

FILED
Clerk of the Superior Court

AUG 23 2023

By: S. Doski, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

JESUS FUENTES, individually, and on behalf
of aggrieved employees pursuant to the Private
Attorneys General Act ("PAGA");

Plaintiff,

v.

APEX CONTRACTING AND
RESTORATION, INC., a California
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: 37-2022-00001417-CU-OE-CTL

Assigned for All Purposes to:
Honorable Ronald F. Frazier
Department C-65

CLASS ACTION

**AMENDED ~~PROPOSED~~ ORDER OF
FINAL APPROVAL AND JUDGMENT**

Hearing Date: August 11, 2023
Hearing Time: 8:30 a.m.
Hearing Place: Department C-65

Complaint Filed: January 12, 2022
FAC Filed: June 22, 2022
Trial Date: None Set

1 The Court, having read the papers filed regarding Plaintiff Jesus Fuentes ("Plaintiff")
2 Motion for Final Approval of Class Action Settlement, and considering the papers submitted in
3 support of the motion, including the Amended Joint Stipulation and Settlement Agreement
4 ("Settlement Agreement," "Settlement," or "Agreement")¹, hereby **FINDS AND ORDERS**:

5 Plaintiff and Defendant Apex Contracting and Restoration, Inc. ("Defendant") entered the
6 Settlement Agreement on or about November 22, 2022 to settle this lawsuit.

7 The Court entered an order dated January 20, 2023 preliminarily approving the settlement
8 of this lawsuit ("Preliminary Approval Order")², consistent with the Code of Civil Procedure
9 section 382 and California Rule of Court 3.769, ordering notice to be sent to Class Members,
10 providing Class Members with an opportunity to object to the Settlement or exclude themselves
11 from the Class, and scheduling a Final Approval Hearing.

12 The Court held a Final Approval Hearing on August 11, 2023 to determine whether to
13 give final approval to the Settlement of this lawsuit.

14 1. Incorporation of Other Documents. This Amended Order of Final Approval and
15 Judgment ("Order and Judgment") incorporates the Settlement Agreement. Unless otherwise
16 provided herein, all capitalized terms in this Order and Judgment shall have the same meaning as
17 set forth in the Settlement Agreement.

18 2. Jurisdiction. Because adequate notice has been disseminated and the Class has
19 been given the opportunity to request exclusion, the Court has personal jurisdiction with respect
20 to the claims of all Class Members. The Court has subject matter jurisdiction over this lawsuit,
21 including jurisdiction to approve the Settlement and grants final certification of the Class.

22 3. Final Class Certification. The Court finds the Class satisfies all applicable
23 requirements of Code of Civil Procedure section 382, California Rule of Court 3.769, and due
24 process. The Court certifies the Class consisting of all current and former hourly-paid or non-

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26 ¹ A true and correct copy of the fully executed Settlement Agreement is attached hereto as
27 **Exhibit 1**.

28 ² A true and correct copy of the signed Preliminary Approval Order is attached hereto as
Exhibit 2.

1 exempt employees employed by Defendant within the State of California at any time between
2 November 5, 2020 through May 20, 2022 ("Class" and "Class Period"). There are two hundred
3 twenty (220) Class Members who did not submit valid and timely requests to exclude themselves
4 from the class action Settlement ("Participating Class Members").

5 4. Adequacy of Representation. Class Counsel fully and adequately represented the
6 Class for purposes of entering and implementing the Settlement and satisfied the requirements of
7 Code of Civil Procedure section 382.

8 5. Notice Packet. The Court finds the Notice of Class and Representative Action
9 Settlement ("Class Notice") and Election Not to Participate ("Opt Out" From) Class Action
10 Settlement ("Exclusion Form") (collectively, known as the "Notice Packet")³ and its distribution
11 to Class Members were implemented pursuant to the Settlement and this Court's Preliminary
12 Approval Order. The Court also finds the Notice Packet:

- 13 a. constitutes notice reasonably calculated to apprise Class Members of: (i)
14 pendency of this lawsuit; (ii) material terms and provisions of the
15 Settlement Agreement and their rights; (iii) their right to object to any
16 aspect of the Settlement Agreement; (iv) their right to exclude themselves
17 from the Settlement Agreement; (v) their right to receive settlement
18 payments; (vi) their right to appear at the Final Approval Hearing; and
19 (vii) binding effect of the orders and judgment in this lawsuit on all
20 Participating Class Members;
- 21 b. constitutes notice that fully satisfied the requirements of Code of Civil
22 Procedure section 382, California Rule of Court 3.769, and due process;
- 23 c. constitutes the best practicable notice to Class Members under the
24 circumstances of this lawsuit; and
- 25 d. constitutes notice reasonable, adequate, and sufficient to Class Members.
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28 ³ A true and correct copy of the Class Notice and Exclusion Form are attached as Exhibits
A and B respectively to the Settlement Agreement.

1 6. Final Settlement Approval. The terms and provisions of the Settlement
2 Agreement have been entered into good faith and are the product of arm's-length negotiations by
3 experienced counsel who have done a meaningful investigation of the claims. The Settlement
4 Agreement and all its terms and provisions are fully and finally approved as fair, reasonable,
5 adequate, and in the best interests of the Parties. The Parties are hereby directed to implement the
6 Settlement Agreement according to its terms and provisions.

7 7. Enforcement of Settlement. Nothing in this Order and Judgment shall preclude
8 any action to enforce the terms and provisions of the Settlement Agreement.

9 8. Binding Effect. The terms and provisions of the Settlement Agreement and this
10 Order and Judgment are binding on Plaintiff, Participating Class Members, and their spouses,
11 heirs, registered domestic partners, executors, administrators, successors, and assigns. In
12 addition, those terms shall have res judicata and other preclusive effect in all pending and future
13 claims, lawsuits, or other proceedings maintained by or on behalf of any such persons to the
14 extent those claims, lawsuits, or other proceedings involve matters that were or could have been
15 raised in this lawsuit and are encompassed by the Released Claims and Private Attorneys
16 General Act of 2004 ("PAGA") Released Claims. The Settlement Agreement will have no
17 binding effect upon, and provide no res judicata preclusion to, those Class Members who have
18 submitted timely requests for exclusion.

19 9. Release of Claims. As of the Effective Final Settlement Date, in exchange for the
20 consideration set forth in the Agreement, Plaintiff and the Participating Class Members release
21 the Released Parties from the Released Claims for the Class Period.

22 a. PAGA Released Claims. As of the Effective Final Settlement Date, the
23 California Labor and Workforce Development Agency ("LWDA") and
24 each Class Member, including Plaintiff, individually and on behalf of their
25 heirs, executors, administrators, representatives, attorneys, successors, and
26 assigns voluntarily and knowingly are barred from bringing a lawsuit for
27 the PAGA Released Claims. The release of the PAGA Released Claims is
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1 effective, regardless of whether the Class Member purports to submit a
2 timely and valid request for exclusion.

3 b. Plaintiff's Release of Claims and General Release. As of the Effective
4 Final Settlement Date, and in exchange for the Class Representative
5 Enhancement Payment to Plaintiff in recognition of his work and efforts in
6 obtaining the benefits for the Class and undertaking the risk for the
7 payment of costs if this matter had not successfully resolved, Plaintiff
8 provides a general release of claims for himself and his spouse, heirs,
9 successors, and assigns. Plaintiff's Release of Claims also includes a
10 waiver of Civil Code section 1542.

11 c. Released Parties. The Released Parties include Defendant and its owners,
12 parents, predecessors, successors, all affiliates, subsidiaries, officers,
13 directors, members, agents, employees, and stockholders.

14 10. Class Representative Enhancement Payment. The Court finds the Class
15 Representative Enhancement Payment of \$10,000, to be paid by Defendant to Plaintiff out of the
16 Gross Settlement Amount, to be reasonable and appropriate. The Class Representative
17 Enhancement Payment is to be paid pursuant to the terms and provisions set forth in the
18 Settlement Agreement.

19 a. The rationale for making enhancement payments is class representatives
20 should be compensated for the expense and risk they incurred in
21 conferring a benefit on the Class. Criteria courts consider include: (1) risk
22 to the class representatives in commencing suit; (2) notoriety and personal
23 difficulties; (3) amount of time and effort spent by the class
24 representatives; (4) duration of the litigation; and (5) personal benefit (or
25 lack thereof) enjoyed by class representatives.

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1 b. The Court reviewed Plaintiff's declaration outlining his involvement.
2 Given the risks inherent in the services as the class representative, duration
3 of the case and time involved, and benefits created for the Class, the Court
4 approves the payment of the Class Representative Enhancement Payment
5 of \$10,000 to Plaintiff.

6 11. Attorney Fee Award and Cost Award. The Court finds the Attorney Fee Award
7 of \$87,500, to be paid by Defendant to Class Counsel out of the Gross Settlement Amount, to be
8 reasonable and appropriate. In addition, the Court finds the Cost Award as reimbursement for
9 actual litigation costs incurred of \$12,559, to be paid by Defendant to Class Counsel out of the
10 Gross Settlement Amount, to be reasonable and appropriate. Such fees and costs are to be paid
11 pursuant to the terms and provisions set forth in the Settlement Agreement. Defendant shall not
12 be required to pay for any other attorneys' fees and expenses, costs, or disbursements incurred by
13 Class Counsel or any other counsel representing Plaintiff or Class Members. Defendant shall also
14 not be required to pay for any other attorneys' fees and expenses, costs, or disbursements
15 incurred by Plaintiff or Class Members in connection with or related in any manner to this
16 lawsuit, Settlement Agreement, settlement administration, and/or Released Claims and PAGA
17 Released Claims.

18 a. The Court has an independent right and responsibility to review the
19 Attorney Fee Award and only award so much as it determines reasonable.
20 (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118
21 Cal.App.4th 123, 127-28.) The Attorney Fee Award of \$87,500 is thirty-
22 five percent (35%) of the common fund created for the benefit of the Class
23 and is supported by use of the percentage-fee method. (See *Laffitte v.*
24 *Robert Half International, Inc.* (2016) 1 Cal.5th 480, 504.) Considering
25 the results achieved, financial risk undertaken, difficult nature of this
26 litigation, skills required, percentage fees award in previous and other
27 cases, and contingent fees charged in the marketplace, the Court finds the
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Attorney Fee Award is consistent with the marketplace, is reasonable, and is approved.

- b. The Court reviewed the declaration of Douglas Han regarding the costs expended in prosecuting this case. Under the terms of the Settlement, Class Counsel may seek reimbursement of up to \$20,000 in litigation costs. The Court finds Class Counsel expended \$12,559 in litigation costs, and such costs were reasonable. Thus, the Court approves the payment of the Cost Award of \$12,559 from the common fund for the reimbursement of Class Counsel's litigation costs.

12. Administration Costs. The Court finds Administration Costs of \$12,500, to be paid by Defendant to the Settlement Administrator out of the Gross Settlement Amount, to be reasonable and appropriate. The Administration Costs are to be paid pursuant to terms and provisions set forth in the Settlement Agreement.

- a. The Court reviewed the declaration of Jennifer Beliveau from Simpluris, Inc., the Settlement Administrator. The Court finds notice was provided to the Class pursuant to the Preliminary Approval Order, constitutes the best practicable notice to the Class, and satisfied due process. Thus, the Court approves the payment of the Administration Costs of \$12,500 for the Settlement Administrator's services in administering the Settlement.

