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JORGE L. LEON, and all others similarly situated
10 (Additional attorneys for parties on following page)

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF FRESNO**
13 **(UNLIMITED JURISDICTION)**
14

15 JORGE L. LEON, on behalf of himself and all
others similarly situated, and as an “aggrieved
16 employee” on behalf of other “aggrieved
employees” under the Labor Code Private
17 Attorneys General Act of 2004,

18 *Plaintiff(s),*

19 vs.
20

21 DAVIS & ROBERTS CONSTRUCTION, INC.,
a California corporation; and DOES 1–50,
22 inclusive,

23 *Defendant(s).*
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27
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Case No. 22CECG00407

**CLASS ACTION AND PAGA
SETTLEMENT AGREEMENT AND
CLASS NOTICE**

Action filed: February 08, 2022
Dept: 501, The Honorable D.
Tyler Tharpe

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This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Jorge L. Leon (“Plaintiff”) and defendant Davis & Roberts Construction, Inc. (“Davis & Roberts Construction, Inc.”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Davis & Roberts Construction, Inc. captioned “Jorge L. Leon, on behalf of himself, and all others similarly situated, and as an ‘aggrieved employee’ on behalf of other ‘aggrieved employees’ under the Labor Code Private Attorneys General Act of 2004, *Plaintiff(s)*, vs. Davis & Roberts Construction, Inc., a California corporation; and DOES 1 through 50, inclusive, *Defendant(s)*,” Case No. 22CECG00407 initiated on February 08, 2022 and pending in Superior Court of the State of California, County of Fresno.

1.2. “Administrator” means Simpluris, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.

1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.

1.4. “Aggrieved Employee” means a person employed by Defendant in California and classified as a hourly, non-exempt who worked for Defendant during the PAGA Period.

1.5. “Class” means all current and former hourly, nonexempt employees of Defendant in California during the Class Period.

1.6. “Class Counsel” means David G. Spivak of The Spivak Law Firm and Walter L. Haines of United Employees Law Group, PC.

1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.

1.8. “Class Data” means Class Member identifying information in Defendant’s possession including the Class Member’s name, last-known mailing address, Social Security number, and number of Class Period Work Weeks and PAGA Pay Periods.

1.9. "Class Member" or "Settlement Class Member" means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).

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

1.11. "Class Notice" means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English with a Spanish translation in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.

1.12. "Class Period" means the period from February 08, 2018 to the date of preliminary approval of this Settlement.

1.13. "Class Representative" means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.

1.14. "Class Representative Service Payment" means the payment to the Class Representative for initiating the Action and providing services in support of the Action.

1.15. "Court" means the Superior Court of California, County of Fresno.

1.16. "Defendant" means named Defendant Davis & Roberts Construction, Inc.

1.17. "Defense Counsel" means Ian B. Wieland and Amanda K. Miller of Sagaser, Watkins & Wieland PC.

1.18. "Effective Date" means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

1.19. "Final Approval" means the Court's order granting final approval of the Settlement.

1.20. "Final Approval Hearing" means the Court's hearing on the Motion for Final

1 Approval of the Settlement.

2 1.21. "Final Judgment" means the Judgment Entered by the Court upon Granting Final
3 Approval of the Settlement. A proposed Final Judgment form is attached as Exhibit F.

4 1.22. "Gross Settlement Amount" means \$166,713.47 which is the total amount
5 Defendant agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross
6 Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments,
7 the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative
8 Service Payment and the Administrator's Expenses. The Gross Settlement Amount is inclusive
9 of all amounts to be paid to Class Members as part of a "Pick Up Stix" campaign. With the
10 exception of the operation of the Escalator Clause below, under no circumstances will
11 Defendant's settlement payment exceed the Gross Settlement Amount. The Gross Settlement
12 Amount includes the \$56,713.47 Defendant paid to Class Members as part of its Pick-Up-Stix
13 campaign.

14 1.23. "Individual Class Payment" means the Participating Class Member's pro rata
15 share of the Net Settlement Amount calculated according to the number of Work Weeks worked
16 during the Class Period.

17 1.24. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of
18 25% of the PAGA Penalties calculated according to the number of Work Weeks worked during
19 the PAGA Period.

20 1.25. "Judgment" means the judgment entered by the Court based upon the Final
21 Approval.

22 1.26. "LWDA" means the California Labor and Workforce Development Agency, the
23 agency entitled, under Labor Code section 2699, subd. (i).

24 1.27. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the
25 LWDA under Labor Code section 2699, subd. (i).

26 1.28. "Net Settlement Amount" means the Gross Settlement Amount, less the following
27 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA
28 Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel
Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be
paid to Participating Class Members as Individual Class Payments.

1.29. "Non-Participating Class Member" means any Class Member who opts out of the

1 Settlement by sending the Administrator a valid and timely Request for Exclusion.

2 1.30. "Notice Packet" means the Class Notice (Exhibit A), the Election Not to
3 Participate in Settlement form (Exhibit B), the Work Week Dispute form (Exhibit C), and the
4 Objection form (Exhibit D) in English with Spanish translations.

5 1.31. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee
6 worked for Defendant for at least one day during the PAGA Period.

7 1.32. "PAGA Period" means the period from December 23, 2020 to the date of
8 preliminary approval of this Settlement.

9 1.33. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

10 1.34. "PAGA Notice" means Plaintiff's December 23, 2021 letter to Defendant and the
11 LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

12 1.35. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from
13 the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$1,000.00) and the
14 75% to LWDA (\$3,000.00) in settlement of PAGA claims.

15 1.36. "Participating Class Member" means a Class Member who does not submit a valid
16 and timely Request for Exclusion from the Settlement.

17 1.37. "Plaintiff" means Jorge L. Leon, the named plaintiff in the Action.

18 1.38. "Preliminary Approval" means the Court's Order Granting Preliminary Approval
19 of the Settlement.

20 1.39. "Preliminary Approval Order" means the proposed Order Granting Preliminary
21 Approval and Approval of PAGA Settlement. A proposed Preliminary Approval Order form is
22 attached as Exhibit E.

23 1.40. "Released Class Claims" means the claims being released as described in
24 Paragraph 6.2 below.

25 1.41. "Released PAGA Claims" means the claims being released as described in
26 Paragraph 6.2 below.

27 1.42. "Released Parties" means: Defendant and each of its officers, directors, employees
28 and agents.

1.43. "Request for Exclusion" means a Class Member's submission of a written request
to be excluded from the Class Settlement signed by the Class Member. An Election Not to
Participate in Settlement form is attached as Exhibit B.

1.44. “Response Deadline” means 60 days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.

1.45. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

1.46. “Workweek” means any week during which a Class Member worked for Defendant for at least one day, during the Class Period.

1.47. A Work Week Dispute form is attached as Exhibit C.

2. RECITALS.

2.1. On February 08, 2022, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, failure to pay wages, unauthorized and unlawful wage deductions, and related claims. On March 07, 2022, Plaintiff filed a First Amended Complaint alleging causes of action against Defendant for failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, failure to pay wages, unauthorized and unlawful wage deductions, and related allegations. The First Amended Complaint is the operative complaint in the Action (the “Operative Complaint.”) Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint and denies any and all liability for the causes of action alleged.

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

2.3. On November 03, 2022 and May 16, 2023, the Parties participated in all-day mediation sessions presided over by Honorable Howard R. Broadman, Ret. which led to this Agreement to settle the Action (describe alternative means of negotiation.

1 2.4. Prior to mediation and negotiating the Settlement, Plaintiff obtained, through
2 informal discovery, the number of comparable employees, the number of workweeks, average
3 rates of pay, sample time records, sample payroll records, written policies, and related
4 information. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set
5 forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot*
6 *Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

7 2.5. The Court has not granted class certification.

8 2.6. The Parties, Class Counsel and Defense Counsel represent that they are not aware
9 of any other pending matter or action asserting claims that will be extinguished or affected by the
10 Settlement.

11 **3. MONETARY TERMS.**

12 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraphs 1.23 and
13 9 below, Defendant promises to pay \$166,713.47 and no more as the Gross Settlement Amount
14 and to separately pay any and all employer payroll taxes owed on the Wage Portions of the
15 Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or
16 any payroll taxes) prior to the deadline stated in Paragraph 6.1 of this Agreement. The
17 Administrator will disburse the entire Gross Settlement Amount without asking or requiring
18 Participating Class Members or Aggrieved Employees to submit any claim as a condition of
19 payment. None of the Gross Settlement Amount will revert to Defendant.

20 3.2. Payments from the Gross Settlement Amount. The Administrator will make and
21 deduct the following payments from the Gross Settlement Amount, in the amounts specified by
22 the Court in the Final Approval:

23 3.2.1. To Plaintiff: Class Representative Service Payment to the Class
24 Representative of not more than \$15,000.00 (in addition to any Individual Class Payment and any
25 Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class
26 Member). Defendant will not oppose Plaintiff's request for a Class Representative Service
27 Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment
28 and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class
Representative Service Payments no later than 16 court days prior to the Final Approval Hearing.
If the Court approves a Class Representative Service Payment less than the amount requested, the

1 Administrator will retain the remainder in the Net Settlement Amount. The Administrator will
2 pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full
3 responsibility and liability for employee taxes owed on the Class Representative Service Payment.

4 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than
5 33.33%, which is currently estimated to be \$55,571.00 and a Class Counsel Litigation Expenses
6 Payment of not more than \$20,000.00. Defendant will not oppose requests for these payments
7 provided that do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for
8 Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days
9 prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or
10 a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator
11 will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability
12 to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class
13 Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator
14 will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more
15 IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the
16 Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds
17 Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any
18 division or sharing of any of these Payments.

19 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed
20 \$6,000.00 except for a showing of good cause and as approved by the Court. To the extent the
21 Administration Expenses are less or the Court approves payment less than \$6,000.00, the
22 Administrator will retain the remainder in the Net Settlement Amount.

23 3.2.4. To Each Participating Class Member: An Individual Class Payment
24 calculated by (a) dividing the Net Settlement Amount by the total number of Work Weeks worked
25 by all Participating Class Members during the Class Period and (b) multiplying the result by each
26 Participating Class Member's Work Weeks.

27 3.2.4.1. Tax Allocation of Individual Class Payments. 20.00% of
28 each Participating Class Member's Individual Class Payment will be allocated to settlement of
wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be
reported on an IRS W-2 Form. The remaining 80.00% of each Participating Class Member's
Individual Class Payment will be allocated to settlement of claims for interest and penalties (the

1 “Non-Wage Portion”). The Non-Wage Portions are not subject to wage withholdings and will be
2 reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability
3 for any employee taxes owed on their Individual Class Payment.

4 3.2.4.2. Effect of Non-Participating Class Members on Calculation
5 of Individual Class Payments. Non-Participating Class Members will not receive any Individual
6 Class Payments. The Administrator will retain amounts equal to their Individual Class Payments
7 in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

8 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the
9 amount of \$4,000.00 to be paid from the Gross Settlement Amount, with 75% (\$3,000.00)
10 allocated to the LWDA PAGA Payment and 25% (\$1,000.00) allocated to the Individual PAGA
11 Payments.

12 3.2.5.1. The Administrator will calculate each Individual PAGA Payment
13 by (a) dividing the amount of the Aggrieved Employees’ 25% share of PAGA Penalties,
14 \$1,000.00, by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees
15 during the PAGA Period and (b) multiplying the result by each Aggrieved Employee’s PAGA
16 Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes
17 owed on their Individual PAGA Payment. An Individual PAGA Payment will be offset by any
18 amount already paid to the Aggrieved Employee as part of the Defendant’s “Pick Up Stix”
19 campaign.

