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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

MARK RAMOS, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

MSI STRUCTURAL STEEL, LLC, a
California Limited Liability Company; and
DOES 1 through 20, inclusive;

Defendants.

Case No.: CIVSB2134505
*[Assigned to Hon. Jessica Morgan, Dept S26,
for all purposes]*

**DECLARATION OF BRIAN J. MANKIN
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Hearing

Date: September 12, 2024

Time: 8:30 a.m.

Dept.: S26

I, Brian J. Mankin, state and declare:

1. I am an attorney licensed to practice before all of the courts of the State of California. I manage the employment department within my firm where I am also a Partner. I represent Plaintiff in this action and I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I submit this declaration in support of Plaintiff's Motion for Preliminary Approval of this Class Action Settlement. If called as a witness, I could and would competently testify thereto.

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1 **COUNSEL'S EXPERIENCE**

2 2. I have been a member, in good standing, of the State Bar of California since 2001.
3 I am admitted to practice in the United States District Courts for the Central and Southern
4 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
5 courts in California.

6 3. I have handled over 500 employee vs. employer litigation matters during my 23
7 years in practice. Over the last 15 years, my practice has almost entirely consisted of
8 representing employees, the majority of which has included class action and representative
9 action wage and hour matters. In total, I have handled over 300 class action and representative
10 action wage/hour cases, and have been appointed by the court as class counsel and have received
11 final court approval and judgment in close to half of those actions to date, and anticipate
12 receiving final approval in many more of those in the future.

13 4. As part of these settlements and judgments, I have recovered in excess of \$250
14 million in damages for my clients and the class members (who often work as nurses, ambulance
15 drivers, technicians, warehouse workers, truck drivers, sales, professional occupations and
16 countless other trades). As of the end of last year, my team and I held the record for the largest
17 known PAGA-only case in California's history as of that time - a \$12.5 million-dollar court
18 approved settlement, which followed extensive litigation, summary adjudication and writs to the
19 CA Supreme Court against a Fortune 50 company (*Garcia v. Macy's*, San Bernardino Superior
20 Court).

21 5. I have tried two class and PAGA cases against Fortune 100 companies. In 2018, I
22 was lead counsel in a PAGA case that my firm tried to the bench in the Orange County Superior
23 Court and received a \$425,000 judgment. In 2019, I was co-counsel in a class action case
24 against Walmart that was tried to the jury in District Court for the Central District, wherein the
25 jury awarded Plaintiffs over \$6 million. Following the successful outcome in trial, both cases
26 were appealed.

27 6. Over the last four or five consecutive years, I have been selected by my peers as a
28 "Super Lawyer" in Employment Litigation, a distinction that only 5% of lawyers receive.

BRIEF SUMMARY OF THE SETTLEMENT

7. Following a contested mediation, Plaintiff and Defendant (collectively, the “Parties”) reached a global settlement and eventually entered into a Class Action Settlement Agreement and Release of Claims resolving the wage and hour claims of the putative class (the “Settlement Agreement” or “S.A”), which is attached hereto as **Exhibit 1**. The Settlement Agreement seeks to release and discharge Defendant from the claims brought against it in exchange for Defendant’s agreement to pay \$362,500 on a non-reversionary, non-claims made basis (each Class Member will receive his/her share of the Net Settlement Amount without having to submit a claim form or take any action, except for those who opt-out). Plaintiff seeks to represent a class of all current and former non-exempt employees employed by Defendant in California at any time during the Class Period of December 17, 2017, through January 31, 2024. Under the terms of the Settlement Agreement, Defendant will not oppose Class Counsel’s application for a reasonable award of attorneys’ fees not to exceed one-third of the Settlement Amount, Class Counsel’s litigation expenses not to exceed \$20,000, settlement administrator costs of \$7,500, PAGA Penalties of \$30,000 of which \$22,500 will be paid to the LWDA and the remaining \$7,500 will be paid to the Aggrieved Employees, and a service award not to exceed \$10,000 to Plaintiff. After subtracting these deductions from the Settlement Amount, approximately \$174,166.67 will be available to pay individual settlement amounts to approximately 148 Class Members who do not opt-out of the settlement, as follows:

<i>Settlement Amount</i>	\$ 362,500.00
Attorneys’ Fees (1/3)	\$ 120,833.33
Litigation Costs (not to exceed)	\$ 20,000.00
Administrator Costs	\$ 7,500.00
PAGA Penalties	\$ 30,000.00
Class Representative Service Award	\$ 10,00.00
<i>Net Settlement Amount</i>	\$ 174,166.67

8. Assuming 148 Class Members, the average payment to each Class Member will be approximately \$1,176.80 (\$174,166.67 / 148). However, the actual payment will be calculated on a pro-rata basis according to the number of Weeks Worked by each Class Member during the Class Period, with each Work Week having a value of approximately

1 \$13.61 (\$174,166.67 / 12,796 estimated Work Weeks).

2 9. Each Class Member will receive the Class Notice, explaining the nature of the
3 case, and the process for participating, objecting and opting-out, and advising of his/her
4 estimated settlement payment and the number of Work Weeks that he/she is credited with
5 working during the Class Period.

6 **PROCEDURAL BACKGROUND**

7 10. My office has performed considerable work and diligently investigated and
8 prosecuted this case to a successful conclusion. Our work has resulted in the creation of a
9 significant settlement fund for the benefit of the Class. We efficiently communicated and
10 exchanged information informally with Defense counsel which enabled the parties to
11 successfully settle the case. Because of the risks involved in litigating the case and the contested
12 legal and factual issues, my office believes this settlement to be fair, reasonable, and adequate.

13 11. After being retained by Plaintiff, we submitted on December 17, 2021, a letter to
14 the California Labor Workforce Development Agency (the "LWDA") for civil penalties under
15 the Private Attorney General Act of 2004 (the "PAGA"), and simultaneously sent a letter to
16 Defendant requesting the production of Plaintiff's personnel and timekeeping records to further
17 evaluate the wage and hour claims. The LWDA ultimately declined to assert jurisdiction over
18 the PAGA, thereby giving Plaintiff the right to bring PAGA claims.

19 12. On December 17, 2021, we filed a complaint alleging class action causes of
20 action and corresponding PAGA claims against Defendants for (1) failure to pay minimum
21 wages, (2) failure to pay overtime, (3) failure to provide meal periods, (4) failure to provide rest
22 breaks, (5) failure to reimburse business expenses, (6) failure to timely pay final wages, (7)
23 failure to provide accurate itemized wage statements, (8) unfair and unlawful competition.

24 13. Defendant retained counsel and immediately began to defend the case. After
25 some initial written discovery and early depositions, there were discussions among counsel, and
26 the Parties agreed to attend private mediation.

27 14. In preparation for the mediation, the Parties informally exchanged documents and
28 information that allowed both sides to calculate the potential damages and evaluate potential risk,

1 including policies and procedures pertaining to each claim alleged, and statistics relating to the
2 number of current and former employees, pay periods worked and other things. Defendant also
3 provided their written policies and practices and a robust sampling of payroll and timekeeping
4 records for Class Members. This information enabled both parties to take a deep dive into the
5 claims. Additionally, during this process, Plaintiff and his counsel analyzed, researched, and
6 investigated the potential issues, including matters related to the calculation of damages, trial,
7 and appellate issues and risks.

8 15. On October 25, 2023, Plaintiff and Defendant participated in mediation before
9 Glenn Lerman, Esq., a well-respected wage-and-hour mediator. However, the matter did not
10 resolve at mediation. Instead, the Parties conducted additional discovery, while continuing
11 settlement discussions. On or about December 19, 2023, the Parties agreed to a global settlement,
12 and the Parties entered into the Settlement Agreement submitted herewith. Now the Parties seek
13 the Court's preliminary approval of the Settlement.

14 **THE WAGE AND HOUR CLAIMS, CLASS COUNSEL'S INVESTIGATION, AND**
15 **EVALUATION OF THE SETTLEMENT**

16 16. The putative Class in this case consists of approximately 148 similarly situated
17 current and former nonexempt employees that performed services for Defendant in California at
18 any time during the Class Period. Plaintiff alleged numerous wage and hour violations on behalf
19 of the Class Members. However, Defendant vigorously contested and denied each of Plaintiff's
20 material allegations on the merits and as to the propriety of a class action or PAGA
21 representative action, as discussed herein.

22 17. In preparation for mediation, Kristina Bui Carlson, an associate within my firm,
23 and I formulated a damages model and risk analysis based upon detailed data obtained through
24 informal discovery and information exchanges. The summary of the claims below is based on
25 calculations by our expert and us, and the risks that we potentially faced, giving significant credit
26 to the defenses that Defendant raised or would like raise in further proceedings. Following the
27 informal exchange and other information provided by Defendant, we estimated the following
28 data points through the date of mediation: (1) 131 Class Members, (2) approximately 70 *former*

1 Class Members for purposes of Labor Code § 203, (3) 9,989 Work Weeks, and (4)
2 approximately 3,173 wage statements during the PAGA Period. From these metrics, and when
3 factoring in claim certification probabilities and liability probabilities, we formulated detailed
4 damages models to value the claims in preparation for mediation and to reach a realistic and
5 reasonable resolution.

6 18. Here, there were three primary categories of claims alleged by Plaintiff: (1)
7 unpaid wage claims under various theories, (2) meal and rest break violations, (3) claims for
8 waiting time and wage statement penalties due to the other alleged violations.

9 19. As to the unpaid wage claims, Plaintiff alleged that Defendant illegally rounded
10 Class Members' shift times and failed to pay for all hours worked, including overtime.
11 Therefore, Plaintiff alleged that Defendant failed to pay all required minimum and overtime
12 wages due to these practices. But Defendant vehemently opposed these unpaid wage claims on
13 the merits and as to the propriety of class certification. Due to the defenses and arguments raised,
14 Plaintiff assigned a 50% risk for the unpaid wage claim at the class certification stage and an
15 additional 40% risk on the merits. In sum, Plaintiff's counsel calculated the risk-adjusted value
16 of the unpaid wage claims as \$599,340.

17 20. Plaintiff also alleged meal and rest break claims against Defendant. Given the
18 total number of Work Weeks, Plaintiff's counsel estimated an approximate 30% violation rate
19 for meal breaks and a 30% violation rate for rest breaks, leading to 13,485 alleged meal
20 violations and 13,485 alleged rest break violations. This established a maximum potential value
21 for these claims of \$674,266 (26,970 violations multiplied by the average hourly rate of \$25 as
22 the applicable premium rate under § 226.7).