13. PAGA Payment. The Court finds the PAGA Payment of \$20,000, seventy-five percent (75%) of which (\$15,000) will be paid to the LWDA out of the Gross Settlement Amount and twenty-five percent (25%) of which (\$5,000) shall be part of the Net Settlement Amount to be distributed to Class Members, on a pro rata basis, to be reasonable and appropriate. The PAGA Payment is to be paid pursuant to the terms and provisions set forth in the Settlement Agreement.

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1 14. Funding the Settlement. If no objection to the Settlement is made, Defendant will
2 pay fifty percent (50%) of the Gross Settlement Amount by wiring the funds to the Settlement
3 Administrator no later than thirty (30) days after entry of the order granting final approval. If an
4 objection is made but no appeal filed, Defendant will pay fifty percent (50%) the Gross
5 Settlement Amount by wiring the funds to the Settlement Administrator no later than twenty-one
6 (21) days after the running of the appeal period. If an appeal is filed, Defendant will pay fifty
7 percent (50%) the Gross Settlement Amount by wiring the funds to the Settlement Administrator
8 no later than twenty-one (21) days after the final judgment becomes final and is no longer subject
9 to appeal. Defendant will pay the remaining fifty percent (50%) of the Gross Settlement Amount
10 by wiring the funds to the Settlement Administrator no later than November 10, 2023. Within
11 fourteen (14) calendar days after Defendant fully funds the Settlement, the Settlement
12 Administrator shall calculate and disburse all payments due under the Settlement.

13 15. Fairness of the Settlement. As noted in the Preliminary Approval Order, the
14 Settlement is entitled to a presumption of fairness. In the moving papers, Plaintiff contends the
15 Settlement was the product of arm's-length negotiations following extensive litigation,
16 discovery, and exchange of documentation. The negotiations were facilitated with the aid of
17 Lynn Frank, an experienced and well-respected mediator.

18 a. The fairness of the Settlement is demonstrated by there being no
19 objections to and no requests for exclusion from the Settlement.

20 16. Uncashed Checks. Participating Class Members and Class Members must cash or
21 deposit their settlement checks within one hundred eighty (180) calendar days after the checks
22 are mailed to them. Uncashed settlement checks will be paid to the State Controller's Unclaimed
23 Property Fund in the name of the Class Member.

24 17. Modification of Settlement Agreement. The Participating Class Members are
25 hereby authorized, upon approval of the Court, to agree to and adopt amendments to or
26 modifications of the Settlement Agreement by an express written instrument signed by the
27 Parties' counsel or their successors-in-interest. Such amendments or modifications shall be
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1 consistent with this Order and Judgment and cannot limit the rights of Participating Class
2 Members under the Settlement Agreement.

3 18. Final Accounting and Compliance. The Court sets an interim compliance hearing
4 for December 1, 2023 in Department C-65. On or before November 22, 2023, Plaintiff shall file
5 a compliance status report. Pursuant to Code of Civil Procedure section 384, the compliance
6 status report shall specify the total amount paid to Participating Class Members and the residual
7 of the unclaimed settlement funds that will be paid to the entity identified as the recipient of such
8 funds in the Settlement Agreement.

9 19. Retention of Jurisdiction. The Court has jurisdiction to enter this Order and
10 Judgment. This Court expressly retains jurisdiction for the administration, interpretation,
11 effectuation, and/or enforcement of the Settlement Agreement and of this Order and Judgment,
12 and for any other necessary purpose, including, without limitation:

- 13 a. enforcing the terms and provisions of the Settlement and resolving any
14 disputes, claims, or causes of action in this lawsuit that, in whole or in
15 part, are related to or arise out of the Settlement or this Order and
16 Judgment;
- 17 b. entering such additional orders as may be necessary or appropriate to
18 protect or effectuate this Order and Judgment approving the Settlement,
19 and permanently enjoining Plaintiff from initiating or pursuing related
20 proceedings, or to ensure the fair and orderly administration of the
21 Settlement; and
- 22 c. entering any other necessary or appropriate orders to protect and effectuate
23 this Court's retention of continuing jurisdiction.

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1 The Motion for Final Approval of Class Action Settlement, Attorney Fee Award, Cost
2 Award, and Class Representative Enhancement Payment is GRANTED. The Settlement
3 Administrator is directed to carry out the terms of the Settlement Agreement forthwith.

4 THE PARTIES ARE HEREBY ORDERED TO COMPLY WITH THE TERMS OF
5 THE SETTLEMENT AGREEMENT. PURSUANT TO CALIFORNIA RULES OF COURT
6 3.769, THE COURT HEREBY ENTERS FINAL JUDGMENT BASED UPON THE TERMS
7 OF THIS ORDER AND SETTLEMENT AGREEMENT AND, WITHOUT AFFECTING THE
8 FINALITY OF THIS MATTER, RETAINS EXCLUSIVE AND CONTINUING
9 JURISDICTION TO ENFORCE THIS ORDER, THE SETTLEMENT AGREEMENT, AND
10 THE JUDGMENT THEREON.

11 **IT IS SO ORDERED.**

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13 DATED: 8/23/23

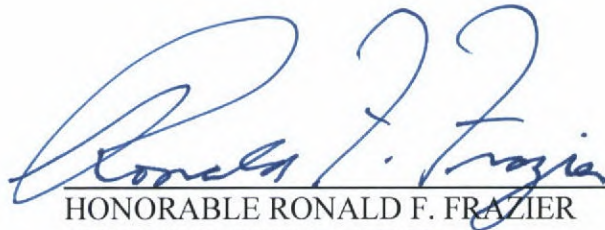

HONORABLE RONALD F. FRAZIER
SUPERIOR COURT JUDGE

EXHIBIT 1

AMENDED JOINT STIPULATION AND SETTLEMENT AGREEMENT

Subject to final approval by the Court, this Settlement Agreement ("Agreement") is between Plaintiff Jesus Fuentes ("Plaintiff"), on behalf of the Class (as defined below) and Defendant Apex Contracting and Restoration, Inc. ("Defendant").

I. DEFINITIONS

In addition to the other terms defined in this Agreement, the terms below have the following meaning and these definitions are made part of the Agreement:

- A. **Action**: The representative PAGA action filed by Plaintiff on January 12, 2022, entitled *Jesus Fuentes v. Apex Contracting and Restoration, Inc.*, Case No. 37-2022-00001417-CU-OE-CTL, in the Superior Court of California, County of San Diego. A First Amended Class Action Complaint for Damages was filed by Plaintiff in this Action on June 22, 2022 that added nine (9) wage-and-hour class action causes of action. The Complaint and First Amended Class Action Complaint filed in this Action may be referred to herein as "Complaints."
- B. **Administration Costs**: The costs incurred by the Settlement Administrator to administer this Settlement, which is currently estimated at \$7,200, shall not exceed \$12,500 and shall be paid from the Qualified Settlement Fund. Defendant shall not be required to pay additional funds toward Administration Costs.
- C. **Agreement, Settlement Agreement, or Settlement**: The settlement agreement reflected in this document titled "Amended Joint Stipulation and Settlement Agreement."
- D. **Attorney Fee Award**: The amount, not to exceed thirty-five percent (35%) of the Gross Settlement Amount or \$87,500, finally approved by the Court and awarded to Class Counsel. The Attorney Fee Award shall be paid from the Qualified Settlement Fund and will not be opposed by Defendant.
- E. **Class**: All current and former hourly-paid or non-exempt employees employed by Defendant within the State of California at any time between November 5, 2020 through May 20, 2022.
- F. **Class Counsel**: Douglas Han, Shunt Tatavos-Gharajeh, and Lizette Rodriguez of Justice Law Corporation.
- G. **Class Data**: The Class Data means information regarding Class Members that Defendant will compile from its available, existing, electronic records and provide to the Settlement Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall include each Class Member's: (1) full name; (2)

last-known address; (3) Social Security Number and Employee ID number, if any; and (4) relevant dates of employment.

- H. **Class Member:** Each person eligible to participate in this Settlement who is a member of the Class as defined above, or, if such person is incompetent or deceased, the person's legal guardian, executor, heir, or successor in interest.
- I. **Class Notice:** The Notice of Class and Representative Action Settlement, substantially similar to the form attached hereto as **Exhibit A**, subject to Court approval.
- J. **Class Period:** The time period between November 5, 2020 through May 20, 2022.
- K. **Class Representative or Plaintiff:** Plaintiff Jesus Fuentes.
- L. **Class Representative Enhancement Payment:** The amount the Court awards to Plaintiff for his services as the Class Representative, which will not exceed \$10,000. This payment shall be paid from the Qualified Settlement Fund and will not be opposed by Defendant. Class Representative Enhancement Payment is subject to approval of the Court.
- M. **Complaints:** The representative PAGA action complaint filed by Plaintiff on January 12, 2022 that also includes the First Amended Complaint filed by Plaintiff on June 22, 2022 that added nine (9) wage-and-hour class action causes of action.
- N. **Cost Award:** The amount that the Court awards Class Counsel for payment of actual litigation costs subject to proof, which shall not exceed \$20,000. The Cost Award will be paid from the Qualified Settlement Fund and will not be opposed by Defendant.
- O. **Counsel for Defendant:** Attorneys Mandy D. Hexom and Gaia T. Linehan of Freeman Mathis & Gary, LLP.
- P. **Court:** The State of California, San Diego County Superior Court.
- Q. **Defendant:** Apex Contracting and Restoration, Inc.
- R. **Effective Final Settlement Date:** The date in which Defendant fully funds the Gross Settlement Amount.
- S. **Exclusion Form:** The Election Not to Participate ("Opt Out" From) Class Action Settlement, substantially similar to the form attached hereto as **Exhibit B**, subject to Court approval.

- T. **Gross Settlement Amount:** The total value of the Settlement is a non-reversionary \$250,000. This is the gross amount Defendant can be required to pay under this Settlement Agreement, which includes: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) Attorney Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (3) the Class Representative Enhancement Payment paid to the Class Representative, as approved by the Court; (4) Administration Costs, as approved by the Court; and (5) the PAGA Payment to the LWDA and Class Members, as approved by the Court. Defendant's share of payroll taxes as the Class Members' current or former employer is not included in the Gross Settlement Amount and will be paid separate from and in addition to the Gross Settlement Amount. No portion of the Gross Settlement Amount will revert to Defendant for any reason.
- U. **Individual Settlement Share(s):** The amount payable to each Participating Class Member under the terms of this Settlement Agreement. Class Members are not required to submit a claim form to receive their Individual Settlement Shares pursuant to this Agreement.
- V. **Judgment or Final Approval:** The final order entered by the Court approving this Agreement after having determined the Settlement is fair, adequate, and reasonable to the Class as a whole, following: (1) notice to the Class; (2) an opportunity to submit timely objections to the Settlement; and (3) a hearing on the fairness of the terms of the Settlement.
- W. **LWDA:** California Labor and Workforce Development Agency.
- X. **Net Settlement Amount:** The total amount of money available from the Gross Settlement Amount for distribution to Participating Class Members, which is the Gross Settlement Amount less the Attorney Fee Award, Cost Award, Class Representative Enhancement Payment, PAGA Payment, and Administration Costs. This is the maximum amount distributed to Participating Class Members.
- Y. **Notice Packet:** The Class Notice and Exclusion Form are collectively known as the Notice Packet.
- Z. **PAGA:** The Labor Code Private Attorneys General Act of 2004 (Labor Code, §§ 2698, *et seq.*).
- AA. **PAGA Notices:** The PAGA Notices refer to the pre-filing notices of the alleged Labor Code violations served by Plaintiff on the LWDA and Defendant on November 5, 2021 and May 12, 2022.
- BB. **PAGA Payment:** The PAGA Payment is the \$20,000 allocated to satisfy the PAGA penalties claim as alleged in the Action. Seventy-five percent (75%) of the PAGA Payment (\$15,000) shall be paid to the LWDA, and twenty-five

percent (25%) of the PAGA Payment (\$5,000) shall be part of the Net Settlement Amount to be distributed to Class Members, on a pro rata basis, as set forth below.

