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Attorneys for Plaintiff Elizandro Valenzuela, individually,
and on behalf of all others similarly situated

[Additional counsel listed on following page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

GILBERTO RUEDA, PAVEL BOVSUN, and
ELIZANDRO VALENZUELA, individually and
on behalf of all others similarly situated,

Plaintiffs,

vs.

CLARKWESTERN DIETRICH BUILDING
SYSTEMS LLC; and DOES 1 through 20,
inclusive,

Defendants.

Case No. 34-2021-00307823-CU-OE-GDS

*Assigned for all purposes to:
Hon. Lauri A. Damrell, Dept. 28*

JOINT STIPULATION OF SETTLEMENT

1 JACKSON LEWIS P.C.
NATHAN W. AUSTIN (SBN 219672)
2 EVAN M. MCBRIDE (SBN 317393)
400 Capitol Mall, Suite 1600
3 Sacramento, California 95814
4 Telephone: (916) 341-0404
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7 Attorneys for Defendant
CLARKWESTERN DIETRICH BUILDING SYSTEMS LLC
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1 It is stipulated and agreed by and among the undersigned Parties, subject to the approval of
2 the Court pursuant to the California Rules of Court, that the Settlement of this Action shall be
3 effectuated upon and subject to the following terms and conditions. Capitalized terms used herein
4 shall have the meanings set forth in Article I or as defined elsewhere in this Joint Stipulation of
5 Settlement (“Agreement” or “Settlement”).

6 This Agreement is made by and between Named Plaintiffs Gilberto Rueda, Pavel Bovsun,
7 and Elizandro Valenzuela (“Named Plaintiffs”) and the Class Members, on the one hand, and
8 Defendant ClarkWestern Dietrich Building Systems LLC (“ClarkWestern” or “Defendant”), on the
9 other hand. Named Plaintiffs and Defendant collectively are referred to in this Agreement as “the
10 Parties.”

11 The Parties agree that the Action shall be, and hereby is, ended, settled, resolved, and
12 concluded by agreement of Defendant to pay the settlement amount of Two Million Five Hundred
13 Thousand Dollars (\$2,500,000.00) as provided in Section 3.06(a) below (“Gross Settlement
14 Amount”) pursuant to the terms and conditions of this Agreement and for the consideration set forth
15 herein, including but not limited to, a release of all claims by Named Plaintiffs and the Class Members
16 as set forth herein.

17 ARTICLE I

18 DEFINITIONS

19 Unless otherwise defined herein, the following terms used in this Agreement shall have the
20 meanings ascribed to them as set forth below:

21 a. “Action” means the action described as follows: *Gilberto Rueda v. ClarkWestern*
22 *Dietrich Building Systems LLC*,” Case No. 34-2021-00307823, commenced on September 14, 2021,
23 in the Superior Court of the State of California for the County of Sacramento (“Rueda Class Action”),
24 “*Gilberto Rueda v. ClarkWestern Dietrich Building Systems LLC*, Case No. 34-2021-00311942,
25 commenced on November 30, 2021 (“Rueda PAGA Action”), and “*Valenzuela v. Clarkwestern*
26 *Dietrich Building Systems dba ClarkDietrich Building Systems*,” Case No. CVRI2200205,
27 commenced on January 18, 2022, in the Superior Court of the State of California for the County of
28 Riverside (“Valenzuela Action”). The Parties will stipulate to file a “Consolidated Complaint” in

1 the Rueda Class Action that will consolidate and incorporate the Rueda PAGA Action and
2 Valenzuela Action into the Rueda Class Action, and therein collectively allege the Released Class
3 Claims and Released PAGA Claims.

4 b. “Agreement” means this Joint Stipulation of Settlement, including the attached
5 Exhibit(s).

6 c. “Class” means all current and former non-exempt employees who are or were
7 employed by Defendant in California at any time during the Class Period.

8 d. “Class Counsel” means the attorneys for the Class and the Class Members, who are:

9 AEGIS LAW FIRM, PC
10 Samuel A. Wong
Kashif Haque
11 Jessica L. Campbell
Fawn F. Bekam
12 9811 Irvine Center Drive, Suite 100
Irvine, California 92618
13 Telephone: (949) 379-6250
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14 Brian J. Mankin
15 Misty M. Lauby
LAUBY, MANKIN & LAUBY, LLP
16 5198 Arlington Avenue, PMB 513
Riverside, CA 92504
17 Tel: (951) 320-1444 | Fax: (951) 320-1445

18 e. “Class List” means a list based on Defendant’s business records that identifies each
19 Class Member’s name, last known home or mailing address, Social Security number or, as
20 applicable, other taxpayer identification number, dates of employment, and the number of Qualifying
21 Workweeks worked during the Class Period.

22 f. “Class Member(s)” means all members of the Class.

23 g. “Class Period” means September 14, 2017 through the Preliminary Approval Date or
24 March 15, 2023, whichever occurs sooner.

25 h. “Court” means the California Superior Court for the County of Sacramento, where
26 the Rueda Action is currently pending.

27 i. “Date of Finality” means the later of the following: (1) the date the Final Order is
28 signed if no objections are filed to the Settlement; (2) if objections are filed and overruled, and no

1 appeal is taken of the Final Order, sixty-five (65) days after the Final Order; or (3) if an appeal or
2 other judicial review is taken from the Court's overruling of objections to the settlement, ten (10)
3 days after the appeal is withdrawn or after an appellate decision affirming the Final Order becomes
4 final.

5 j. "Defendant" means Defendant ClarkWestern Dietrich Building Systems LLC.

6 k. "Defense Counsel" means counsel for Defendant:

7 JACKSON LEWIS P.C.
8 Nathan W. Austin
9 Evan M. McBride
400 Capital Mall, Suite 1600
10 Sacramento, CA 95814
Telephone: (916) 341-0404

11 l. "Disposition" means the method by which the Court approves the terms of the
12 Settlement and retains jurisdiction over its enforcement, implementation, construction,
13 administration, and interpretation.

14 m. "Final Order Approving Settlement of Class Action" or "Final Order" means the final
15 formal court order signed by the Court following the Final Fairness and Approval Hearing in
16 accordance with the terms herein, approving this Agreement.

17 n. "Gross Settlement Amount" means Two Million Five Hundred Thousand Dollars and
18 Zero Cents (\$2,500,000.00) to be paid by Defendant as provided by this Agreement to settle this
19 Action. All payments to the Class, administration costs, attorney's fees and costs, the PAGA
20 Settlement Amount, and Incentive Awards, pursuant to Section 3.06(a) below, shall be paid out of
21 the Gross Settlement Amount. Under no condition will Defendant's aggregate liability exceed the
22 Gross Settlement Amount, with the exception that the employer's share of payroll taxes arising from
23 the payments made under this settlement shall be paid by Defendant separate from and in addition
24 to the Gross Settlement Amount. The Gross Settlement Amount is subject to a pro rata increase
25 pursuant to Section 3.04(e) below. No part of the Gross Settlement Amount shall revert to Defendant.

26 o. "Incentive Awards" means a monetary amount of up to Ten Thousand Dollars
27 (\$10,000.00) for each of the Named Plaintiffs, subject to Court approval, in recognition of their effort
28 and work in prosecuting the Action on behalf of Class Members, and for their general release of

1 claims.

2 p. "Individual Settlement Payment(s)" means each Participating Class Member's
3 respective share of the Net Settlement Amount. Individual Settlement Payments will be determined
4 by the calculations provided in this Agreement.

5 q. "LWDA" means The State of California Labor and Workforce Development Agency.

6 r. "LWDA Payment" means 75% of the \$200,000 allocated to the settlement of PAGA
7 claims which, subject to Court approval, will be paid to the LWDA pursuant to Section 3.06(e) of
8 this Agreement, as provided for below.

9 s. "Motion for Final Approval" means Plaintiffs' submission of a written motion,
10 including any evidence as may be required for the Court to conduct an inquiry into the fairness of
11 the Settlement as set forth in this Agreement, to conduct a Final Fairness and Approval Hearing, and
12 to enter a Final Order in this Action.

13 t. "Motion for Preliminary Approval" means Plaintiffs' submission of a written motion,
14 including any evidence as may be required for the Court to grant preliminary approval of the
15 Settlement as required by Rule 3.769 of the California Rules of Court.

16 u. "Named Plaintiffs" means Gilberto Rueda, Pavel Bovsun, and Elizandro Valenzuela.

17 v. "Net Settlement Amount" means the Gross Settlement Amount less Court-approved
18 administration costs, Class Counsels' attorney's fees and costs, Incentive Awards, the LWDA
19 Payment, and the Individual PAGA Settlement Payments pursuant to Section 3.06(a)-(f) below.