20 3.2.5.2. If the Court approves PAGA Penalties of less than the amount
21 requested, the Administrator will allocate the remainder to the Net Settlement Amount. The
22 Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

23 **4. SETTLEMENT FUNDING AND PAYMENTS.**

24 4.1. Class Work Weeks and Aggrieved Employee Pay Periods. Based on a review of
25 its records to date, Defendant estimates there are 119 Class Members who collectively worked a
26 total of 9,686 Work Weeks, and 58 Aggrieved Employees who worked a total 2,844 of weekly
27 PAGA Pay Periods.

28 4.2. Class Data. Not later than 15 days after the Court grants Preliminary Approval
of the Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in
the form of a Microsoft Excel spreadsheet. To protect Class Members’ privacy rights, the

1 Administrator must maintain the Class Data in confidence, use the Class Data only for purposes
2 of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator
3 employees who need access to the Class Data to effect and perform under this Agreement.
4 Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class
5 Data omitted class member identifying information and to provide corrected or updated Class
6 Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant
7 must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use
8 best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or
omitted Class Data.

9 4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross
10 Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll
11 taxes by transmitting the funds to the Administrator no later than 14 days after the Effective Date.

12 4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendant
13 funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class
14 Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration
15 Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
16 Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees
17 Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service
18 Payment shall not precede disbursement of Individual Class Payments and Individual PAGA
Payments.

19 4.4.1. The Administrator will issue checks for the Individual Class Payments
20 and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail,
21 postage prepaid. The face of each check shall prominently state the date (not less than 180 days
22 after the date of mailing) when the check will be voided. The Administrator will cancel all checks
23 not cashed by the void date. The Administrator will send checks for Individual Settlement
24 Payments to all Participating Class Members (including those for whom Notice Packet was
25 returned undelivered). The Administrator will send checks for Individual PAGA Payments to all
26 Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved
27 Employees (including those for whom Notice Packet was returned undelivered). The
28 Administrator may send Participating Class Members a single check combining the Individual
Class Payment and the Individual PAGA Payment. Before mailing any checks, the Administrator

1 must update the recipients' mailing addresses using the National Change of Address Database.

2 4.4.2. The Administrator must conduct a Class Member Address Search for all
3 other Class Members whose checks are returned undelivered without USPS forwarding address.
4 Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS
5 forwarding address provided or to an address ascertained through the Class Member Address
6 Search. The Administrator need not take further steps to deliver checks to Class Members whose
7 re-mailed checks are returned as undelivered. The Administrator shall promptly send a
8 replacement check to any Class Member whose original check was lost or misplaced, requested
9 by the Class Member prior to the void date.

10 4.4.3. For any Class Member whose Individual Class Payment check or
11 Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator
12 shall transmit the funds represented by such checks to the California Controller's Unclaimed
13 Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to
14 the requirements of California Code of Civil Procedure Section 384, subd. (b).

15 4.4.4. The payment of Individual Class Payments and Individual PAGA
16 Payments shall not obligate Defendant to confer any additional benefits or make any additional
17 payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in
18 this Agreement.

19 **5. [OMITTED]**

20 **6. RELEASES OF CLAIMS.** Effective on the date when Defendant fully funds the entire
21 Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the
22 Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims
23 against all Released Parties as follows:

24 6.1 Plaintiff's Release. Plaintiff and his respective former and present spouses,
25 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release
26 and discharge Released Parties from all claims, transactions, or occurrences that occurred during
27 the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have
28 been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims
that were, or reasonably could have been, alleged based on facts contained in the Operative
Complaint, Plaintiff's PAGA Notice, or ascertained during the Action and released under 6.2,
below. ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims or actions to

1 enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability
2 benefits, social security benefits, workers' compensation benefits that arose at any time, or based
3 on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts
4 or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be
5 true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects,
6 notwithstanding such different or additional facts or Plaintiff's discovery of them.

6 6.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For
7 purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights,
8 and benefits, if any, of section 1542 of the California Civil Code, which reads:

9
10 **A general release does not extend to claims that the creditor or releasing party does**
11 **not know or suspect to exist in his or her favor at the time of executing the release,**
12 **and that if known by him or her would have materially affected his or her settlement**
13 **with the debtor or Released Party.**

14 6.2 Release by Participating Class Members Who Are Not Aggrieved Employees:
15 All Participating Class Members, on behalf of themselves and their respective former and present
16 representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released
17 Parties from all claims stated in the Operative Complaint and those based solely upon the facts
18 alleged in the Operative Complaint. Except as set forth in Section 6.3 of this Agreement,
19 Participating Class Members do not release any other claims, including claims for vested benefits,
20 wrongful termination, violation of the Fair Employment and Housing Act, unemployment
21 insurance, disability, social security, workers' compensation, or claims based on facts occurring
22 outside the Class Period.

23 6.3 Release of PAGA Claim. Plaintiff releases all claims for civil penalties that
24 could have been sought by the Labor Commissioner for the violations identified in Plaintiff's
25 pre-filing letter to the LWDA; Plaintiff does not release the claim for wages or damages of any
26 Aggrieved Employee unless such Aggrieved Employee is a Participating Class Member.

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28 **7. MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and

1 file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies with
2 the Court’s current checklist for Preliminary Approvals. A Preliminary Approval Order form is
3 attached as Exhibit E.

4 7.1 Defendant’s Declaration in Support of Preliminary Approval. Within ten (10)
5 days of the full execution of this Agreement, Defendant will prepare and deliver to Class Counsel
6 a signed Declaration from Defendant and Defense Counsel that shall aver that they are not aware
7 of any other pending matter or action asserting claims that will be extinguished or adversely
8 affected by the Settlement.

9 7.2 Plaintiff’s Responsibilities. Plaintiff will prepare and deliver to Defense Counsel
10 all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice,
11 and memorandum in support, of the Motion for Preliminary Approval that includes an analysis
12 of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under
13 Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval
14 and Approval of PAGA Settlement; (iii) a draft proposed Notice Packet; (iv) a signed declaration
15 from the Administrator attaching its “not to exceed” bid for administering the Settlement and
16 attesting to its willingness to serve; competency; operative procedures for protecting the security
17 of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other
18 misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members;
19 and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense
20 Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve
21 and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members,
22 and/or the Administrator; (v) a signed declaration from each Class Counsel firm attesting to its
23 competency to represent the Class Members; its timely transmission to the LWDA of all necessary
24 PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative
25 Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699,
26 subd. (l)(2)); (vi) a redlined version of the parties’ Agreement showing all modifications made to
27 the Model Agreement ready for filing with the Court; and (vii) all facts relevant to any actual or
28 potential conflict of interest with Class Members, and the Administrator. In their Declarations,
Plaintiff and Class Counsel shall aver that they are not aware of any other pending matter or action
asserting claims that will be extinguished or adversely affected by the Settlement.

7.3 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly

1 responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later
2 than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the
3 Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion
4 for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary
Approval to the Administrator.

5 7.4 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion
6 for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and
7 Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person
8 or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant
9 Preliminary Approval or conditions Preliminary Approval on any material change to this
10 Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of
11 the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and
12 otherwise satisfy the Court's concerns.

13 **8. SETTLEMENT ADMINISTRATION.**

14 8.1 Selection of Administrator. The Parties have jointly selected Simpluris, Inc. to
15 serve as the Administrator and verified that, as a condition of appointment, Simpluris, Inc. agrees
16 to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this
17 Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel
18 represent that they have no interest or relationship, financial or otherwise, with the Administrator
19 other than a professional relationship arising out of prior experiences administering settlements.

20 8.2 Employer Identification Number. The Administrator shall have and use its own
21 Employer Identification Number for purposes of calculating payroll tax withholdings and
22 providing reports state and federal tax authorities.

23 8.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund
24 that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury
Regulation section 468B-1.

25 8.4 Notice to Class Members.

26 8.4.1 No later than three (3) business days after receipt of the Class Data, the
27 Administrator shall notify Class Counsel that the list has been received and state the number of
28 Class Members, PAGA Members, Work Weeks, and Pay Periods in the Class Data.

1 8.4.2 Using best efforts to perform as soon as possible, and in no event later than
2 14 days after receiving the Class Data, the Administrator will send to all Class Members identified
3 in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Notice Packet
4 with Spanish translation, if applicable substantially in the forms attached to this Agreement as
5 **Exhibits A, B, C, and D.** The first page of the Class Notice shall prominently estimate the dollar
6 amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class
7 Member, and the number of Work Weeks and PAGA Pay Periods (if applicable) used to calculate
8 these amounts. Before mailing Notice Packets, the Administrator shall update Class Member
addresses using the National Change of Address database.

9 8.4.3 Not later than 3 business days after the Administrator’s receipt of any
10 Notice Packet returned by the USPS as undelivered, the Administrator shall re-mail the Notice
11 Packet using any forwarding address provided by the USPS. If the USPS does not provide a
12 forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail
13 the Notice Packet to the most current address obtained. The Administrator has no obligation to
14 make further attempts to locate or send Notice Packet to Class Members whose Notice Packet is
returned by the USPS a second time.

15 8.4.4 The deadlines for Class Members’ written objections, Challenges to Work
16 Weeks and/or weekly Pay Periods (disputes), and Requests for Exclusion will be extended an
17 additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class
18 Members whose notice is re-mailed. The Administrator will inform the Class Member of the
19 extended deadline with the re-mailed Notice Packet.

20 8.4.5 If the Administrator, Defendant or Class Counsel is contacted by or
21 otherwise discovers any persons who believe they should have been included in the Class Data
22 and should have received Notice Packet, the Parties will expeditiously meet and confer in person
23 or by telephone, and in good faith, in an effort to agree on whether to include them as Class
24 Members. If the Parties agree, such persons will be Class Members entitled to the same rights as
25 other Class Members, and the Administrator will send, via email or overnight delivery, a Class
26 Notice requiring them to exercise options under this Agreement not later than 14 days after receipt
27 of Class Notice, or the deadline dates in the Class Notice, which ever are later.

28 8.5 Requests for Exclusion (Opt-Outs).

1 8.5.1 Class Members who wish to exclude themselves (opt-out of) the Class
2 Settlement must send the Administrator, by fax, email, or mail, a signed written Request for
3 Exclusion not later than 60 days after the Administrator mails the Notice Packet (plus an
4 additional 14 days for Class Members whose Notice Packet is re-mailed). A Request for
5 Exclusion is a letter from a Class Member or his/her representative that reasonably communicates
6 the Class Member's election to be excluded from the Settlement and includes the Class Member's
7 name, address and email address or telephone number. To be valid, a Request for Exclusion must
8 be timely faxed, emailed, or postmarked by the Response Deadline. An Election Not to Participate
in Settlement form, attached as Exhibit B, may be used for this purpose but is not required.

9 8.5.2 The Administrator may not reject a Request for Exclusion as invalid
10 because it fails to contain all the information specified in the Class Notice. The Administrator
11 shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the
12 identity of the person as a Class Member and the Class Member's desire to be excluded. The
13 Administrator's determination shall be final and not appealable or otherwise susceptible to
14 challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion,
15 the Administrator may demand additional proof of the Class Member's identity. The
16 Administrator's determination of authenticity shall be final and not appealable or otherwise
susceptible to challenge.

17 8.5.3 Every Class Member who does not submit a timely and valid Request for
18 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all
19 benefits and bound by all terms and conditions of the Settlement, including the Participating Class
20 Members' Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless of whether the
21 Participating Class Member actually receives the Class Notice or objects to the Settlement.