- CC. **PAGA Released Claims:** The PAGA Released Claims means all allegations and claims for civil penalties pursuant to PAGA based on any and all underlying Labor Code violations alleged in the Complaints or in the PAGA Notices that arose during the Class Period. This includes the alleged violations of Labor Code sections 201 *et seq.*, 202, 203, 204, 218.5, 221, 226(a), 226.2, 226.3, 226.7, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802.
- DD. **Participating Class Members:** All Class Members who do not submit a valid and timely request to exclude themselves from the class action Settlement.
- EE. **Parties:** Plaintiff, as an individual and the Class Representative, and Defendant.
- FF. **Preliminary Approval or Preliminary Approval Order:** The Court's order preliminarily approving the proposed Settlement.
- GG. **Qualified Settlement Fund or QSF:** A fund within the meaning of Treasury Regulation section 1.46B-1, 26 C.F.R. sections 1.468B-1, *et seq.*, that is established by the Settlement Administrator for the benefit of Participating Class Members, Plaintiff, and Class Counsel.
- HH. **Released Claims:** The Released Claims means any and all wage-and-hour claims, rights, demands, liabilities, and causes of action of every nature and description whether alleged or could have been alleged arising from or related to the claims litigated in the Complaints against Defendant that arose during the Class Period. This Released Claims are based upon, but are not limited to, the following categories of allegations: (1) failure to pay minimum wages; (2) failure pay overtime wages; (3) failure to provide meal breaks or pay premium wages for noncompliant meal breaks; (4) failure to provide rest breaks or pay premium wages for noncompliant rest breaks; (5) failure to provide accurate itemized wage statements; (6) failure to compensate employees for rest and recovery periods and other unproductive time; (7) failure to reimburse business expenses; (8) failure to pay all wages due during employment and upon termination of employment; (9) violation of California's unfair business practices laws; (10) violation of California's unfair competition laws; and (11) any potential penalties, interests, or attorneys' fees associated with these causes of action under California law.
- II. **Released Parties:** Defendant and its owners, parents, predecessors, successors, all affiliates, subsidiaries, officers, directors, members, agents, employees, and stockholders.

- JJ. Response Deadline:** Ninety (90) calendar days from the initial mailing of the Notice Packet.
- KK. Settlement Administrator:** The third-party administrator agreed upon by Parties to administer this Settlement is Simpluris, Inc. (“Simpluris”).
- LL. Weeks Worked:** Weeks Worked means all weeks during the Class Period that a Class Member worked as an hourly-paid or non-exempt employee in California for Defendant during the Class Period.

II. RECITALS

- A. Procedural History.** On November 5, 2021, Plaintiff, a former employee of Defendant, provided written notice to the LWDA and Defendant of the specific provisions of the Labor Code he contends were violated and the theories supporting his contentions.

On January 12, 2022, Plaintiff filed a representative PAGA action in the Superior Court of California, County of San Diego, alleging the following: (1) failure to pay minimum and overtime wages; (2) failure to provide paid sick leave; (3) failure to provide meal periods and rest breaks; (4) failure to timely pay wages during employment; (5) failure to timely pay wages upon termination; (6) failure to provide complete and accurate wage statements; (7) failure to keep complete and accurate payroll records; and (8) failure to reimburse business expenses.

On May 5, 2022, the Parties attended mediation with the mediator Lynn Frank that resulted in the settlement of the Action, subject to the Court’s approval.

In line with the decision to settle the Action, Plaintiff provided an amended written notice to the LWDA and Defendant on May 12, 2022. Plaintiff then filed a First Amended Complaint that added nine (9) wage-and-hour class action causes of action and adjusted the Class definition.

- B. Investigation and Discovery.** Prior to the mediation, the Parties conducted significant investigation and discovery of the facts and law both before and after the Action was filed. Defendant produced hundreds of documents relating to its policies, practices, and procedures regarding reimbursement of business expenses, paying non-exempt employees for all hours worked, meal and rest break policies, and payroll and operational policies. As part of Defendant’s production, Plaintiff also reviewed time records, pay records, and information relating to the size and scope of the Class, as well as data permitting Plaintiff to understand the number of Weeks Worked during the Class Period. Plaintiff also interviewed several Class Members who worked for Defendant throughout the Class Period. Parties agree the above-described investigation and evaluation, as well as the information exchanged during the settlement negotiations, are more

than sufficient to assess the merits of the respective Parties' positions and to compromise the issues on a fair and equitable basis.

- C. Benefits of Settlement to Class Members.** Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to continue the litigation against Defendant through trial and through any possible appeals. Plaintiff and Class Counsel also considered the uncertainty and risk of further litigation, the potential outcome, and the difficulties and delays inherent in such litigation. Plaintiff and Class Counsel conducted extensive settlement negotiations, including a formal mediation on May 5, 2022. Based on the foregoing, Plaintiff and Class Counsel believe the settlement set forth in this Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the Class Members.
- D. Plaintiff's Claims.** Plaintiff asserts Defendant's defenses are without merit. Neither this Agreement nor any documents referred to or contemplated herein, nor any action taken to carry out this Agreement is, may be construed as, or may be used as an admission, concession, or indication by or against Plaintiff, Class Members, or Class Counsel as to the merits of any claims or defenses asserted, or lack thereof, in the Action. If this Settlement is approved, Plaintiff, Class Members, or Class Counsel will not oppose Defendant's efforts to use this Agreement to prove that Plaintiff and Class Members have resolved and are forever barred from relitigating the Released Claims.
- E. Defendant's Denial of Wrongdoing.** Defendant generally and specifically denies any and all liability or wrongdoing of any sort with regard to any of the claims alleged, make no concessions or admissions of liability of any sort, and contend that for any purpose other than settlement, the Action is not appropriate for class or representative treatment. Defendant asserts several defenses to the claims and has denied any wrongdoing or liability arising out of any of the alleged facts or conduct in the Action. Defendant adopted a comprehensive timekeeping and meal period compliance program many years before the Complaints were filed which includes procedures to (1) encourage employees to report timekeeping and meal or rest period problems and (2) require supervisors and payroll employees to address and correct such problems. This uniquely demonstrates Defendant's good faith efforts to comply with California wage and hour law. Neither this Agreement, nor any document referred to or contemplated herein, nor any action taken to carry out this Agreement, is or may be construed as, or may be used as an admission, concession, or indication by or against Defendant or any of the Released Parties of any fault, wrongdoing, or liability whatsoever. Nor should the Agreement be construed as an admission that Plaintiff can serve as an adequate Class Representative. There has been no determination by any court as to the merits of the claims asserted by Plaintiff against Defendant or as to whether a class or classes should be certified, other than for settlement purposes only.

- F. Defendant's Reasons for Settlement.** Defendant recognizes that the defense of this litigation will be protracted and expensive. Substantial amounts of time, energy, and resources of Defendant have been and, unless this Settlement is made, will continue to be devoted to the defense of the claims asserted by Plaintiff. Defendant, therefore, has agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the Released Claims.

III. SETTLEMENT TERMS AND CONDITIONS

- A. Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the maximum Gross Settlement Amount, excluding Defendant's share of payroll taxes, that Defendant is obligated to pay under this Settlement Agreement is \$250,000.
- B. Class Certification.** For the purposes of this Settlement, the Parties stipulate and agree to certification of the claims asserted on behalf of Class Members. The Parties stipulate and agree that for this Settlement to occur, the Court must certify the Class as defined in this Agreement.
- C. Conditional Nature of Stipulation for Certification.** The Parties stipulate and agree to the certification of the claims asserted on behalf of Plaintiff and Class Members for purposes of this Settlement only. If the Settlement does not become effective, the fact the Parties were willing to stipulate to certification as part of the Settlement shall not be admissible or used in any way in connection with the question of whether the Court should certify any claims in a non-settlement context in this Action or in any other lawsuit or venue. If the Settlement does not become effective, Defendant reserves the right to contest any issues relating to class certification, liability, and damages.
- D. Appointment of Class Representative.** For the purposes of this Settlement, the Parties stipulate and agree Plaintiff shall be appointed as the representative for the Class.
- E. Appointment of Class Counsel.** For the purpose of this Settlement, the Parties stipulate and agree the Court appoint Class Counsel to represent the Class.
- F. Settlement Disbursement.** Subject to the terms and conditions of this Agreement, and the approval of the Court, the Settlement Administrator will disburse the Gross Settlement Amount as follows:
- 1. To the Plaintiff.** In addition to his Individual Settlement Share, and subject to the Court's approval, Plaintiff will receive up to \$10,000 as the Class Representative Enhancement Payment. The Settlement Administrator will pay the Class Representative Enhancement Payment out of the Qualified Settlement Fund. Payroll tax withholdings and deductions will not be taken from the Class Representative Enhancement Payment. An IRS Form 1099

will be issued to Plaintiff with respect to his Class Representative Enhancement Payment. Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on the Class Representative Enhancement Payment and shall hold harmless Defendant, Class Counsel, and the Released Parties from any claim or liability for taxes, penalties, or interest arising as a result of the Class Representative Enhancement Payment. If the Court does not approve the entirety of the application for the Class Representative Enhancement Payment, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendant nor the Settlement Administrator shall be responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Plaintiff, the difference shall become part of the Net Settlement Amount and will be distributed to Participating Class Members. If the Court reduces or does not approve the requested Class Representative Enhancement Payment, Plaintiff shall not have the right to revoke the Settlement, and it will remain binding, nor will Plaintiff seek, request, or demand an increase in the Gross Settlement Amount on that basis or any basis.

2. **To Class Counsel.** Class Counsel will apply to the Court for, and Defendant agrees not to oppose, a total Attorney Fee Award not to exceed thirty-five percent (35%) or \$87,500 of the Gross Settlement Amount and a Cost Award not to exceed \$20,000. The Settlement Administrator will pay the Court-approved amounts for the Attorney Fee Award and Cost Award out of the Gross Settlement Amount. The Settlement Administrator may purchase an annuity to utilize US treasuries and bonds or other attorney fee deferral vehicles for Class Counsel. Payroll tax withholding and deductions will not be taken from the Attorney Fee Award or the Cost Award. IRS Forms 1099 will be issued to Class Counsel with respect to these payments. Class Counsel shall be solely and legally responsible to pay all applicable taxes on the Fee and Cost Awards. If the Court does not approve the entirety of the application for the Attorney Fee Award and/or Cost Award, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendant nor the Settlement Administrator shall be responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Class Counsel for the Attorney Fee Award and/or Cost Award, the difference shall become part of the Net Settlement Amount and will be distributed to Participating Class Members.
3. **To the Settlement Administrator.** The Settlement Administrator will pay to itself Administration Costs (reasonable fees and expenses) approved by the Court that is currently estimated at \$7,200 but shall not exceed \$12,500. This will be paid out of the Qualified Settlement Fund. Defendant shall not be required to pay additional funds toward settlement administration costs. If the actual amount of Administration Costs is less than the amount

estimated and/or requested, the difference shall become part of the Net Settlement Amount and will be distributed to Participating Class Members.

- 4. To Participating Class Members.** The Settlement Administrator will pay each Participating Class Member an Individual Settlement Share from the Net Settlement Amount.