20 w. "Non-Participating Class Member(s)" means any Class Member(s) who submit to the
21 Settlement Administrator a valid and timely written request to be excluded from the Class pursuant
22 to Section 3.04(b) below.

23 x. "Notice Packet" means the Notice of Proposed Class Action Settlement in a form
24 substantially similar to the Notice Packet attached hereto as **Exhibit A**, subject to Court approval.

25 y. "PAGA" means the California Private Attorneys General Act of 2004, which is
26 codified in California Labor Code §§ 2698 *et seq.*

27 z. "PAGA Settlement Amount" means the portion of the Gross Settlement Amount
28 allocated to the resolution of PAGA Group Members' claims arising under PAGA. The Parties have

1 agreed that the PAGA Settlement Amount is Two Hundred Thousand Dollars (\$200,000), subject to
2 Court approval. Of the PAGA Settlement Amount, 75% will be considered the LWDA Payment,
3 and the remaining 25% will be distributed to PAGA Group Members as the Individual PAGA
4 Settlement Payments.

5 aa. “PAGA Group Members” means all Class Members employed by Defendant at any
6 time between September 14, 2020 through the Preliminary Approval Date or March 15, 2023,
7 whichever occurs sooner (“PAGA Period”).

8 bb. “Participating Class Member(s)” is defined as a Class Member who does not timely
9 exclude himself or herself from the Settlement and will therefore receive his or her share of the Net
10 Settlement Amount automatically without the need to return a claim form. Each Participating Class
11 Member will be paid his/her Individual Settlement Payment.

12 cc. “Preliminary Approval Date” means the date the Court preliminarily approves the
13 Settlement embodied in this Agreement.

14 dd. “Qualified Settlement Fund” or “QSF” means a fund within the meaning of Treasury
15 Regulation § 1.468B-1, 26 CFR § 1.468B-1 *et seq.*, that is established by the Settlement
16 Administrator for the benefit of Participating Class Members.

17 ee. “Qualifying Workweeks” means the number of weeks that Class Members worked
18 for Defendant as non-exempt employees during the Class Period.

19 ff. “Released Parties” means: (i) Defendant; (ii) each of Defendant’s respective past,
20 present and future parents, subsidiaries, and affiliates including, without limitation, any corporation,
21 limited liability company, or partnership; (iii) the past, present and future shareholders, directors,
22 officers, agents, employees, attorneys, insurers, members, partners, managers, contractors, agents,
23 consultants, representatives, administrators, fiduciaries, benefit plans, transferees, predecessors,
24 successors, and assigns of any of the foregoing; and (iv) any individual or entity which could be
25 jointly liable with any of the foregoing, including, but not limited to, temporary agencies.

26 gg. “Response Deadline” means the deadline by which Class Members must postmark or
27 fax to the Settlement Administrator requests for exclusion or written notices of objection. The
28 Response Deadline will be sixty (60) calendar days after the initial mailing of the Notice Packet by

1 the Settlement Administrator, unless the sixtieth calendar day falls on a Sunday or federal holiday,
2 in which case the Response Deadline will be extended to the next day on which the U.S. Postal
3 Service is open. The Response Deadline will be extended as set forth herein if there is a re-mailing.

4 hh. "Settlement Administration Costs" means all costs incurred by the Settlement
5 Administrator in administration of the Settlement, including, but not limited to, mailing of notice to
6 the class, calculation of Individual Settlement Payments, generation of Individual Settlement
7 Payment checks and related tax reporting forms, administration of unclaimed checks, and generation
8 of checks to Class Counsel for attorneys' fees and costs, to Named Plaintiffs for their Incentive
9 Awards, and to the LWDA. The Settlement Administration Costs shall be paid from the Gross
10 Settlement Amount.

11 ii. "Settlement Administrator" means Phoenix Settlement Administrators, Inc., which
12 the Parties have agreed will be responsible for the administration of the Individual Settlement
13 Payments to be made by Defendant from the Gross Settlement Amount and related matters under
14 this Agreement.

15 **ARTICLE II**

16 **CONTINGENT NATURE OF THE AGREEMENT**

17 **Section 2.01: Stipulation of Class Certification for Settlement Purposes**

18 Because the Parties have stipulated to the certification of the Class with respect to all causes
19 of action alleged in the Action for settlement purposes only, this Agreement requires preliminary and
20 final approval by the Court. Accordingly, the Parties enter into this Agreement on a conditional basis.
21 This Agreement is contingent upon the approval and certification by the Court. If the Date of Finality
22 does not occur, the fact that the Parties were willing to stipulate for the purposes of this Agreement
23 to a Class shall have no bearing on, nor be admissible in connection with, the issue of certification
24 of the Class with respect to all causes of action alleged in the Action. Defendant does not consent to
25 certification of the Class for any purpose other than to effectuate settlement of the Action. If the Date
26 of Finality does not occur, or if Disposition of this Action is not effectuated, any certification of the
27 Class as to Defendant will be vacated and Named Plaintiffs, Defendant, and the Class will be returned
28 to their positions with respect to the Action as if the Agreement had not been entered into. In the

1 event that the Date of Finality does not occur: (a) any Court orders preliminarily or finally approving
2 certification of any class contemplated by this Agreement shall be null, void, and vacated, and shall
3 not be used or cited thereafter by any person or entity; and (b) the fact of the settlement reflected in
4 this Agreement, the fact that Defendant did not oppose the certification of a Class under this
5 Agreement, or that the Court preliminarily approved the certification of the Class, shall not be used
6 or cited thereafter by any person or entity, including in any manner whatsoever, including without
7 limitation any contested proceeding relating to the certification of any class. If the Date of Finality
8 does not occur, this Agreement shall be deemed null and void, shall be of no force or effect
9 whatsoever, and shall not be referred to or used for any purpose whatsoever. Defendant expressly
10 reserves the right to challenge the propriety of class certification in the Action for any purpose, if the
11 Date of Finality does not occur.

12 The Parties and their respective counsel shall take all steps that may be requested by the Court
13 relating to the approval and implementation of this Agreement and shall otherwise use their
14 respective best efforts to obtain Court approval and implement this Agreement. If the Court does not
15 grant the Motion for Preliminary Approval and/or the Motion for Final Approval, the Parties agree
16 to meet and confer to address the Court's concerns. If the Parties are unable to agree upon a
17 resolution, the Parties agree to seek the assistance of mediator Jeffrey A. Ross, Esq. to resolve the
18 dispute.

19 **ARTICLE III**

20 **PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF THE SETTLEMENT**

21 The procedure for obtaining Court approval of and implementing this Agreement shall be as
22 follows:

23 **Section 3.01: Motion for Conditional Class Certification and Preliminary Approval**

24 After filing the Consolidated Complaint, Named Plaintiffs will bring a motion before the
25 Court for an order conditionally certifying the Class to include all claims pled in the Action based on
26 the preliminary approval of this Agreement. The date that the Court grants preliminary approval of
27 this Agreement will be the "Preliminary Approval Date."

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1 **Section 3.02: The Settlement Administrator**

2 The Parties have chosen Phoenix Settlement Administrators, Inc. to administer this
3 Settlement and to act as the Settlement Administrator, including but not limited to distributing and
4 responding to inquiries about the Notice Packet, determining the validity of exclusions/opt-outs,
5 calculating the Net Settlement Amount and the Individual Settlement Payments, issuing the
6 Individual Settlement Payment checks and distributing them to Participating Class Members,
7 establishing and maintaining the QSF, and issuing the payment to Class Counsel for attorneys' fees
8 and costs, the Incentive Award checks to Named Plaintiffs, and the employer payroll taxes to the
9 appropriate taxing authorities. The Settlement Administrator shall expressly agree to all of the terms
10 and conditions of this Agreement.

11 All costs of administering the Settlement, including but not limited to all costs and fees
12 associated with preparing, issuing and mailing any and all notices to Class Members and/or
13 Participating Class Members and/or PAGA Group Members, all costs and fees associated with
14 computing, processing, reviewing, and mailing the Individual Settlement Payments, all costs and fees
15 associated with preparing any tax returns and any other filings required by any governmental taxing
16 authority or agency, all costs and fees associated with preparing any other checks, notices, reports,
17 or filings to be prepared in the course of administering disbursements from the Net Settlement
18 Amount, and any other costs and fees incurred and/or charged by the Settlement Administrator in
19 connection with the execution of its duties under this Agreement ("Settlement Administration
20 Costs"), shall be paid to the Settlement Administrator from the Gross Settlement Amount.