22 8.5.4 Every Class Member who submits a valid and timely Request for
23 Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment
24 or have the right to object to the class action components of the Settlement. Aggrieved Employees
are eligible for an Individual PAGA Payment.

25 8.6 Challenges to Calculation of Work Weeks. Each Class Member shall have 60
26 days after the Administrator mails the Notice Packet (plus an additional 14 days for Class
27 Members whose Notice Packet is re-mailed) to challenge the number of Class Work Weeks and
28 weekly PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. This is also

1 known as a dispute. A Work Week Dispute form, attached as Exhibit C, may be used for this
2 purpose but is not required. The Class Member may challenge the allocation by communicating
3 with the Administrator via fax, email or mail. The Administrator must encourage the challenging
4 Class Member to submit supporting documentation. In the absence of any contrary
5 documentation, the Administrator is entitled to presume that the Work Weeks contained in the
6 Class Notice are correct so long as they are consistent with the Class Data. The Administrator's
7 determination of each Class Member's allocation of Work Weeks and/or weekly Pay Periods shall
8 be final and not appealable or otherwise susceptible to challenge. The Administrator shall
9 promptly provide copies of all challenges to calculation of Work Weeks and/or weekly Pay
10 Periods to Defense Counsel and Class Counsel and the Administrator's determination the
11 challenges.

11 8.7 Objections to Settlement.

12 8.7.1 Only Participating Class Members may object to the class action
13 components of the Settlement and/or this Agreement, including contesting the fairness of the
14 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel
15 Litigation Expenses Payment and/or Class Representative Service Payment.

16 8.7.2 Participating Class Members may send written objections to the
17 Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear
18 in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval
19 Hearing. A Participating Class Member who elects to send a written objection to the
20 Administrator must do so not later than 60 days after the Administrator's mailing of the Notice
21 Packet (plus an additional 14 days for Class Members whose Notice Packet was re-mailed). The
22 Objection form attached as Exhibit D may be used for this purpose but is not required.

23 8.7.3 Non-Participating Class Members have no right to object to any of the class
24 action components of the Settlement.

25 8.8 Administrator Duties. The Administrator has a duty to perform or observe all
26 tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

27 8.8.1 Website, Email Address and Toll-Free Number. The Administrator will
28 establish and maintain and use an internet website to post information of interest to Class
Members including the date, time and location for the Final Approval Hearing and copies of the
Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Notice

1 Packet, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class
2 Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final
3 Approval and the Judgment. The Administrator will also maintain and monitor an email address
4 and a toll-free telephone number to receive Class Member calls, faxes and emails.

5 8.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator
6 will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not
7 later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the
8 Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names
9 and other identifying information of Class Members who have timely submitted valid Requests
10 for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class
11 Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for
12 Exclusion from Settlement submitted (whether valid or invalid).

13 8.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide
14 written reports to Class Counsel and Defense Counsel that, among other things, tally the number
15 of: Notice Packets mailed or re-mailed, Notice Packets returned undelivered, Requests for
16 Exclusion (whether valid or invalid) received, objections received, challenges to Work Weeks
17 and/or weekly Pay Periods received and/or resolved, and checks mailed for Individual Class
18 Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include
19 provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies
20 of all Requests for Exclusion and objections received.

21 8.8.4 Workweek and/or Pay Period Challenges. The Administrator has the
22 authority to address and make final decisions consistent with the terms of this Agreement on all
23 Class Member challenges over the calculation of Work Weeks and/or weekly Pay Periods. The
24 Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.

25 8.8.5 Administrator’s Declaration. Not later than 14 days before the date by
26 which Plaintiff is required to file the Motion for Final Approval of the Settlement, the
27 Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable
28 for filing in Court attesting to its due diligence and compliance with all of its obligations under
this Agreement, including, but not limited to, its mailing of the Notice Packets, the Notice Packets
returned as undelivered, the re-mailing of Notice Packets, attempts to locate Class Members, the
total number of Requests for Exclusion from Settlement it received (both valid or invalid), the

number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

8.8.6 Final Report by Administrator. Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

9. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE. Defendant estimated for purposes of mediation that there are 9,686 weeks worked by 119 Class Members for the period of February 8, 2018 through May 16, 2023. If the number of weeks worked by Class Members increases by more than ten percent (10%) above the estimated number of 9,686 as of the date of the Court's preliminary approval of the Settlement, then Defendant shall have the option of either (1) increasing the amount of the Gross Settlement Amount by the corresponding percentage increase above ten percent (10%) (i.e., if the number of weeks worked by the Class Members increases above the 10% threshold of 10,655, the Gross Settlement Amount shall increase by the percentage of weeks worked by the Class Members above the threshold of 10,655; calculated as follows: $\text{updated total weeks worked} - 10,655 = \text{workweeks above 10\% threshold}$, $\text{workweeks above 10\% threshold} / 10,655 = \text{percentage increase}$, $\text{percentage increase} \times \$166,713.47 \text{ original Gross Settlement Amount} = \text{additional monies owed}$) or (2) modifying the end date of the Class Period to an earlier date to not trigger the escalation provision. Before the Parties seek or a Party seeks final Court approval of the Settlement, the Settlement Administrator will advise Plaintiff's counsel and Defendant's counsel of Defendant's report of the total number of weeks worked by the Class Members for the period of February 8, 2018 through the date of the Court's preliminary approval of the Settlement.

10. DEFENDANT'S RIGHT TO WITHDRAW. If the number of valid Requests for

1 Exclusion identified in the Exclusion List exceeds 10.00% of the total of all Class Members,
2 Defendant may, but is not obligated, elect to withdraw from the Settlement. The Parties agree
3 that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect
4 whatsoever, and that neither Party will have any further obligation to perform under this
5 Agreement; provided, however, Defendant will remain responsible for paying all Settlement
6 Administration Expenses incurred to that point. Defendant must notify Class Counsel and the
7 Court of its election to withdraw not later than 7 days after the Administrator sends the final
8 Exclusion List to Defense Counsel; late elections will have no effect.

9 **11. MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared
10 Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement
11 that includes a request for approval of the PAGA settlement under Labor Code section 2699,
12 subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively “Motion for
13 Final Approval”). Plaintiff shall provide drafts of these documents to Defense Counsel not later
14 than 7 days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel
15 will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any
16 disagreements concerning the Motion for Final Approval.

17 11.1 Response to Objections. Each Party retains the right to respond to any objection
18 raised by a Participating Class Member, including the right to file responsive documents in Court
19 no later than 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted
20 by the Court.

21 11.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final
22 Approval on any material change to the Settlement (including, but not limited to, the scope of
23 release to be granted by Class Members), the Parties will expeditiously work together in good
24 faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final
25 Approval. The Court’s decision to award less than the amounts requested for the Class
26 Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation
27 Expenses Payment and/or Administrator Expenses Payment shall not constitute a material
28 modification to the Agreement within the meaning of this paragraph.

11.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of
Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for

1 purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement
2 administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

3 11.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms
4 and conditions of this Agreement, specifically including the Class Counsel Fees Payment and
5 Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their
6 respective counsel, and all Participating Class Members who did not object to the Settlement as
7 provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to
8 post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions
9 for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver
10 of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the
11 Parties' obligations to perform under this Agreement will be suspended until such time as the
12 appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect
13 the amount of the Net Settlement Amount.

14 11.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If
15 the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a
16 material modification of this Agreement (including, but not limited to, the scope of release to be
17 granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless
18 expeditiously work together in good faith to address the appellate court's concerns and to obtain
19 Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration
20 Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify
21 the Court's award of the Class Representative Service Payment or any payments to Class Counsel
22 shall not constitute a material modification of the Judgment within the meaning of this paragraph,
23 as long as the Gross Settlement Amount remains unchanged.

24 **12. AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil
25 Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed
26 amended judgment.

27 **13. ADDITIONAL PROVISIONS.**

28 13.1 No Admission of Liability, Class Certification or Representative Manageability
for Other Purposes. This Agreement represents a compromise and settlement of highly disputed

1 claims. Nothing in this Agreement is intended or should be construed as an admission by
2 Defendant that any of the allegations in the Operative Complaint have merit or that Defendant
3 has any liability for any claims asserted; nor should it be intended or construed as an admission
4 by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that class
5 certification and representative treatment is for purposes of this Settlement only. If, for any reason
6 the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendant
7 reserves the right to contest certification of any class for any reasons, and Defendant reserves all
8 available defenses to the claims in the Action, and Plaintiff reserves the right to move for class
9 certification on any grounds available and to contest Defendant's defenses. The Settlement, this
10 Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be
11 admissible in connection with, any litigation (except for proceedings to enforce or effectuate the
12 Settlement and this Agreement).

12 13.2 Confidentiality Prior to Preliminary Approval. Other than information necessary
13 to secure Court approval of this Settlement, Plaintiff, Class Counsel, Defendant, and Defense
14 Counsel separately agree that they and each of them will not disclose, disseminate, and/or
15 publicize, or cause or permit another person to disclose, disseminate, or publicize, any of the
16 terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation,
17 association, government agency, or other entity except: (1) to the Parties' attorneys, accountants,
18 or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a
19 related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4)
20 in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a
21 state or federal government agency. Each Party agrees to immediately notify each other Party of
22 any judicial or agency order, inquiry, or subpoena seeking information about the Action,
23 Settlement, or this Agreement.

23 Plaintiff and Class Counsel will keep all terms of this Settlement confidential and
24 will not make any public disclosure or social media postings about the Action, the Settlement, or
25 this Agreement, except for what is necessary to obtain approval of this Settlement from the Court.
26 If comment or information is requested by the media, Plaintiff and Class Counsel will provide no
27 information other than direct the media to the public records of the action on file with the Court.
28 Class Counsel will take all steps necessary to ensure Plaintiff is aware of, and will encourage
Plaintiff to adhere to, the restriction against public disclosure and media comment on the Action,

1 the Settlement, its terms, and this Agreement. Class Counsel and Plaintiff agree that this
2 Confidentiality term is a material term and that breach of this provision shall be deemed a material
3 breach of this Settlement. The Parties agree that breach of this Confidentiality term shall cause
4 irreparable harm to Defendant.

5 13.3 Plaintiff, Class Counsel, Defendant, and Defense Counsel separately agree not
6 to, directly or indirectly, initiate any conversation or other communication with any third party
7 regarding this Agreement or the matters giving rise to this Agreement except to respond only that
8 “the matter was resolved,” or words to that effect. This paragraph does not restrict Class Counsel’s
9 communications with Class Members in accordance with Class Counsel’s ethical obligations
10 owed to Class Members. Nothing in this Agreement shall prohibit Class Counsel from disclosing
11 this Settlement in declarations and/or other evidence submitted to Courts concerning their
12 qualifications to serve as Class Counsel.

13 13.4 No Solicitation. The Parties separately agree that they and their respective
14 counsel and employees will not solicit any Class Member to opt out of or object to the Settlement,
15 or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class
16 Counsel’s ability to communicate with Class Members in accordance with Class Counsel’s ethical
17 obligations owed to Class Members.

18 13.5 Integrated Agreement. Upon execution by all Parties and their counsel, this
19 Agreement together with its attached exhibits shall constitute the entire agreement between the
20 Parties relating to the Settlement, superseding any and all oral representations, warranties,
21 covenants, or inducements made to or by any Party.

22 13.6 Attorney Authorization. Class Counsel and Defense Counsel separately warrant
23 and represent that they are authorized by Plaintiff and Defendant, respectively, to take all
24 appropriate action required or permitted to be taken by such Parties pursuant to this Agreement
25 to effectuate its terms, and to execute any other documents reasonably required to effectuate the
26 terms of this Agreement including any amendments to this Agreement.