- a. Individual Settlement Share Calculation.** The Individual Settlement Share is calculated based on each Participating Class Member's pro rata share of the Net Settlement Amount based on the Weeks Worked during the Class Period using the following formula: (i) the number of Week Worked by the Participating Class Member as an hourly-paid or non-exempt employee during the Class Period, divided by (ii) the total number of Weeks Worked by all Participating Class Members collectively during the Class Period, which is then multiplied by the Net Settlement Amount. The Settlement Administrator will use the Class Data to calculate the number of Weeks Worked by each Class Member based on their dates of employment for purposes of this calculation.

- b. Tax Treatment for Individual Settlement Shares.** Each Participating Class Member's Individual Settlement Share will be apportioned as follows: twenty percent (20%) wages and eighty percent (80%) penalties and interests. The portion paid as wages shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported by W-2 forms. Payment of all amounts will be made subject to backup withholding unless a duly executed W-4 form is received from the payee(s). The amounts paid as penalties and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms. The employees' share of payroll tax withholdings shall be withheld from each persons' Individual Settlement Share. Participating Class Members will be responsible for the payment of any taxes and penalties assessed on the Individual Settlement Shares and will be solely responsible for any penalties or other obligations resulting from their personal tax reporting of Individual Settlement Shares.

- 5. To Class Members.** The Settlement Administrator will pay each Class Member a portion of the twenty-five percent (25%) of the PAGA Payment (\$5,000) regardless of whether the Class Members requests exclusion.

- a. **25% of the PAGA Payment Calculation.** The portion of the PAGA Payment allocated to Class Members is calculated based on their Weeks Worked during the Class Period using the following formula: (i) the number of Week Worked by the Class Member as an hourly-paid or non-exempt employee during the Class Period, divided by (ii) the total number of Weeks Worked by all Class Members collectively during the Class Period, which is then multiplied by twenty-five percent (25%) of the PAGA Payment (\$5,000) allocated to Class Members. The Settlement Administrator will use the Class Data to calculate the number of Weeks Worked by each Class Member based on their dates of employment for purposes of this calculation.
 - b. **Tax Treatment for 25% of the PAGA Payment.** Each Class Member's share of the PAGA Payment will be apportioned as one hundred percent (100%) penalties and shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms. Class Members will be responsible for the payment of any taxes and penalties assessed on their portion of the PAGA Payment and will be solely responsible for any penalties or other obligations resulting from their personal tax reporting of their portion of the PAGA Payment.
6. **To the LWDA.** The Settlement Administrator will pay the LWDA seventy-five percent (75%) of the PAGA Payment (\$15,000).
7. **To the Responsible Tax Authorities.** The Settlement Administrator will withhold the amount of the Participating Class Members' portion of normal payroll withholding taxes out of each person's Individual Settlement Share. The Settlement Administrator will calculate the amount of the Participating Class Members' and Defendant's portion of payroll withholding taxes. The Settlement Administrator will submit Defendant's portion of payroll withholding tax calculation to Defendant for additional funding and forward those amounts along with each person's Individual Settlement Share withholdings to the appropriate taxing authorities.
- G. **Appointment of Settlement Administrator.** The Settlement Administrator shall be responsible for: (1) preparing, translating, printing, and mailing the Notice Packet to the Class Members; (2) keeping track of any objections or requests for exclusion from Class Members; (3) performing skip traces and remailing Notice Packets and Individual Settlement Shares to Class Members; (4) calculating any and all payroll tax deductions as required by law; (5) calculating each Participating Class Member's Individual Settlement Share; (6) calculating each Class Member's portion of the PAGA Payment; (7) providing weekly status reports to the Parties' counsel, which is to include updates on any

objections or requests for exclusion that have been received; (8) providing a due diligence declaration for submission to the Court prior to the Final Approval hearing; (9) mailing Individual Settlement Shares to Participating Class Members; (10) mailing portions of the PAGA Payment to Class Members; (11) mailing the portion of the PAGA Payment to the LWDA; (12) distributing the Attorney Fee Award and Cost Award to Class Counsel; (13) printing and providing Class Members and Plaintiff with W-2s and 1099 forms as required under this Agreement and applicable law; (14) providing a due diligence declaration for submission to the Superior Court upon the completion of the Settlement; (15) providing any funds remaining in the QSF as a result of uncashed checks to the State Controller's Unclaimed Property Fund in the name of the Class Member; and (16) performing other tasks as the Parties mutually agree. The Parties each represent that they do not have any financial interest in Simpluris or otherwise have a relationship with Simpluris that could create a conflict of interest.

1. The Settlement Administrator shall be the only entity authorized to make withdrawals or payments from the QSF account. The Settlement Administrator will: (a) acknowledge that it has fiduciary obligations to the Parties, and will attest that it will not allow any disbursements to be made from the QSF except as expressly authorized by this Agreement; (b) agree that it will receive no disbursements or fees from the QSF for actions undertaken or expenses incurred without prior approval by the Parties' counsel; and (c) acknowledge its obligations to return the entire QSF to Defendant (less any administrative expenses incurred by the Settlement Administrator) if this Agreement: (i) does not receive final approval by the Court; (ii) is modified or reversed on appeal; and/or (iii) is otherwise rendered null and void.
2. The Settlement Administrator shall report the Individual Settlement Shares to all required taxing and other authorities, withhold the standard employer's and employee's share of payroll taxes from the wage portion of each Individual Settlement Shares, and transmit these amounts to the taxing authorities, and issue IRS Forms W-2 and 1099s. Upon completion of administration of the Settlement, the Settlement Administrator shall provide written certification of such completion to the Court and counsel for all Parties. The Settlement Administrator shall also provide any and all documentation to Defendant necessary to demonstrate that all duties have been performed under this section.

H. Procedure for Approving Settlement.

1. Motion for Preliminary Approval and Conditional Certification.

- a. Plaintiff will move for an order conditionally certifying the Class for settlement purposes only, giving Preliminary Approval of the

Settlement, setting a date for the Final Approval hearing, and approving the Notice Packet and Exclusion Form.

- b. At the Preliminary Approval hearing, Plaintiff will appear, support the granting of the motion, and submit a proposed order granting conditional certification of the Class and Preliminary Approval of the Settlement; appointing the Class Representative, Class Counsel, and Settlement Administrator; approving the Notice Packet; and setting the Final Approval hearing.
 - c. Should the Court decline to conditionally certify the Class or to Preliminarily Approve all material aspects of the Settlement with prejudice, the Settlement will be null and void, and the Parties will have no further obligations under it. The amounts of the Attorney Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement Payment shall be determined by the Court, the Court's determination on these amounts shall be final and binding, and the Court's approval or denial of any amount requested for these items are not conditions of this Agreement and are to be considered separate and apart from the fairness, reasonableness, and adequacy of the Settlement. Any order or proceeding relating to an application for the Attorney Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement Payment shall not operate to terminate or cancel this Settlement Agreement.
2. **Notice to Class Members.** After the Court enters its Preliminary Approval Order, every Class Member will be provided with the Notice Packet in accordance with the following procedure:
- a. **Class Data.** Within twenty-one (21) calendar days after entry of the Preliminary Approval Order, Defendant shall deliver to the Class Data to the Settlement Administrator.
 - b. **Updating Addresses.** Upon receipt of the Class Data, the Settlement Administrator will perform a search based on the National Change of Address Database ("NCOA") to update and correct any known or identifiable address changes. The Settlement Administrator shall maintain the Class Data as private and confidential and take reasonable and necessary precautions to maintain the confidentiality of the Class Data. The Settlement Administrator shall not distribute or use the Class Data or any information contained for any purpose other than to administer this Settlement.

- c. **Mailing.** Within fourteen (14) calendar days after Defendant's deadline to provide the Class Data to the Settlement Administrator, the Settlement Administrator will mail the Notice Packet to all identified Class Members via first-class regular U.S. Mail.
- d. **Remailing.** If a Notice Packet is returned because of an incorrect address, within ten (10) days from receipt of the returned Notice Packet, the Settlement Administrator will conduct a search for a more current address for the Class Member and re-mail the Notice Packet to the Class Member. The Settlement Administrator will use the NCOA and skip traces to attempt to find the current address. The Settlement Administrator will be responsible for taking reasonable steps to trace the mailing address of any Class Member for whom a Notice Packet is returned by U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum: (1) the tracking of all undelivered mail; (2) performing address searches for all mail returned without a forwarding address; and (3) promptly re-mailing to Class Members for whom new addresses are found. If the Settlement Administrator is unable to locate a better address, the Notice Packet shall be re-mailed to the original address. If the Notice Packet is re-mailed, the Settlement Administrator will note for its own records the date and address of each re-mailing. Those Class Members who receive a re-mailed Notice Packet, whether by skip-trace or forwarded mail, will have an additional twenty-one (21) calendar days to postmark an Exclusion Form or file and serve an objection to the Settlement or dispute the information provided in their Notice Packet. The Settlement Administrator shall mark on the envelope whether the Notice Packet is a re-mailed notice.
- e. **Submitting Disputes.** Class Members may dispute the information provided in their Notice Packet, but must do so in writing, via first class mail, and it must be postmarked by the Response Deadline. To the extent Class Members dispute the number of weeks to which they have been credited or the amount of their Individual Settlement Share, Class Members must produce evidence to the Settlement Administrator showing that such information is inaccurate. Absent evidence rebutting Defendant's records, Defendant's records will be presumed determinative. However, if a Class Member produces evidence to the contrary, the Parties will evaluate the evidence submitted by the Class Member and will make the final decision as to the number of eligible weeks that should be applied and/or the Individual Settlement Share to which the Class Member may be entitled.

- f. Deficient Exclusion Form.** If any Exclusion Form received is incomplete or deficient, the Settlement Administrator shall send a letter informing the Class Member of the deficiency and allow fourteen (14) days to cure the deficiency. If after the cure period the Exclusion Form is not cured, it will be determined that the Class Member did not exclude himself or herself from the Settlement and will be bound by the Settlement.
- g. Objections.** If the Settlement Administrator receives objections to the Settlement, the Settlement Administrator shall immediately, but in no event later than the business day after it receives such objections, notify the Parties' counsel of the objections and provide copies of the objections via email.
- h. Weekly Reports.** The Settlement Administrator shall provide a weekly status report to the Parties. As part of its weekly status report, the Settlement Administrator will inform the Parties' counsel of the number of Notice Packets mailed, the number of Notice Packets returned as undeliverable, the number of Notice Packets remailed, and the number of Exclusion Forms received.
- i. Settlement Administrator's Declaration.** No later than fourteen (14) calendar days after the Response Deadline, the Settlement Administrator will serve on the Parties a declaration of due diligence setting forth its compliance with its obligations under this Agreement. The declaration shall also be filed with the Court by Class Counsel no later than ten (10) calendar days before the Final Approval hearing. Before the Final Approval hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

3. Objections to Settlement.

- a. Notice Packet.** The Notice Packet will provide that the Class Members who wish to object to the Settlement may do so in writing, signed, dated, and mailed to the Settlement Administrator postmarked no later than the Response Deadline.
- b. Format.** Any written objections shall state: (1) the objecting person's full name, address, and telephone number; (2) the words "Notice of Objection" or "Formal Objection;" (4) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (5) list identifying witness(es) the objector may call to testify at the Final Approval hearing; and (6)

provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval hearing.

- c. **Objectors' Appearances.** Class Members may (though are not required to) appear at the Final Approval hearing, either in person or through their own counsel. Class Members' timely and valid objections to the Settlement will be considered even if the objecting Class Members do not appear at the Final Approval Hearing. The failure to file and serve a written objection does not waive Class Members' right to appear at and make an oral objection at the Final Approval hearing. Finally, Class Members may appear at the Final Approval hearing even if they do not file objections to the Settlement.