21 **Section 3.03: Notice to Class Members**

22 No later than fourteen (14) calendar days after the Preliminary Approval Date, Defendant
23 will provide the Settlement Administrator with a "Class List" in electronic format based on its
24 business records, identifying the names of the Class Members, their last known home addresses,
25 Social Security numbers or, as applicable, other taxpayer identification number, their dates of
26 employment and weeks worked during the Class Period. To protect Class Members' privacy rights,
27 the Settlement Administrator must maintain the Class List in confidence, use the Class List only for
28 purposes of this Settlement and for no other purpose, and restrict access to the Class List to Settlement

1 Administrator employees who need access to the Class List to effect and perform under this
2 Agreement.

3 Within thirty (30) days of the Court's preliminary approval order, the Settlement
4 Administrator will send Class Members, by first-class mail, at their last known address, the Court
5 approved Notice Packet, including notice of this Settlement and of the opportunity to opt out of the
6 Settlement Class. The Notice Packet will include a calculation of the Class Member's approximate
7 share of the Net Settlement Amount. Class Members will have sixty (60) days from the date of
8 mailing in which to postmark objections or requests for exclusion. Prior to the initial mailing, the
9 Settlement Administrator will check all Class Member addresses against the National Change of
10 Address database and shall update any addresses before mailing. The Settlement Administrator will
11 skip trace and re-mail all returned, undelivered mail within five (5) days of receiving notice that a
12 Notice Packet was undeliverable. If a Class Member's notice is re-mailed, the Class Member shall
13 have fifteen (15) calendar days from the re-mailing, or sixty (60) calendar days from the date of the
14 initial mailing, whichever is later, in which to postmark objections or requests for exclusion. Class
15 Members shall not be required to submit claim forms in order to receive a proportional share of the
16 Net Settlement Amount.

17 If the Notice Packet is returned with a forwarding address, the Settlement Administrator shall
18 re-mail the Notice Packet to the forwarding address. With respect to those Class Members whose
19 Notice Packet is returned to the Settlement Administrator as undeliverable, the Settlement
20 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or
21 mass search on LexisNexis or comparable databases based on set criteria and, if another address is
22 identified, shall mail the Notice Packet to the newly identified address. It is the intent of the parties
23 that reasonable means be used to locate Class Members and that the Settlement Administrator be
24 given discretion to take steps in order to facilitate notice of the Settlement and delivery of the
25 Individual Settlement Payments to all Participating Class Members.

26 If the Notice Packet is re-mailed, the Settlement Administrator will note for its own records
27 and notify Class Counsel and Defense Counsel of the date of each such re-mailing as part of a weekly
28 status report provided to the Parties.

1 In the event a Class Member's Notice Packet remains undeliverable sixty (60) calendar days
2 after the Notice Packet was initially mailed, the Settlement Administrator will not mail the Class
3 Member's Individual Settlement Payment. The Settlement Administrator will hold the Class
4 Member's Individual Settlement Payment during the check cashing period on behalf of the Class
5 Member. If at the conclusion of the check cashing period the Class Member's Notice Packet and
6 Individual Settlement Payment remain undeliverable and/or unclaimed and uncashed, the Settlement
7 Administrator will distribute the funds from unclaimed/uncashed checks in accordance with the
8 procedures set forth in Section 3.06(g) below.

9 No later than twenty (20) court days prior to the Final Fairness and Approval Hearing, the
10 Settlement Administrator shall provide Defense Counsel and Class Counsel with a declaration
11 attesting to completion of the notice process, including any attempts to obtain valid mailing addresses
12 for and re-sending of any returned Notice Packets, as well as the number of valid requests for
13 exclusion and objections that the Settlement Administrator received.

14 **Section 3.04: Responses to Notice**

15 **a. Class Member Disputes**

16 If any Class Member disagrees with Defendant's records as to his or her Qualifying
17 Workweeks during the Class Period as reflected in the Notice Packet, the Class Member shall set
18 forth in writing the Qualifying Workweeks he/she claims to have worked during the Class Period
19 and submit such writing to the Settlement Administrator by the Response Deadline, along with any
20 supporting documentation. The Notice will also provide a method for the Class Member to challenge
21 the employment data on which his or her Individual Settlement Payment is based. The Settlement
22 Administrator shall contact the Parties regarding the dispute and the Parties will work in good faith
23 to resolve it. If the Parties are unable to resolve the dispute, the Settlement Administrator will be the
24 final arbiter of the Qualifying Workweeks for each Class Member during the Class Period based on
25 the information provided to it.

26 **b. Requests for Exclusion from Class**

27 In order for any Class Member to validly exclude himself or herself from the Class and this
28 Settlement (*i.e.*, to validly opt out), a written request for exclusion must be signed by the Class

1 Member or his or her authorized representative, and must be sent to the Settlement Administrator,
2 postmarked or faxed no later than the Response Deadline (or fifteen (15) days after the Settlement
3 Administrator re-mails the Notice to the Class Member, whichever is later). The Notice Packet shall
4 contain instructions on how to validly exclude himself or herself from the Class and this Settlement
5 (*i.e.*, opt out), including the language to be used in a request for exclusion. The date of the initial
6 mailing of the Notice Packet, and the date the signed request for exclusion was postmarked, shall be
7 conclusively determined according to the records of the Settlement Administrator. Any Class
8 Member who timely and validly requests exclusion from the Class and this Settlement will not be
9 entitled to any Individual Settlement Payment, will not be bound by the terms and conditions of this
10 Agreement, and will not have any right to object, appeal, or comment thereon.

11 Any Class Member who fails to timely submit a request for exclusion shall automatically be
12 deemed a Class Member whose rights and claims with respect to the issues raised in the Action are
13 determined by the Court's Final Order Approving Settlement of Class Action, and by the other
14 rulings in the Action. Thus, said Class Member's rights to pursue any claims covered by the Action
15 and/or released in this Agreement will be extinguished.

16 The number of opt-outs by Class Members is not to exceed ten percent (10%), or Defendant
17 may terminate the Settlement. Defendant agrees to notify Class Counsel of any such decision no later
18 than fourteen (14) calendar days following the opt-out deadline. If Defendant elects to terminate the
19 Settlement, Defendant shall be responsible for any costs of administration incurred up to that point.

20 PAGA Group Members may not opt out of the PAGA Individual Settlement Amount or the
21 Released Claims by PAGA Group Members.

22 **c. Objections to Settlement**

23 For any Class Member to object to this Agreement, or any term of it, the person making the
24 objection must not submit a request for exclusion (*i.e.*, must not opt out), and should send to the
25 Settlement Administrator, postmarked or faxed no later than the Response Deadline (or fifteen (15)
26 days after the Settlement Administrator re-mails the Notice to the Class Member, whichever is later),
27 a written statement of the grounds of objection, signed by the objecting Class Member or his or her
28 attorney, along with all supporting papers. The date of the initial mailing of the Notice Packet, and

1 the date the signed objection was postmarked, shall be conclusively determined according to the
2 records of the Settlement Administrator. The Settlement Administrator shall send any objections it
3 receives to Defense Counsel and Class Counsel within three (3) business days of receipt. Class
4 Members may also appear at the final approval hearing to object. The Court retains final authority
5 with respect to the consideration and admissibility of any Class Member objections.

6 **d. Encouragement of Class Members**

7 The Parties to this Agreement and the counsel representing such Parties shall not, directly or
8 indirectly, through any person, encourage or solicit any Class Member to exclude him or herself from
9 this Settlement (opt out), or to object to it. However, Class Counsel may respond to inquiries from
10 Class Members.

11 **e. Right to Adjust Gross Settlement Amount**

12 The Parties have agreed to include a maximum of 62,700 workweeks (up to 10% more than
13 57,000 workweeks) in the Class Period. If the total number of workweeks worked by Class Members
14 exceeds 62,700, Defendant, in its sole discretion, may elect to shorten the Class Period to the date
15 that the total workweeks meets but does not exceed 62,700, or Defendant may choose to pay the pro
16 rata percentage increase in excess of 10% of the Gross Settlement Amount to include the additional
17 workweeks, e.g. a 12% increase in workweeks would result in a 2% increase of the Gross Settlement
18 Amount.

19 **Section 3.05: Final Fairness and Approval Hearing**

20 On the date set forth in the Order for Preliminary Approval and Notice Packet, a Final
21 Fairness and Approval Hearing shall be held before the Court in order to (1) review this Agreement
22 and determine whether the Court should give it final approval, and (2) consider any objections made
23 and all responses by the Parties to such objections. At the Final Fairness and Approval Hearing, the
24 Parties shall ask the Court to grant final approval to this Agreement and shall submit to the Court a
25 Proposed Final Order Approving Settlement of Class Action.

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1 **Section 3.06: Settlement Payment Procedures**

2 **a. Settlement Amount**

3 In exchange for the Released Claims set forth in this Agreement, Defendant agrees to pay the
4 Gross Settlement Amount in the amount of Two Million Five Hundred Thousand Dollars
5 (\$2,500,000.00), subject to a pro rata increase under the condition set forth in Section 3.04(e). The
6 Gross Settlement Amount includes all Individual Settlement Amounts to Participating Class
7 Members, all administration costs, Class Counsel's attorney's fees and costs, PAGA Settlement
8 Amount (both the LWDA Payment and the Individual PAGA Settlement Payments), and the
9 Incentive Awards.

