgment entered by the Court based upon the Approval Order.

1.15 "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).

1.16 "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).

1.17 "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, the PAGA Representative Award, and the Administration Expenses Payment. The remainder is to be paid to

Aggrieved Employees as Individual PAGA Payments and to the LWDA in the LWDA PAGA Payment.

1.18 "PAGA Counsel" means Attorneys Justin F. Marquez, Christina Le, and Arsiné Grigoryan at Wilshire Law Firm, the attorneys representing the Plaintiff in the Action.

1.19 "PAGA Counsel Fees Payment" and "PAGA Counsel Litigation Expenses Payment" mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys' fees and expenses, respectively, incurred to prosecute the Action.

1.20 "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Pro-Craft for at least one day during the PAGA Period.

1.21 "PAGA Period" means the period from November 9, 2020 to the date of the Approval Order.

1.22 "PAGA" means the California Labor Code Private Attorneys General Act (Labor Code §§ 2698 *et seq.*)

1.23 "PAGA Notice" means Plaintiff's September 3, 2021, letter to Pro-Craft and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

1.24 "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Net Settlement Amount, which is $151,583.33. The PAGA Penalties are allocated 25% to the Aggrieved Employees ($37,895.83) and the 75% to LWDA ($113,687.50) in settlement of all PAGA claims.

1.25 "Plaintiff" means Jason Haffner, the named plaintiff in the Action.

1.26 "Released PAGA Claims" means any and all claims for civil penalties under PAGA arising from the pleaded claims in the Complaint and Amended Complaint for the entire duration of the PAGA Period, and from all other claims for civil penalties arising from, related to, or otherwise connected with the underlying factual allegations contained in the Complaint and Amended Complaint, that Plaintiff, on behalf of himself, the LWDA and the Aggrieved Employees, alleged or could allege against Defendant and the Released Parties. The Released PAGA Claims include, without limitation, all claims for civil penalties arising under California Labor Code Sections 210, 226.3, 1174.5, 1197.1 and 2699(f)(2), based on the facts set forth in Plaintiff's September 3, 2021 LWDA Letter and Plaintiff's Complaint and Amended Complaint, and further includes all claims seeking civil penalties for (1) failure to pay for all hours worked, including minimum wages, straight time wages, and overtime wages, (2) failure to provide meal periods, (3) failure to authorize and permit rest periods, (4) failure to pay all earned wages two times per month; (5) failure to maintain accurate records of hours worked and meal periods, (6) failure to pay all wages at termination, (7) failure to furnish accurate itemized wage statements, (8) failure to indemnify for necessary expenditures, (9) for failure to provide employment records, (10) failure to pay reporting time wages, (11) failure to pay split shift differential, and (12) failure to notify employees of sick leave time and accrual, and further including all claims for civil penalties pursuant to California Labor Code Sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 226.8, 246, 248.5, 432, 510, 512, 515, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 2753, 2802, 2699(a), (f)-(g) and 2699.3, California Code of Regulations 11050(4)(C) and (5)(A), as well as any applicable IWC Orders, arising during the PAGA Period.

1.27 "Released Parties" means: Pro-Craft and each of its divisions, subsidiaries, partnerships, parents, affiliated companies, trusts, or other related entities, past and present, and each of them, as well as each of their directors, officers, shareholders, partners, members, representatives, executors, trustees, fiduciaries, administrators, beneficiaries, assignees, successors, business managers, agents, contractors, insurers, attorneys, and employees, past and present, and each of them and their marital community.

1.28 "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.

1.29 "Pro-Craft" means named Defendant Pro-Craft Construction, Inc.

1.30 "PAGA Representative Award" means the $10,000 to be paid to Plaintiff for serving as the named representative in the Action.

2. <u>RECITALS.</u>

2.1 On November 9, 2021, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Pro-Craft for civil penalties under PAGA for failure to pay for all hours worked, including minimum, straight time and overtime wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to pay all earnings twice per month, failure to maintain accurate records of hours worked and meal periods, failure to pay all wages at termination, failure to furnish accurate itemized wage statements and failure to indemnify for necessary expenditures. Pro-Craft denies the allegations in the

Complaint, denies any failure to comply with the laws identified in the Complaint and denies any and all liability for the causes of action alleged.

2.2 Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Pro-Craft and the LWDA by sending the PAGA Notice.