4. Request for Exclusion from the Settlement ("Opt-Out").

- a. **Notice Packet.** The Notice Packet will provide Class Members who wish to exclude themselves from the class action Settlement must mail to the Settlement Administrator an Exclusion Form.
- b. **Format.** Any written request for exclusion must: (1) include the Class Member's name, address, telephone number, and last four digits of the Social Security Number; (2) be addressed to the Settlement Administrator; (3) be signed by the Class Member; and (4) be postmarked no later than the Response Deadline.
- c. **No Opt Out From PAGA.** Class Members will not be able to exclude themselves from receiving their portion of the PAGA Payment. The Notice Packet will inform Class Members they cannot opt out of the PAGA portion of the Settlement and explain they will not be permitted to pursue any action under PAGA against the Released Parties even if they elect to Opt-Out of the class action portion of the Settlement.
- d. **Validity and Effect.** Any Class Member who returns a valid Exclusion Form will not participate in or be bound by the Settlement and Judgment and will not receive an Individual Settlement Share. A Class Member who does not complete and mail a valid Exclusion Form will be included in the Settlement, will receive an Individual Settlement Share, and be bound by all terms and conditions of the Settlement. This will occur as long as the Settlement is approved by the Court and by the Judgment, regardless of whether he or she has objected to the Settlement.
- e. **Report.** No later than seven (7) calendar days after the Response Deadline, the Settlement Administrator will provide the Parties

with a complete and accurate accounting of the number of Notice Packets mailed to Class Members, the number of Notice Packets returned as undeliverable, the number of Notice Packets remailed to Class Members, the number of remailed Notice Packets returned as undeliverable, the number of Class Members who objected to the Settlement and copies of their submitted objections, the number of Class Members who returned valid requests for exclusion, and the number of Class Members who returned invalid requests for exclusion.

- f. Defendant's Option to Terminate.** If more than ten percent (10%) of the Class Members submit Exclusion Forms, Defendant, at its sole option, may withdraw from the Settlement and this Agreement is null and void.

5. No Solicitation of Objection or Requests for Exclusion. Neither the Parties nor their respective counsel will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, request exclusion from the Settlement, or appeal from the Judgment.

6. Motion for Final Approval.

- a.** Class Counsel will file unopposed motions and memoranda in support thereof for Final Approval of the Settlement and the following payments in accord with the terms of the Settlement: (1) Attorney Fee Award; (2) Cost Award; (3) Administrative Costs; (4) Class Representative Enhancement Payment; and (5) PAGA Payment. Class Counsel will also move the Court for an order of Final Approval (and associated entry of Judgment) releasing and barring any Released Claims of the Participating Class Members and the PAGA Released Claims of the Class Members.
- b.** If the Court denies Final Approval of the Settlement with prejudice, or if the Court's Final Approval of the Settlement is reversed or materially modified on appellate review, then this Settlement will become null and void. If that occurs, the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount or any amounts that otherwise would have been owed under this Agreement. Further, should this occur, the Parties agree they shall be equally responsible for the Settlement Administrator's Administration Costs through that date. An award by the Court of a lesser amount than sought by Plaintiff and Class Counsel for the Class Representative Enhancement Payment, Attorney Fee Award, and/or Cost Award, will not constitute a material modification to the Settlement.

- c. Upon Final Approval of the Settlement, the Parties shall present to the Court a proposed Final Approval Order, approving the Settlement and entering Judgment in accordance therewith. Such entry of final Judgment shall operate to permanently bar and enjoin all Class Members (excluding those who submit a valid and timely Opt-Out form) from instituting, commencing, prosecuting, or pursuing, either directly or in any other capacity, any of the claims, damages, causes of action, or claims for attorneys' fees asserted in the Action or identified as Released Claims in this Agreement. Notwithstanding the entry of final judgment in the Actions, the Court shall retain jurisdiction to interpret and enforce this Agreement pursuant to Code of Civil Procedure section 664.6. After entry of Judgment, the Court shall have continuing jurisdiction over the Action for purposes of: (1) enforcing this Settlement Agreement; (2) addressing settlement administration matters, and (3) addressing such post-Judgment matters as may be appropriate under Court rules and applicable law.
 - d. Except as to Class Members who timely submit a valid Exclusion Form the Preliminary Approval Order and Final Judgment will contain provisions enjoining Plaintiff and the Class Members from prosecuting the claims released herein and enjoining Plaintiff and the Class Members from initiating or continuing other proceedings regarding the claims released herein, including but not limited to filing any claims for monetary relief of the Released Claims before the Division of Labor Standards and Enforcement ("DLSE") or in any forum whatsoever. Inclusion of these provisions in the Order of Preliminary Approval Order and Final Judgment and Order of Final Approval is a material part of the consideration for this Settlement. After approval of this Agreement at the Final Approval Hearing and upon receipt of the final payment, the Participating Class Members and the Class Representative each release the Released Parties, and each of them, of and from any and all of the Released Claims.
7. **Vacating, Reversing, or Modifying Judgment on Appeal.** If, after a notice of appeal, the reviewing court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement, and that court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher court, then this Settlement will become null and void and the Parties will have no further obligations under it. A material modification would include, but not necessarily be limited to, any alteration of the Gross Settlement Amount.
8. **Disbursement of Settlement Shares and Payments.** Subject to the Court finally approving the Settlement, the Settlement Administrator shall

distribute funds pursuant to the terms of this Agreement and the Superior Court's Final Approval Order and Judgment. The maximum amount Defendant can be required to pay under this Settlement for any purpose is the Gross Settlement Amount. The Settlement Administrator shall keep the Parties' counsel apprised of all distributions from the Gross Settlement Amount. The Settlement Administrator shall respond to questions from the Parties' counsel. No person shall have any claim against the Parties, the Parties' counsel, or the Settlement Administrator based on the distributions and payments made in accordance with this Agreement.

- a. **Funding the Settlement:** If no objection to the Settlement is made, Defendant will pay fifty percent (50%) of the Gross Settlement Amount by wiring the funds to the Settlement Administrator no later than thirty (30) days after entry of the order granting final approval. If an objection is made but no appeal filed, Defendant will pay fifty percent (50%) the Gross Settlement Amount by wiring the funds to the Settlement Administrator no later than twenty-one (21) days after the running of the appeal period. If an appeal is filed, Defendant will pay fifty percent (50%) the Gross Settlement Amount by wiring the funds to the Settlement Administrator no later than twenty-one (21) days after the final judgment becomes final and is no longer subject to appeal. Defendant will pay the remaining fifty percent (50%) of the Gross Settlement Amount by wiring the funds to the Settlement Administrator no later than November 10, 2023. Defendant shall also at these times provide any tax information the Settlement Administrator may need to calculate each Participating Class Members' Individual Settlement Shares.
- b. **Disbursement:** Within fourteen (14) calendar days after Defendant fully funds the Settlement, the Settlement Administrator shall calculate and disburse all payments due under the Settlement Agreement, including all Individual Settlement Shares, Attorney Fee Award, Cost Award, Class Representative Enhancement Payment, PAGA Payment, and Administration Costs. The Settlement Administrator will also forward a check for seventy-five percent (75%) of the PAGA Payment to the LWDA for settlement of the PAGA claim. After such payment, Defendant shall have no liability for PAGA claims by or on behalf of Class Members, which are released under this Agreement.
- c. **QSF:** The Parties agree that the QSF is intended to be a "Qualified Settlement Fund" under Section 468B of the Code and Treasury Regulations section 1.468B-1, 26 C.F.R. sections 1.468B-1, *et seq.* and will be administered by the Settlement Administrator as such. The Parties and Settlement Administrator shall treat the QSF

as coming into existence as a Qualified Settlement Fund on the earliest date permitted as set forth in 26 C.F.R. section 1.468B-1, and such election statement shall be attached to the appropriate returns as required by law.

- 9. Void or Uncashed Checks.** Participating Class Members and Class Members must cash or deposit their Individual Settlement Share checks within one hundred eighty (180) calendar days after the checks are mailed to them. If any checks are returned as undeliverable and without a forwarding address, the Settlement Administrator will conduct a skip trace search to find the most up to date mailing address and remail the checks promptly. If any checks are not redeemed or deposited within ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard indicating that unless the check is redeemed or deposited in the next ninety (90) calendar days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced. If any checks remain uncashed or not deposited by the expiration of the 90-day period after mailing the reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after the checks are mailed, pay the amount of the Individual Settlement Share to the State Controller's Unclaimed Property Fund in the name of the Class Member.
- 10. Final Report by Settlement Administrator.** Within ten (10) calendar days after the disbursement of all funds, the Settlement Administrator will serve on the Parties a declaration providing a final report on the disbursements of all funds.
- 11. Defendant's Legal Fees.** Defendant is responsible for paying for all of Defendant's own legal fees, costs, and expenses incurred in this Action outside of the Gross Settlement Amount.
- I. Release of Claims.** As of the Effective Final Settlement Date, in exchange for the consideration set forth in this Agreement, Plaintiff and the Participating Class Members release the Released Parties from the Released Claims for the Class Period.
- J. PAGA Released Claims.** As of the Effective Final Settlement Date, the LWDA and each Class Member, including Plaintiff, individually and on behalf of their heirs, executors, administrators, representatives, attorneys, successors, and assigns voluntarily and knowingly are barred from bringing a lawsuit for the PAGA Released Claims. The release of the PAGA Released Claims is effective, regardless of whether the Class Member purports to submit a timely and valid request for exclusion.
- K. Plaintiff's Release of Claims and General Release.** As of the Effective Final Settlement Date, and in exchange for the Class Representative Enhancement

Payment to Plaintiff in an amount not to exceed \$10,000, in recognition of his work and efforts in obtaining the benefits for the Class, and undertaking the risk for the payment of costs if this matter had not successfully resolved, Plaintiff provide a general release of claims for himself and his spouse, heirs, successors and assigns, and forever releases, remises, and discharges the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties and expenses of any nature whatsoever, arising from the beginning of time through the date of the Court grants Preliminary Approval, known or unknown, suspected or unsuspected, whether in tort, contract, equity, or otherwise, for violation of any federal, state or local statute, rule, ordinance or regulation, including but not limited to all claims arising out of, based upon, or relating to his employment with Defendant or the remuneration for, or termination of, such employment. Plaintiff's Release of Claims includes a waiver of Civil Code section 1542, which provides:

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.

If any claim is not subject to release, Plaintiff waives any right or ability to be a class or collective action representative or to otherwise participate in any putative or certified class, collective or multi-party action or proceeding based on such a claim in which Defendant or any of the other Released Parties identified in this Settlement Agreement is a party.

L. Miscellaneous Terms

- 1. No Admission of Liability.** Defendant makes no admission of liability or wrongdoing by virtue of entering into this Agreement. Defendant reserves the right to contest any issues relating to class certification and liability if the Settlement is not approved. Defendant denies that it has engaged in any unlawful activity, has failed to comply with the law in any respect, has any liability to anyone under the claims asserted in the Action, or that but for the Settlement, a Class should be certified in the Action or could proceed on a representative basis. This Agreement is entered solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant of liability or wrongdoing. This Settlement and the Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation, administrative proceeding, or other special proceeding (other than solely in connection with this Settlement).
- 2. No Effect on Employee Benefits.** The Class Representative Enhancement Payment and Individual Settlement Shares paid to Plaintiff, Participating

Class Members, and/or the Class Members shall not be deemed to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (*e.g.*, vacation, holiday pay, retirement plans, etc.) of Plaintiff, Participating Class Members, or Class Members. The Parties agree that any Class Representative Enhancement Payment and Individual Settlement Shares paid to Plaintiff, Participating Class Members, and/or the Class Members under the terms of this Agreement do not represent any modification of Plaintiff's, Participating Class Members', or Class Members' previously credited hours of service or other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by Defendant.