23 21. However, Defendant raised numerous arguments in response to this claim,
24 including that it authorized the Class Members to take meal and rest breaks, meaning that no one
25 had a reason or cause to miss a break or take a short/late break. Therefore, Defendant asserted
26 that a fact-finder would have to determine for each Class Member whether a break was missed
27 and why, and why a break was noncompliant or nonexistent, because if it was by the employee's
28 choice, no liability attaches to Defendant. These defenses are factored into Plaintiff's analysis in

1 two ways. First, these issues raise questions regarding whether the meal and rest break claims
2 could be certified, and Plaintiff placed a 50% risk at the class certification stage for meal periods
3 and a 40% risk for rest breaks. Second, these defenses also go toward the merits given the
4 evidentiary question of proving the number of meal and rest violations. As such, Plaintiff placed
5 a 40% risk on the merits for meal breaks, and an additional 40% risk on the merits for rest
6 breaks, setting the risk-adjusted value for the combined meal and rest break claims at \$222,508.

7 22. Plaintiff alleged claims for waiting time penalties and wage statement violations.
8 The maximum values for these claims were as follows: (1) \$446,250 for waiting time penalties
9 [70 former employees x \$212.50 average daily pay x 30 days], and (2) \$307,300 for wage
10 statement violations [3,173 wage statements at the \$50/\$100 formula under § 226(e)].

11 23. But Defendant raised a variety of defenses to these claims that impacted the
12 valuation. Namely, Defendants argued that the wage statements did not violate Labor Code §
13 226 and, even if there was a “technical” violation, Plaintiff would be unable to prove the required
14 “knowing and intentional” and “injury” elements. Defendant also argued that these claims were
15 derivative claims of the above-mentioned unpaid wage and meal / rest break claims. Based on
16 these facts and defenses, Plaintiff placed a 40% risk at class certification and estimated another
17 30% risk the merits, leading to a risk-adjusted value of \$129,066 for the wage statement claims.

18 24. Then, as to the waiting time penalty claim, Plaintiff’s valuation had to account for
19 the fact that part of this claim was derivative of the unpaid wage claims and also of the meal and
20 rest break claims, if those claims failed at certification or on the merits, there would be no
21 waiting time penalties owed. Furthermore, even if the unpaid wage and/or meal/rest claims
22 succeeded at certification and on the merits, Plaintiff would have to prove that the violations (if
23 any existed) were “willful” under the meaning of Labor Code § 203. And, here, Defendant
24 argued there was no “willful” violation as they were inadvertent and unintentional. As a result of
25 this analysis, Plaintiff’s counsel applied a 40% risk at class certification and a 30% risk on the
26 merits, leading to a risk-adjusted value of \$187,425.

27 25. In sum, when factoring in the defenses and risks of ongoing litigation, Plaintiff
28 estimated the risk-adjusted class recovery as follows:

- Unpaid Wage Claims \$ 599,340
- Meal and Rest Break Claims \$ 222,508
- Wage Statement Claims \$ 129,066
- Waiting Time Penalty Claims \$ 187,425
- **Total Risk Adjusted Penalties and Damages \$ 1,138,339**

THE SETTLEMENT IS FAIR, JUST, AND REASONABLE

26. The settlement was the product of extensive arm's length negotiations, facilitated by an experienced mediator. Though cordial and professional, the settlement negotiations were adversarial and non-collusive in nature. The settlement reached is the product of substantial effort by the parties and their counsel. Although we believed that there was a possibility of certifying the claims, we recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or on the damages awarded, and/or on an appeal that can take several more years to litigate.

27. The settlement will result in a fair payment to each class member based on the number of Weeks Worked during the Class Period. As set forth hereinabove, Plaintiff and their counsel have diligently investigated the claims and defenses on behalf of the Class Members and worked to achieve a resolution of the claims to maximize the recovery by avoiding further expenditure of attorneys' fees and costs. After evaluating the significant risks attendant with further litigation described above and weighing them against the benefits of a known compromise and settlement as set forth in the Settlement Agreement, settlement on the terms agreed to is believed to be in the best interest of Plaintiff and the Class, and is a fair and reasonable resolution of the claims alleged.

28. Plaintiff's counsel brought to bear a great deal of experience in negotiating the settlement of this case. As detailed herein, Plaintiff's counsel engaged in the necessary discovery and investigation, making it possible to exercise informed judgment throughout the settlement process, including significant document review (*e.g.*, documents pertaining to Defendant's policies and procedures, personnel documents, among others), and conducted an extensive analysis of the detailed class-wide data provided by Defendant.

1 29. Based on my experience in other cases, including wage and hour matters, I
2 believe I am qualified to evaluate the class claims and viability of defenses in this class action.
3 In this case, the recovery for each class member is reasonable, fair, and adequate, and a
4 settlement at this time is in the best interests of the class. The settlement provides each class
5 member with compensation for the alleged violations when viewed in relation to the costs and
6 risks inherent in obtaining class certification and proceeding to trial.

7 30. Plaintiff's counsel, as well as Defense counsel, fully endorse the terms and
8 conditions of the settlement as set forth in the abovementioned Settlement Agreement.

9 31. Of course, the settlement amount represents a compromise figure, taking into
10 account the various risks surrounding class certification and the merits of Defendant's asserted
11 defense. Nevertheless, the settlement provides for fair and adequate payments to the class
12 members, with no reversion to Defendants.

13 **PLAINTIFF'S REQUESTED ENHANCEMENT PAYMENT**

14 32. Plaintiff seeks an enhancement payment of \$10,000 for his services to the Class,
15 which I believe is fair and warranted. Mr. Ramos came forward in an effort to effectuate a
16 policy and practice change that benefitted all other Class Members, and to recover unpaid wages.
17 He assumed significant risk in bringing this litigation—namely, had he lost, he would have been
18 ordered to pay Defendant's costs.

19 33. Plaintiff provided invaluable assistance to my office and the Class in this case,
20 including providing factual background for the Class Complaint; reviewing the litigation
21 documents; providing information and documents about Defendant's policies and practices;
22 participating in phone calls to discuss litigation and settlement strategy; and reviewing the
23 settlement documents. Plaintiff agreed to participate in this case with no guarantee of personal
24 benefit. At final approval, Plaintiff will submit a comprehensive declaration setting forth all of
25 the reasons why he believes that the service award should be approved.

26 ///

27 ///

28 ///

1 **ADEQUACY OF COUNSEL AND THE PROVISIONAL REASONABLENESS OF THE**
2 **REQUESTED FEES AND COSTS**

3 34. As set forth above, I have handled well over 300 class and representative actions,
4 have been appointed as class counsel and have successfully resolved over half of those cases, and
5 many others remain pending and will successfully resolve in the future.

6 35. When this case was taken on a contingency fee basis, with my firm agreeing to
7 assume responsibility for all litigation costs, the ultimate result was far from certain. In the
8 course of this litigation, my firm paid all costs including filing fees, court costs, research fees,
9 and mediation costs. There was never a guarantee that we would recoup those expenditures.

10 36. It is my experience that attorney fee awards of one-third of a common fund
11 settlement is the standard in California. In this case, Plaintiff's counsel agreed to seek one-third
12 of the Settlement Amount for attorneys' fees. Defendant does not oppose this fee request. The
13 fee is further warranted because it is within the range of reasonableness typically awarded in
14 class actions. The litigation costs are reasonably capped at \$20,000 and will be based on the
15 actual amount of costs incurred at the time of final approval.

16 **SETTLEMENT ADMINISTRATOR**

17 37. The parties request that the Court appoint Phoenix Settlement Administrators
18 ("Phoenix") to serve as the Settlement Administrator. Phoenix is experienced in administering
19 class action settlements, and has provided a proposal to administer this settlement for a total of
20 \$7,500, which is attached hereto as **Exhibit 4**.

21 **SUBMISSION TO THE LWDA**

22 38. Plaintiff has concurrently submitted the settlement to the LWDA in accordance
23 with Labor Code § 2699(1)(2). The proof of submission is attached hereto as **Exhibit 5**.

24 **EXHIBITS AND CONCLUSION**

25 39. A true and correct copy of the partially signed Settlement Agreement is attached
26 as **Exhibit 1**.

27 40. The proposed Class Notice is attached as **Exhibit 2**.
28

41. A true and correct copy of the notice letter we submitted to the LWDA is attached as **Exhibit 3**.

42. Phoenix's proposal to administer the Settlement is attached hereto as **Exhibit 4**.

43. The LWDA's confirmation of receipt of this Motion and Declarations is attached hereto as **Exhibit 5**.

44. For the foregoing reasons, it is respectfully requested that the Court grant preliminary approval of the settlement as being fair, reasonable, and in the best interests of the class, as well as preliminarily approve the requested attorneys' fees, costs, and enhancement payment to the Class Representative.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 13, 2024, at Riverside, California.

By: Brian J. Mankin
Brian J. Mankin, Esq.

EXHIBIT “1”

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Attorneys for Defendant MSI STRUCTURAL STEEL, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

MARK RAMOS, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

MSI STRUCTURAL STEEL, LLC, a
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DOES 1 through 20, inclusive;

Defendants.

Case No.: CIVSB2134505
*[Assigned to Hon. Jessica Morgan, Dept S26,
for all purposes]*

**CLASS ACTION SETTLEMENT
AGREEMENT AND RELEASE OF
CLAIMS**

This Class Action Settlement Agreement and Release of Claims is entered into by and
between Plaintiff Mark Ramos, individually and on behalf of all others similarly situated, and on
behalf of the State of California, and Defendant MSI Structural Steel, LLC, and is approved by
their respective counsel of record, subject to the terms and conditions hereof and the Court's

1 approval.

2 **A. Definitions**

3 1. "Action" or "Lawsuit" means and refers to the case entitled *Mark Ramos v. MSI*
4 *Structural Steel, LLC, et al.*, San Bernardino County Superior Court, Case No. CIVSB2134505,
5 which was commenced on December 17, 2021.

6 2. "Administrator" means and refers to Phoenix Class Action Administrator
7 Solutions, the third-party class action settlement administrator agreed to by the Parties, and
8 approved by the Court, that will provide the Notice to the Class Members and distribute the
9 settlement amounts as described in this Agreement.

10 3. "Administration Costs" means the amount the Administrator will be paid from the
11 Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the
12 Administrator's "not to exceed" bid submitted to the Court in connection with Preliminary
13 Approval of the Settlement.

14 4. "Aggrieved Employee(s)" means all current and former nonexempt employees
15 employed by Defendant MSI Structural Steel, LLC, in California at any time during the PAGA
16 Period.

17 5. "Agreement" or "Settlement Agreement" or "Settlement" shall mean this Class
18 Action and PAGA Settlement Agreement and Release of Claims.

19 6. "Class" means all current and former nonexempt employees employed by
20 Defendant MSI Structural Steel, LLC, in California at any time during the Class Period.