2.3 On November 3, 2022, the Parties participated in an all-day mediation presided over by Jeffrey Krivis, Esq., which led to this Agreement to settle the Action.

2.4 Prior to mediation, Plaintiff obtained, through informal discovery, among other things, electronic Payroll and Earnings data, a random sample of timekeeping data, as well as information about Pro-Craft's wage and hour policies, union side letters, meal period waivers, meal premium information, and Plaintiff's personnel records.

2.5 In conjunction with and conditioned upon the Court granting Approval of this Settlement, Plaintiff will file an Amended Complaint in the Action as part of its Motion for the Court to Approve the Settlement that will include additional claims for civil penalties under PAGA for failure to provide employment records; failure to pay reporting time wages; failure to pay split shift differential; and failure to notify employees of sick leave time and accrual. The Parties hereby agree that, for settlement purposes only, the statute of limitations of the PAGA Action claims shall be deemed to relate back to November 9, 2020. In addition, the Amended Complaint will include all other amendments necessary to give full effect to this settlement. Pro-Craft stipulates to the filing of the Amended Complaint for settlement purposes only, and reserves its rights and declares that it would and will oppose Plaintiff's filing of the Amended Complaint should the Court fail to issue its Approval of the Settlement.

2.6 The Amended Complaint will be the operative complaint in the Action (the "Operative Complaint.") Pro-Craft denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint and denies any and all liability for the causes of action alleged.

2.7 The Parties, PAGA Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. <u>MONETARY TERMS.</u>

3.1 <u>Gross Settlement Amount</u>. Except as otherwise provided by Paragraph 9 below, Pro-Craft promises to pay Two Hundred Seventy Five Thousand Dollars and Zero Cents ($275,000.00) and no more as the Gross Settlement Amount. Pro-

Craft has no obligation to pay the Gross Settlement Amount prior to sixty (60) business days after the Effective Date, as stated in Paragraph 4.3 of this Agreement, except as otherwise noted in Paragraph 9.1. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Pro-Craft.

3.2 Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Approval Order:

3.2.1 To PAGA Counsel: A PAGA Counsel Fees Payment of not more than 33.33% which is currently estimated to be Ninety One Thousand Six Hundred Sixty Six Dollars and Sixty Seven Cents ($91,666.67) and PAGA Counsel Litigation Expenses Payment of not more than $17,000.00. Pro-Craft will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. Plaintiff and/or PAGA Counsel will file an application or motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds Pro-Craft harmless, and indemnifies Pro-Craft, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.2 To the Administrator: An Administrator Expenses Payment not to exceed $4,750.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than $4,750.00, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.3 To the Plaintiff: The PAGA Representative Award not to exceed $10,000.00. To the extent the Court approves payment less than

$10,000.00, the Administrator will retain the remainder in the Net Settlement Amount.

3.3 Payment from Net Settlement Amount: The Administrator will make and deduct the following payments from the Net Settlement Amount, the amounts specified by the Court in the Approval Order:

3.3.1 To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of $151,583.33 to be paid from the Net Settlement Amount, with 75% ($113,687.50) allocated to the LWDA PAGA Payment and 25% ($37,895.83) allocated to the Individual PAGA Payments.

3.2.3.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties ($37,895.33) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.3.3. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1 Aggrieved Employee Pay Periods. Based on a review of its records to date, Pro-Craft estimates there are 336 Aggrieved Employees who worked a total of 16,388 PAGA Pay Periods through November 3, 2022.

4.2 Aggrieved Employee Data. Within thirty (30) calendar days of the Court filing the Approval Order, Pro-Craft will deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. Pro-Craft has a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data to the Administrator as soon as reasonably feasible. Without any extension of the deadline by which Pro-Craft must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.

4.3 Funding of Gross Settlement Amount. Pro-Craft shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than sixty (60) days after the Effective Date, except as otherwise noted in Paragraph 9.1.

4.4 Payments from the Gross Settlement Amount. Within thirty (30) days after Pro-Craft funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the PAGA Representative Award, the Administration Expenses Payment, and the PAGA Counsel Expenses Payment. Disbursement of the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments.

4.4.1 The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2 The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are retuned undelivered without USPS forwarding address. Within seven (7) days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.