3. **Publicity.** Defendant may disclose the details of this Settlement as required under its legal obligations. Plaintiff and Class Counsel shall make no public statement or release. This provision shall not apply to the filing of any documents with the Court or the LWDA that are necessary to effectuate the Settlement. This provision is also not intended to interfere with or restrict: (1) the Settlement Administrator from distributing the Notice Packets and otherwise complying with its obligation to provide information to affected Class Members; (2) the Settlement Administrator from posting any judgment on its website; and (3) Class Counsel from disclosing the Parties' names in this Action and the venue/case number of this Action for purposes of proving adequacy.
4. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire Agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any party concerning this Agreement or its exhibits, other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.
5. **Authorization to Enter This Settlement Agreement.** The Parties' Counsel warrant and represent they are authorized by the Parties to take all appropriate action required or permitted to be taken under this Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. If Parties are unable to reach agreement on the form or content of any document needed to implement this Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court, and in all cases, all such documents, supplemental provisions, and assistance of the Court will be consistent with this Agreement.

- 6. Exhibits and Headings.** The terms of this Agreement include the terms set forth in the attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibits to this Agreement are an integral part of the Settlement and must be approved substantially as written. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.
- 7. Interim Stay of Proceedings.** The Parties agree to stay and hold all proceedings in the Action in abeyance, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the Court.
- 8. Amendment or Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by the Parties' counsel or their successors-in-interest.
- 9. Agreement Binding on Successors and Assigns.** This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Parties, as previously defined.
- 10. No Prior Assignment.** Plaintiff hereby represents, covenants, and warrants that he has not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged.
- 11. Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the California, without giving effect to any conflict of law principles or choice of law principles.
- 12. Fair, Adequate, and Reasonable Settlement.** The Parties and their counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arm's-length negotiations, considering all relevant factors, current, and potential.
- 13. No Tax or Legal Advice.** The Parties understand and agree the Parties are neither providing tax or legal advice, nor making representations regarding tax obligations or consequences, if any, related to this Agreement. The Parties understand and agree Plaintiff, Class Counsel, Class Members, and Participating Class Members will assume any such tax obligations or consequences that may arise from any disbursements made under this Agreement. The Parties also understand and agree Plaintiff, Class Counsel,

Class Members, and Participating Class Members shall not seek any indemnification from the Parties or any of the Released Parties in this regard. The Parties agree if any taxing body determines that additional taxes are due from any recipient of a disbursement under this agreement, such recipient assumes all responsibility for the payment of such taxes.

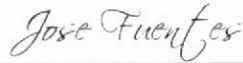
- 14. Jurisdiction of the Superior Court.** The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgment entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Superior Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all orders and judgments in connection therewith.
- 15. Invalidity of Any Provision; Severability.** Before declaring any provision of this Agreement invalid, the Parties request that the Court first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. If any provision of this Agreement shall be found unenforceable, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.
- 16. 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.
- 17. Execution in Counterparts.** This Agreement may be executed in one or more counterparts. All executed counterparts will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile or PDF signatures will be accepted. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
- 18. Escalation Clause.** The Parties estimate the total Weeks Worked by Class Members during the Class Period is no more than 6,556. If the number of Weeks Worked is determined to be more than ten percent (10%) higher than 6,556 (i.e., 7,212), the Gross Settlement Amount shall be increased on a pro-rata basis for any Weeks Worked added above ten percent (10%).

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.

Dated: 11/21/2022, 2022

JESUS FUENTES



Dated: _____, 2022

**APEX CONTRACTING AND RESTORATION,
INC.**

By: Eric Schweinfurter
Title: CFO

Dated: November 22, 2022

JUSTICE LAW CORPORATION



Douglas Han, Esq.
Shunt Tatavos-Gharajeh, Esq.
Lizette Rodriquez, Esq.
Attorneys for Plaintiff Jesus Fuentes, on behalf of
himself and all others similarly situated

Dated: November 20, 2022

FREEMAN MATHIS & GARY, LLP



Mandy D. Hexom, Esq.
Gaia T. Linehan, Esq.
Attorneys for Apex Contracting and Restoration, Inc.

IV. EXECUTION BY PARTIES AND COUNSEL

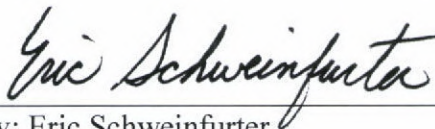
The Parties and their counsel execute this Agreement.

Dated: _____, 2022

JESUS FUENTES

Dated: November 22, 2022

**APEX CONTRACTING AND RESTORATION,
INC.**



By: Eric Schweinfurter

Title: CFO

Dated: _____, 2022

JUSTICE LAW CORPORATION

Douglas Han, Esq.

Shunt Tatavos-Gharajeh, Esq.

Lizette Rodriquez, Esq.

Attorneys for Plaintiff Jesus Fuentes, on behalf of
himself and all others similarly situated

Dated: November 20, 2022

FREEMAN MATHIS & GARY, LLP



Mandy D. Hexom, Esq.

Gaia T. Linehan, Esq.

Attorneys for Apex Contracting and Restoration, Inc.

EXHIBIT A

CALIFORNIA SUPERIOR COURT, COUNTY OF SAN DIEGO

Jesus Fuentes v. Apex Contracting and Restoration, Inc.

Case No. 37-2022-00001417-CU-OE-CTL

NOTICE OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT

A court authorized this notice. This is not a solicitation.

This is not a lawsuit against you, and you are not being sued.

However, your legal rights are affected by whether you act or don't act.

TO: All current and former hourly-paid or non-exempt employees employed by Defendant Apex Contracting and Restoration, Inc. ("Defendant") within the State of California at any time between November 5, 2020 through May 20, 2022.

The Superior Court of California, County of San Diego, has granted preliminary approval of a proposed settlement ("Settlement") of the above-captioned class and representative action (referred to in this document as the "Action"). Because your rights may be affected by this Settlement, it is important that you read this Notice of Class and Representative Action Settlement ("Notice") carefully.

The Court has certified the following class for settlement purposes ("Class" or "Class Members"):

All current and former hourly-paid or non-exempt employees employed by Defendant within the State of California at any time between November 5, 2020 through May 20, 2022.

The purpose of this Notice is to provide a brief description of the claims alleged in the Action, the key terms of the Settlement, and your rights and options with respect to the Settlement.

YOU MAY BE ENTITLED TO MONEY UNDER THE PROPOSED SETTLEMENT. PLEASE READ THIS NOTICE CAREFULLY; IT INFORMS YOU ABOUT YOUR LEGAL RIGHTS.

WHAT INFORMATION IS IN THIS NOTICE

1. Why Have I Received This Notice?.....	Page 2
2. What Is This Case About?	Page 2
3. Am I a Class Member?	Page 2
4. How Does This Action Settlement Work?.....	Page 3
5. Who Are the Attorneys Representing the Parties?	Page 3
6. What Are My Options?.....	Page 4
7. How Do I Opt Out Or Exclude Myself From The Class Action Portion of the Settlement?.....	Page 4
8. How Do I Object to the Settlement?	Page 4
9. How Does This Settlement Affect My Rights? What are the Released Claims?	Page 5
10. How Much Can I Expect to Receive From This Settlement?.....	Page 6
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13. Final Approval Hearing.....	Page 8
14. How Do I Get More Information?.....	Page 8

1. *Why Have I Received This Notice?*

The personnel records of Defendant indicate you may be a Class Member. The Settlement will resolve all Class Members' Released Claims, as described below, from November 5, 2020 through May 20, 2022 (the "Class Period").

A Preliminary Approval Hearing was held on [the date of preliminary approval], in the Superior Court of California, County of San Diego. The Court conditionally certified the Class for settlement purposes only and directed that you receive this Notice. The Court has determined there is sufficient evidence to suggest the proposed settlement may be fair, adequate, and reasonable and that any final determination of those issues will be made at the Final Approval Hearing.

The Court will hold a Final Approval Hearing concerning the proposed settlement on [the date of final approval hearing] at [time a.m./p.m.], before the Honorable Ronald F. Frazier, at the Superior Court of California, County of San Diego (Hall of Justice), located at 330 West Broadway, San Diego, California 92101, Department C-65.

2. *What Is This Case About?*

On November 5, 2021, Plaintiff, a former employee of Defendant, provided written notice to the California Labor and Workforce Development Agency ("LWDA") and Defendant of the specific provisions of the Labor Code he contends were violated and the theories supporting his contentions. On January 12, 2022, Plaintiff filed a representative PAGA action in the Superior Court of California, County of San Diego, alleging the following: (1) failure to pay minimum and overtime wages; (2) failure to provide paid sick leave; (3) failure to provide meal periods and rest breaks; (4) failure to timely pay wages during employment; (5) failure to timely pay wages upon termination; (6) failure to provide complete and accurate wage statements; (7) failure to keep complete and accurate payroll records; and (8) failure to reimburse business expenses.

On May 5, 2022, the Parties attended mediation with the mediator Lynn Frank that resulted in the settlement of the Action, subject to the Court's approval. In line with the decision to settle the Action, Plaintiff provided an amended written notice to the LWDA and Defendant on May 12, 2022. Plaintiff then filed a First Amended Complaint on June 22, 2022 that added nine (9) wage-and-hour class action causes of action and adjusted the Class definition.

The Court has not made any determination as to whether the claims advanced by Plaintiff have any merit. It has not been decided whether this case could proceed as a class or representative action. Instead, both sides agreed to resolve the Action with no decision or admission of who is right or wrong. In other words, the Court has not determined that Defendant violated any laws, nor has it decided in favor of Plaintiff or Defendant. Instead, both sides have agreed to resolve the Action with no decision or admission of who is right or wrong. By agreeing to resolve the Action, the Parties avoid the risks and costs of a trial.

Defendant denies all allegations made by Plaintiff, individually and on behalf of Class Members, in the Action and denies liability for any wrongdoing with respect to the alleged facts or causes of action asserted in the Action. The settlement is not an admission by Defendant of any wrongdoing or an indication that any law was violated.

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3. *Am I A Class Member?*

You are a Class Member if you are a current and former hourly-paid or non-exempt employee employed by Defendant within the State of California at any time between November 5, 2020 through May 20, 2022. If you qualify as a Class Member, you could receive money from the class action portion of the Settlement.

4. *How Does This Action Settlement Work?*

Plaintiff sued on behalf of himself and all other similarly situated employees who were employed by Defendant as hourly-paid or non-exempt employees in California at any time during the Class Period. Plaintiff and other current and former employees comprise a "Class" and are "Class Members." The settlement of this Action resolves the Released Claims of all Class Members, except for those who exclude themselves from the Class by requesting to be excluded in the manner set forth below.

Plaintiff and Class Counsel believe the Settlement is fair and reasonable. The Court must also review the terms of the Settlement and determine if it is fair and reasonable to the Class. The Court file has the Settlement documents, which explain the Settlement in greater detail. If you would like copies of the Settlement documents, you can contact Class Counsel, whose contact information is below, and they will provide you with a free copy.