27 13.7 Cooperation. The Parties and their counsel will cooperate with each other and
28 use their best efforts, in good faith, to implement the Settlement by, among other things,
modifying the Settlement Agreement, submitting supplemental evidence and supplementing
points and authorities as requested by the Court. In the event the Parties are unable to agree upon

1 the form or content of any document necessary to implement the Settlement, or on any
2 modification of the Agreement that may become necessary to implement the Settlement, the
3 Parties will seek the assistance of a mediator and/or the Court for resolution.

4 13.8 No Prior Assignments. The Parties separately represent and warrant that they
5 have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer,
6 or encumber to any person or entity and portion of any liability, claim, demand, action, cause of
7 action, or right released and discharged by the Party in this Settlement.

8 13.9 No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense
9 Counsel are providing any advice regarding taxes or taxability, nor shall anything in this
10 Settlement be relied upon as such within the meaning of United States Treasury Department
11 Circular 230 (31 CFR Part 10, as amended) or otherwise.

12 13.10 Modification of Agreement. This Agreement, and all parts of it, may be
13 amended, modified, changed, or waived only by an express written instrument signed by all
14 Parties or their representatives, and approved by the Court.

15 13.11 Agreement Binding on Successors. This Agreement will be binding upon, and
16 inure to the benefit of, the successors of each of the Parties.

17 13.12 Applicable Law. All terms and conditions of this Agreement and its exhibits will
18 be governed by and interpreted according to the internal laws of the state of California, without
19 regard to conflict of law principles.

20 13.13 Cooperation in Drafting. The Parties have cooperated in the drafting and
21 preparation of this Agreement. This Agreement will not be construed against any Party on the
22 basis that the Party was the drafter or participated in the drafting.

23 13.14 Confidentiality. To the extent permitted by law, all agreements made, and orders
24 entered during Action and in this Agreement relating to the confidentiality of information shall
25 survive the execution of this Agreement.

26 13.15 Use and Return of Class Data. Information provided to Class Counsel pursuant
27 to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class
28 Counsel by Defendant in connection with the mediation, other settlement negotiations, or in
connection with the Settlement, may be used only with respect to this Settlement, and no other
purpose, and may not be used in any way that violates any existing contractual agreement, statute,
or rule of court. Not later than 90 days after the date when the Court discharges the

1 Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement
2 funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from
3 Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant
4 makes a written request to Class Counsel for the return, rather than the destructions, of Class
5 Data.

6 13.16 Headings. The descriptive heading of any section or paragraph of this Agreement
7 is inserted for convenience of reference only and does not constitute a part of this Agreement.

8 13.17 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement
9 shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
10 weekend or federal legal holiday, such date or deadline shall be on the first business day
11 thereafter.

12 13.18 Notice. All notices, demands or other communications between the Parties in
13 connection with this Agreement will be in writing and deemed to have been duly given as of the
14 third business day after mailing by United States mail, or the day sent by email or messenger,
15 addressed as follows:

16 To Plaintiff:
17 David G. Spivak, Esq.
18 The Spivak Law Firm
19 8605 Santa Monica Bl
20 PMB 42554
21 West Hollywood, CA 90069
22 david@spivaklaw.com

23 To Defendant:
24 Ian B. Wieland, Esq.
25 Sagaser, Watkins & Wieland PC
26 5260 N. Palm Ave.
27 Ste. 400
28 Fresno, CA 93704
ian@sw2law.com; amanda@sw2law.com; tristan@sw2law.com

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

1 themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove
2 the existence and contents of this Agreement.

3 13.20 Stay of Litigation. The Parties agree that upon the execution of this Agreement
4 the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further
5 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the
6 date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
7 process.

8 Dated: 10 / 30 / 2023

By: 
JORGE L. LEON

9
10 Dated: _____

By: _____
Herbt J. Davis for
Davis & Roberts Construction, Inc.

13 THE SPIVAK LAW FIRM

14
15 Dated: 10 / 20 / 2023

By: 
DAVID G. SPIVAK, Attorneys for
Plaintiff, JORGE L. LEON, and all
others similarly situated

19 UNITED EMPLOYEES LAW GROUP, PC

20
21 Dated: _____

By: _____
WALTER L. HAINES, Attorneys for
Plaintiff, JORGE L. LEON, and all
others similarly situated

24 SAGASER, WATKINS & WIELAND PC

25
26 Dated: _____

By: _____
IAN B. WIELAND, Attorneys for
Defendant, DAVIS & ROBERTS
CONSTRUCTION, INC.

1 themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove
2 the existence and contents of this Agreement.

3 13.20 Stay of Litigation. The Parties agree that upon the execution of this Agreement
4 the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further
5 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the
6 date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
7 process.

8 Dated: _____

By: _____
JORGE L. LEON

10 Dated: _____

By: _____
Herbt J. Davis for
Davis & Roberts Construction, Inc.

13 THE SPIVAK LAW FIRM

15 Dated: _____

By: _____
DAVID G. SPIVAK, Attorneys for
Plaintiff, JORGE L. LEON, and all
others similarly situated

19 UNITED EMPLOYEES LAW GROUP, PC

21 Dated: October 20, 2023

By: 
WALTER L. HAINES, Attorneys for
Plaintiff, JORGE L. LEON, and all
others similarly situated

25 SAGASER, WATKINS & WIELAND PC

26 Dated: _____

By: _____
IAN B. WIELAND, Attorneys for
Defendant, DAVIS & ROBERTS
CONSTRUCTION, INC.

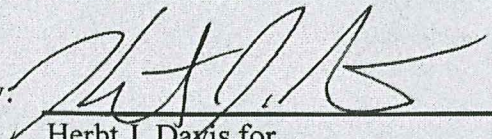
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2 the existence and contents of this Agreement.

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4 the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further
5 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the
6 date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
7 process.

8 Dated: _____

By: _____
JORGE L. LEON

10 Dated: 11-14-2023

11 By: 
Herbt J. Davis for
12 Davis & Roberts Construction, Inc.

13 THE SPIVAK LAW FIRM

14
15 Dated: _____

16 By: _____
17 DAVID G. SPIVAK, Attorneys for
18 Plaintiff, JORGE L. LEON, and all
19 others similarly situated

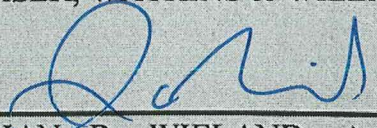
20 UNITED EMPLOYEES LAW GROUP, PC

21 Dated: _____

22 By: _____
23 WALTER L. HAINES, Attorneys for
24 Plaintiff, JORGE L. LEON, and all
25 others similarly situated

26 SAGASER, WATKINS & WIELAND PC

27 Dated: 11/14/2023

28 By: 
IAN B. WIELAND, Attorneys for
Defendant, DAVIS & ROBERTS
CONSTRUCTION, INC.

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EXHIBIT A

**COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING
DATE FOR FINAL COURT APPROVAL**

(case name: *Jorge L. Leon v. Davis & Roberts Construction, Inc.* and number 22CECG00407)

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

You may be eligible to receive money from an employee class action lawsuit (“Action”) against Davis & Roberts Construction, Inc. (“Defendant”) for alleged violations of California’s labor laws. The Action was filed by one of Defendant’s employees Jorge L. Leon (“Plaintiff”) and seeks payment of (1) wages and other relief for a class of all current and former hourly, nonexempt employees of Defendant in California (“Class Members”) Defendant during the Class Period (February 08, 2018 to <<the date of preliminary approval of this Settlement>>); and (2) penalties under the California Private Attorney General Act (“PAGA”) for hourly, non-exempt employees who worked for Defendant during the PAGA Period (December 23, 2020 to <<the date of preliminary approval of this Settlement>>) (“Aggrieved Employees”).

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

Based on Defendant’s records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$<<IndividualClassPaymentAmount>> (less withholding) and your Individual PAGA Payment is estimated to be \$<<IndividualPAGAPaymentAmount>>.** The estimated dollar value of a Work Week is <<\$increment type value>> and a weekly Pay Period is <<@PayPeriodValue>>. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendant’s records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.) The individual payments amounts will vary. However, the average Individual Class Payment to a Class Member is estimated to be <<\$Average Individual Class Payment Amount>>. The average Individual PAGA Payment to a Class Member is estimated to be <<\$Average Individual PAGA Payment Amount>>. The highest Individual Class Payment to a Class Member is estimated to be <<\$Highest Individual Class Payment Amount>> and the lowest is estimated to be <<\$Lowest Individual Class Payment Amount>>. The highest Individual PAGA Payment to a Class Member is estimated to be <<\$Highest Individual PAGA Payment Amount>> and the lowest is estimated to be <<\$Lowest Individual PAGA Payment Amount>>.

The above estimates are based on Defendant’s records showing that **you worked <<__>> Work Weeks** during the Class Period and **you worked <<__>> Pay Periods** during the PAGA Period. If you believe that you worked more Work Weeks during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. The Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate, and reasonable, and that any final determination of those issues will be made at the Final Approval Hearing. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff's attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires Defendant to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendant.

If you worked for Defendant during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

(1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against Defendant.

(2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting a written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period claims for California labor law violations against Defendant, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

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

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the claims against Defendant that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is <<RESPONSE DEADLINE>>	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. You can use the enclosed Election Not To Participate In Settlement form for this purpose. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice.

	You cannot opt-out of the PAGA portion of the proposed Settlement. Defendant must pay Individual PAGA Payments to all Aggrieved Employees and Plaintiff releases Defendant from civil penalties it may owe to the Aggrieved Employees.
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by <<RESPONSE DEADLINE>>	All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed Settlement. You can use the enclosed Objection form for this purpose. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
You Can Participate in the <<FinalApprovalHearingDate>> Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on <<FinalApprovalHearingDate>>. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing whether or not they submitted a written objection. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Work Week / Pay Periods Written Challenges Must be Submitted by <<RESPONSE DEADLINE>>	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many Work Weeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Period Work Weeks and number of PAGA Period Pay Periods you worked according to Defendant’s records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by <<RESPONSE DEADLINE>>. See Section 4 of this Notice. You can use the enclosed Work Weeks Dispute form for this purpose.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former employee of Defendant. The Action accuses Defendant of violating California labor laws by failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, failure to pay wages, unauthorized and unlawful wage deductions, and related violations of the Labor Code. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the PAGA (Labor Code section 2698 and sections that follow) (“PAGA”). Plaintiff is represented by attorneys in the Action: David G. Spivak of The Spivak Law Firm and Walter L. Haines of United Employees Law Group, PC (“Class Counsel.”)

3

Leon v. Davis & Roberts Construction, Inc., et al.
Class Action and PAGA Settlement Agreement

1 Defendant strongly denies violating any laws or failing to pay any wages and contends it complied
2 with all applicable laws.

3 **2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?**

4 So far, the Court has made no determination whether Defendant or Plaintiff is correct on the
5 merits. In the meantime, Plaintiff and Defendant hired an experienced, neutral mediator in an
6 effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather
7 than continuing the expensive and time-consuming process of litigation. The negotiations were
8 successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to
9 jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff
10 and Defendant have negotiated a proposed Settlement that is subject to the Court’s Final
11 Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By
12 agreeing to settle, Defendant does not admit any violations or concede the merit of any claims.

13 Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they
14 believe that: (1) Defendant has agreed to pay a fair, reasonable and adequate amount considering
15 the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement
16 is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily
17 approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and
18 scheduled a hearing to determine Final Approval.