4.4.3 For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.

4.4.4 The payment of Individual PAGA Payments shall not obligate Pro-Craft to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. **RELEASES OF CLAIMS**. Effective on the date when Pro-Craft fully funds the entire Gross Settlement Amount, Plaintiff and PAGA Counsel will release claims against all Released Parties as follows:

5.1 Plaintiff's Release. Plaintiff for himself and for his respective spouses, domestic partners, marital community, children, estates, heirs, trusts, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, personal representatives, and assignees does forever and completely release and discharge and covenant not to sue the Released Parties with respect to any and all claims, demands, liens, agreements, contracts, grievances, covenants, actions, suits, causes of action, wages, obligations, debts, liquidated damages, penalties, interest, costs, expenses, attorneys' fees, damages, judgments, orders and liabilities of whatever kind or nature in law, equity or otherwise, whether now known or unknown, suspected or unsuspected, concealed or hidden, which Plaintiff now owns or holds or has at any time heretofore owned or held as against said Released Parties, or any of them. Such released claims include specifically, but not exclusively and without limiting the generality of the foregoing, any and all claims, demands, agreements, grievances, obligations and causes of action, known or unknown, suspected or unsuspected, concealed or hidden, including but not limited to all claims arising out of, based upon, relating to, or in any way connected with:

5.1.1 Plaintiff's employment with Pro-Craft or the remuneration for or termination of such employment;

5.1.2 any allegation in the PAGA Notice, Action, Complaint or Amended Complaint;

5.1.3 any transactions, occurrences, acts or omissions set forth, or facts alleged, in any and all charges, complaints, claims, grievances or pleadings filed by Plaintiff against any Released Party prior to the date hereof with any city, county, state or federal agency, commission, office or tribunal whatsoever, including, but not limited to, the Civil Rights Department, State of California, the Equal Employment Opportunity Commission, the Department of Labor, the LWDA, Occupational Safety and Health Administration, and National Labor Relations Board; and/or

5.1.4 any transactions, occurrences, acts or omissions occurring prior to the date hereof, including specifically without limiting the generality of the foregoing any claim under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Employee Retirement Income Security Act, the National Labor Relations Act, the Fair Labor Standards Act, the Family and Medical Leave Act, the California Constitution, the California Labor Code, the California Civil Code, the California Government Code, the California Business & Professions Code, the California Family Rights Act, the California Fair Employment and Housing Act, or any other federal, state, or local statute or regulation.

5.1.5 Plaintiff agrees that there is a risk that any injury that he may have suffered by reason of the Released Parties' relationship with him might not now be known, and there is a further risk that said injuries, whether known or unknown, suspected or unsuspected, concealed or hidden, at the date of this Agreement, might possibly become progressively worse, and that as a result thereof further damages may be sustained. Nevertheless, Plaintiff agrees to forever and fully release and discharge the Released Parties, and understands that by the execution of this Agreement no further claims for any such injuries that existed at the time of the execution of this Agreement may ever be asserted by Plaintiff with respect to claims arising in the time period from the beginning of time to the execution of this Agreement.

5.1.6 <u>Plaintiff's Waiver of Rights Under California Civil Code Section 1542</u>. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of Section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or Released Party.

5.2 <u>Release by Aggrieved Employees</u>:

Plaintiff, standing in the shoes of the Labor Commissioner/LWDA to the extent permitted by law, and on behalf of the State of California and all Aggrieved Employees, for themselves and for their respective spouses, domestic partners, children, estates, heirs, trusts, and representatives, will forever completely release and discharge the Released Parties from the

Released PAGA Claims that have or could have arisen or accrued during the PAGA Period. It is the intent of the Parties that the Approval Order entered by the Court shall have full equitable and collateral estoppel and res judicata effect and be final and binding upon Plaintiff, the LWDA, and the Aggrieved Employees regarding the Released PAGA Claims. Each Aggrieved Employee and the LWDA will be deemed to have made the foregoing Release as if by manually signing it.

5.3 Release by PAGA Counsel:

PAGA Counsel release on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for PAGA Fees and PAGA Expenses incurred in connection with the PAGA Notice and the Action.

6. MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT. The Parties agree to jointly prepare and file an application or motion for approval of this Settlement.