5. *Who Are the Attorneys Representing the Parties?*

Attorneys for Plaintiff and the Class	Attorneys for Defendant
JUSTICE LAW CORPORATION Douglas Han Shunt Tatavos-Gharajeh Lizette Rodriguez 751 N. Fair Oaks Avenue, Suite 101 Pasadena, California 91103 Telephone: (818) 230-7502 Facsimile: (818) 230-7259	FREEMAN MATHIS & GARY, LLP Many D. Hexom Gaia T. Linehan 225 Broadway, Suite 1460 San Diego, California 92101 Telephone: (619) 687-3000

The Court has decided that Justice Law Corporation is qualified to represent the Class Members simultaneously for the purposes of this Settlement. Class Counsel is working on your behalf. If you want your own attorney, you may hire one at your own cost.

6. *What Are My Options?*

The purpose of this Notice is to inform you of the proposed Settlement and your options. Each option has its consequences, which you should understand before making your decision. Your rights regarding each option, and the steps you must take to select each option, are summarized below and explained in more detail in this Notice.

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Important Note: Defendant will not retaliate against you in any way for either participating or not participating in this Settlement.

- **DO NOTHING:** You do not have to do anything to receive payment under this Settlement.

If you do nothing and the Court grants final approval of the Settlement, you will become part of the class action portion of the Settlement and will receive an Individual Settlement Share (explained below) based on the total number of workweeks you were employed by Defendant as an hourly-paid or non-exempt employee in California during the Class Period. You will release all the Released Claims as defined in Section No. 9 below and you will give up your right to pursue the Released Claims, as defined in Section No. 9 below.

- **OPT-OUT:** If you do not want to participate as a Class Member **and do not want to receive a class action settlement payment**, you may “opt-out,” and you will not be part of the class action portion of the Settlement. If the Court grants final approval of the Settlement, you will not receive an Individual Settlement Share, and you will not give up the right to sue the Released Parties, including Defendant, for any of the Released Claims as defined in Section No. 9 below. Please note that you will still receive your portion of the PAGA Payment and be bound by the PAGA Released Claims as defined in Section No. 9 below even if you opt out of the class action portion of the Settlement. Your right to pursue a claim pursuant to PAGA will be extinguished regardless of whether or not you opt-out.

- **OBJECT:** You can ask the Court to deny approval of this Settlement by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. You cannot both object to the Settlement and opt out of the case.

The procedures for opting out and objecting are set forth below in the sections entitled “How Do I Opt-Out or Exclude Myself From This Settlement” and “How Do I Object To The Settlement?”

7. How Do I Opt Out Or Exclude Myself From The Class Action Portion of the Settlement?

If you do not wish to participate in the class action portion of the Settlement, **and do not want to receive an Individual Settlement Share**, you can exclude yourself from the Settlement (*i.e.*, “opt-out”) by sending an opt-out form by the date and to the address stated below. A form (“ELECTION NOT TO PARTICIPATE IN (“OPT-OUT” FROM) CLASS ACTION SETTLEMENT”) (the “Exclusion Form”) has been provided to you along with this Notice, which can be used for this purpose. Alternatively, you can submit your own written document that includes all the same information included in the Exclusion Form. If you opt-out of the Settlement, you will not be bound by the class action portion of the Settlement, and you will not release the Released Claims set forth in Section No. 9. The Exclusion Form must be complete, signed, dated, and mailed by First-Class U.S. Mail, **postmarked no later than** [REDACTED] to: **Apex Contracting and Restoration, Inc. Settlement Administrator, C/O SIMPLURIS, INC., [INSERT ADDRESS]**.

If you received a remailed Notice and Exclusion Form (collectively, known as the “Notice Packet”), whether, by skip-trace or forwarded mail, you will have an additional twenty-one (21) calendar days to postmark an Exclusion Form. The envelope should indicate whether the Notice Packet has been forwarded or remailed. We

encourage you to keep copies of all documents, including the envelope, in the event your compliance with the deadline is challenged.

The Court will exclude from the class action portion of the Settlement any Class Member who submits a complete and timely Exclusion Form as described in the preceding paragraph. Exclusion Forms that do not include all required information and/or that are not timely submitted will be deemed null, void, and ineffective. Any Class Member who fails to submit a valid and timely Exclusion Form on or before the above-specified deadline shall be bound by all terms of the Settlement, release, and any Judgment entered in the Action if the Settlement receives final approval from the Court.

8. *How Do I Object To The Settlement?*

If you are a Class Member who does not opt-out of the Settlement, you may object to the Settlement, personally or through an attorney.

You may mail a written objection to the Settlement Administrator at [address] by [the Response Deadline]. If you received a remailed Notice Packet, whether, by skip-trace or forwarded mail, you will have an additional twenty-one (21) calendar days to postmark a written objection. If you choose to object in writing your objection must state: (1) the objecting person's full name, address, and telephone number; (2) the words "Notice of Objection" or "Formal Objection;" (3) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (4) list identifying witness(es) the objector may call to testify at the Final Approval Hearing; and (5) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval Hearing.

Class Members may (though are not required to) appear at the Final Approval Hearing, either in person or through their own counsel. Class Members' timely and valid objections to the Settlement will be considered even if the objecting Class Members do not appear at the Final Approval Hearing. The failure to file and serve a written objection does not waive Class Members' right to appear at and make an oral objection at the Final Approval Hearing. Finally, Class Members may appear at the Final Approval Hearing even if they do not file objections to the Settlement.

If the Court approves the settlement over objections, objecting Class Members will receive an Individual Settlement Share and will be bound by the terms of the Settlement.

9. *How Does This Settlement Affect My Rights? What are the Released Claims?*

If the proposed Settlement is approved by the Court, a Final Judgment will be entered by the Court. All Class Members who do not opt-out of the Settlement will be bound by the Court's Final Judgment and will fully release and discharge Defendant and its parents, predecessors, successors, all affiliates, subsidiaries, officers, directors, members, agents, employees, and stockholders ("Released Parties"). The Released Claims are as follows:

A. Released Claims.

The Released Claims means any and all wage-and-hour claims, rights, demands, liabilities, and causes of action of every nature and description whether alleged or could have been alleged arising from or related to the claims litigated in the Complaints against Defendant that arose during the Class Period. This Released Claims are based upon the following categories of allegations: (1) failure to pay minimum wages; (2) failure pay overtime wages;

(3) failure to provide meal breaks or pay premium wages for noncompliant meal breaks; (4) failure to provide rest breaks or pay premium wages for noncompliant rest breaks; (5) failure to provide accurate itemized wage statements; (6) failure to compensate employees for rest and recovery periods and other unproductive time; (7) failure to reimburse business expenses; (8) failure to pay all wages due during employment and upon termination of employment; (9) violation of California's unfair business practices laws; (10) violation of California's unfair competition laws; and (11) any potential penalties, interests, or attorneys' fees associated with these causes of action under California law ("Released Claims").

B. PAGA Released Claims.

Even if Class Members submit timely and valid Exclusion Forms, they will still be bound by the PAGA portion of the Settlement. The PAGA Released Claims means all allegations and claims for civil penalties pursuant to PAGA based on any and all underlying Labor Code violations alleged in the Complaints or in the PAGA Notices that arose during the Class Period. This includes the alleged violations of Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.2, 226.3, 226.7, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802 ("PAGA Released Claims").

10. How Much Can I Expect to Receive From This Settlement?

Defendant will pay, subject to Court approval, a Gross Settlement Amount of \$250,000 to cover: (1) Individual Settlement Shares to all Class Members who do not submit a valid and timely request to exclude themselves from the class action Settlement ("Participating Class Members"); (2) Class Representative Enhancement Payment in an amount of \$10,000 to Plaintiff; (3) Administration Costs to the Settlement Administrator in an amount currently estimated at \$7,200 but not to exceed \$12,500; (4) Attorney Fee Award to Class Counsel in an amount of \$87,500 and Cost Award to Class Counsel of up to \$20,000 supported by declaration; (5) PAGA Payment for settlement of claims under PAGA for \$20,000, seventy-five percent (75%) of which (\$15,000) shall be paid to the LWDA, and twenty-five percent (25%) of which (\$5,000) shall be part of the Net Settlement Amount to be distributed to Class Members, on a pro rata basis.

After deducting the Class Representative Enhancement Payment, Administration Costs, Attorney Fee Award, Cost Award, and PAGA Payment, the estimated sum of \$105,000 is the "Net Settlement Amount," which shall be distributed to all Participating Class Members.

The Individual Settlement Share will be calculated by the Settlement Administrator based on each Participating Class Member's pro rata share of the Net Settlement Amount based on the Weeks Worked during the Class Period using the following formula: (1) number of Week Worked by the Participating Class Member as an hourly-paid or non-exempt employee during the Class Period, divided by (2) total number of Weeks Worked by all Participating Class Members during the Class Period, which is then multiplied by the Net Settlement Amount.

Although your exact share of the Net Settlement Amount cannot be precisely calculated until after the Response Deadline, based upon the calculation above, your approximate share of the Net Settlement Amount is as follows: \$ [redacted], less taxes. This is based on Defendant's records showing that your number of Weeks Worked attributed to you during the Class Period is [redacted].

If you believe the number of Weeks Worked attributed to you are incorrect, you may provide documentation and/or an explanation to show contrary information to the Settlement Administrator at [address] on or before [the Response Deadline]. Any evidence submitted will be carefully weighed, and the Parties' counsel will make a final

determination. If this Notice was remailed to you, you have an additional twenty-one (21) calendar days to submit a dispute.

Twenty percent (20%) of your Individual Settlement Share will be treated as unpaid wages. Applicable taxes will be withheld from the wages portion of your Individual Settlement Share only and reported on an IRS Form W-2. The remaining eighty percent (80%) of your Individual Settlement Share will be treated as penalties and interest and will be paid pursuant to an IRS Form 1099.

If no objection to the Settlement is made, Defendant will pay fifty percent (50%) of the Gross Settlement Amount by wiring the funds to the Settlement Administrator no later than thirty (30) days after entry of the order granting final approval. If an objection is made but no appeal filed, Defendant will pay fifty percent (50%) the Gross Settlement Amount by wiring the funds to the Settlement Administrator no later than twenty-one (21) days after the running of the appeal period. If an appeal is filed, Defendant will pay fifty percent (50%) the Gross Settlement Amount by wiring the funds to the Settlement Administrator no later than twenty-one (21) days after the final judgment becomes final and is no longer subject to appeal. Defendant will pay the remaining fifty percent (50%) of the Gross Settlement Amount by wiring the funds to the Settlement Administrator no later than November 10, 2023. Within fourteen (14) calendar days after Defendant fully funds the Settlement, the Settlement Administrator shall calculate and disburse all payments due under the Settlement Agreement.

It is strongly recommended that upon receipt of your Individual Settlement Share check, you immediately cash it or cash it before the 180-day void date shown on each check. If any checks remain uncashed or not deposited by the expiration of the 180-day period after mailing, the Settlement Administrator will, within two hundred (200) calendar days after the checks are mailed, pay the amount of the Individual Settlement Share to the State Controller's Unclaimed Property Fund in the name of the Class Member.

11. What is the PAGA Payment?

Under the terms of the Settlement, \$20,000 has been set aside as the PAGA Payment. This portion is the total amount of civil penalties collected on behalf of the State of California. Seventy-five percent (75%) of the PAGA Payment (\$15,000) shall be paid to the LWDA, and twenty-five percent (25%) of the PAGA Payment (\$5,000) shall be part of the Net Settlement Amount to be distributed to Class Members, on a pro rata basis.