19 **3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?**

20 A. Gross Settlement Amount. Defendant Will Pay \$166,713.47 as the Gross
21 Settlement Amount (Gross Settlement). The Gross Settlement Amount is inclusive of all amounts
22 to be paid to Class Members as part of a “Pick Up Stix” campaign. Defendant has agreed to
23 deposit the Gross Settlement Amount into an account controlled by the Administrator of the
24 Settlement. The Administrator will use the Gross Settlement Amount to pay the Individual Class
25 Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s
26 attorney’s fees and expenses, the Administrator’s expenses, and penalties to be paid to the
27 California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants
28 Final Approval, Defendant will fund the Gross Settlement Amount not more than 14 days after
the Judgment entered by the Court become final. The Judgment will be final on the date the Court
enters Judgment, or a later date if Participating Class Members object to the proposed Settlement
or the Judgment is appealed. The Gross Settlement Amount includes the \$56,713.47 Defendant
paid to Class Members as part of its direct negotiations with individual Class Members to release
their claims (“Pick-Up-Stix campaign”).

B. Court Approved Deductions from Gross Settlement. At the Final Approval
Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions
from the Gross Settlement, the amounts of which will be decided by the Court at the Final
Approval Hearing:

1. Attorney Fees and Costs. Up to \$55,571.00 (33.33% of the Gross

Settlement to Class Counsel for attorneys' fees and up to \$20,000.00 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.

2. Class Representative Service Award. Up to \$15,000.00 as a Class Representative Service Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Service Award will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.

3. Administration Expenses. Up to \$10,000.00 to the Administrator for services administering the Settlement.

4. PAGA Penalties. Up to \$4,000.00 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

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

Defendant estimated for purposes of mediation that there are 9,686 weeks worked by 119 Class Members for the period of February 8, 2018 through May 16, 2023. If the number of weeks worked by Class Members increases by more than ten percent (10%) above the estimated number of 9,686 as of the date of the Court's preliminary approval of the Settlement, then Defendant shall have the option of either (1) increasing the amount of the Gross Settlement Amount by the corresponding percentage increase above ten percent (10%) (i.e., if the number of weeks worked by the Class Members increases above the 10% threshold of 10,655, the Gross Settlement Amount shall increase by the percentage of weeks worked by the Class Members above the threshold of 10,655; calculated as follows: $\text{updated total weeks worked} - 10,655 = \text{workweeks above 10\% threshold}$, $\text{workweeks above 10\% threshold} / 10,655 = \text{percentage increase}$, $\text{percentage increase} \times \$166,713.47 \text{ original Gross Settlement Amount} = \text{additional monies owed}$) or (2) modifying the end date of the Class Period to an earlier date to not trigger the escalation provision. Before the Parties seek or a Party seeks final Court approval of the Settlement, the Settlement Administrator will advise Plaintiff's counsel and Defendant's counsel of Defendant's report of the total number of weeks worked by the Class Members for the period of February 8, 2018 through the date of the Court's preliminary approval of the Settlement.

C. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class Members based on their Class Period Work Weeks.

D. Taxes Owed on Payments to Class Members. Plaintiff and Defendant are asking the Court to approve an allocation of 20.00% of each Individual Class Payment to taxable wages ("Wage Portion") and 80.00% to interest and penalties ("Non-Wage Portion."). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendant will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted

1 as penalties rather than wages for tax purposes. The Administrator will report the Individual
2 PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099
Forms.

3 Although Plaintiff and Defendant have agreed to these allocations, neither side is giving
4 you any advice on whether your Payments are taxable or how much you might owe in taxes. You
5 are responsible for paying all taxes (including penalties and interest on back taxes) on any
6 Payments received from the proposed Settlement. You should consult a tax advisor if you have
any questions about the tax consequences of the proposed Settlement.

7 E. Need to Promptly Cash Payment Checks. The front of every check issued for
8 Individual Class Payments and Individual PAGA Payments will show the date when the check
9 expires (the void date). If you don't cash it by the void date, your check will be automatically
10 cancelled, and the monies will be deposited with the California Controller's Unclaimed Property
11 Fund (https://www.sco.ca.gov/search_upd.html) in your name. If the monies represented by your
check are sent to the Controller's Unclaimed Property Fund, you should consult the rules of the
Fund for instructions on how to retrieve your money. You can contact the Unclaimed Property
Fund at (800) 992-4647.

12 F. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated
13 as a Participating Class Member, participating fully in the Class Settlement, unless you notify the
14 Administrator in writing, not later than <<RESPONSE DEADLINE>>, that you wish to opt-out.
15 The easiest way to notify the Administrator is to email, fax, or mail a written and signed Request
16 for Exclusion by the <<RESPONSE DEADLINE>> Response Deadline. The Request for
17 Exclusion should be a letter from a Class Member or his/her representative setting forth a Class
18 Member's name, present address, telephone number, and a simple statement electing to be
excluded from the Settlement. You may use the enclosed Election Not To Participate In
Settlement form for this purpose. Excluded Class Members (i.e., Non-Participating Class
Members) will not receive Individual Class Payments, but will preserve their rights to personally
pursue claims against Defendant for violations of California's labor laws.

19 You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude
20 themselves from the Class Settlement (Non-Participating Class Members) remain eligible for
21 Individual PAGA Payments and Plaintiff releases Defendant from civil penalties it may owe to
the Aggrieved Employees.

22 G. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is
23 possible the Court will decline to grant Final Approval of the Settlement or decline enter a
24 Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff
25 and Defendant have agreed that, in either case, the Settlement will be void: Defendant will not
pay any money and Class Members will not release any claims against Defendant.

26 H. Administrator. The Court has appointed a neutral company, Simpluris, Inc. (the
27 "Administrator") to send this Notice, calculate and make payments, and process Class Members'
28 Requests for Exclusion. The Administrator will also decide Class Member Challenges over Work
Weeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to

1 administer the Settlement. The Administrator's contact information is contained in Section 9 of
2 this Notice.

3 I. Participating Class Members' Release. After the Judgment is final and Defendant
4 has fully funded the Gross Settlement (and separately paid all employer payroll taxes),
5 Participating Class Members will be legally barred from asserting any of the claims released under
6 the Settlement. This means that unless you opted out by validly excluding yourself from the Class
7 Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant or
8 its officers, directors, employees, and agents for wages based on the Class Period facts and PAGA
9 penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

10 The Participating Class Members will be bound by the following release:

11 All Participating Class Members, on behalf of themselves and their respective
12 former and present representatives, agents, attorneys, heirs, administrators,
13 successors, and assigns, release Released Parties from all claims stated in the
14 Operative Complaint and those based solely upon the facts alleged in the Operative
15 Complaint. Except as set forth in Section 6.3 of the Settlement Agreement,
16 Participating Class Members do not release any other claims, including claims for
17 vested benefits, wrongful termination, violation of the Fair Employment and
18 Housing Act, unemployment insurance, disability, social security, workers'
19 compensation, or claims based on facts occurring outside the Class Period.

20 J. The PAGA Release. After the Court's judgment is final, and Defendant has paid
21 the Gross Settlement (and separately paid the employer-side payroll taxes), Plaintiff releases all
22 claims for civil penalties that could have been sought by the Labor Commissioner for the
23 violations identified in Plaintiff's pre-filing letter to the LWDA; Plaintiff does not release the
24 claim for wages or damages of any Aggrieved Employee unless such Aggrieved Employee is a
25 Participating Class Member.

26 **4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?**

27 A. Individual Class Payments. The Administrator will calculate Individual Class
28 Payments by (a) dividing the Net Settlement Amount by the total number of Work Weeks worked
by all Participating Class Members, and (b) multiplying the result by the number of Work Weeks
worked by each individual Participating Class Member. An Individual Class Payment will be
offset by any amount already paid to the Class Member as part of the Defendant's "Pick Up Stix"
campaign.

B. Individual PAGA Payments. The Administrator will calculate Individual PAGA
Payments by (a) dividing \$1,000.00 by the total number of PAGA Period Pay Periods worked by
all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay
Periods worked by each individual Aggrieved Employee. An Individual PAGA Payment will be
offset by any amount already paid to the Aggrieved Employee as part of the Defendant's "Pick Up
Stix" campaign.

1 C. Workweek/Pay Period Challenges. The number of Class Work Weeks you worked
2 during the Class Period and the number of PAGA Pay Periods you worked during the PAGA
3 Period, as recorded in Defendant's records, are stated in the first page of this Notice. You have
4 until <<RESPONSE DEADLINE>> to challenge the number of Work Weeks and/or weekly Pay
5 Periods credited to you. You can submit your challenge by signing and sending a letter to the
6 Administrator by email, fax or regular U.S. mail. You can use the enclosed Dispute form for this
7 purpose. Section 9 of this Notice has the Administrator's contact information.

8 You need to support your challenge by submitting copies of pay stubs or other records.
9 The Administrator will accept Defendant's calculation of Work Weeks and/or weekly Pay Periods
10 based on Defendant's records as accurate unless you send copies of records containing contrary
11 information. You should send copies rather than originals because the documents will not be
12 returned to you. The Administrator will resolve Work Week and/or Pay Period challenges based
13 on your submission and on input from Class Counsel (who will advocate on behalf of
14 Participating Class Members) and Defendant's Counsel. The Administrator's decision is final.
15 You can't appeal or otherwise challenge its final decision.

11 5. HOW WILL I GET PAID?

12 A. Participating Class Members. The Administrator will send, by U.S. mail, a single
13 check to every Participating Class Member (i.e., every Class Member who doesn't opt-out)
14 including those who also qualify as Aggrieved Employees. The single check will combine the
15 Individual Class Payment and the Individual PAGA Payment.

16 B. Non-Participating Class Members. The Administrator will send, by U.S. mail, a
17 single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class
18 Settlement (i.e., every Non-Participating Class Member).

19 **Your check will be sent to the same address as this Notice. If you change your
20 address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has
21 the Administrator's contact information.**

20 6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

21 Email, fax, or mail a written and signed letter with your name, present address, telephone
22 number, and a simple statement that you do not want to participate in the Settlement. You may
23 use the enclosed Election Not To Participate In Settlement form for this purpose. The
24 Administrator will exclude you based on any writing communicating your request be excluded.
25 Be sure to personally sign your request, identify the Action as *Jorge L. Leon vs. Davis & Roberts*
26 *Construction, Inc.*, Case No. 22CECG00407, and include your identifying information (full name,
27 address, telephone number, approximate dates of employment, and social security number for
28 verification purposes). You must make the request yourself. If someone else makes the request
for you, it will not be valid. You should send your Request for Exclusion to the Administrator by
email, fax, or send by regular U.S. mail. **The Administrator must be sent your request to be
excluded by <<RESPONSE DEADLINE>>, or it will be invalid.** Section 9 of the Notice has

the Administrator's contact information. If you are an Aggrieved Employee, you will still receive an Individual PAGA Payment.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Defendant are asking the Court to approve. At least 16 days before the Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them and the Settlement Agreement on the Administrator's Website <<ADMINISTRATOR WEBSITE>> or the Court's website <<COURT WEBSITE>>.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is <<RESPONSE DEADLINE>>.** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action, *Jorge L. Leon vs. Davis & Roberts Construction, Inc.*, case no. 22CECG00407, and include your name, current address, telephone number, and approximate dates of employment for Defendant and sign the objection. Section 9 of this Notice has the Administrator's contact information. You may use the enclosed Objection form for this purpose. You should send your objection to the Administrator by email, fax, or send by regular U.S. mail.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on <<FINAL APPROVAL HEARING DATE>> at <<FINAL APPROVAL HEARING TIME>> in Department 501 of the Fresno Superior Court, located at B.F. Sisk Court, 1130 O Street, Fresno, CA 93721. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually by <<CourtConnect/CourtCall/MicrosoftTeams>>

(<https://www.<<CourtVirtualAppearanceLink>>>). Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website <<ADMINISTRATOR WEBSITE>> beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendant and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to the Administrator's website at <<CLERK OF COURT'S PHONE NUMBER>>. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<http://www.<<COURT'S WEBSITE>>.aspx>) and entering the Case Number for the Action, Case No. 22CECG00407. You can also make an appointment to personally review court documents in the Clerk's Office at the B.F. Sisk Court by calling <<CLERK OF COURT'S PHONE NUMBER>>.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

Class Counsel:

Name of Attorney:	David G. Spivak
Email Address:	david@spivaklaw.com
Name of Firm:	The Spivak Law Firm
Mailing Address:	8605 Santa Monica Bl PMB 42554 West Hollywood, CA 90069
Telephone:	(213) 725-9094

Administrator:

Name of Company:	Simpluris, Inc.
Email Address:	_____
Mailing Address:	_____
Telephone:	_____
Fax Number:	_____

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void

☐ you should consult the Unclaimed Property Fund (https://www.sco.ca.gov/search_upd.html) for instructions on how to retrieve the funds. You can contact the Unclaimedx Property Fund at (800)

1 992-4647.