21 7. "Class Member(s)" refers to individual members of the Class.

22 8. "Class Counsel" refers to Brian Mankin and Kristina Carlson of Lauby, Mankin
23 & Lauby LLP.

24 9. "Class Counsel Fees Payment" and "Class Counsel Litigation Expenses Payment"
25 mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys' fees
26 and expenses, respectively, incurred to prosecute the Action.

27 10. "Class Data" means Class Member identifying information in Defendant's
28 possession including the Class Member's name, last-known mailing address, Social Security

number, and number of Class Period Workweeks and PAGA Pay Periods.

11. "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).

12. "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.

13. "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, attached as Exhibit A and incorporated by reference into this Agreement.

14. "Class Period" is the period from December 17, 2017, through January 31, 2024.

15. "Class Representative" or "Plaintiff" means and refers to Plaintiff Mark Ramos.

16. "Complaint" refers to the class and PAGA representative action complaint filed herein.

17. "Court" (or "Judge") means the California Superior Court, County of San Bernardino.

18. "Defendant" refers to Defendant MSI Structural Steel, LLC.

19. "Defendant's Counsel" or "Defense Counsel" means and refers to Payne & Fears.

20. "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.

21. "Employee Paid Taxes" means taxes paid by an individual employee, including but not limited to Federal Insurance Contributions Act, federal income tax, state disability

1 insurance, and state income tax payments.

2 22. "Employer Paid Taxes" means taxes paid by the employer, including Federal
3 Unemployment Tax Act, Federal Insurance Contributions Act, state unemployment insurance,
4 and Employee Training Tax payments.

5 23. "Escalator Clause:" Based on a review of its records, Defendant estimated there
6 were 148 Class Members who collectively worked a total of 12,796 Workweeks during the Class
7 Period. As such, the Parties agree that, should the total number of workweeks during the Class
8 Period exceed 14,715 (15% more than Defendant's representation), then the Settlement Amount
9 shall increase by \$28.33 (\$362,500 divided by 12,796) for each additional workweek above
10 14,715.

11 24. "Final Approval" refers to the order of the Court granting final approval of this
12 Settlement Agreement and entering a judgment approving this Agreement on substantially the
13 terms provided herein or as may be modified by subsequent agreement of the Parties.

14 25. "Gross Settlement Amount" is \$362,500.00, which is the total gross amount
15 Defendant agrees to pay under the Settlement except for the Employer Paid Taxes and as
16 provided in Paragraph 23. The Gross Settlement Amount will be used to pay Individual Class
17 Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees
18 Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payments,
19 the Administrator Expenses Payment, all interest payments, and all applicable Employee Paid
20 Taxes.

21 26. "Individual Class Payment" means the Participating Class Member's pro rata
22 share of the Net Settlement Amount calculated according to the number of Work Weeks worked
23 during the Class Period.

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

27 28. "Judgment" means the judgment entered by the Court based upon the Final
28 Approval.

1 29. “LWDA” means the California Labor and Workforce Development Agency.

2 30. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the
3 LWDA under Labor Code section 2699, subd. (i).

4 31. “Net Settlement Amount” means the Gross Settlement Amount, less the following
5 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA
6 Payment, Class Representative Service Payments, Class Counsel Fees Payment, Class Counsel
7 Litigation Expenses Payment, and the Administration Costs. The remainder is to be paid to
8 Participating Class Members as Individual Class Payments, including all Employee Paid Taxes.

9 32. “Non-Participating Class Member” means any Class Member who opts out of the
10 Settlement by sending the Administrator a valid and timely Request for Exclusion.

11 33. “Notice” means the notice of proposed class settlement that will be sent to the
12 Class Members and which will advise each Class Member of the settlement and his or her
13 estimated Individual Class Payment and Individual PAGA Payment and will further advise of the
14 setting of a Final Approval Hearing. The Notices shall be mailed in English and Spanish.

15 34. “Objecting Class Member” means a Class Member, other than Plaintiff, who
16 submits a valid and timely objection to the terms of this Agreement, pursuant to Paragraph 68(c)
17 below.

18 35. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698, *et seq.*).

19 36. “PAGA Notice” means Plaintiff Mark Ramos’ December 17, 2021 letter to
20 Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

21 37. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid
22 from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$7,500.00) and
23 the 75% to LWDA (\$22,500.00) in settlement of PAGA claims.

24 38. “PAGA Period” is the period from December 17, 2020, through January 31, 2024.

25 39. “Participating Class Member” means any and all Class Members who do not opt-
26 out by submitting timely valid Requests for Exclusion.

27 40. “Parties” or “Settling Parties” mean Plaintiff and Defendant, collectively.
28

1 41. “Preliminary Approval Date” means the date the Court approves the Settlement
2 Agreement and enters the Preliminary Approval Order.

3 42. “Preliminary Approval Order” means the judicial Order to be entered by the
4 Court, upon the application or motion of the Plaintiffs, preliminarily approving this Settlement
5 and providing for the issuance of the Notice to the Class, an opportunity to opt out of the
6 Settlement, an opportunity to submit timely objections to the Settlement, and setting a final
7 approval hearing on the fairness of the terms of Settlement, including approval of attorneys’ fees
8 and costs.

9 43. “QSF” means the Qualified Settlement Fund set up by the Administrator for the
10 benefit of the Participating Class Members and Aggrieved Employees, and from which the
11 settlement payments shall be made.

12 44. “Released Class Claims” or “Class Claims” by the Participating Class Members
13 upon Final Approval of the Settlement mean the claims stated in the operative complaint and
14 those based upon the facts in the complaint, including: (a) failure to pay minimum wages, (b)
15 failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to provide rest
16 breaks, (e) timely pay wages upon separation of employment, (f) failure to provide accurate
17 itemized wage statements, (g) failure to reimburse business expenses, (h) unfair and unlawful
18 competition, and (i) all other claims for statutory penalties based on the facts or claims alleged in
19 the operative complaint. The time period governing the Released Class Claims shall be the Class
20 Period.

21 45. “Released PAGA Claims” or “PAGA Claims” means all PAGA claims that
22 Plaintiff alleged against the Released Parties, on behalf of the Aggrieved Employees and the
23 State of California, based on the facts stated in the operative Complaint and in the relevant
24 LWDA notice letters, including all PAGA claims seeking civil penalties premised upon: (a)
25 failure to pay minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal
26 periods, (d) failure to provide rest breaks, (e) failure to timely pay wages each period and upon
27 separation of employment, (f) failure to provide accurate itemized wage statements, (g) failure to
28 reimburse business expenses, and (h) all other claims for civil penalties recoverable under the

1 Private Attorneys General Act, Labor Code §§ 2698 *et seq.* based on the facts or claims alleged
2 in the operative complaint. The time period governing the PAGA Released Claims shall be the
3 PAGA Period. The PAGA Released Claims do not release any Aggrieved Employees' claims
4 for wages or statutory penalties. Aggrieved Employees' Released PAGA Claims are limited to
5 the PAGA Period.

6 46. "Released Parties" means Defendant and each of its past, present and future
7 agents, employees, servants, officers, directors, partners, trustees, representatives, shareholders,
8 stockholders, members, attorneys, parents, subsidiaries, equity sponsors, related
9 companies/corporations and/or partnerships, divisions, assigns, predecessors, successors,
10 insurers, consultants, joint venturers, joint employers, temporary staffing agencies, affiliates,
11 alter-egos, vendors, and affiliated organizations, and all of its respective past, present and future
12 employees, directors, officers, agents, representatives, payroll agencies, attorneys, stockholders,
13 fiduciaries, parents, subsidiaries, and assigns.

14 47. "Request for Exclusion" means a Class Member's submission of a written request
15 to be excluded from the Class Settlement signed by the Class Member.

16 48. "Response Deadline" means 30 days after the Administrator mails the Class
17 Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class
18 Members may mail Requests for Exclusion from the Settlement, or mail his or her Objection to
19 the Settlement. Class Members to whom the Class Notice is resent after having been returned
20 undeliverable to the Administrator shall have the Response Deadline extended by an additional
21 14 calendar days.

22 49. "Service Payment" or "Service Award" means, in exchange for the execution of a
23 stand-alone general release of all claims, the payments to each Class Representative for initiating
24 the Action and providing services in support of the Action, in addition to their Individual Class
25 Payment as a Participating Class Member and Individual PAGA Payment as an Aggrieved
26 Employee.

27 50. "Work Weeks" or "Weeks Worked" means any week during which a Class
28 Member or Aggrieved Employee worked for Defendant for at least one day during the Class

1 Period or PAGA Period.

2 **B. General Terms**

3 51. On December 17, 2021, Plaintiff Mark Ramos filed a putative class and
4 representative PAGA action in the San Bernardino County Superior Court. On the same day,
5 Plaintiff Vargas submitted a letter to the LWDA setting for the alleged violations under PAGA.
6 The LWDA declined to assert jurisdiction over the PAGA Claims. The operative complaint
7 alleges the following claims: (a) failure to pay minimum wages, (b) failure to pay overtime
8 wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) timely pay wages
9 upon separation of employment, (f) failure to provide accurate itemized wage statements, (g)
10 failure to reimburse business expenses, (h) unfair and unlawful competition, and (i) related PAGA
11 claims.

12 52. Defendant denies Plaintiff's claims and allegations and contend that the Action is
13 not suitable for class certification or manageable as a class or representative action.

14 53. The Class Representative believes he can proceed with the representative and
15 class claims, that the Action is meritorious, and that class certification is appropriate.

16 54. The Parties have conducted a thorough investigation into the facts of the Action.
17 This includes conducting an extensive exchange of informal discovery, including Defendant's
18 written policies and practices and confirmation regarding the payroll and timekeeping practices
19 for Class Members. Class Counsel is both knowledgeable about and has done extensive research
20 with respect to the applicable law and potential defenses to the claims of the Class. Class
21 Counsel has diligently pursued an investigation of the Class Members' claims against Defendant.
22 Based on the foregoing data and on their own independent investigation and evaluation, Class
23 Counsel is of the opinion that the settlement with Defendant for the consideration and on the
24 terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best
25 interest of the Class Members in light of all known facts and circumstances, including the risk of
26 significant delay and uncertainty associated with litigation, various defenses asserted by
27 Defendant, and numerous potential appellate issues.

1 55. On August 30, 2023, Plaintiff and Defendant participated in a full-day mediation
2 with Glenn Lerman, a well-respected wage-and-hour mediator. However, the matter did not
3 settle at the conclusion of mediation. Instead, the Parties continued negotiations for months until
4 the Parties reached the Settlement detailed herein on December 19, 2023.