10 Within fifteen (15) calendar days after the Court signs the Final Order, Defendant shall
11 transfer the Gross Settlement Amount plus Defendant's share of employer-side payroll taxes, as set
12 forth herein, into a QSF established by the Settlement Administrator either directly or by sending the
13 funds to the Settlement Administrator to be deposited and distributed. The Settlement Administrator
14 will use these funds to fund payment of the Individual Settlement Payments to Participating Class
15 Members, Class Counsel's attorneys' fees and costs, the Incentive Awards, the LWDA Payment, the
16 Individual PAGA Settlement Payments, and the Settlement Administration Costs.

17 Within ten (10) calendar days after receiving Defendants' final payment, funding the Gross
18 Settlement Amount in full, the Settlement Administrator will pay the Individual Settlement Payments
19 to Participating Class Members, Class Counsel's attorneys' fees and costs, the LWDA Payment, the
20 Individual PAGA Settlement Payments, the Incentive Awards, and employer and employee tax
21 withholdings applicable to the Net Settlement Amount allocated to wages. Prior to this distribution,
22 the Settlement Administrator will perform a search based on the National Change of Address
23 Database to update and correct for any known or identifiable address changes.

24 **b. Payment of Attorneys' Fees and Costs**

25 Class Counsel shall submit an application for an award of attorneys' fees of up to thirty-five
26 percent of the Gross Settlement Amount, which, based on the current Gross Settlement Amount, is
27 Eight Hundred Seventy-Five Thousand Dollars and Zero Cents (\$875,000.00). Class Counsel shall
28 submit an application for an award of costs not to exceed Thirty Thousand Dollars (\$30,000.00).

1 Such application for attorneys' fees and costs shall be heard by the Court at the Final Fairness and
2 Approval Hearing. Defendant shall not object to or oppose any such application in these amounts.
3 Class Counsel shall serve Defendant with copies of all documents submitted in support of their
4 application for an award of attorneys' fees and costs.

5 Any attorneys' fees and costs awarded to Class Counsel by the Court shall be paid from the
6 Gross Settlement Amount and shall not constitute payment to any Class Member(s). The attorneys'
7 fees and costs for Class Counsel approved by the Court shall encompass all work performed, costs,
8 and expenses related to the investigation, prosecution, and settlement of the Action incurred through
9 the Date of Finality. To the extent that the Court approves less than the amount of attorney's fees
10 and/or costs that Class Counsel requests, the difference between the requested and awarded amounts
11 will be reallocated to the Net Settlement Amount.

12 **c. Payment of Settlement Administration Costs**

13 The Settlement Administration Costs shall be paid out of the Gross Settlement Amount and
14 shall not constitute payment to any Participating Class Member(s). The amount shall not exceed Ten
15 Thousand Five Hundred Dollars (\$10,500.00).

16 **d. Payment of Incentive Award to Named Plaintiffs**

17 Subject to Court approval, the Named Plaintiffs shall each receive an Incentive Award of up
18 to Ten Thousand Dollars (\$10,000.00) each, the request for which Defendant will not object to or
19 oppose. The Incentive Awards shall be paid out of the Gross Settlement Amount and shall not
20 constitute payment to any Participating Class Member(s) other than Named Plaintiffs. To the extent
21 that the Court approves less than the amount of incentive award that Class Counsel request, the
22 difference between the requested and awarded amounts will be reallocated to the Net Settlement
23 Amount.

24 Because it is the intent of the Parties that the Incentive Awards represent payment to Named
25 Plaintiffs for their service to the Class Members, and not wages, the Settlement Administrator will
26 not withhold any taxes from the Incentive Awards. The Incentive Awards will be reported on a Form
27 1099, which the Settlement Administrator will provide to Named Plaintiffs and to the pertinent taxing
28 authorities as required by law.

1 **e. Payment to the Labor and Workforce Development Agency**

2 In consideration of claims made under PAGA, Class Counsel will request that the Court
3 approve allocation of Two Hundred Thousand Dollars (\$200,000) of the Gross Settlement Amount
4 to these claims. Seventy-five percent (75%) of this payment will be paid to the California Labor and
5 Workforce Development Agency (“LWDA Payment”), and twenty-five percent (25%) will be paid
6 to the Net Settlement Amount for distribution to PAGA Group Members. Defendant will not oppose
7 this request. The entire PAGA Settlement Amount will be paid out of the Gross Settlement Amount.
8 The Court’s adjustment, if any, of the amount allocated to Named Plaintiffs’ PAGA claim in the
9 Action, will not invalidate this Agreement.

10 **f. Payment of Individual Settlement Payments to Participating Class Members**
11 **and PAGA Group Members**

12 The Parties agree that the Net Settlement Amount shall be used to fund Individual Settlement
13 Payments. The Parties agree that the Net Settlement Amount shall be divided between all
14 Participating Class Members in proportion to the number of individual Qualifying Workweeks for
15 each Class Member. To calculate the minimum amount each Class Member will receive based on
16 their individual Qualifying Workweeks, the Net Settlement Amount will be divided by the total
17 number of Qualifying Workweeks by all Class Members during the Class Period and then allocated
18 on a pro rata basis. Qualifying Workweeks will be rounded up to the next whole integer. Each Class
19 Member’s approximate Individual Settlement Payment amount will be included in his or her Notice
20 Packet. After final approval by the Court, the Net Settlement Amount will be dispersed to
21 Participating Class Members (those who did not exclude themselves) on a pro rata basis based on the
22 individual Qualifying Workweeks worked during the Class Period by each Participating Class
23 Member.

24 Each Individual Settlement Payment will represent wages and penalties allocated using the
25 following formula: 1/3rd allocated to wages; 2/3rd allocated to interest and penalties. The amounts
26 paid as wages shall be subject to all tax withholdings customarily made from an employee’s wages
27 and all other authorized and required withholdings and shall be reported by W-2 forms. The
28 employer-side taxes will be paid separate from and in addition to the Gross Settlement Amount. The

1 amounts paid as penalties and interest shall be subject to all authorized and required withholdings
2 other than the tax withholdings customarily made from employees' wages and shall be reported by
3 IRS 1099 forms.

4 The Parties agree that 25% of the PAGA Settlement Amount shall be divided between all
5 PAGA Group Members in proportion to the number of workweeks worked during the PAGA period.
6 To calculate the minimum amount each PAGA Group Member will receive based on their individual
7 workweeks, the 25% of the PAGA Settlement Amount will be divided by the total number of
8 workweeks worked by all PAGA Group Members during the PAGA Period and then allocated on a
9 pro rata basis. The Individual PAGA Settlement Payments represent penalties and shall be reported
10 by IRS 1099 forms. No later than ten (10) business days after receiving the Gross Settlement Amount
11 from Defendant, the Settlement Administrator shall prepare and mail the checks for the Individual
12 Settlement Payments to Participating Class Members and the Individual PAGA Settlement Payments
13 to PAGA Group Members. Individual Settlement Payments paid from the Net Settlement Amount
14 allocated to wages will be reduced by applicable employer and employee tax withholdings, and the
15 Settlement Administrator will issue a Form W-2 for the wage portion of the Individual Settlement
16 Payments. The Settlement Administrator will issue a Form 1099 to the extent required by law for the
17 interest and penalty portions of the Individual Settlement Payments and for the Individual PAGA
18 Settlement Payments. Participating Class Members and PAGA Group Members shall have 180 days
19 from the date their Individual Settlement Payment and/or Individual PAGA Settlement Payment
20 checks are dated to cash their checks. Any checks that are not cashed upon the expiration of that 180-
21 day time period will be void, and the uncashed funds shall be paid to the State Controller Unclaimed
22 Property Fund in the name of the Class Member and/or PAGA Group Member for whom the funds
23 are designated.

24 If a check is returned to the Settlement Administrator as undeliverable, the Settlement
25 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or
26 a mass search on LexisNexis or a comparable databases based on set criteria and, if another address
27 is identified, the Settlement Administrator shall mail the check to the newly identified address. If the
28 Settlement Administrator is unable to obtain a valid mailing address through this process, the

1 Settlement Administrator will tender the funds from the undeliverable checks to the State Controller
2 Unclaimed Property Fund in the name of the Class Member for whom the funds are designated.