2 ☐ you will have no way to recover the money.

3 **11. WHAT IF I CHANGE MY ADDRESS?**

4 To receive your check, you should immediately notify the Administrator if you move or otherwise
5 change your mailing address.

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Leon v. Davis & Roberts Construction, Inc.
Superior Court of the State of California, County of Fresno
Case No. 22CECG00407

ELECTION NOT TO PARTICIPATE IN SETTLEMENT FORM

**IF YOU WANT TO BE INCLUDED IN THIS CLASS ACTION SETTLEMENT AND BE ELIGIBLE FOR
A SHARE OF THE SETTLEMENT PROCEEDS,
DO NOT FILL OUT THIS FORM.**

**IF YOU DO NOT WANT TO BE INCLUDED IN THE SETTLEMENT, YOU MUST COMPLETE AND
SIGN THIS DOCUMENT AND MAIL IT TO THE ADDRESS BELOW, EMAILED, FAXED, OR
POSTMARKED NOT LATER THAN <<RESPONSE DEADLINE>>:**

Leon v. Davis & Roberts Construction, Inc. Class Action Administrator
c/o _____

I declare as follows: I have received notice of the proposed settlement in this action and I wish to be excluded from the class and **not** to participate in the proposed settlement. I understand this means that I will not be bound by the Settlement and also will not share in the settlement proceeds. I understand that exclusion from the Class Settlement will not result in exclusion from the PAGA portion of the Settlement. If I am an Aggrieved Employee under the Settlement, I will still receive an Individual PAGA Payment.

(Typed or Printed Name)

(Address)

(City, State, Zip Code)

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EXHIBIT C

1 **WORK WEEK DISPUTE FORM**

2 Superior Court of The State of California
3 For The County of Fresno
4 *Jorge L. Leon v. Davis & Roberts Construction, Inc.*, Case No. 22CECG00407

5 Indicate Name/Address Changes, if any:

6 <<Name>>

7 <<Address>>

8 <<City>>, <<State>> <<Zip Code>>

9 XX - XX -

10 TO ALL CURRENT AND FORMER HOURLY, NONEXEMPT EMPLOYEES OF
11 DEFENDANT IN CALIFORNIA FROM FEBRUARY 8, 2018 THROUGH THE DATE OF
12 PRELIMINARY APPROVAL OF THIS SETTLEMENT.

13 The amount of your estimated Settlement Award is based upon the number of Work Weeks you
14 worked between February 08, 2018 and <<the date of preliminary approval of this Settlement>>
15 and Work Weeks you worked between December 23, 2020 and the date of preliminary approval
16 of this Settlement. "Individual Class Work Weeks" are defined as any Work Week in which you
17 worked at least one (1) day as an hourly, non-exempt of Davis & Roberts Construction, Inc.
18 ("Defendant") in California during the calendar week. "Individual PAGA Work Weeks" are
19 defined as any Work Week (Pay Period) in which you worked at least one (1) day as an hourly,
20 non-exempt of Davis & Roberts Construction, Inc. ("Defendant") in California during the
21 calendar week during the period of December 23, 2020 through <<the date of preliminary
22 approval of this Settlement>>. The number of Class and PAGA Work Weeks applicable to your
23 claim are set forth below.

24 **YOUR ELIGIBLE WORK WEEKS**

25 Defendant's records indicate that you worked <<number of Work Weeks>> Work Weeks
26 between February 08, 2018 and <<the date of preliminary approval of this Settlement>> and
27 <<number of Work Weeks>> Work Weeks between December 23, 2020 through <<the date of
28 preliminary approval of this Settlement>>.

29 **YOUR ESTIMATED SETTLEMENT AWARD AND DISPUTE PROCEDURE**

30 Under the terms of the Class Action Settlement, you are entitled to receive a settlement payment
31 in the approximate estimated amount of <<\$Settlement Share Amount>>, minus all applicable
32 payroll and tax deductions, after the Court approves the Settlement and it goes into effect. This
33 process may take six months or more. You will receive a Form W-2 reflecting the payment to
34 you. Your Settlement Share reflected on this Notice is only an estimate. The exact amount of the
35 payment could vary, up or down.

1 If you wish to dispute the number of February 08, 2018 credited to you, or anything else about
2 your employment status, you must complete and return this form by indicating what you believe
3 is incorrect on the blank lines below and return it on or before <<RESPONSE DEADLINE>> to
4 the Administrator by email, fax, or regular U.S. Mail with proof of the submission date (such as
5 a postmark or delivery service date stamp). You may use this Work Weeks Dispute form for this
6 purpose. You must also send any documents or other information that you contend supports your
7 belief that the information set forth above is incorrect. The Administrator will resolve any dispute
8 based upon Defendant's records and any information you provide. Please be advised that the
9 information on this Work Weeks Dispute Form is presumed to be correct unless the documents
10 you submit are company records from Defendant.

11 _____
12 _____
13 _____
14 _____

15 **UNLESS YOU ARE FILING A DISPUTE REGARDING THE NUMBER OF WORK**
16 **WEEKS, RECEIPT OF A SETTLEMENT PAYMENT, OR YOUR EMPLOYMENT**
17 **STATUS, YOU DO NOT NEED TO TAKE ANY ACTION**

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EXHIBIT D

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OBJECTION FORM

Jorge L. Leon v. Davis & Roberts Construction, Inc.
Superior Court of the State California, County of Fresno
Case No. 22CECG00407

Please verify and/or complete any missing identifying information:

CPT ID: <<CPT ID>>

<<Name>>

<<Address1>>

<<Address2>>

<<City>>, <<State>> <<Zip>>

CORRECT NAME AND ADDRESS HERE:

Telephone Number: (____) ____ - ____

THIS FORM IS TO BE USED ONLY IF YOU WANT TO PARTICIPATE IN THE SETTLEMENT, BUT YOU OBJECT TO THE TERMS OF THE SETTLEMENT. IF YOU OBJECT TO THE SETTLEMENT, YOU SHOULD SIGN AND COMPLETE THIS FORM ACCURATELY AND IN ITS ENTIRETY (OR ONE LIKE IT), AND YOU SHOULD EMAIL IT TO <<____@____.COM>>, FAX IT TO <<XXX-XXX-XXXX>>, OR MAIL IT BY FIRST CLASS U.S. MAIL TO THE ADMINISTRATOR SO THAT IT IS POSTMARKED ON OR BEFORE <<RESPONSE DEADLINE>>. THE ADDRESS FOR THE ADMINISTRATOR IS NOTED ON PAGE TWO OF THIS FORM.

IF YOU DO NOT OBJECT TO THE SETTLEMENT, DO NOT SUBMIT THIS FORM. THE ADMINISTRATOR WILL SEND THIS OBJECTION AND ANY SUPPORTING DOCUMENTS TO THE ATTORNEYS FOR THE PARTIES. THE ATTORNEYS FOR THE PARTIES WILL FILE THE OBJECTION WITH THE COURT.

The Court will consider your objection at the Final Approval Hearing if you timely submit it. Include any and all evidence and supporting papers (including, without limitation, all briefs, written evidence, and declarations) that you would like the Court to consider. However, you may speak to the Court at the final approval hearing whether or not you submit a timely objection.

[] I OBJECT to the *Jorge L. Leon v. Davis & Roberts Construction, Inc.* Settlement on the following grounds (if additional space necessary, please include additional sheets of paper):

[] I am or will be represented by an attorney (provide name and address of attorney on lines below if applicable):

Executed on _____, 2023

(Signature)

<<Name>>

(Printed Name)

EMAIL TO THE ADMINISTRATOR: <<____@____.COM>>

FAX TO THE ADMINITRATOR: <<(XXX) XXX-XXXX>>

MAIL TO THE SETTLEMENT ADMINISTRATOR, BY U.S. MAIL
POSTMARKED NOT LATER THAN <<RESPONSE DEADLINE>>:

Jorge L. Leon v. Davis & Roberts Construction, Inc. Administrator

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EXHIBIT E

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF FRESNO
(UNLIMITED JURISDICTION)

JORGE L. LEON, on behalf of himself and all others similarly situated, and as an “aggrieved employee” on behalf of other “aggrieved employees” under the Labor Code Private Attorneys General Act of 2004,

Plaintiff(s),

vs.

DAVIS & ROBERTS CONSTRUCTION, INC., a California corporation; and DOES 1–50, inclusive,

Defendant(s).

Case No. 22CECG00407

**[PROPOSED] ORDER
PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT**

Action filed: February 08, 2022
Dept: 501, The Honorable D. Tyler Tharpe

1 The Motion of Plaintiff Jorge L. Leon (hereafter referred to as "Plaintiff") for Preliminary
2 Approval of a Class Action Settlement (the "Motion") was considered by the Court, the
3 Honorable D. Tyler Tharpe presiding. The Court having considered the Motion, the Class Action
4 and PAGA Settlement Agreement and Class Notice ("Settlement" or "Settlement Agreement"),
5 and supporting papers, HEREBY ORDERS THE FOLLOWING:
6

7 1. The Court grants preliminary approval of the Settlement and the Settlement Class
8 based upon the terms set forth in the Settlement filed as an Exhibit to the Motion for Preliminary
9 Approval. All terms herein shall have the same meaning as defined in the Settlement. The Court
10 has determined only that there is sufficient evidence to suggest that the proposed settlement
11 might be fair, adequate, and reasonable, and that any final determination of those issues
12 will be made at the final hearing. The Court will make a determination at the hearing on the
13 motion for final approval of class action settlement (the "Final Approval Hearing") as to whether
14 the Settlement is fair, adequate and reasonable to the Settlement Class.
15

16 2. For purposes of this Preliminary Approval Order, the "Settlement Class" means
17 all current and former hourly, nonexempt employees of Defendant in California (collectively
18 "Class Members"), who worked anytime during the Class Period. The "Class Period" shall mean
19 the period of time from February 08, 2018, through the date of preliminary approval of this
20 Settlement.
21