5 56. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts
6 to be performed or judgment to be entered pursuant to the terms of the Settlement and
7 Agreement, shall be construed as an admission by Defendant of any wrongdoing or violation of
8 any statute or law or liability on the claims or allegations in the Action.

9 57. Stipulation for Class Certification. For settlement purposes only, Defendant will
10 stipulate that the Class Members described herein who do not Request Exclusion from the Class
11 may be conditionally certified as a Class. This stipulation to certification is in no way an
12 admission that class action certification is proper and shall not be admissible in this or in any
13 other action except for the sole purposes of enforcing this Agreement. Should, for whatever
14 reason, the Court fail to issue Final Approval, the Parties' stipulation to class certification as part
15 of the Settlement shall become null and void ab initio and shall have no bearing on, and shall not
16 be admissible in connection with, the issue of whether certification would be appropriate in a
17 non-settlement context. Defendant expressly reserves its rights and declares that it would
18 continue to oppose class certification and the substantive merits of the case should the Court fail
19 to issue Final Approval. Plaintiffs expressly reserve their rights and declare that they will
20 continue to pursue class certification and a trial should the Court fail to issue Final Approval.

21 **C. Terms of Settlement**

22 58. The financial terms of the Settlement are as follows:

23 (a) Gross Settlement Amount: The Parties agree to settle this Action for the
24 Gross Settlement Amount, subject to the Escalator Clause and Defendant's obligation to
25 separately pay Employer Paid Taxes, which is the maximum amount that will be paid by
26 Defendant and includes Individual Class Payments, the Class Counsel Fees Payment, the Class
27 Counsel Litigation Expenses Payment, the Service Payment to the Class Representatives,
28 Administration Costs, and PAGA Penalties.

1 (b) The Individual Class Payment for each Class Member will be calculated
2 by the Administrator using the Class Data provided by Defendant as follows. Compensable
3 workweeks will be all Weeks Worked by the Class Members during the Class Period. The
4 dollars per compensable work week will be calculated by dividing the total Weeks Worked by
5 Class Members into the Net Settlement Amount to determine a per work week value
6 ("Workweek Value"). The Workweek Value will be multiplied by the number of Weeks
7 Worked by a Participating Class Member during the Class Period to determine the distribution
8 for a Participating Class Member. If there are any timely submitted Requests for Exclusion, the
9 Administrator shall proportionately increase the Individual Class Payments for each Participating
10 Class Member so that the amount actually distributed to Participating Class Members equals
11 100% of the Net Settlement Amount.

12 (c) Allocation of Individual Class Payments: The Individual Class Payments
13 to Participating Class Members will be allocated as follows: one-third (33.33%) will be allocated
14 as wages subject to withholding of all applicable local, state and federal taxes; and two-thirds
15 (66.67%) will be allocated for interest and statutory penalties from which no taxes will be
16 withheld. The Administrator will issue to each Participating Class Member an Internal Revenue
17 Service Form W-2 and comparable state forms with respect to the wage allocation and a Form
18 1099 with respect to the penalties and interest allocations. Participating Class Members assume
19 full responsibility and liability for any Employee Paid Taxes owed on their Individual Class
20 Payment.

21 (d) Service Payment to Class Representatives: The amount, if any, awarded
22 to the Class Representatives as a Service Payment will be set by the Court in its discretion, not to
23 exceed \$10,000, in exchange for the service that he performed on behalf of the Class. Defendant
24 agrees not to oppose this request. The Service Payment to Plaintiff will be paid out of the Gross
25 Settlement Amount. The Class Representative will be issued an IRS Form 1099 in connection
26 with this payment. Plaintiff shall be solely and legally responsible to pay all applicable taxes on
27 this payment. The Parties agree that any amount awarded as the Service Payment to Plaintiff
28 less than the requested amount shall not be a basis for Class Counsel to void this Settlement

1 Agreement. Should the Court approve a lesser amount for the Service Payment, the difference
2 shall be added to the Net Settlement Amount to be distributed to the Participating Class
3 Members. The Service Payment to Class Representative is conditioned on the Plaintiff's
4 Release, which is a general release of all claims, as set forth below.

5 (e) Class Counsel Fees Payment and Expenses Payment: Defendant agrees to
6 not oppose a request by Class Counsel to the Court for an award of attorneys' fees of one-third of
7 the Gross Settlement Amount, plus reasonable litigation costs not to exceed \$20,000. The Class
8 Counsel Fees Payment and Class Counsel Litigation Expenses Payment shall be paid from the
9 Gross Settlement Amount, and, except for these payments, Defendant shall have no further
10 obligation to pay any attorneys' fees, costs, or expenses to Class Counsel. Should the Court
11 approve a lesser amount than what is sought by Class Counsel, the difference shall be added to
12 the Net Settlement Amount to be distributed to the Participating Class Members. Any Court
13 order awarding less than the amount sought by Class Counsel shall not be grounds to rescind the
14 Settlement Agreement or otherwise void the Settlement. The Administrator shall issue to Class
15 Counsel an IRS Form 1099 reflecting the amount of attorneys' fees and expenses awarded by the
16 Court. Class Counsel assumes full responsibility and liability for taxes owed on the Class
17 Counsel Fees Payment and the Class Counsel Litigation Expenses Payment.

18 (f) Administration Costs: The fees and other charges of the Administrator
19 will be paid from the Gross Settlement Amount, not to exceed \$7,500, unless (1) the Escalator
20 Clause is triggered (whereby any reasonable increase in Settlement Administration Costs shall be
21 paid from the increased Gross Settlement Amount, subject to Court approval), or (2) as otherwise
22 approved by all Parties and the Court. To the extent the Administration Costs are less or the
23 Court approves payment less than \$7,500, the Administrator will retain the remainder in the Net
24 Settlement Amount.

25 (g) PAGA Penalties: The Parties agree that \$30,000 is allocated to PAGA
26 Penalties, and is to be paid from the Gross Settlement Amount, subject to Court approval. Of
27 this amount, \$22,500 (75%) shall be paid to the LWDA in satisfaction of civil penalties under
28 PAGA and \$7,500 (25%) will form the Individual PAGA Payments to the Aggrieved

1 Employees, which shall be calculated and allocated pro-rata on a Work Week basis, which will
2 be treated entirely as civil penalties and shall be reported as required on an IRS Form 1099.
3 Aggrieved Employees assume full responsibility and liability for any taxes owed on their
4 Individual PAGA Payment. Class Counsel shall give proper notice to the LWDA of the
5 Settlement.

6 (h) Tax Liability: Class Counsel, Defendant and Defendant's Counsel make
7 no representations as to the tax treatment or legal effect of settlement amounts called for
8 hereunder, and Plaintiff and the Class Members are not relying on any statement or
9 representation by Class Counsel or Defendant in this regard. Plaintiff, Participating Class
10 Members, and Aggrieved Employees understand and agree that they will be solely responsible
11 for the payment of any taxes and penalties assessed on their respective Individual Class
12 Payments and Individual PAGA Payments, described herein. Forms 1099 will be distributed in
13 the manner required by the Internal Revenue Code of 1986 (the "Code") and consistent with this
14 Agreement. If the Code, the regulations promulgated thereunder, or other applicable tax law, is
15 changed after the date of this Agreement, the processes set forth in this Section may be modified
16 in a manner to bring Defendant into compliance with any such changes. Plaintiff, Participating
17 Class Members, and Aggrieved Employees understand and agree that they will be solely
18 responsible for the payment of any taxes and penalties assessed on their respective payments
19 described herein.

20 (i) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS
21 AGREEMENT (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY"
22 AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING
23 PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO
24 PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR
25 DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND
26 OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
27 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
28 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES

1 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
2 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
3 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
4 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
5 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY
6 OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT
7 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
8 ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY
9 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
10 ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
11 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR
12 ADVISOR'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS
13 LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF
14 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING
15 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

16 (j) "Non-Reversionary" Settlement. This is a "non-reversionary" settlement.
17 Under no circumstances will any portion of the Gross Settlement Amount revert to Defendant.
18 Participating Class Members and Aggrieved Employees will not have to make a claim in order to
19 receive an Individual Class Payment or Individual PAGA Payment. Distributions, in the form of
20 Individual Class Payment or Individual PAGA Payments will be made directly to each
21 Participating Class Member and Aggrieved Employee. The Administrator shall be responsible
22 for accurately and timely reporting and remittance obligations with respect to unclaimed funds as
23 a result of a Participating Class Member and/or Aggrieved Employee not cashing any checks
24 delivered pursuant to the Settlement by the check cashing deadline, as set forth herein.

25 (k) Class Counsel and Plaintiffs believe that the Settlement is fair and
26 reasonable and will so represent same to the Court.

27 ///

28 ///

1 **D. Release by the Participating Class Members**

2 59. Upon entry of the Final Approval Order and Defendant's funding of the Gross
3 Settlement Amount and the required Employer Paid Taxes, and except as to such rights or claims
4 as may be created by this Agreement, Plaintiff and the Participating Class Members will forever
5 completely release and discharge the Released Parties from the Released Class Claims for the
6 Class Period.

7 60. Each Participating Class Member will be deemed to have made the foregoing
8 Release as if by manually signing it.

9 61. Class Representatives, on behalf of themselves and the Class, acknowledge and
10 agree that the claims for unpaid wages and untimely payment of wages in the Action are
11 disputed, and that the payments set forth herein constitute payment of all sums allegedly due to
12 them. Class Representatives, on behalf of themselves and the Class, acknowledge and agree that
13 Labor Code § 206.5 is not applicable to the Parties or Settlement. Labor Code § 206.5 provides
14 in pertinent part as follows: "An employer shall not require the execution of any release of any
15 claim or right on account of wages due, or to become due, or made as an advance on wages to be
16 earned, unless payment of those wages has been made."

17 **E. Release of PAGA Claims**

18 62. Upon entry of the Final Approval Order and Defendant's funding of the Gross
19 Settlement Amount and the required Employer Paid Taxes, Plaintiff, the LWDA, the State of
20 California, and Aggrieved Employees shall completely release and discharge the Released
21 Parties from the Released PAGA Claims for the PAGA Period.

22 63. Regardless of submitting a valid Request for Exclusion, neither Plaintiffs nor any
23 Aggrieved Employee shall have the right to opt-out or otherwise exclude themselves from
24 releasing the Released PAGA Claims. Under *Robinson v. Southern Counties Oil Co.*, 53
25 Cal.App.5th 476 (2020), the Released PAGA Claims apply to all Aggrieved Employees,
26 regardless of whether they request exclusion from the class.

27 64. It is the intent of the Parties that the Final Approval Order shall have full
28 equitable and collateral estoppel and res judicata effect to the fullest extent permitted by law.