3 **g. Default on Payment.**

4 Defendant's failure to fund the Gross Settlement Amount within ten (10) calendar days after
5 the date that the Court grants final approval of the Settlement shall be considered a default. In the
6 event Defendant fails to timely fund the Gross Settlement Amount, the Settlement Administrator will
7 provide notice to Class Counsel and Defendant's counsel within three (3) business days of the missed
8 payment. Thereafter, Defendant will have seven (7) days to cure the default and tender payment to
9 the Settlement Administrator. In the event Defendant fails to cure the default within the times set
10 forth herein, Named Plaintiffs may elect to enter judgment against Defendant, on an ex parte basis,
11 for the balance of the unpaid Gross Settlement Amount to date, and Named Plaintiffs will be entitled
12 to recover interest at ten percent (10%) per year from the due date for such payment and reasonable
13 attorneys' fees and costs.

14 **h. No Credit Toward Benefit Plans.**

15 The Individual Settlement Payments made to Participating Class Members under this
16 Agreement, as well as any other payments made pursuant to this Agreement, will not be utilized to
17 calculate any additional benefits under any benefit plans to which any Class Members may be
18 eligible, including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase
19 plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties'
20 intention that this Agreement will not affect any rights, contributions, or amounts to which any Class
21 Members may be entitled under any benefit plans.

22 **ARTICLE IV**

23 **LIMITATIONS ON USE OF THIS SETTLEMENT**

24 **Section 4.01: No Admission**

25 Defendant disputes the allegations in the Action and disputes that, but for this Settlement, a
26 Class should not have been certified in the Action. This Agreement is entered into solely for the
27 purpose of settling highly disputed claims. Nothing in this Agreement is intended nor will be
28 construed as an admission of liability or wrongdoing by Defendant.

1 **Section 4.02: Non-Evidentiary Use**

2 Whether or not the Date of Finality occurs, neither this Agreement, nor any of its terms, nor
3 the Settlement itself, will be: (a) construed as, offered, or admitted in evidence as, received as, or
4 deemed to be evidence for any purpose adverse to Defendant or any other of the Released Parties,
5 including but not limited to, evidence of a presumption, concession, indication, or admission by any
6 of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or
7 (b) disclosed, referred to, or offered in evidence against any of the Released Parties in any further
8 proceeding in the Action, except for the purposes of effectuating the Settlement pursuant to this
9 Agreement or for Defendant to establish that a Class Member has resolved any of his or her claims
10 released through this Agreement.

11 **Section 4.03: Nullification**

12 The Parties have agreed to the certification of the Class encompassing all claims alleged in
13 the Action for the sole purpose of effectuating this Agreement. If (a) the Court should for any reason
14 fail to certify this Class for settlement, or (b) the Court should for any reason fail to approve this
15 Settlement, or (c) the Court should for any reason fail to enter the Final Order, or (d) the Final Order
16 is reversed, or declared or rendered void, or (e) the Court should for any reason fail to dispose of the
17 Action in its entirety, then (i) this Agreement shall be considered null and void; (ii) neither this
18 Agreement nor any of the related negotiations or proceedings shall be of any force or effect; (iii) all
19 Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had
20 been neither entered into nor filed with the Court; and (iv) the fact that the Parties were willing to
21 stipulate to class certification of all causes of action pled in the Action as part of the Settlement will
22 have no bearing on, and will not be admissible in connection with, the issue of whether the Class
23 should be certified by the Court in a non-settlement context in this Action or any other action, and in
24 any of those events, Defendant expressly reserves the right to oppose certification of the Class.

25 In the event of a timely appeal from the Final Order, the Final Order shall be stayed and the
26 Gross Settlement Amount shall not be distributed pending the completion of the appeal.

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1 **ARTICLE V**

2 **RELEASES**

3 **Section 5.01: Released Claims by Class Members**

4 Upon the date Defendant transfers the Gross Settlement Amount, Named Plaintiffs and
5 Participating Class Members who do not opt out of the Settlement, release the Released Parties from
6 any and all claims alleged in Named Plaintiffs' Operative Complaint, during the Class Period,
7 including but not limited to all claims under state, federal and local law that were or could have been
8 asserted based on the facts and allegations made in the Action, and any amendments thereto,
9 including without limitation, California Labor Code sections 200, 201, 202, 203, 204, 208, 210,
10 218.6, 221, 222, 223, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174, 1174.5, 1182.12, 1194,
11 1194.2, 1197, 1197.1, 1198, and 1199, California Industrial Commission Wage Orders, Cal. Code
12 Reg., Title. 8, section 11040, *et seq.*, Business and Professions Code sections 17200, *et seq.*,
13 California Code of Civil Procedure section 1021.5, and including all claims for or related to alleged
14 unpaid wages, minimum wages, hours worked, overtime or double time wages, regular rate of pay,
15 bonus and incentive pay, sick pay, timely payment of wages at separation, wage statements, meal
16 periods and meal period premiums, rest break and rest break premiums, failure to pay additional
17 401(k) benefits and/or deferred compensation benefits and/or matching benefits for payments
18 received under the Settlement, unfair competition, unfair business practices, unlawful business
19 practices, fraudulent business practices, class actions, declaratory relief, penalties of any nature
20 (including but not limited to waiting-time penalties), interest, fees, costs, as well as all other claims
21 and allegations alleged in the Action (collectively, "Released Class Claims"), arising any time during
22 the Class Period. The claims to be released include any remedies or relief based on the factual
23 allegations made in the Actions which include penalties of any nature; interest; attorneys' fees and
24 costs; and any other claims arising out of or related to the respective complaints filed the Actions
25 arising during the Class period.

26 **Section 5.02: Released Claims by PAGA Group Members**

27 Upon the date of funding the Gross Settlement Amount, Plaintiffs, on behalf of the State of
28 California and PAGA Group Members, will release all claims for civil penalties that were or could

1 have been asserted based on the facts and allegations made in the Action, and any amendments
2 thereto, as to the PAGA Group Members, including without limitation, California Labor Code
3 sections 200, 201, 202, 203, 204, 208, 210, 218.6, 221, 222, 223, 226, 226.2, 226.3, 226.7, 246, 510,
4 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and 1199, California Industrial
5 Commission Wage Orders, including all PAGA claims for alleged unpaid wages, minimum wages,
6 hours worked, overtime or double time wages, regular rate of pay, bonus and incentive pay, sick pay,
7 timely payment of wages at separation, wage statements, meal periods and meal period premiums,
8 rest breaks and rest break premiums, failure to pay additional 401(k) benefits and/or deferred
9 compensation benefits and/or matching benefits for payments received under the Settlement, fees,
10 costs, as well as all other PAGA claims and allegations alleged in the Action (collectively, “Released
11 PAGA Claims”), arising any time during the PAGA Period.

12 **Section 5.03: Named Plaintiffs’ Release of Unknown Claims**

13 Upon the date of funding the Gross Settlement Amount, Named Plaintiffs, waive, release,
14 acquit, and forever discharge the Released Parties from any and all claims, actions, charges,
15 complaints, grievances, and causes of action, of any nature arising from Named Plaintiffs’
16 employment with Defendant, whether known or unknown, which exist or may exist as of the Parties’
17 execution of this Agreement.

18 Section 1542 of the California Civil Code provides as follows:

19 *“A general release does not extend to claims that the creditor or releasing*
20 *party does not know or suspect to exist in his or her favor at the time of*
21 *executing the release and that, if known by him or her, would have*
22 *materially affected his or her settlement with the debtor or released party.”*

23 Plaintiffs’ general release provided herein is made with an express waiver and relinquishment
24 of any claim, right, or benefit under California Civil Code section 1542. The release specifically
25 excludes Plaintiff Elizandro Valenzuela’s individual FMLA, retaliation, wrongful termination, and
26 related non-wage and hour claims which will be subject to a separate individual settlement and
27 release agreement pursuant to Civil Code section 1542. However, in that separate settlement and
28 release, Plaintiff Valenzuela shall remain eligible to recover as a Class Member under the settlement

1 terms for this Action.

2 **ARTICLE VI**

3 **MISCELLANEOUS PROVISIONS**

4 **Section 6.01: Amendments or Modification**

5 The terms and provisions of this Agreement may be amended or modified only by an express
6 written agreement that is signed by all the Parties (or their successors-in-interest) and their counsel,
7 and approved by the Court.

8 **Section 6.02: Assignment**

9 None of the rights, commitments, or obligations recognized under this Agreement may be
10 assigned by any Party, Class Member, Class Counsel, or Defense Counsel without the express written
11 consent of each other Party and their respective counsel. The representations, warranties, covenants,
12 and agreements contained in this Agreement are for the sole benefit of the Parties under this
13 Agreement and shall not be construed to confer any right or to avail any remedy to any other person.

14 **Section 6.03: Governing Law**

15 This Agreement shall be governed, construed, and interpreted, and the rights of the Parties
16 shall be determined, in accordance with the laws of the State of California, without regard to conflicts
17 of laws.