22 3. Defendant estimated for purposes of mediation that there are 9,686 weeks worked
23 by 119 Class Members for the period of February 8, 2018 through May 16, 2023. If the number
24 of weeks worked by Class Members increases by more than ten percent (10%) above the
25 estimated number of 9,686 as of the date of the Court's preliminary approval of the Settlement,
26 then Defendant shall have the option of either (1) increasing the amount of the Gross Settlement
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1 Amount by the corresponding percentage increase above ten percent (10%) (i.e., if the number of
2 weeks worked by the Class Members increases above the 10% threshold of 10,655, the Gross
3 Settlement Amount shall increase by the percentage of weeks worked by the Class Members
4 above the threshold of 10,655; calculated as follows: updated total weeks worked - 10,655 =
5 workweeks above 10% threshold, workweeks above 10% threshold / 10,655 = percentage
6 increase, percentage increase x \$166,713.47 original Gross Settlement Amount = additional
7 monies owed) or (2) modifying the end date of the Class Period to an earlier date to not trigger
8 the escalation provision. Before the Parties seek or a Party seeks final Court approval of the
9 Settlement, the Settlement Administrator will advise Plaintiff's counsel and Defendant's counsel
10 of Defendant's report of the total number of weeks worked by the Class Members for the period
11 of February 8, 2018 through the date of the Court's preliminary approval of the Settlement.
12

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14 4. "Effective Date" means the date by when both of the following have occurred: (a)
15 the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the
16 Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no
17 Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if
18 one or more Participating Class Members objects to the Settlement, the day after the deadline for
19 filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the
20 day after the appellate court affirms the Judgment and issues a remittitur.
21

22 5. This action is provisionally certified pursuant to section 382 of the California Code
23 of Civil Procedure and Rule 3.760, et seq. of the California Rules of Court as a class action for
24 purposes of settlement only with respect to the proposed Settlement Class.
25

26 6. Not later than 15 days after the Court grants Preliminary Approval of the
27 Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the form
28

1 of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator
2 must maintain the Class Data in confidence, use the Class Data only for purposes of the Settlement
3 and for no other purpose, and restrict access to the Class Data to Administrator employees who
4 need access to the Class Data to effect and perform under the Settlement Agreement. Defendant
5 has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data
6 omitted class member identifying information and to provide corrected or updated Class Data as
7 soon as reasonably feasible. Without any extension of the deadline by which Defendant must send
8 the Class Data to the Administrator, the Parties and their counsel will expeditiously use best
9 efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted
10 Class Data.
11

12
13 7. No later than three (3) business days after receipt of the Class Data, the
14 Administrator shall notify Class Counsel that the list has been received and state the number of
15 Class Members, PAGA Members, Work Weeks, and Pay Periods in the Class Data.
16

17 8. Using best efforts to perform as soon as possible, and in no event later than 14
18 days after receiving the Class Data, the Administrator will send to all Class Members identified
19 in the Class Data, via first-class United States Postal Service ("USPS") mail, the Notice Packet
20 with Spanish translation, if applicable substantially in the forms attached to this order as **Exhibits**
21 **A, B, C, and D**. The first page of the Class Notice shall prominently estimate the dollar amounts
22 of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member,
23 and the number of Work Weeks and PAGA Pay Periods (if applicable) used to calculate these
24 amounts. Before mailing Notice Packets, the Administrator shall update Class Member addresses
25 using the National Change of Address database.
26

27 9. Not later than 3 business days after the Administrator's receipt of any Notice
28

1 Packet returned by the USPS as undelivered, the Administrator shall re-mail the Notice Packet
2 using any forwarding address provided by the USPS. If the USPS does not provide a forwarding
3 address, the Administrator shall conduct a Class Member Address Search, and re-mail the Notice
4 Packet to the most current address obtained. The Administrator has no obligation to make further
5 attempts to locate or send Notice Packet to Class Members whose Notice Packet is returned by
6 the USPS a second time.
7

8 10. Class Counsel's contact information is David G. Spivak, Esq., The Spivak Law
9 Firm, 8605 Santa Monica Bl, PMB 42554, West Hollywood, CA 90069. Defense Counsel's
10 contact information is Ian B. Wieland, Esq., Sagaser, Watkins & Wieland PC, 5260 N. Palm Ave.,
11 Ste. 400, Fresno, CA, 93704.
12

13 11. The deadlines for Class Members' written objections, Challenges to Work Weeks
14 and/or weekly Pay Periods (disputes), and Requests for Exclusion will be extended an additional
15 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose
16 notice is re-mailed. The Administrator will inform the Class Member of the extended deadline
17 with the re-mailed Notice Packet.
18

19 12. If the Administrator, Defendant or Class Counsel is contacted by or otherwise
20 discovers any persons who believe they should have been included in the Class Data and should
21 have received Notice Packet, the Parties will expeditiously meet and confer in person or by
22 telephone, and in good faith, in an effort to agree on whether to include them as Class Members.
23 If the Parties agree, such persons will be Class Members entitled to the same rights as other Class
24 Members, and the Administrator will send, via email or overnight delivery, a Notice Packet
25 requiring them to exercise options under the Settlement Agreement not later than 14 days after
26 receipt of Notice Packet, or the deadline dates in the Notice Packet, which ever are later.
27
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1 13. Requests for Exclusion. Class Members who wish to exclude themselves (opt-out
2 of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written
3 Request for Exclusion not later than 60 days after the Administrator mails the Notice Packet (plus
4 an additional 14 days for Class Members whose Notice Packet is re-mailed). A Request for
5 Exclusion is a letter from a Class Member or his/her representative that reasonably communicates
6 the Class Member's election to be excluded from the Settlement and includes the Class Member's
7 name, address and email address or telephone number. To be valid, a Request for Exclusion must
8 be timely faxed, emailed, or postmarked by the Response Deadline. An Election Not to Participate
9 in Settlement form, attached as Exhibit B, may be used for this purpose but is not required.

10
11 14. The Administrator may not reject a Request for Exclusion as invalid because it
12 fails to contain all the information specified in the Class Notice. The Administrator shall accept
13 any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of
14 the person as a Class Member and the Class Member's desire to be excluded. The Administrator's
15 determination shall be final and not appealable or otherwise susceptible to challenge. If the
16 Administrator has reason to question the authenticity of a Request for Exclusion, the
17 Administrator may demand additional proof of the Class Member's identity. The Administrator's
18 determination of authenticity shall be final and not appealable or otherwise susceptible to
19 challenge.

20
21 15. Every Class Member who does not submit a timely and valid Request for Exclusion
22 is deemed to be a Participating Class Member under the Settlement Agreement, entitled to all
23 benefits and bound by all terms and conditions of the Settlement, including the Participating Class
24 Members' Releases under Paragraphs 6.2 and 6.3 of the Settlement, regardless whether the
25 Participating Class Member actually receives the Class Notice or objects to the Settlement.
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1 16. Every Class Member who submits a valid and timely Request for Exclusion is a
2 Non-Participating Class Member and shall not receive an Individual Class Payment or have the
3 right to object to the class action components of the Settlement. Plaintiff releases all claims for
4 civil penalties that could have been sought by the Labor Commissioner for the violations
5 identified in Plaintiffs pre-filing letter to the LWDA; Plaintiff does not release the claim for wages
6 or damages of any Aggrieved Employee unless such Aggrieved Employee is a Participating Class
7 Member.
8

9 17. Challenges to Calculation of Work Weeks. Each Class Member shall have 60 days
10 after the Administrator mails the Notice Packet (plus an additional 14 days for Class Members
11 whose Notice Packet is re-mailed) to challenge the number of Class Work Weeks and PAGA Pay
12 Periods (if any) allocated to the Class Member in the Class Notice. This is also known as a dispute.
13 A Work Week Dispute form, attached as Exhibit C, may be used for this purpose but is not
14 required. The Class Member may challenge the allocation by communicating with the
15 Administrator via fax, email or mail. The Administrator must encourage the challenging Class
16 Member to submit supporting documentation. In the absence of any contrary documentation, the
17 Administrator is entitled to presume that the Work Weeks contained in the Class Notice are
18 correct so long as they are consistent with the Class Data. The Administrator's determination of
19 each Class Member's allocation of Work Weeks and/or weekly Pay Periods shall be final and not
20 appealable or otherwise susceptible to challenge. The Administrator shall promptly provide
21 copies of all challenges to calculation of Work Weeks and/or weekly Pay Periods to Defense
22 Counsel and Class Counsel and the Administrator's determination the challenges.
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26 18. Objections to Settlement. Only Participating Class Members may object to the
27 class action components of the Settlement and/or this Agreement, including contesting the
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1 fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class
2 Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

3 19. Participating Class Members may send written objections to the Administrator, by
4 fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire
5 an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A
6 Participating Class Member who elects to send a written objection to the Administrator must do
7 so not later than 60 days after the Administrator's mailing of the Notice Packet (plus an additional
8 14 days for Class Members whose Notice Packet was re-mailed). An The Objection form attached
9 as Exhibit D may be used for this purpose but is not required.
10

11 20. Non-Participating Class Members have no right to object to any of the class action
12 components of the Settlement.
13

14 21. Not later than 14 days before the date by which Plaintiff is required to file the
15 Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and
16 Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and
17 compliance with all of its obligations under the Settlement Agreement, including, but not limited
18 to, its mailing of the Notice Packets, the Notice Packets returned as undelivered, the re-mailing
19 of Notice Packets, attempts to locate Class Members, the total number of Requests for Exclusion
20 from Settlement it received (both valid or invalid), the number of written objections and attach
21 the Exclusion List. The Administrator will supplement its declaration as needed or requested by
22 the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's
23 declaration(s) in Court.
24

25 22. The Court approves, as to form and content, the Class Notice in substantially the
26 form attached as Exhibit A to this Order, the Election Not to Participate in Settlement form in
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1 substantially the form attached as Exhibit B to this Order, the Work Weeks Dispute form in
2 substantially the form attached as Exhibit C to this Order, and the Objection form in substantially
3 the form attached as Exhibit D to this Order.

4 23. The Court approves, for settlement purposes only, David G. Spivak of The Spivak
5 Law Firm and Walter L. Haines of United Employees Law Group, PC as Class Counsel.

6 24. The Court approves, for settlement purposes only, Jorge L. Leon as the Class
7 Representative.
8

9 25. The Court approves Simpluris, Inc. as the Administrator.

10 26. The Court preliminarily approves Class Counsel's request for attorneys' fees and
11 costs subject to final review by the Court.
12

13 27. The Court preliminarily approves the estimated Administrator costs payable to the
14 Administrator subject to final review by the Court.

15 28. The Court preliminarily approves Plaintiff's Class Representative Service
16 Payment subject to final review by the Court.
17

18 29. A Final Approval Hearing shall be held on ____ at ____.m. in Department 501 of
19 the Superior Court for the State of California, County of Fresno, located at the B.F. Sisk Court,
20 1130 O Street, Fresno, CA 93721 to consider the fairness, adequacy and reasonableness of the
21 proposed Settlement preliminarily approved by this Preliminary Approval Order, and to consider
22 the application of Class Counsel for attorneys' fees and costs and the Class Representative Service
23 Payment to the Class Representative. The notice of motion and all briefs and materials in support
24 of the motion for final approval of class action settlement and motion for attorneys' fees and
25 litigation costs shall be served and filed with this Court on or before _____. Plaintiff's counsel must
26 give notice to any objecting party of any continuance of the hearing of the motion for final
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1 approval.

2 30. If for any reason the Court does not execute and file a Final Approval Order and
3 judgment, or if the Effective Date, as defined in the Settlement, does not occur for any reason, the
4 proposed Settlement that is the subject of this order, and all evidence and proceedings had in
5 connection therewith, shall be without prejudice to the status quo ante rights of the Parties to the
6 litigation, as more specifically set forth in the Settlement.
7

8 31. The Court expressly reserves the right to adjourn or continue the Final Approval
9 Hearing from time to time without further notice to members of the Class. The Plaintiff shall give
10 prompt notice of any continuance to Settlement Class Members who object to the Settlement.
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12 **IT IS SO ORDERED.**

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15 **DATE**

15 **THE HONORABLE D. TYLER THARPE**
16 **SUPERIOR COURT JUDGE**

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EXHIBIT F

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF FRESNO
(UNLIMITED JURISDICTION)

JORGE L. LEON, on behalf of himself and all others similarly situated, and as an “aggrieved employee” on behalf of other “aggrieved employees” under the Labor Code Private Attorneys General Act of 2004,

Plaintiff(s),

vs.