1 **F. Release by Plaintiff and Class Representatives**

2 65. As a condition of receiving any portion of the Class Representative Service
3 Payments, Plaintiff and each of their respective former and present spouses, representatives,
4 agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge
5 the Released Parties from all known and unknown claims, transactions, or occurrences under
6 federal, state and/or local law, statute, ordinance, regulation, common law, or other source of
7 law, including but not limited to claims arising from or related to their respective employments
8 with Defendant and their compensation while so employed ("Plaintiff's Release"). Plaintiff's
9 Release includes all claims asserted in the Action and/or arising from or related to the facts and
10 claims alleged in the Action or the PAGA Notice, or that could have been raised in the Action or
11 the PAGA Notice based on the facts and claims alleged. Plaintiff's Release includes, but is not
12 limited to, all claims for unpaid wages, including, but not limited to, failure to pay minimum
13 wages, straight time compensation, overtime compensation, double-time compensation, and
14 interest; the calculation of the regular rate of pay; failure to pay wages at least twice each
15 calendar month; failure to timely pay wages; failure to timely pay final wages; non-compliant
16 (e.g., missed, short, late, and/or interrupted) meal periods and rest periods; failure to provide
17 meal periods; failure to authorize and permit rest periods; the calculation and payment of meal
18 period and rest period premiums; failure to reimburse business expenses; payment for all hours
19 worked, including off-the-clock work and rounded time; wage statements; deductions; failure to
20 keep accurate records; unlawful deductions and/or withholdings from wages; unfair business
21 practices; penalties, including, but not limited to, recordkeeping penalties, wage statement and
22 payroll reporting penalties, minimum-wage penalties, and waiting-time penalties; and attorneys'
23 fees and costs. Plaintiffs' Release includes all claims arising under the California Labor Code
24 (including, but not limited to, sections 200, 201, 201.1, 201.3, 201.5, 202, 203, 204, 205.5, 206,
25 210, 216, 218, 218.5, 218.6, 221, 222, 222.5, 223, 224, 225, 225.5, 226, 226.2, 226.3, 226.7,
26 226.8, 227.3, 246, 247.5, 248.5, 256, 450, 510, 511, 512, 515, 516, 550, 551, 552, 558, 1174,
27 1174.5, 1175, 1182.12, 1194, 1194.2, 1194.3, 1197, 1197.1, 1197.2, 1198, 1198.5, 2698 *et seq.*,
28 2699 *et seq.*, 2802, and 2804); all claims arising under: the Wage Orders of the California

1 Industrial Welfare Commission; the California Private Attorneys General Act of 2004 (PAGA);
2 California Business and Professions Code section 17200, *et seq.*; the California Civil Code, to
3 include sections 3287, 3336 and 3294; 8 CCR §§ 3203, 11070, 11090, 11100; California Code of
4 Civil Procedure § 1021.5; the California common law of contract; the Fair Labor Standards Act,
5 29 U.S.C. §§ 201, *et seq.*; 29 CFR 778.223; 29 CFR 778.315; federal common law; and the
6 Employee Retirement Income Security Act, 29 U.S.C. §§ 1001, *et seq.* (ERISA). Plaintiffs'
7 Release also includes all claims for lost wages and benefits, emotional distress, retaliation,
8 punitive damages, and attorneys' fees and costs arising under federal, state, or local laws for
9 discrimination, harassment, retaliation, and wrongful termination, such as, by way of example
10 only, (as amended) 42 U.S.C. § 1981, Title VII of the Civil Rights Act of 1964, the Americans
11 with Disabilities Act (ADA), the Age Discrimination in Employment Act (ADEA), and the
12 California Fair Employment and Housing Act (FEHA); and the law of contract and tort. This
13 release excludes the release of claims not permitted by law. Plaintiff's Release does not extend
14 to any claims or actions to enforce this Agreement, or to any claims for vested benefits,
15 unemployment benefits, disability benefits, social security benefits, workers' compensation
16 benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff
17 acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts
18 or law that Plaintiffs now know or believe to be true but agree, nonetheless, that Plaintiff's
19 Release shall be and remain effective in all respects, notwithstanding such different or additional
20 facts or Plaintiff's discovery of them. The specific terms of each respective Plaintiff's Release
21 will be detailed in stand-alone individual settlement agreements.

22 66. Plaintiff's Waivers of Rights Under California Civil Code Section 1542. For
23 purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights,
24 and benefits, if any, of section 1542 of the California Civil Code, which reads:

25 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR
26 OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR
27 HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT IF
28 KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR

1 HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

2 **G. Interim Stay of Proceedings**

3 67. Pending completion of all of the prerequisites necessary to effectuate this
4 Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the Action
5 except such as is necessary to effectuate the Settlement.

6 **H. Notice Process**

7 68. Appointment of Administrator. The Parties have agreed to the appointment of the
8 Administrator to perform the duties of a settlement administrator, including mailing the Notice,
9 using standard devices to obtain forwarding addresses, independently reviewing and verifying
10 documentation associated with any claims or opt-out requests, resolving any disputes regarding
11 the calculation or application of the formula for determining the Individual Class Payment and
12 Individual PAGA Payments, drafting and mailing the settlement checks to Participating Class
13 Members and Aggrieved Employees, issuing all necessary tax forms, preparing declarations and
14 reports for the Parties and the Court, and performing such other tasks as set forth herein or as the
15 Parties mutually agree or that the Court orders.

16 69. Disputes Regarding Administration. Any and all disputes relating to
17 administration of the Settlement by the Administrator (except for disputes regarding Class Data)
18 shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms
19 and conditions of this Agreement, until Plaintiffs and Defendant notify the Court that all
20 payments and obligations contemplated by this Agreement have been fully carried out. Prior to
21 presenting any issue to the Court, counsel for the Parties will confer in good faith to resolve the
22 dispute without the necessity of Court intervention. The Administrator shall also be responsible
23 for issuing to Plaintiff, Participating Class Members, and Aggrieved Employees, and Class
24 Counsel any Tax Forms as may be required by law for all amounts paid pursuant to this
25 Agreement.

26 70. Class Data. Within fourteen (14) days after entry of the Preliminary Approval
27 Order, Defendant shall provide the Class Data to the Administrator. The Administrator will run a
28 check of the Class Members' addresses against those on file with the U.S. Postal Service's

1 National Change of Address List. The Class Data provided to the Administrator will remain
2 confidential and will not be used or disclosed to anyone, except as required by applicable tax
3 authorities, pursuant to Defendant's express written consent, or by order of the Court. Although
4 Class Counsel will not be provided with the list of Class Data, nothing herein shall prevent Class
5 Counsel from communicating with Class Members regarding the Action and Settlement.

6 71. Total Workweeks. At least 5 days prior to mailing the Notice, the Administrator
7 shall provide a spreadsheet to Class Counsel and Defense Counsel containing a preliminary
8 calculation of all payments to be paid from the Gross Settlement Amount, including the
9 estimated Individual Class Payments to each Class Member and Individual PAGA Payments to
10 each Aggrieved Employee (a person's name shall be redacted and a control number used in place
11 of the name). In the event that the total Workweeks worked by all Class Members triggers the
12 Escalator Clause, the Settlement Administrator shall notify the Parties of the increased Gross
13 Settlement Amount, and related increased payments from the Gross Settlement Amount,
14 including increased Class Counsel Fees Payment and any increased Settlement Administration
15 Costs, all of which shall be subject to Court approval.

16 72. Notice. The Notice, as approved by the Court, shall be sent by the Administrator
17 to the Class Members, by first class mail, in English and Spanish, within ten (10) calendar days
18 following the Administrator's receipt of the Class Data. The Administrator shall use standard
19 devices, including a skip trace, to obtain forwarding addresses of Class Members if any
20 envelopes are returned.

21 73. Returned Notice Packets. The Administrator will take steps to ensure that the
22 Notice is received by all Class Members, including utilization of the National Change of Address
23 Database maintained by the United States Postal Service to review the accuracy of and, if
24 possible, update a mailing address. Notices will be re-mailed to any Class Member for whom an
25 updated address is located within five (5) calendar days following both the Administrator
26 learning of the failed mailing and its receipt of the updated address. Class Members to whom the
27 Class Notice is resent after having been returned undeliverable to the Administrator shall have
28 the Response Deadline extended by an additional 14 calendar days.

1 74. Presumption Regarding Receipt of Notice. It will be conclusively presumed that
2 if an envelope has not been returned to Administrator by the Response Deadline that the Class
3 Member received the Notice.

4 75. Disputes Regarding Class Data. Class Members are deemed to participate in the
5 Settlement unless they opt-out, and Aggrieved Employees may not opt out of the Released
6 PAGA Claims. The Notice will inform Class Members of his/her estimated Individual Class
7 Payment and Individual PAGA Payment, as well as the number of weeks he/she worked during
8 the Class Period and the PAGA Period. Class Members may dispute their Weeks Worked if they
9 feel they should be credited with more Weeks Worked in the Class Period and/or PAGA Period
10 in California than Defendant's records show by timely submitting evidence to the Administrator.
11 Defendant's records will be presumed determinative absent reliable evidence to rebut
12 Defendant's records, but the Administrator will evaluate the evidence submitted by the Class
13 Member and provide the evidence submitted to Class Counsel and Defense Counsel who agree to
14 meet and confer in good faith about the evidence to determine the Class Member's actual
15 number of Work Weeks, estimated Individual Class Payment, and Individual PAGA Payment. If
16 Class Counsel and Defense Counsel are unable to agree, they agree to submit the dispute to the
17 Court to render a final decision. Class Members and Aggrieved Employees will have until the
18 Response Deadline to dispute Weeks Worked, object or opt out, unless extended by the Court.

19 76. Declaration of Due Diligence. The Administrator shall provide counsel for the
20 Parties, at least twenty-five (25) days prior to the final approval hearing, a declaration of due
21 diligence and proof of mailing with regard to the mailing of the Notice.

22 77. Class Members' Rights. Each Class Member will be fully advised of the
23 Settlement, the ability to object to the settlement, and the ability to opt-out or request exclusion
24 from the Class Claims portion of the Settlement. The Notice will inform the Class Members of
25 the Court-established deadlines for filing objections or requesting exclusion from the Settlement
26 in accordance with the following guidelines:

27 (a) Requests for Exclusion from Class. Any Class Member, other than
28 Plaintiffs, may request to be excluded from the Class by submitting a "Request for Exclusion" to

1 the Administrator, postmarked on or before the Response Deadline. The Request for Exclusion
2 should state:

3 "I WISH TO BE EXCLUDED FROM THE CLASS IN THE
4 ELEMENTIS SPECIALTIES LAWSUIT. I UNDERSTAND
5 THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT
6 CLASS, I WILL NOT RECEIVE MY INDIVIDUAL CLASS
7 PAYMENT FROM THIS LAWSUIT."