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19 **Section 6.04: Entire Agreement**

20 This Agreement, including the Exhibits referred to herein, which form an integral part hereof,
21 contains the entire understanding of the Parties with respect to the subject matter contained herein.
22 In case of any conflict between text contained in Articles I through VI of this Agreement and text
23 contained in the Exhibits to this Agreement, the former (*i.e.*, Articles I through VI) shall be
24 controlling, unless the Exhibits are changed by or in response to a Court order. There are no
25 restrictions, promises, representations, warranties, covenants, or undertakings governing the subject
26 matter of this Agreement other than those expressly set forth or referred to herein. This Agreement
27 supersedes all prior agreements and understandings among the Parties with respect to the settlement
28 of the Action, including correspondence between Class Counsel and Defense Counsel and drafts of

1 prior agreements or proposals.

2 **Section 6.05: Waiver of Compliance**

3 Any failure of any Party, Defense Counsel, or Class Counsel hereto to comply with any
4 obligation, covenant, agreement, or condition set forth in this Agreement may be expressly waived
5 in writing, to the extent permitted under applicable law, by the Party or Parties and their respective
6 counsel entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or
7 failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or
8 condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

9 **Section 6.06: Counterparts and Fax/PDF Signatures**

10 This Agreement, and any amendments hereto, may be executed in any number of counterparts
11 and any Party and/or their respective counsel may execute any such counterpart, each of which when
12 executed and delivered shall be deemed to be an original. All counterparts taken together shall
13 constitute one instrument. A fax or PDF signature on this Agreement shall be as valid as an original
14 signature.

15 **Section 6.07: Meet and Confer Regarding Disputes**

16 Should any dispute arise among the Parties or their respective counsel regarding the
17 implementation or interpretation of this Agreement, a representative of Class Counsel and a
18 representative of Defense Counsel shall meet and confer in an attempt to resolve such disputes prior
19 to submitting such disputes to the Court.

20 **Section 6.08: Agreement Binding on Successors**

21 This Agreement will be binding upon, and inure to the benefit of, the successors in interest
22 of each of the Parties.

23 **Section 6.09: Cooperation in Drafting**

24 The Parties have cooperated in the negotiation and preparation of this Agreement. This
25 Agreement will not be construed against any Party on the basis that the Party, or the Party's counsel,
26 was the drafter or participated in the drafting of this Agreement.

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1 **Section 6.10: Fair and Reasonable Settlement**

2 The Parties believe that this Agreement reflects a fair, reasonable, and adequate settlement of
3 the Action and have arrived at this Agreement through arm's-length negotiation and in the context
4 of adversarial litigation, taking into account all relevant factors, current and potential. The Parties
5 further believe that the Settlement is and is consistent with public policy, and fully complies with
6 applicable law.

7 **Section 6.11: Headings**

8 The descriptive heading of any section or paragraph of this Agreement is inserted for
9 convenience of reference only and does not constitute a part of this Agreement and shall not be
10 considered in interpreting this Agreement.

11 **Section 6.12: Notice**

12 Except as otherwise expressly provided in the Agreement, all notices, demands, and other
13 communications under this Agreement must be in writing and addressed as follows:

14 *To Named Plaintiffs and the Class:*

15 AEGIS LAW FIRM, PC
16 Samuel A. Wong
17 Kashif Haque
18 Jessica L. Campbell
19 Fawn F. Bekam
20 Daniel E. Ishu
 9811 Irvine Center Drive, Suite 100
 Irvine, California 92618
 Telephone: (949) 379-6250
 Facsimile: (949) 379-6251

21 Brian J. Mankin
22 Misty M. Lauby
23 LAUBY, MANKIN & LAUBY LLP
 5198 Arlington Avenue, PMB 513
 Riverside, CA 92504
 Tel: (951) 320-1444 | Fax: (951) 320-1445

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1 And

2 *To Defendant:*

3 JACKSON LEWIS P.C.
4 Nathan W. Austin
5 Evan M. McBride
6 400 Capitol Mall, Suite 1600
7 Sacramento, CA 95814
8 Telephone: (916) 341-0404

7 **Section 6.13: Enforcement of Settlement and Continuing Court Jurisdiction**

8 To the extent consistent with class action procedure, this Agreement shall be enforceable by
9 the Court pursuant to California Code of Civil Procedure section 664.6 and California Rule of Court
10 3.769(h). The Final Order entered by the Court will not adjudicate the merits of the Action or the
11 liability of the Parties resulting from the allegations of the Action. Its sole purpose is to adopt the
12 terms of the Settlement and to retain jurisdiction over its enforcement. To that end, the Court shall
13 retain continuing jurisdiction over this Action and over all Parties and Class Members, to the fullest
14 extent to enforce and effectuate the terms and intent of this Agreement. In the event that one or more
15 of the Parties institutes any legal action or other proceeding against any other Party or Parties to
16 enforce the provisions of this Settlement, the successful Party or Parties will be entitled to recover
17 from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness
18 fees incurred in connection with any enforcement actions.

19 **Section 6.14: Mutual Full Cooperation**

20 The Parties agree fully to cooperate with each other to accomplish the terms of this
21 Agreement, including but not limited to the execution of such documents, and the taking of such
22 other action, as may reasonably be necessary to implement the terms of this Agreement. The Parties
23 to this Agreement shall use their best efforts, to effectuate and implement this Agreement and its
24 terms. In the event the Parties are unable to reach agreement on the form or content of any document
25 needed to implement the Settlement, or on any supplemental provisions that may become necessary
26 to effectuate the terms of the Settlement, the Parties agree to seek the assistance of the Court.

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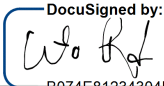
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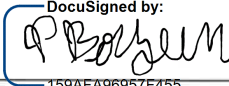
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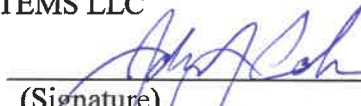
1 Dated: 6/15/2023 | 1:00 PM PDT GILBERTO RUEDA

2 By:  DocuSigned by:
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4 Named Plaintiff

5 Dated: 6/5/2023 | 8:54 AM PDT PAVEL BOVSUN

6 By:  DocuSigned by:
7 159AFA96957F455...
8 Named Plaintiff

9 Dated: May 25, 2023 CLARKWESTERN DIETRICH BUILDING
10 SYSTEMS LLC

11 By: 
12 (Signature)
13 John J Collins
14 (Printed Name)
15 CEO
16 (Title)

17 APPROVED AS TO FORM ONLY:

18 Dated: May 23, 2023 AEGIS LAW FIRM, PC

19 By: 
20 Daniel E. Ishu

21 Attorneys for Named Plaintiffs Gilberto Rueda
22 and Pavel Bovsun

23 Dated: LAUBY, MANKIN & LAUBY LLP

24 By: Brian J. Mankin

25 Attorneys for Named Plaintiff Elizandro
26 Valenzuela
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Dated: _____

CLARKWESTERN DIETRICH BUILDING
SYSTEMS LLC

By: _____
(Signature)

(Printed Name)

(Title)

APPROVED AS TO FORM ONLY:

Dated: May 23, 2023

AEGIS LAW FIRM, PC

By: 
Daniel E. Ishu

Attorneys for Named Plaintiffs Gilberto Rueda
and Pavel Bovsun

Dated: May 26, 2023

LAUBY, MANKIN & LAUBY LLP

By: 
Brian J. Mankin

Attorneys for Named Plaintiff Elizandro
Valenzuela

Dated: _____

JACKSON LEWIS P.C.

By: _____
Nathan W. Austin

Attorneys for Defendant ClarkWestern Dietrich
Building Systems LLC

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Dated: _____

GILBERTO RUEDA

By: _____
Named Plaintiff

Dated: _____

PAVEL BOVSUN

By: _____
Named Plaintiff

Dated: May 25, 2023

CLARKWESTERN DIETRICH BUILDING
SYSTEMS LLC

By: _____
(Signature)
John J Collins
(Printed Name)
CEO
(Title)

APPROVED AS TO FORM ONLY:

Dated: May 23, 2023

AEGIS LAW FIRM, PC

By: Daniel E. Ishu
Daniel E. Ishu

Attorneys for Named Plaintiffs Gilberto Rueda
and Pavel Bovsun

Dated: _____

LAUBY, MANKIN & LAUBY LLP

By: _____
Brian J. Mankin

Attorneys for Named Plaintiff Elizandro
Valenzuela

1 Dated: _____
2

CLARKWESTERN DIETRICH BUILDING
SYSTEMS LLC

3 By: _____
(Signature)

4 _____
(Printed Name)

5 _____
(Title)

7
8 **APPROVED AS TO FORM ONLY:**

9 Dated: May 23, 2023

AEGIS LAW FIRM, PC

10
11 By: 
Daniel E. Ishu

12
13 Attorneys for Named Plaintiffs Gilberto Rueda
and Pavel Bovsun

14 Dated: _____

LAUBY, MANKIN & LAUBY LLP

15
16 By: _____
Brian J. Mankin

17
18 Attorneys for Named Plaintiff Elizandro
Valenzuela

19
20 Dated: May 26, 2023

JACKSON LEWIS P.C.