DAVIS & ROBERTS CONSTRUCTION, INC.,
a California corporation; and DOES 1–50,
inclusive,

Defendant(s).

Case No. 22CECG00407

**[PROPOSED] FINAL ORDER AND
JUDGMENT APPROVING CLASS
ACTION SETTLEMENT**

Action filed: February 08, 2022
Dept: 501, The Honorable D.
Tyler Tharpe

1 This matter came on for hearing on ____ at ____m. in Department 501 of the above-
2 captioned court on Plaintiff's Motion for Final Approval of a Class Action Settlement pursuant
3 to California Rules of Court, Rule 3.769, as set forth in the Joint Stipulation of Class Action
4 Settlement and Release of Claims (the "Settlement") filed herewith which provides for a Gross
5 Settlement Amount ("GSA") of up to \$166,713.47 in compromise of all disputed claims on behalf
6 of all current and former hourly, nonexempt employees of Defendant in California during the
7 period of February 08, 2018 to the date of preliminary approval of this Settlement ("Settlement
8 Class Period"). All capitalized terms used herein shall have the same meaning as defined in the
9 Settlement. The Gross Settlement Amount includes the \$56,713.47 Defendant paid to Class
10 Members as part of its Pick-Up-Stix campaign.
11

12
13 In accordance with the Court's prior Order Granting Preliminary Approval of Class
14 Action Settlement, Class Members have been given notice of the terms of the Settlement and the
15 opportunity to submit a claim, request exclusion, comment upon or object to it or to any of its
16 terms. Having received and considered the Settlement, the supporting papers filed by the Parties,
17 and the evidence and argument received by the Court in conjunction with the motions for
18 preliminary and final approval of the Settlement, the Court grants final approval of the Settlement
19 and HEREBY ORDERS, ADJUDGES, DECREES AND MAKES THE FOLLOWING
20 DETERMINATIONS¹:
21

22 1. The Court has jurisdiction over the subject matter of the Action and over all Parties
23 to the Action, including all Class Members. Pursuant to this Court's Order Granting Preliminary
24

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26
27 ¹ A true and correct copy of the Court's ruling on the Motion for Final Approval of Class Action
28 Settlement entered on [REDACTED] is attached hereto as **Exhibit A** and incorporated by reference. A true
and correct copy of the Court's Minute Order dated [REDACTED] is attached hereto as **Exhibit B** and
incorporated by reference.

1 Approval of Class Action Settlement of ____, the Notice Packet was sent to each Class Member
2 by First Class U.S. mail. The Notice Packet informed Class Members of the terms of the
3 Settlement, their right to receive their proportional share of the Settlement, their right to request
4 exclusion, their right to comment upon or object to the Settlement, and their right to appear in
5 person or by counsel at the final approval hearing and be heard regarding final approval of the
6 Settlement. Adequate periods of time were provided by each of these procedures. No member of
7 the Settlement Class presented written objections to the proposed Settlement as part of this notice
8 process, stated an intention to appear, or actually appeared at the final approval hearing.
9

10 2. For purposes of this Final Order and Judgment, the Class Members are all current
11 and former hourly, nonexempt employees of Defendant in California during the Class Period. at
12 any time during the period of February 08, 2018 to the date of preliminary approval of this
13 Settlement (“Settlement Class Period”).
14

15 3. The Court finds and determines that the notice procedure afforded adequate
16 protections to Class Members and provides the basis for the Court to make an informed decision
17 regarding final approval of the Settlement based on the responses of Class Members. The Court
18 finds and determines that the notice provided in this case was the best notice practicable, which
19 satisfied the requirements of law and due process as to all persons entitled to such notice.
20

21 **Release by Plaintiff and Class Members.** The Parties agree that it is their intent that the
22 resolution set forth in this Settlement will release and discharge the Released Claims by way of
23 any further attempt, by lawsuit, administrative claim or action, arbitration, demand, or other action
24 of any kind by each and all of the Settlement Class Members (including participation to any extent
25 in any representative or collective action) against the Released Parties. This release will not take
26 effect until Defendant has paid the Gross Settlement Amount in full per this Settlement
27
28

1 Agreement.

2 **PAGA Release**. Plaintiff releases all claims for civil penalties that could have been
3 sought by the Labor Commissioner for the violations identified in Plaintiffs pre-filing letter to
4 the LWDA; Plaintiff does not release the claim for wages or damages of any Aggrieved Employee
5 unless such Aggrieved Employee is a Participating Class Member.
6

7 “**Released Claims**” shall mean all claims stated in the Operative Complaint and based
8 solely on the facts alleged in the Operative Complaint. “**Released Parties**” shall mean Defendant,
9 its officers, directors, employees and agents.

10 2. The Court further finds and determines that the terms of the Settlement are fair,
11 reasonable and adequate, that the Settlement is ordered finally approved, and that all terms and
12 provisions of the Settlement, including the release of claims contained therein, should be and
13 hereby are ordered to be consummated, and directs the Parties to effectuate the Settlement
14 according to its terms. As of the Effective Date of Settlement, and for the duration of the
15 Settlement Class Period, all Class Members are hereby deemed to have waived and released all
16 Released Claims and are forever barred and enjoined from prosecuting the Released Claims
17 against the Released Parties as fully set forth in the Settlement. No objections were received by
18 the Parties or the Court through the date of this Final Order and Judgment. The Court finds ____
19 Class Member(s) - ____ - submitted a request for exclusion from the Settlement as determined by
20 the Administrator and therefore is/are not in the Settlement Class.
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24 3. The Court finds and determines that (a) the Settlement Shares to be paid to
25 Participating Class Members and (b) the LWDA payment as civil penalties under the California
26 Labor Code Private Attorneys General Act of 2004, as amended, California Labor Code sections
27 2699 *et seq.*, as provided for by the Settlement are fair and reasonable. The Court hereby grants
28

1 final approval to, and orders the payment of, those amounts be made to the Participating Class
2 Members and to the California Labor & Workforce Development Agency (“LWDA”), in
3 accordance with the terms of the Settlement.

4 4. The Court further grants final approval to and orders that the following payments
5 be made in accordance with the terms of the Settlement:

6 a. Class Counsel fees & costs of \$55,571.00 in attorneys’ fees and \$20,000.00
7 in litigation costs to Class Counsel;

8 b. \$15,000.00 as a Class Representative Service Payment award payable to
9 Plaintiff Jorge L. Leon for his service as a Class Representative;

10 c. \$10,000.00 in costs of the Administrator payable to Simpluris, Inc. for its
11 services as the Administrator; and

12 d. Payment of \$3,000.00 (75% of the (\$4,000.00 PAGA penalty) to the
13 LWDA.

14 7. The settlement shall proceed as directed in the Settlement, and no payments
15 pursuant to the Settlement shall be distributed until after the Effective Date of Settlement. Without
16 affecting the finality of this Final Order and Judgment in any way, the Court retains jurisdiction
17 of all matters relating to the interpretation, administration, implementation, effectuation and
18 enforcement of this Final Order and Judgment and the Settlement pursuant to California Rule of
19 Court 3.769(h).

20 8. Within 14 calendar days of the Effective Date of Settlement, Defendant shall
21 deposit the Settlement proceeds in an account designated by the Administrator: (i) the total
22 amount of all Individual Class Payments to Participating Class Members, (ii) the Court approved
23 Class Counsel fees & costs, (iii) the Court-approved Class Representative Service Payment, (iv)
24

1 the Court-approved costs of the Administrator, (v) the payment to the LWDA, and (vi) (i) the
2 total amount of all Individual PAGA Payments to Aggrieved Employees.

3 9. Other than its employer side payroll taxes, Defendant's payment of such sums
4 shall be the sole financial obligation of Defendant under the Settlement, and shall be in full
5 satisfaction of all claims released herein, including, without limitation, all claims for wages,
6 penalties, interest, attorneys' fees, costs and expenses.

8 10. Pursuant to CCP 384 and the Settlement, Participating Class Members shall have
9 one hundred and eighty (180) days from the date of the check's issuance to cash their Settlement
10 Share check. After the expiration of the 180-day period, on Defendant's behalf, the Administrator
11 shall remit any amounts from voided settlement checks and otherwise unclaimed, plus interest on
12 the Residue at the legal rate of interest from the date of entry of the initial judgement to the
13 California Unclaimed Property Fund.

15 11. The Parties shall file a final accounting report by _____. A non-appearance case
16 review re submission of a final report is scheduled for _____ at _____.m. in Department 501. The
17 Parties shall also prepare and file a stipulation and proposed order and proposed Amended Final
18 Order and Judgment by _____ which includes the amount of distribution of unpaid cash Residue,
19 and unclaimed or abandoned funds to the non-party, the accrued interest on that sum. The
20 stipulation shall be signed by counsel for the class and defense counsel in accord with the
21 proposed Amended Final Order and Judgment. If there are objections by any party or non-party,
22 class counsel shall immediately notify the Court and the matter will be set for further hearing. A
23 non-appearance hearing for the lodging of the stipulation and proposed order and separate
24 amended judgment is scheduled for _____ at _____.m. in Department 501.

27 12. Nothing in this Final Order and Judgment shall preclude any action to enforce the
28

1 Parties' obligations under the Settlement or hereunder, including the requirement that Defendant
2 deposit funds for distribution by the Administrator to Participating Class Members in accordance
3 with the Settlement.

4 13. The Court hereby enters final judgment in this case in accordance with the terms
5 of the Settlement, Order Granting Preliminary Approval of Class Action Settlement, and this Final
6 Order and Judgment.
7

8 14. The Parties are hereby ordered to comply with the terms of the Settlement.

9 15. The Parties shall bear their own costs and attorneys' fees except as otherwise
10 provided by the Settlement and this Final Order and Judgment.
11

12 16. The Settlement is not an admission by Defendant nor is this Final Order and
13 Judgment a finding of the validity of any claims in the Action or of any wrongdoing by Defendant.
14 Furthermore, the Settlement is not a concession by Defendant and shall not be used as an
15 admission of any fault, omission, or wrongdoing by Defendant. Neither this Final Order and
16 Judgment, the Settlement, any document referred to herein, any exhibit to any document referred
17 to herein, any action taken to carry out the Settlement, nor any negotiations or proceedings related
18 to the Settlement are to be construed as, or deemed to be evidence of, or an admission or
19 concession with regard to, the denials or defenses of Defendant, and shall not be offered in
20 evidence in any proceeding against the Parties hereto in any Court, administrative agency, or other
21 tribunal for any purpose whatsoever other than to enforce the provisions of this Final Order and
22 Judgment. This Final Order and Judgment, the Settlement and exhibits thereto, and any other
23 papers and records on file in the Action may be filed in this Court or in any other litigation as
24 evidence of the settlement by Defendant to support a defense of res judicata, collateral estoppel,
25 release, or other theory of claim or issue preclusion or similar defense as to the Released Claims.
26
27
28

1 17. This document shall constitute a Judgment for purposes of California Rule of
2 Court 3.769(h).

3 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

4
5
6 _____
7 **DATE**

8 **THE HONORABLE D. TYLER THARPE**
9 **SUPERIOR COURT JUDGE**