8 To be valid, any Request for Exclusion must include the full name, address, telephone
9 number, last four digits of the social security number or date of birth, and signature of the Class
10 Member requesting exclusion. The Request for Exclusion must be returned by mail to the
11 Administrator at the specified address set forth in the Notice. Any such Request must be made in
12 accordance with the terms set forth in the Notice. A Request for Exclusion will be timely only if
13 postmarked by the Response Deadline, unless the Parties otherwise agree in writing. Any Class
14 Member who timely requests exclusion in compliance with these requirements: (i) will not have
15 any rights under this Agreement, including the right to object, appeal or comment on the
16 Settlement; (ii) will not be entitled to receive the Individual Class Payment under this
17 Agreement; and (iii) will not be bound by this Agreement, or the Judgment. Any Class Member
18 who is an Aggrieved Employee who requests timely exclusion will still be subject to the
19 Released PAGA Claims to the fullest extent permitted by law and receive an Individual PAGA
20 Payment. All Parties and their counsel, including Defendant's respective members, member
21 managers, owners, officers, and directors, shall not encourage or solicit opt-outs or objections,
22 directly or indirectly, through any means.

23 (b) Binding Effect on Participating Class Members. All Participating Class
24 Members will: (i) be bound by the terms and conditions of this Agreement, the Judgment, and
25 the releases set forth herein; and (ii) except as otherwise provided herein, will be deemed to have
26 waived all objections and oppositions to the fairness, reasonableness, and adequacy of the
27 Settlement.

1 (c) Objections to Settlement. Any Class Member, other than Plaintiff, who
2 does not submit a valid and timely Request for Exclusion may object to the terms of this
3 Agreement. To object, a Class Member shall inform the Administrator, in writing by mail, of his
4 or her objection which must be postmarked by the Response Deadline (plus an additional 14
5 days for Class Members whose Class Notice was re-mailed). Such objection shall include the
6 Objecting Class Member's full name, address, telephone number, last four digits of the social
7 security number or date of birth, signature, and dates of employment with Defendant, in addition
8 to the case name and number, the basis for the objection, including any legal support and each
9 specific reason in support of the objection, as well as any documentation or evidence in support
10 thereof, and, if the Objecting Class Member is represented by counsel, the name and address of
11 his or her counsel. The Administrator shall provide objections, if any, to Class Counsel and
12 Defense Counsel within three (3) calendar days of receipt, and the Administrator shall attach the
13 same to its declaration of due diligence and file with the Court prior to the Final Approval
14 Hearing. An Objecting Class Member remains eligible to receive monetary compensation from
15 the Settlement. Plaintiffs and Defendant shall not be responsible for any fees, costs, or expenses
16 incurred by an Objecting Class Member and/or his or her counsel related to any objections to the
17 Settlement. Submitting an objection does not preserve the right to appeal a final judgment.
18 Rather, the right to appeal is preserved by becoming a party of record by timely and properly
19 intervening or filing a motion to vacate the judgment under Code of Civil Procedure § 663. Non-
20 Participating Class Members have no right to object to any of the class action components of the
21 Settlement.

22 (d) Failure to Object. Any Class Member who does not timely and properly
23 become a party of record by intervening or filing a motion to vacate the judgment waives any
24 and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding
25 and appellate proceeding, such as a motion to vacate judgment, motion for new trial, a motion
26 under California Code of Civil Procedure section 473, and extraordinary writs.

27 (e) Responses to Objections. Counsel for the Parties may file a response to
28 any objections submitted by an Objecting Class Member at least five (5) court days before the

1 date of the Final Approval Hearing.

2 (f) The Administrator shall disclose jointly to Class Counsel and Defense
3 Counsel what objections or Requests for Exclusion were timely submitted on a weekly basis, and
4 upon the request of Class Counsel or Defense Counsel.

5 78. Funding of the Settlement Amount. Defendant shall deposit the Gross Settlement
6 Amount, plus Defendant's Employer Paid Taxes owed on Individual Class Payments, with the
7 Administrator within fifteen (15) days after the Effective Date.

8 79. Distribution of Funds. No later than ten (10) calendar days after the deposit of the
9 Gross Settlement Amount by Defendant, the Administrator shall mail the Individual Class
10 Payments to the Participating Class Members, the Individual PAGA Payments to the Aggrieved
11 Employees, the Class Counsel Fees Payment and Class Counsel Litigation Expense Payment to
12 Class Counsel, any Service Payments to the Class Representatives, the payment to the LWDA
13 for PAGA Penalties, and will pay itself the Administration Costs.

14 80. Deadline for Cashing Settlement Checks. Participating Class Members and
15 Aggrieved Employees shall have 180 calendar days after mailing by the Administrator to cash
16 their settlement checks. The release will be binding upon all Participating Class Members who
17 do not cash their checks within the 180-day period. In the event that any settlement check is
18 returned to the Administrator within 180 days of mailing, the Administrator will, within five (5)
19 business days of receipt of the returned settlement check, perform a skip trace to locate the
20 individual, and notify Defense Counsel and Class Counsel of the results. If a new address is
21 located by these means, the Administrator will have ten (10) business days to re-issue the check.
22 Neither Defendant, Defense Counsel, Class Counsel, Plaintiffs, nor the Administrator will have
23 any liability for lost or stolen settlement checks, forged signatures on settlement checks, or
24 unauthorized negotiation of settlement checks. Without limiting the foregoing, in the event a
25 Participating Class Member and/or Aggrieved Employee notifies the Administrator that he or she
26 believes that a settlement check has been lost or stolen, the Administrator shall immediately stop
27 payment on such check. If the check in question has not been negotiated prior to the stop
28 payment order, the Administrator will issue a replacement check.

1 (a) If any Participating Class Member's check is not cashed within the time
2 periods noted above, the check will be void and a stop-payment will be issued, and the
3 Administrator shall issue the unclaimed funds to the California Controller's Unclaimed Property
4 Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the
5 requirements of California Code of Civil Procedure Section 384, subd. (b).

6 (b) If any Aggrieved Employee's check is not cashed within the time periods
7 noted above, the check will be void and a stop-payment will be issued, and the Administrator
8 shall issue the unclaimed funds to the California Controller's Unclaimed Property Fund in the
9 name of the Aggrieved Employee thereby leaving no "unpaid residue" subject to the
10 requirements of California Code of Civil Procedure Section 384, subd. (b).

11 **I. Duties of the Parties Prior to the Court's Approval**

12 81. Promptly after execution of this Agreement, Plaintiff will move the Court for
13 Preliminary Approval of this Settlement and entry of the Preliminary Approval Order
14 accomplishing the following:

- 15 (a) Approving as to form and content the proposed Notice;
16 (b) Directing the mailing of the Notice by first class mail to the Class
17 Members;
18 (c) Preliminarily approving this Settlement;
19 (d) Preliminarily certifying the class for purposes of this Settlement;
20 (e) Advising the LWDA of the proposed Settlement; and
21 (f) Scheduling the Final Approval Hearing on the issue of whether this
22 Settlement should be finally approved as fair, reasonable and adequate.

23 **J. Duties of the Parties Following Court's Final Approval**

24 82. In connection with the Final Approval Hearing provided for in this Agreement,
25 Class Counsel shall submit a proposed Final Approval Order:

- 26 (a) Approving the Settlement, adjudging the terms thereof to be fair,
27 reasonable and adequate, and directing consummation of its terms and provisions;
28

1 (b) Approving Class Counsel's application for an award of the Class Counsel
2 Fees Payment and Class Counsel Litigation Expenses Payment, the Service Payment to the Class
3 Representatives, and the payment to the Administrator for costs of administering the settlement;
4 and

5 (c) Entering judgment approving settlement.

6 **K. Voiding the Agreement**

7 83. Defendant's Right to Rescind. If either: (a) more than ten percent (10%) of the
8 Class Members submit timely and valid requests to opt out of the Class Settlement; (b) the total
9 Workweeks associated with Class Members who submit timely and valid requests to opt out of
10 the Class Settlement equal or exceed ten percent (10%) of the total Workweeks during the Class
11 Period, or (c) the LWDA objects to the Settlement, Defendant shall have the option, in its sole
12 discretion, to rescind this Agreement. The Parties agree that if Defendant rescinds this
13 Agreement, the Settlement shall be void ab initio, have no force or effect whatsoever, and that
14 neither Party will have any further obligation to perform under this Agreement; provided,
15 however, Plaintiff and Defendant will each be responsible for paying half of all Settlement
16 Administration Expenses incurred to that point. If Defendant exercises this option, it shall
17 provide Class Counsel with written notice of its election within ten (10) days after the
18 Administrator sends the final Exclusion List to Defense Counsel; late elections will have no
19 effect. At which point the Parties shall return to their respective positions that existed before the
20 execution of this Agreement, and no term of this Agreement or any draft thereof, or the
21 negotiation, documentation or other part or aspect of the Parties' settlement discussions, shall
22 have any effect or be admissible as evidence for any purpose in the Action, or in any other
23 proceeding.

24 84. If the Court fails or refuses to issue the Final Approval Order or fails to approve
25 any material condition of this Agreement which effects a fundamental change of the Settlement,
26 the entire Agreement shall be rendered voidable and unenforceable as to all Parties herein at the
27 option of either Party.
28

1 85. If the Settlement is voided or fails for any reason, Plaintiff and Defendant will
2 have no further obligations under the Settlement, including any obligation by Defendant to pay
3 the Gross Settlement Amount, or any amounts that otherwise would have been owed under this
4 Settlement.

5 86. If the Settlement is voided or fails for any reason, any costs incurred by the
6 Administrator shall be borne equally by Defendant and Plaintiff, unless otherwise specified in
7 this Agreement.

8 **L. Other Terms**

9 87. Waiver. The waiver by one Party of any breach of this Agreement by another
10 Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

11 88. Parties' Authority. The signatories hereto represent that they are fully authorized
12 to enter into this Agreement and bind the Parties hereto to the terms and conditions hereof.

13 89. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
14 accomplish the terms of this Agreement, including but not limited to, execution of such
15 documents and to take such other action as may reasonably be necessary to implement the terms
16 of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts
17 contemplated by this Agreement and any other efforts that may become necessary by order of the
18 Court, or otherwise, to effectuate this Agreement and the terms set forth herein. As soon as
19 practicable after execution of this Agreement, Class Counsel shall, with the assistance and
20 cooperation of Defendant and Defense Counsel, take all necessary steps to secure the Court's
21 preliminary and final approval of the settlement, and the final entry of judgment.

22 90. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
23 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,
24 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
25 cause of action or rights released and discharged by this Agreement.