21 _____
22 By: 
Nathan W. Austin

23
24 Attorneys for Defendant ClarkWestern Dietrich
Building Systems LLC

EXHIBIT A

**THIS IS AN IMPORTANT COURT APPROVED NOTICE OF CLASS ACTION
SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL.**

Rueda, et al. v. ClarkWestern Dietrich Building Systems LLC
Sacramento County Superior Court, Case No. 34-2021-00307823

The Superior Court for the State of California authorized this Notice. Read it carefully. It is not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.

If you worked for ClarkWestern Dietrich Building Systems LLC (“ClarkDietrich”) as a non-exempt employee in California at any time from September 14, 2017 through March 15, 2023 you may be eligible to receive payment from a class action settlement.

A proposed settlement (the “Settlement”) has been reached between Plaintiffs Gilberto Rueda, Pavel Bovsun, and Elizandro Valenzuela (“Plaintiffs”) and Defendant ClarkWestern Dietrich Building Systems LLC (“ClarkDietrich” or “Defendant”) in a class action lawsuit entitled *Rueda, et al. v. ClarkWestern Dietrich Building Systems LLC*, Case No. 34-2021-00307823 (Sacramento County Superior Court) (the “Lawsuit”). The purpose of this Notice of Class Action Settlement (“Notice”) is to briefly describe the Lawsuit and Settlement, and to inform you of your rights and options in connection with the Lawsuit and the Settlement.

The Court has preliminarily approved the Settlement, which includes all non-exempt employees who worked for ClarkDietrich in California at any time from September 14, 2017 through March 15, 2023.

The proposed Settlement has two main parts: (1) a Class Settlement requiring ClarkDietrich to fund Individual Class Payments, and (2) a PAGA Settlement requiring ClarkWestern to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”)

If the Court grants final approval of the Settlement, there may be money available to you. Based on ClarkDietrich’s records, **your Individual Class Payment is estimated to be \$_____ (less withholding) and your Individual PAGA Payment is estimated to be \$_____.** The actual amount you may receive likely will be different and will depend on a number of factors. If no amount is stated for your Individual PAGA Payment, then according to ClarkDietrich’s records you are not eligible for an Individual PAGA Payment under the Settlement because you did not work during the PAGA Period.

The above estimates are based on ClarkDietrich’s records showing that **you worked _____ workweeks** during the Class Period and **you worked _____ workweeks** during the PAGA Period. If you believe that you worked more workweeks during either period, you can submit a challenge by the deadline date. See Section 6 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiffs and Plaintiffs’ attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires ClarkDietrich to make payments under the Settlement and requires Class Members and PAGA Group Members to give up their rights to assert certain claims against ClarkDietrich.

- If you worked for ClarkDietrich during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:
 - (1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against ClarkDietrich.
 - (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting a written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against ClarkDietrich, and you will remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

ClarkDietrich **will not retaliate against you for any actions you take with respect to the proposed Settlement.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
You Can Participate in the Settlement – No Action is Required	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against ClarkDietrich that are covered by this Settlement.
You Can Opt Out of the Class Settlement But Not the PAGA Settlement The Opt-out Deadline is 	If you do not want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Settlement Administrator a written Request for Exclusion. Once excluded, you will no longer be eligible for an Individual Class Payment and cannot object to any portion of the proposed Settlement. See Section 8 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. If you are eligible, ClarkDietrich must pay you an Individual PAGA Payment and you must give up your rights to pursue Released Claims (defined below).
Participating Class Members Can Object to the Class Settlement But Not the PAGA Settlement	All Class Members who do not opt-out are Participating Class Members and can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to

Written Objections Must be Submitted by 	Class Counsel and Plaintiffs who pursued the Lawsuit on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiffs, but every dollar paid to Class Counsel and Plaintiffs reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiffs if you think they are unreasonable. See Section 7 of this Notice.
You Can Participate in the Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on . You do not have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 10 of this Notice.
You Can Challenge the Calculation of Your Workweeks/Pay Periods Written Challenges Must be Submitted by 	The amount of your Individual Class Payment and PAGA Payment (if any) depends on how many workweeks you worked during the Class and PAGA Periods, respectively. The number of workweeks you worked according to ClarkDietrich's records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by . See Section 6 of this Notice.

1. Why did I get this notice?

ClarkDietrich's records show that you worked for ClarkDietrich as a non-exempt employee in California at some point between September 14, 2017 and March 15, 2023.

The Court has determined that there is sufficient evidence to suggest that the proposed Settlement is fair, adequate, and reasonable. A final determination of those issues will be made at the final hearing. You have legal rights and options that you may exercise as part of this Settlement. Judge Lauri A. Damrell of the Superior Court of the State of California, County of Sacramento, is overseeing this lawsuit.

2. What is this lawsuit about?

In this Lawsuit, Plaintiffs claim that ClarkDietrich: (1) failed to pay minimum wages; (2) failed to pay overtime wages; (3) failed to provide meal periods; (4) failed to permit rest breaks; (5) failed to provide accurate itemized wage statements; (6) failed to pay all wages due upon separation of employment and within the required time; (7) violated California's Unfair Competition laws; and (8) that these violations entitle Plaintiffs to recover civil penalties on behalf of the State of California under Labor Code § 2698 et. seq ("PAGA").

Throughout the litigation, ClarkDietrich has strongly denied—and continues to deny—the factual and legal allegations in the Lawsuit. ClarkDietrich denies any wrongdoing and asserts that its conduct at all times complied with the law. However, ClarkDietrich has voluntarily agreed to the terms of a negotiated settlement in order to avoid the burden and expense of continued litigation.

3. What is a class action and who is involved?

In a class action lawsuit such as this, a person called the “Class Representative” sues on behalf of other people who may have similar claims. The people together are referred to as a “Class” or “Class Members.” The person who is the Class Representative is also called the plaintiff. The company being sued is called the defendant. In class action litigation, a court resolves the issues for everyone in the Class in one lawsuit, except for those people who choose to exclude themselves from the Class.

This class action also includes a “Private Attorneys General Act” (“PAGA”) claim, where the Plaintiffs are attempting to recover civil penalties on behalf of the State of California. In a PAGA action, the State receives 75% of any recovered civil penalties, and the employees receive 25%. This Settlement will resolve all claims by the State for civil penalties arising from the claims made by Plaintiffs in the Lawsuit during the period of September 14, 2020 through March 15, 2023 (“PAGA Period”).

For settlement purposes, Plaintiffs and ClarkDietrich have agreed that this case can proceed as a class action and have agreed to ask the Court to approve the class action Settlement. The Court has not ruled on the merits of the claims in the Lawsuit.

4. What are the important terms of the proposed Settlement?

The major terms of the settlement are as follows:

1. Gross Settlement Amount: ClarkDietrich has agreed to pay \$2,500,000.00 to settle the claims in this Lawsuit. This amount is also known as the “Gross Settlement Amount.” ClarkDietrich has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Settlement Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Awards, Class Counsel’s attorney’s fees and expenses, the Administrator’s expenses, and penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, ClarkDietrich will fund the Gross Settlement not more than 15 days after the Judgment entered by the Court become final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
2. Plaintiffs’ Release: Plaintiffs have agreed to release all of their claims in this Lawsuit against ClarkDietrich.
3. Deductions from Settlement Amount: At the final approval hearing, Plaintiffs will ask the Court to approve the following deductions from the \$2,500,000.00 Gross Settlement Amount:
 - a. Up to 35% of the Gross Settlement Amount (which is currently equal to \$875,000.00) for Class Counsel’s attorneys’ fees.