The portion of the PAGA Payment allocated to Class Members will be calculated by the Settlement Administrator based on their Weeks Worked during the Class Period using the following formula: (1) the number of Week Worked by the Class Member as an hourly-paid or non-exempt employee during the Class Period, divided by (2) the total number of Weeks Worked by all Class Members collectively during the Class Period, which is then multiplied by twenty-five percent (25%) of the PAGA Payment (\$5,000) allocated to Class Members.

Based upon the calculation above, your portion of the PAGA Payment is \$. You are responsible for paying any federal, state, or local taxes owed as a result of this portion of the PAGA Payment.

Each Class Member's share of the PAGA Payment will be apportioned as one hundred percent (100%) penalties and shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms.

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Because these penalties can only be sought by the State of California, you cannot exclude yourself from the PAGA portion of the Settlement if the Court gives final approval. In other words, even if you exclude yourself from the class action portion of the Settlement, you will still be paid your portion of the civil penalties described above.

12. *How Will the Attorneys for the Class and the Class Representative Be Paid?*

Class Counsel will be paid from the Gross Settlement Amount. Subject to Court approval, Class Counsel shall be paid an amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount (or \$87,500) as the Attorney Fee Award and up to \$20,000 as the Cost Award.

Defendant has paid all its own attorneys' fees and costs.

As set forth in Section No. 10 above, the Plaintiff will also be paid a Class Representative Enhancement Payment, subject to Court approval.

13. *Final Approval Hearing*

The Court will hold a Final Fairness Hearing concerning the proposed settlement on [the date of final approval hearing] at [time a.m./p.m.], before Honorable Ronald F. Frazier, at the Superior Court of California, County of San Diego (Hall of Justice), located at 330 West Broadway, San Diego, California 92101, Department C-65. You are not required to appear at this hearing. Any changes to the Final Fairness Hearing date and time will be available on the Settlement Administrator's website [INSERT WEBSITE ADDRESS].

14. *How Do I Get More Information?*

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS OR WOULD LIKE ELECTRONIC COPIES OF DOCUMENTS RELATING TO THE ACTION OR THE SETTLEMENT, you may contact Class Counsel listed above or the Settlement Administrator at the telephone number listed in the footer of this document toll-free. Please refer to "Apex Contracting and Restoration, Inc. class action settlement."

This Notice does not contain all the terms of the Settlement or all the details of these proceedings. For more detailed information, you may refer to the underlying documents and papers on file with the Records Management Office at located at 330 West Broadway, San Diego, California 92101 between 8:30 a.m. and 4:00 p.m.

You may also contact the Settlement Administrator, whose contact information is indicated in the footer of this document, for more information. The Settlement Administrator will provide you with an electronic copy of the settlement documents or case documents free of charge.

PLEASE DO NOT TELEPHONE THE COURT OR COURT'S CLERK FOR INFORMATION ABOUT THIS SETTLEMENT.

EXHIBIT B

ELECTION NOT TO PARTICIPATE IN ("OPT OUT" FROM) CLASS ACTION SETTLEMENT

Superior Court of the State of California, County of San Diego

Jesus Fuentes v. Apex Contracting and Restoration, Inc.

Case No. 37-2022-00001417-CU-OE-CTL

ONLY SIGN AND MAIL THIS DOCUMENT IF YOU WISH TO EXCLUDE YOURSELF FROM THE CLASS ACTION PORTION OF THE SETTLEMENT. IF YOU EXCLUDE YOURSELF, YOU WILL NOT RECEIVE A PAYMENT FROM THE CLASS ACTION PORTION OF THE SETTLEMENT.

This document must be postmarked no later than _____ and sent via U.S. Mail to:

Apex Contracting and Restoration, Inc. Settlement Administrator, C/O SIMPLURIS, INC.

[Insert Administrator Address]

[City, State Zip Code]

By signing and mailing this form to exclude yourself from the class action portion of the Settlement, you are agreeing to and confirming the following:

It is my decision not to participate in the class action portion of the Settlement in *Jesus Fuentes v. Apex Contracting and Restoration, Inc.* I understand that by excluding myself I will not receive an Individual Settlement Share from the class action portion of the Settlement. However, I will still receive a portion of the Private Attorneys General Act of 2004 Payment regardless of whether I exclude myself from the class action portion of the Settlement.

I confirm I am and/or was employed as an hourly-paid or non-exempt employee of Apex Contracting and Restoration, Inc. within the State of California at any time between November 5, 2020 through May 20, 2022. I confirm that I have received and reviewed the Notice of Class and Representative Action Settlement in this Action. I have decided to be excluded from the Class, and I have decided **not** to participate in the class action portion of the Settlement.

Dated: _____

(Signature)

(Last Four Digits of Social Security Number)

(Type or print name and former name(s))

(Telephone Number)

(Address)

(Address continued)

EXHIBIT 2

01/20/2023 at 10:12:00 AM

Clerk of the Superior Court
By Vanessa Bahena, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

JESUS FUENTES, individually, and on behalf
of aggrieved employees pursuant to the Private
Attorneys General Act ("PAGA");

Plaintiff,

v.

APEX CONTRACTING AND
RESTORATION, INC., a California
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: 37-2022-00001417-CU-OE-CTL

Assigned for All Purposes to:
Honorable Ronald F. Frazier
Department C-65

CLASS ACTION

**AMENDED [~~PROPOSED~~] ORDER
GRANTING PLAINTIFF'S MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT,
CONDITIONAL CERTIFICATION,
APPROVAL OF CLASS NOTICE,
SETTING OF FINAL APPROVAL
HEARING DATE**

Hearing Date: December 22, 2022
Hearing Time: 1:30 p.m.
Hearing Place: Department C-65

Complaint Filed: January 12, 2022
FAC Filed: June 22, 2022
Trial Date: None Set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 The Motion for Preliminary Approval of Class Action Settlement came before this Court,
3 the Honorable Ronald F. Frazier presiding, on December 22, 2022 at 1:30 p.m. The Court having
4 considered the papers submitted in support of the Motion, HEREBY ORDERS THE
5 FOLLOWING:

6 1. The following Class is conditionally certified for purposes of settlement only: all
7 current and former hourly-paid or non-exempt employees employed by Defendant Apex
8 Contracting and Restoration, Inc. ("Defendant") within the State of California at any time between
9 November 5, 2020 through May 20, 2022 ("Class," "Class Members," and Class Period").

10 2. The Court grants preliminary approval of the settlement based upon the terms set
11 forth in the Amended Joint Stipulation and Settlement Agreement ("Settlement Agreement,"
12 "Settlement," or "Agreement"). Capitalized terms shall have the definitions set forth in the
13 Settlement Agreement.

14 3. The settlement embodied in the Settlement Agreement appears to be fair, adequate,
15 and reasonable to the Class. The Settlement falls within the range of reasonableness and appears
16 to be presumptively valid, subject only to any objections that may be raised at the Final Approval
17 Hearing and final approval by this Court.

18 4. Jesus Fuentes is conditionally approved to serve as the class representative.

19 5. Douglas Han, Shunt Tatavos-Gharajeh, and Lizette Rodriguez of Justice Law
20 Corporation are conditionally approved as Class Counsel for the Class.

21 6. The Court confirms Simpluris, Inc. ("Simpluris") as the Settlement Administrator.

22 7. The proposed Gross Settlement Amount of \$250,000 is conditionally approved.

23 8. The proposed payment of an Attorney Fee Award to Class Counsel not to exceed
24 thirty-five (35%) of the Gross Settlement Amount or \$87,500 and a Cost Award for actual litigation
25 costs to Class Counsel not to exceed \$20,000 are conditionally approved.

26 9. The proposed Class Representative Enhancement Payment of \$10,000 to Plaintiff
27 for his services as the class representative is conditionally approved.

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1 10. The proposed payment of Administration Costs not to exceed \$12,500 to Simpluris
2 for its services is conditionally approved.

3 11. The Court also hereby conditionally approves the Private Attorneys General Act of
4 2004 ("PAGA") Payment of \$20,000 the Parties have allocated for the settlement of the claims for
5 PAGA penalties stemming from the alleged Labor Code violations. Seventy-five percent (75%) of
6 the PAGA Payment (\$15,000) shall be paid to the California Labor and Workforce Development
7 Agency ("LWDA"), and twenty-five percent (25%) of the PAGA Payment (\$5,000) shall be part
8 of the Net Settlement Amount to be distributed to Class Members, on a pro rata basis.

9 12. A Final Approval Hearing on the question of whether the Settlement, the Attorney
10 Fee Award, Cost Award, and Class Representative Enhancement Payment should be finally
11 approved as fair, reasonable, and adequate as to all Class Members who do not submit a valid and
12 timely request to exclude themselves from the class action Settlement ("Participating Class
13 Members") is scheduled on the date and time set forth in paragraph 15 below.

14 13. The Court approves, as to form and content, the Notice of Class and Representative
15 Action Settlement ("Class Notice"), as attached as **Exhibit A** to the Agreement. The Court also
16 approves the procedure for Class Members to participate in, to opt out of, and to object to the
17 Settlement as set forth in the Class Notice. The Court approves, as to form and content, the Election
18 Not to Participate ("Opt Out" From) Class Action Settlement ("Exclusion Form") the Class
19 Members must use to exclude themselves from the Settlement, other than the release of claims
20 under PAGA, as attached as **Exhibit B** to the Agreement.

21 14. The Court directs the mailing of the Class Notice and Exclusion Form (collectively,
22 the "Notice Packet") to all identified Class Members via first-class regular U.S. Mail in accordance
23 with the implementation schedule set forth in paragraph 15 below. The Court finds the dates
24 selected for the mailing and distribution of the Notice Packet, as set forth in the Implementation
25 Schedule, meet the requirements of due process, provide the best notice practicable under the
26 circumstances, and shall constitute due and sufficient notice to all persons entitled.

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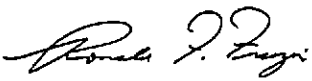
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15. The Court orders the following **Implementation Schedule** for further proceedings:

a.	Deadline for Defendant to submit the Class Data to Settlement Administrator	Within twenty-one (21) calendar days after entry of the Preliminary Approval Order
b.	Deadline for Settlement Administrator to mail the Notice Packet to Class Members	Within fourteen (14) calendar days after Defendant's deadline to provide the Class Data to the Settlement Administrator
c.	Deadline for Class Members to postmark disputes, requests for exclusion, or written objections to the Settlement Administrator	Within ninety (90) calendar days from initial mailing of the Notice Packet
d.	Deadline for Class Members to postmark disputes, requests for exclusion, or written objections to the Settlement Administrator if they received a remailed Notice Packet	Additional twenty-one (21) calendar days from the original Response Deadline
e.	Deadline for Class Counsel to file Motion for Final Approval of Settlement, Attorney Fee Award, Cost Award, and Class Representative Enhancement Payment	Sixteen (16) Court days before Final Approval Hearing in conformity with Code of Civil Procedure section 1005
f.	Final Approval Hearing and Final Approval	August 11, 2023 at 8:30 a.m. in Department C-65

IT IS SO ORDERED.

Dated: 01/20/2023

By 
Honorable Ronald F. Frazier
Judge of the Superior Court

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I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is manderson@justicelawcorp.com

On August 25, 2023, I served the foregoing document described as

for the following case: **Fuentes v. Apex Contracting and Restoration, Inc.**
 LWDA/Court Case No.: **LWDA Case No.: CM-851399-21**
Court Case No.: 37-2022-00001417-CU-OE-CTL
San Diego County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California

Labor & Workforce Development Agency

800 Capitol Mall, MIC-55

Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

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

Executed on August 25, 2023, at Pasadena, California.

Martin Andersen

Mariah Anderson