26 91. No Admission. Defendant denies any and all liability to Plaintiff and/or any Class
27 Member and/or Aggrieved Employee in this Action, as to any and all causes of action that were
28 asserted or that might have been asserted in this Action. Nonetheless, Defendant wishes to settle

1 and compromise the matters at issue in the Complaint to avoid further substantial expense and
2 the inconvenience and distraction of protracted and burdensome litigation. Defendant has taken
3 into account the uncertainty and risks inherent in litigation, and without conceding any infirmity
4 in the defenses that they have asserted or could assert against Plaintiffs, has determined that it is
5 desirable and beneficial that Plaintiff's claims be settled in the manner and upon the terms and
6 conditions set forth in this Agreement.

7 92. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
8 Order, nothing contained herein, nor the consummation of this Agreement, is to be construed or
9 deemed an admission of liability, culpability, negligence, or wrongdoing on the part of
10 Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this
11 Agreement with the intention of avoiding further disputes and litigation with the attendant
12 inconvenience and expenses. This Agreement is a settlement document, and it, along with all
13 related documents such as the notices, and motions for preliminary and final approval, shall,
14 pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be
15 inadmissible in evidence in any proceeding, except an action or proceeding to approve the
16 settlement, and/or interpret or enforce this Agreement. The stipulation for class certification as
17 part of this Agreement is for settlement purposes only and if, for any reason the settlement is not
18 approved, the stipulation will be of no force or effect.

19 93. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel,
20 Defendant, and Defense Counsel separately agree that, until the Motion for Preliminary
21 Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or
22 publicize, or cause or permit another person to disclose, disseminate or publicize, any of the
23 terms of the Agreement directly or indirectly, specifically or generally, to any person,
24 corporation, association, government agency, or other entity except: (1) to the Parties' attorneys,
25 accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2)
26 counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing
27 authorities; (4) to the extent necessary to obtain a "not to exceed" bid and a declaration from the
28 Administrator; (5) in response to a court order or subpoena; or (6) in response to an inquiry or

1 subpoena issued by a state or federal government agency. Each Party agrees to immediately
2 notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such
3 information. Plaintiffs, Class Counsel, Defendant, and Defense Counsel separately agree not to,
4 directly or indirectly, initiate any conversation or other communication, before the filing of the
5 Motion for Preliminary Approval, with any third party regarding this Agreement or the matters
6 giving rise to this Agreement except to respond only that "the matter was resolved," or words to
7 that effect. This paragraph does not restrict Class Counsel's communications with Class
8 Members in accordance with Class Counsel's ethical obligations owed to Class Members.

9 94. No Solicitation. The Parties separately agree that they and their respective
10 counsel and employees will not solicit any Class Member to opt out of or object to the
11 Settlement, or appeal from the Judgment. Class Counsel shall not at any time list or publicize
12 the action or settlement on its website or any advertising material. Nothing in this paragraph
13 shall be construed to restrict Class Counsel's ability to communicate with Class Members in
14 accordance with Class Counsel's ethical obligations owed to Class Members.

15 95. Notices. Unless otherwise specifically provided herein, all notices, demands or
16 other communications given hereunder shall be in writing and shall be deemed to have been duly
17 given as of the third business day after mailing by United States registered or certified mail,
18 return receipt requested, addressed:

19 *To the Class:*

20 Brian J. Mankin
21 *brian@lmlfirm.com*
22 Lauby, Mankin & Lauby LLP
23 5198 Arlington Ave, PMB 513
24 Riverside, CA 92504
25 Tel: (951) 320-1444 | Fax: (951) 320-1445

26 *To Defendant:*

27 Jeffrey K. Brown, State Bar No. 162957
28 *jkb@paynefears.com*
29 PAYNE & FEARS
30 4 Park Plaza, Suite 1100
31 Irvine, California 92614
32 Tel: 949-851-1100 | Fax: 949-851-1212

1 96. Construction. The Parties hereto agree that the terms and conditions of this
2 Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and
3 that this Agreement shall not be construed in favor of or against any Party by reason of the extent
4 to which any Party or his or its counsel participated in the drafting of this Agreement. Plaintiff
5 and Defendant expressly waive the common-law and statutory rule of construction that
6 ambiguities should be construed against the drafter of an agreement and further agree, covenant,
7 and represent that the language in all parts of this Agreement shall be in all cases construed as a
8 whole, according to its fair meaning.

9 97. Captions and Interpretations. Paragraph titles or captions contained herein are
10 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or
11 describe the scope of this Agreement or any provision hereof. Each term of this Agreement is
12 contractual and not merely a recital.

13 98. Modification. This Agreement may not be changed, altered, or modified, except
14 in writing and signed by the Parties hereto, and approved by the Court. This Settlement
15 Agreement may not be discharged except by performance in accordance with its terms or by a
16 writing signed by all of the Parties hereto.

17 99. Dispute Resolution. Prior to instituting legal action to enforce the provisions of
18 this Agreement or to declare rights and/or obligations under this Agreement, a Party shall
19 provide written notice to the other Party and allow an opportunity to cure the alleged
20 deficiencies, and Plaintiff and Defendant may agree to seek the help of the Mediator to resolve
21 any dispute they are unable to resolve informally. During this period, the Parties shall bear their
22 own attorneys' fees and costs. This provision shall not apply to any legal action or other
23 proceeding instituted by any person or entity other than Plaintiff or Defendant.

24 100. Choice of Law. This Settlement Agreement shall be governed by and construed,
25 enforced and administered in accordance with the laws of the State of California, without regard
26 to its conflicts-of-law rules.

27 101. Integration Clause. This Settlement Agreement contains the entire agreement
28 between the Parties relating to the settlement and transaction contemplated hereby, and all prior

1 or contemporaneous agreements, understandings, representations, and statements, whether oral
2 or written and whether by a Party or such Party's legal counsel, are merged herein. No rights
3 hereunder may be waived except in writing.

4 102. Binding On Assigns. This Agreement shall be binding upon and inure to the
5 benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
6 successors and assigns.

7 103. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
8 because the members of the Class are numerous, it is impossible or impractical to have each
9 Class Member execute this Agreement. The Notice will advise all Class Members of the binding
10 nature of the release provided herein and such shall have the same force and effect as if this
11 Agreement were executed by each Class Member.

12 104. Counterparts. This Agreement may be executed in counterparts, and when each
13 Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an
14 original, and, when taken together with other signed counterparts, shall constitute one fully
15 signed Agreement, which shall be binding upon and effective as to all Parties. Electronic
16 signatures shall have the same force and effect as an original.

17 Dated: Apr 3, 2024

PLAINTIFF AND CLASS REPRESENTATIVE:



Mark ramos (Apr 3, 2024 15:44 PDT)

Mark Ramos

20 Dated: Apr. 4, 2024

CLASS COUNSEL

LAUBY, MANKIN & LAUBY LLP



Brian J. Mankin

Attorneys for Plaintiff

25 Dated: _____

DEFENDANT MSI STRUCTURAL STEEL, LLC

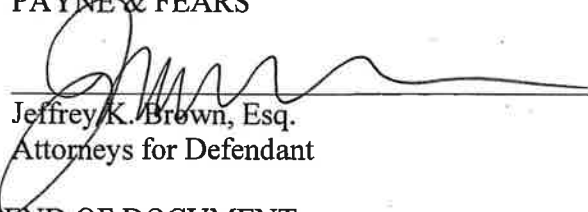


By: DION M. GENCHI (name)

CEO (title)

1 Dated: 5/31/24

COUNSEL FOR DEFENDANT
PAYNE & FEARS

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Jeffrey K. Brown, Esq.
Attorneys for Defendant

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END OF DOCUMENT

EXHIBIT “2”

COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT

Ramos v. MSI Structural Steel, LLC

(San Bernardino County Superior Court, Case No. CIVSB2134505)

***The San Bernardino County Superior Court 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 a class action lawsuit (“Action”) against MSI Structural Steel, LLC, (“Defendant” or “MSI”) for alleged unpaid wage claims.

The Action was filed by a former employee of Defendant, and seeks payment of unpaid wages, statutory damages and penalties, interest and attorneys’ fees on behalf of the “Class Members” defined as all current and former nonexempt employees employed by MSI Structural Steel, LLC, in California at any time during the Class Period (which is December 17, 2017, through January 31, 2024). The Action also seeks penalties under the California Private Attorney General Act (“PAGA”) for all “Aggrieved Employees” defined as all current and former nonexempt employees employed by MSI Structural Steel, LLC, in California at any time during the PAGA Period (which is December 17, 2020, through January 31, 2024).

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

[CLASS MEMBER NAME] [ID/CONTROL NUMBER]

Two Parts	Weeks Worked During: Class Period (Class Member) and PAGA Period (Aggrieved Employee)	Your Estimated Share
Class Member	INSERT (During Class Period)	\$INSERT (Individual Class Payment)
Aggrieved Employee	INSERT (During PAGA Period)	\$INSERT (Individual PAGA Payment)

Based on Defendant’s records, and the Parties’ current assumptions, your estimated Individual Class Payment (less withholding) and your Individual PAGA Payment are shown in the chart above, along with the Workweeks you are credited with working during the Class Period and PAGA Period, respectively, according to Defendant’s records. The actual amount you may receive could be adjusted depending on several factors. (If no amount is stated for your Individual PAGA Payment, then you are not eligible for an Individual PAGA Payment because you did not work during the PAGA Period.)

If you believe that you worked more weeks during either period than Defendant’s records show in the chart above, you can submit a challenge by **DATE**, 2024 (“**Response Deadline**”). 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. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiffs and Plaintiffs’ attorneys (“Class Counsel”). The Court will also decide whether to approve the settlement where Defendant makes 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 MSI during the Class Period and/or the PAGA Period, you have a few options as shown in the Chart below:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE A SETTLEMENT PAYMENT	If you want to receive your full settlement payment, then no further action is required on your part. You will automatically receive a settlement payment if the Settlement receives final approval by the Court. You will be bound by the terms of the Settlement Agreement and will give up your right to sue on the Released Class Claims described in Section 3 .
EXCLUDE YOURSELF	If you do <u>not</u> wish to participate in the settlement of the Class Claims, you may “opt-out” of the settlement of the Class Claims. If you choose to opt-out, you must submit a Request for Exclusion by [REDACTED], 2024 (see Section 6 for more details on how to opt-out). If you opt-out, you will no longer be a Class Member, and you will (1) <u>not</u> receive an Individual Class Payment, but you will preserve your right to pursue the Released Class Claims described below subject to applicable statutes of limitations, and (2) be barred from filing an objection to the settlement. You cannot opt-out of the PAGA portion of the proposed Settlement. Individual PAGA Payments will be sent to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue PAGA Released Claims. See Section 6 of this Notice.
OBJECT	If you decide to object to the settlement because you find it unfair or unreasonable, you must submit an Objection stating why you object to the settlement by [REDACTED], 2024 (see Section 7 for details on how to object).
DISPUTE THE NUMBER OF WEEKS WORKED	If you believe the number of workweeks that you were credited with working in the chart above is incorrect, you may submit a written dispute to the Administrator (see Section 4 for more details on how to dispute your credited Weeks Worked). Defendant’s records will be presumed correct, but you may provide evidence to the Administrator showing how many Work Weeks you believe you should be credited.