6.1 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699, subd. (f)(2), including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiff, PAGA Counsel or Defense Counsel; (iii) a signed declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (iv) a redlined version of the parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; (v) an Amended Complaint; and (vi) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator. In their Declarations, Plaintiff and PAGA shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

6.2 Responsibilities of PAGA Counsel. PAGA Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the application or motion for approval of this Settlement no later than sixty (60) days after the full execution of this Agreement and, if necessary, obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the motion. PAGA Counsel is responsible for delivering the Court's Approval Order to the Administrator.

6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed application or motion for approval of this Settlement and/or the supporting declarations and documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant the motion for approval of this Settlement or conditions its approval on any material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

7.1 Selection of Administrator. The Parties have jointly selected Phoenix to serve as the Administrator and verified that, as a condition of appointment, Phoenix agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports to state and federal tax authorities.

7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.

7.4 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8. AGGRIEVED EMPLOYEE SIZE ESTIMATES and ESCALATOR CLAUSE. Based on its records, Pro-Craft estimates that, as of the date of this Settlement Agreement, there are 336 Aggrieved Employees who worked 16,388 Pay Periods from November 9, 2020, through November 3, 2022. In the event that the actual number of Pay Periods worked by all Aggrieved Employees during the foregoing period increases by 10% or more, then Pro-Craft shall increase the Gross Settlement Fund on a proportional basis in excess of twenty percent (i.e., if there were a twenty-one percent (11%) increase in the number of Pay Periods, then Pro-Craft will increase the Gross Settlement Fund by one percent (1%)).

9. **CONTINUING JURISDICTION OF THE COURT**. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

9.1 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment, the Parties and their respective counsel waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If another party appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final.

10. **ADDITIONAL PROVISIONS.**

10.1 No Admission of Liability or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Pro-Craft that any of the allegations in the PAGA Notice, Complaint or Amended Complaint have merit or that Pro-Craft has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Pro-Craft's defenses in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement, Pro-Craft reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to contest Pro-Craft's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

10.2 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits, if any, shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party, as well as the prior PAGA Settlement Agreement executed by the Parties.

10.3 Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Pro-Craft, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

10.4 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of Mediator Jeffrey A. Krivis, Esq., and/or the Court for resolution.

10.5 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

10.6 No Tax Advice. Neither Plaintiff, PAGA Counsel, Pro-Craft nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

10.7 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.

10.8 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

10.9 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.

10.10 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

10.11 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.

10.12 Use and Return of Aggrieved Employee Data. Information provided to PAGA Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data provided to PAGA Counsel by Pro-Craft in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. As set forth in the Court's Order related to the Parties Stipulation to Regarding Information Provided Under Cover of Mediation Privilege and Written Discovery, which was signed by the Court on July 12, 2022, all Mediation Data received by Plaintiff must be returned to Defendant within five (5) business days after the conclusion of the mediation.

10.13 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

10.14 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

10.15 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

Justin F. Marquez, Esq.
Christina Le, Esq.
Arsiné Grigoryan, Esq.
Wilshire Law Firm
305 Wilshire Boulevard, 12th Floor
Los Angeles, CA 90010

To Pro-Craft:

David A. Wimmer, Esq.
Allison R. Musante, Esq.
Swerdlow Florence Sanchez Swerdlow & Wimmer,
A Law Corporation
10877 Wilshire Boulevard, Suite 1650
Los Angeles, CA 90024

10.16 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

10.17 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP Section 583.330 the date to bring a case to trial under CCP Section 583.310 shall be extended for the entire period of this settlement process.

EXECUTED this 22 day of November 2022, at San Diego County, California.

DocuSigned by:
5B2D40BB9DFC4BE...
Jason Haffner

EXECUTED this 28th day of November 2022, at San Bernadino County, California.

PRO-CRAFT CONSTRUCTION, INC.

By: Susan McFayden
Susan McFayden (Nov 29, 2022 12:51 PST)

Susan McFayden
Its: Chief Financial Officer

<u>APPROVED AS TO FORM</u>:

WILSHIRE LAW FIRM

By: ______________________ Dated: November 22, 2022

Christina Le, Esq.
Attorneys for Employee, Jason Haffner

<u>APPROVED AS TO FORM</u>:

SWERDLOW FLORENCE SANCHEZ
SWERDLOW & WIMMER, A LAW CORPORATION

By: ______________________ Dated: Nov 29, 2022

David A. Wimmer, Esq.
Attorneys for Employer, Pro-Craft Construction, Inc.