- b. Up to \$30,000.00 for reimbursement of Class Counsel's litigation costs.
- c. An Incentive Award of up to \$10,000.00 to each of the three Plaintiffs (totaling \$30,000.00) for filing the Lawsuit, performing work in connection with the Lawsuit, and the risks associated with filing the Lawsuit.
- d. Up to \$10,500.00 to cover the costs of the Settlement Administrator.
- e. A PAGA Settlement Amount of up to \$200,000.00 for the release of PAGA claims. The PAGA Settlement Amount shall be allocated 75% (\$150,000.00) to the California Labor and Workforce Development Agency and 25% (\$50,000.00) to the non-exempt employees that worked for Defendant in California at any time during the PAGA Period ("PAGA Group Members"). If you are a PAGA Group Member, you will receive a pro rata share of the PAGA Group Payment based on the number of workweeks you worked for ClarkDietrich in California during the PAGA Period, regardless of whether you opt-out of the class settlement.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

- 4. Net Settlement Amount: If the Court approves these requested deductions, there will be approximately \$1,354,500.00 remaining. The remaining funds will be referred to as the "Net Settlement Amount." The Net Settlement Amount will be distributed to Class Members who do not request exclusion according to the number of weeks they worked for Defendant in California during the Class Period.
- 5. Check Cashing Period: If a settlement check remains uncashed after 180 days from the date it is issued, the check will become void and the amount of the uncashed check will be sent to the California State Controller's Unclaimed Property Fund, to be held in your name.
- 6. Participating Class Members' Release: If the Court grants final approval of the Settlement and you do not exclude yourself from the Settlement, you will be deemed to have released (i) Defendant; (ii) each of Defendant's respective past, present and future parents, subsidiaries, and affiliates including, without limitation, any corporation, limited liability company, or partnership; (iii) the past, present and future shareholders, directors, officers, agents, employees, attorneys, insurers, members, partners, managers, contractors, agents, consultants, representatives, administrators, fiduciaries, benefit plans, transferees, predecessors, successors, and assigns of any of the foregoing; and (iv) any individual or entity which could be jointly liable with any of the foregoing, including, but not limited to, temporary agencies (collectively, "Released Parties") from any and all claims alleged in the Lawsuit, during the Class Period, including but not limited to all claims under state, federal and local law that were or could have been asserted based on the facts and allegations made in the Lawsuit, and any amendments thereto, including without limitation, California Labor Code sections 200, 201, 202, 203, 204, 208, 210, 218.6, 221, 222, 223, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and 1199, California Industrial Commission Wage Orders, Cal. Code Reg., Title. 8, section 11040, *et seq.*, Business and Professions Code sections 17200, *et seq.*, California Code of

Civil Procedure section 1021.5, and including all claims for or related to alleged unpaid wages, minimum wages, hours worked, overtime or double time wages, regular rate of pay, bonus and incentive pay, sick pay, timely payment of wages at separation, wage statements, meal periods and meal period premiums, rest break and rest break premiums, failure to pay additional 401(k) benefits and/or deferred compensation benefits and/or matching benefits for payments received under the Settlement, unfair competition, unfair business practices, unlawful business practices, fraudulent business practices, class actions, declaratory relief, penalties of any nature (including but not limited to waiting-time penalties), interest, fees, costs, as well as all other claims and allegations alleged in the Lawsuit (collectively, “Released Claims”), arising any time during the Class Period. The claims to be released include any remedies or relief based on the factual allegations made in the Lawsuit which include penalties of any nature; interest; attorneys’ fees and costs; and any other claims arising out of or related to the respective complaints filed the Lawsuit arising during the Class period. (collectively, “Released Claims”).

7. PAGA Group Members’ Release: If the Court grants final approval of the Settlement and you are a PAGA Group Member, you will have released the right to bring a claim for civil penalties under PAGA that arose during the PAGA Period, all claims for civil penalties that were or could have been asserted based on the facts and allegations made in the Lawsuit, and any amendments thereto, as to the PAGA Group Members, including without limitation, California Labor Code sections 200, 201, 202, 203, 204, 208, 210, 218.6, 221, 222, 223, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and 1199, California Industrial Commission Wage Orders, including all PAGA claims for alleged unpaid wages, minimum wages, hours worked, overtime or double time wages, regular rate of pay, bonus and incentive pay, sick pay, timely payment of wages at separation, wage statements, meal periods and meal period premiums, rest breaks and rest break premiums, failure to pay additional 401(k) benefits and/or deferred compensation benefits and/or matching benefits for payments received under the Settlement, fees, costs, as well as all other PAGA claims and allegations alleged in the Lawsuit (collectively, “Released PAGA Claims”). You will release these Released PAGA Claims even if you opt-out of the class action settlement.

5. Am I part of this Class?

The Settlement Class includes: All non-exempt employees who are or were employed by ClarkDietrich in California at any time from September 14, 2017 through March 15, 2023 (the “Class Period”). If you are not sure whether you are included in the Settlement Class, you can contact Phoenix Settlement Administrators, Inc., the “Settlement Administrator”, or by calling or writing the lawyers representing the Class in this case (“Class Counsel”), at the phone numbers or addresses listed in Section 11.

6. How will the administrator calculate my Individual Settlement Payment and Individual PAGA Payment?

The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of workweeks worked by each individual Participating Class Member.

The Administrator will calculate Individual PAGA Payments by (a) dividing 25 percent of the PAGA Settlement Amount by the total number of PAGA workweeks worked by all PAGA Group Members and (b) multiplying the result by the number of PAGA workweeks worked by each individual PAGA Group Member.

The number of workweeks you worked during the Class and PAGA Periods, as recorded in ClarkDietrich's records, are stated in the first page of this Notice. You have until [redacted] to challenge the number of workweeks credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information. You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept ClarkDietrich's calculation of workweeks based on ClarkDietrich's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve workweek challenges based on your submission and on input from ClarkDietrich. The Administrator's decision is final. You cannot appeal or otherwise challenge its final decision.

You do not need to do anything further to receive your Individual Settlement Payment and Individual PAGA Payment (if any), other than to ensure that the Settlement Administrator has an accurate mailing address for you. It is important that you contact and inform the Settlement Administrator listed in Section 9, below, of any changes to your mailing address for timely payment.

7. How do I object to the Settlement?

If you are a Class Member and would like to object to the Settlement, you must not submit a request for exclusion (*i.e.*, you must not opt-out). To object, you may mail a written objection to the Settlement Administrator at the address in Section 11 below. Your written objection must set forth the grounds for your objection and be signed and dated, along with any supporting documents. Any written objection must be mailed to the Settlement Administrator no later than [redacted]. You can also appear at the final approval hearing. The information for the hearing is included in Section 10 of this notice.

8. How do opt out of the Class Settlement?

If you are a Class Member and would like to exclude yourself from the Class Settlement ("opt-out"), you, or your authorized representative, need to submit a written statement requesting exclusion from the Class to the Settlement Administrator at the address in Section 11 below. The statement must contain your name, address, telephone number, and your signature or the signature of your legally authorized representative and must be postmarked on or before [redacted]. The date of the postmark on the mailing envelope shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any class member who fails to submit a valid and timely request for exclusion will be bound by all terms of the settlement and any final disposition entered in this Class Action if the Settlement is approved by the Court.

9. Who is handling the Settlement Administration process?

Phoenix Settlement Administrators, Inc.

[address]

[address]

[Telephone]

10. When is the Final Fairness and Approval Hearing and do I have to attend?

The Final Fairness and Approval Hearing has been set for [REDACTED], at [REDACTED] in Department 28 of the Superior Court of California, County of Sacramento located at 720 9th Street, Sacramento, California 95814. You do not need to attend the hearing to be a part of the Settlement. However, if you wish to object to the Settlement, you may appear at the hearing. Please note that the hearing may be continued without further notice to the Class.

11. How can I get more information about the Settlement?

For more information, the pleadings and other records in this litigation, including copies of the Settlement Agreement, may be examined at any time during regular business hours at the office of the Clerk of the Superior Court of the State of California, for Sacramento, at the Sacramento County Superior Court, located at 720 9th Street, Sacramento, California 95814. You can also view the case records online at the court's website: services.saccourt.ca.gov/PublicCaseAccess/Civil/SearchByCaseNumber. Input the Case Number 34-2021-00307823 and click "search" to view the case record.

You can also contact Class Counsel or the Settlement Administrator using the contact information listed below:

Class Counsel:

AEGIS LAW FIRM, PC Samuel A. Wong Kashif Haque Jessica L. Campbell Fawn F. Bekam Daniel E. Ishu 9811 Irvine Center Drive, Suite 100 Irvine, California 92618 Telephone: (949) 379-6250 Facsimile: (949) 379-6251	Brian J. Mankin Misty M. Lauby LAUBY, MANKIN & LAUBY LLP 5198 Arlington Avenue, PMB 513 Riverside, CA 92504 Tel: (951) 320-1444 Fax: (951) 320-1445
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Settlement Administrator:

Phoenix Settlement Administrators, Inc.

Email Address:

Mailing Address:

Telephone:

Fax Number:

If your address changes, or is different from the address on the envelope enclosing this Notice, please promptly notify the Settlement Administrator.

PLEASE DO NOT CALL OR WRITE TO THE COURT, OR TO ANY OF DEFENDANT'S MANAGERS, SUPERVISORS, OR DEFENDANT'S ATTORNEYS WITH QUESTIONS ABOUT THIS NOTICE.