YOU MAY ATTEND THE FINAL APPROVAL HEARING, BUT IT’S NOT REQUIRED	
DATE: [REDACTED], 2024 TIME: 8:30 A.M.	At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement. 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. See Section 8 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff and Class Representative, Mark Ramos, is a former employee MSI. The Action accuses Defendant of violating California labor laws due to the alleged: (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure to timely pay final wages, (f) failure to provide accurate itemized wage statements; (g) failure to reimburse business expenses, and (h) unfair and unlawful competition. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”). Plaintiff is represented by attorneys in the Action (“Class Counsel”). See Section 9 below for their contact information.

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

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

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

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

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

1. Defendant Will Pay \$362,500 as the Settlement Amount. Defendant has agreed to pay \$362,500 (the “Settlement Amount”) into an account controlled by the Administrator. The Administrator will use the Settlement Amount to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payments, Class Counsel’s attorneys’ fees and expenses, the Administrator’s Costs, and PAGA Penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, Defendant will fund the Settlement not more than 15 days after the Court’s grants Final Approval, assuming that no Class Member objects or intervenes in the Settlement, which will delay payments until after the deadline to file an appeal or an appeal is resolved.

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

- A. Up to one-third of the Settlement Amount to Class Counsel for attorneys' fees (\$120,833.33) and up to \$20,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
- B. Up to \$10,000 to Class Representative as a Service Payment for filing the Action, working with Class Counsel and representing the Class. The Class Representative's Service Payment will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.
- C. Up to \$7,500 to the Administrator for services administering the Settlement (unless the Court approves a higher or lower amount).
- D. Up to \$30,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% to Individual PAGA Payments to all Aggrieved Employees, which will be divided based on their share of Weeks Worked during the PAGA Period.

3. 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 remainder (the “Net Settlement”) by making Individual Class Payments to Participating Class Members based on their Weeks Worked during the Class Period.

4. Taxes Owed on Payments to Class Members. Plaintiff and Defendant are asking the Court to approve an allocation of 33.33% of each Individual Class Payment to taxable wages (“Wage Portion”) and 66.67% to penalties and interest (“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 as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and Defendant have agreed to these allocations, neither side is giving you any advice on whether your payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any 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.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name.

If the monies represented by your check are sent to the Controller's Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you opt-out of the Settlement no later than the Response Deadline. See Section 6 of this Notice for details on how to Opt-Out.

7. The Proposed Settlement Will be Void If the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs 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.

8. Administrator. The Court has appointed a neutral company, Phoenix Class Action Administration Solutions (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion and Objections (if any). The Administrator will also decide any Disputes over weeks worked, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.

9. Participating Class Members' Release. After the Judgment is final and Defendant has fully funded the Settlement Amount and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant or the Released Parties entities based on the facts alleged in the Action for the duration of the Class Period and PAGA Period, which are resolved by this Settlement.

The Participating Class Members will be bound by the following release: Upon the final approval of the Settlement by the Court and Defendant's funding of the Settlement Amount, Plaintiff and all Class Members who do not submit a valid opt-out/request for exclusion will fully release and discharge Defendant and each of its former and present directors, officers, shareholders, owners, limited partners, attorneys, insurers, predecessors, successors, employees, assigns, parents, subsidiaries, and affiliates, and all persons acting by, through, under, or in concert with them, and each of these entities' present or past officers, directors, former and present directors, officers, shareholders, owners, limited partners, attorneys, insurers, predecessors, successors, employees, assigns, parents, subsidiaries, and affiliates (the "Released Parties") from all claims stated in the Complaint and those based solely upon the facts in the Complaint, including: (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure to reimburse business expenses, (f) failure to timely pay wages, (g) failure to timely pay wages upon separation of employment, (h) failure to provide accurate itemized wage statements, (i) unfair and unlawful competition, and (j) all other claims that reasonably could have arisen out of the allegations made and based on the facts alleged in the Complaint. These released claims and damages are hereinafter referred to as "Released Class Claims." The time period governing these Released Class Claims shall be at any time from December 17, 2017, through January 31, 2024 ("Class Period").

10. Release of Released PAGA Claims. Also upon the Court's final approval of the Settlement and Defendants' funding of the Settlement Amount, Plaintiff—in his individual capacity and on behalf of the State of California and the

LWDA—and all Aggrieved Employees shall completely release and discharge the Released Parties of PAGA claims that Plaintiff alleged against the Released Parties, on behalf of the Aggrieved Employees and the State of California, based on the facts stated in the Complaint and in the relevant LWDA notice letter, including all PAGA claims seeking civil penalties premised upon: (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure to reimburse business expenses, (f) failure to timely pay wages each period, (g) failure to timely pay wages upon separation of employment, (h) failure to provide accurate itemized wage statements, and (i) all other claims for civil penalties recoverable under PAGA based on the facts or claims alleged in the Complaint. These released claims and damages are hereinafter referred to as “Released PAGA Claims.” The time period governing the PAGA Released Claims shall be any time from December 17, 2017, through January 31, 2024 (“PAGA Period”).

4. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

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

2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$7,500 by the total number of Weeks Worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by the number of Weeks Worked by each individual Aggrieved Employee during the PAGA Period.

3. Disputing Weeks Worked. The number of weeks you worked during the Class Period and PAGA Period, as recorded in Defendant’s records, are stated in the first page of this Notice. You have until **INSERT DATE HERE** (“Response Deadline”) to dispute the number of Workweeks credited to you by submitting evidence to the Administrator.

You need to support your dispute by sending copies of pay stubs or other records. The Administrator will accept Defendant’s calculation of weeks worked based on Defendant’s records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek challenges based on your submission and on input from Class Counsel and Defendant’s Counsel. The Administrator’s decision is final. You can’t appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members and Aggrieved Employees. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (*i.e.*, every Class Member who does not opt-out) and Aggrieved Employee. The single check will combine the Individual Class Payment and the Individual PAGA Payment.

2. Aggrieved Employees Only. If you opted out of the Class settlement, but qualify as an Aggrieved Employee, then the Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee, including those who opt out of the Class Settlement.

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

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

If you **do not** wish to take part in the release of the Class Claims in the Settlement, you may exclude yourself by sending to the Settlement Administrator a “Request for Exclusion” letter/card postmarked no later than , 2024 with your full name, address, telephone number, last four digits of your social security number or your date of birth, and signature. The Request for Exclusion should state:

“I WISH TO BE EXCLUDED FROM THE CLASS IN THE ELEMENTIS SPECIALTIES LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE MY INDIVIDUAL CLASS PAYMENT FROM THIS LAWSUIT.”

Any person who submits a timely Request for Exclusion from the Class Claims (1) will not have any rights under this Settlement, including the right to object, appeal or comment on the Settlement; (2) will not be entitled to receive an Individual Class Payment; (3) will preserve the right to pursue the Released Class Claims, and (4) will not be bound by this Settlement, or the Judgment.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement remain eligible for Individual PAGA Payments.

If you do not want to participate in the Settlement, the Administrator will exclude you based on timely receipt of a writing communicating your request to be excluded. Be sure to personally sign your request, identify the Action as Ramos v. MSI Structural Steel and include your identifying information (full name, address, telephone number, approximate dates of employment, and last four digits of social security number or your date of birth for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **Send your request to be excluded to the Administrator by [REDACTED], 2024 (the “Response Deadline”), or it will be invalid.** Section 9 of the Notice has the Administrator’s contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. A Participating Class Member who disagrees with any aspect of the Settlement may wish to object. **The deadline for sending written objections to the Administrator is [REDACTED], 2024 (the “Response Deadline”).**

If you wish to object to the proposed Settlement, you or your own attorney must submit a written objection, and the objection must include your full name, address, telephone number, last four digits of the social security number or date of birth, signature, and dates of employment with Defendant, in addition to the case name and number (Ramos v. MSI Structural Steel, LLC, Case No. CIVSB2134505), the basis for the objection, including any legal support and each specific reason in support of the objection, as well as any documentation or evidence in support thereof. Additionally, if you are represented by an attorney, the objection must include the name and address of your attorney. This objection and all supporting information must be sent to the Administrator at the address listed in Section 9, **postmarked** on or before [REDACTED], 2024.

If you do not comply with these procedures and the deadline for objections, the Court may not consider your objection at the Final Approval Hearing, and you may lose the right to contest the approval of the Settlement. You are still eligible to receive a settlement payment should the settlement become Final even if you object to the settlement. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment before entry of judgment.

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. WHEN IS THE FINAL APPROVAL HEARING?

On [REDACTED], 2024, the Court will hold a public hearing in in Department S26 of the Superior Court for the State of California, County of San Bernardino, 247 West 3rd Street, San Bernardino, CA 92415, for the purposes of determining whether the proposed Settlement is fair, adequate and reasonable and should be approved, whether to approve Class Counsel’s applications for attorneys’ fees and costs, whether to approve the payments to the LWDA, and whether to approve Plaintiff’s request for the service award. This hearing may be continued or rescheduled by the Court. Objectors to the proposed settlement will be provided notice in the event that the Final Approval Hearing is continued to a later date. Class Members who support the proposed Settlement do not need to appear at the hearing and do not need to take any other action to indicate their approval. Class Members who object to the proposed Settlement are not required to attend the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

If you have questions about this Notice, the process to Opt-Out or Object, or the Settlement, or if you did not receive this Notice in the mail and you believe that you are or may be a member of the Class, you should contact the Administrator for more information or to request that a copy of this Notice be sent to you in the mail.

Settlement Administrator
Name
Mailing Address
Telephone Number

If you wish to communicate directly with Class Counsel, you may contact them at the contact information noted here:

Class Counsel
Brian Mankin, Esq. <i>brian@LMLfirm.com</i> Kristina Carlson, Esq. <i>kristina@LMLfirm.com</i> Lauby Mankin Lauby LLP 5198 Arlington Ave, PMB 513 Riverside, CA 92504 Tel: (951) 320-1444

You may also seek advice and guidance from your own private attorney at your own expense, if you so desire.

This Notice is only a summary. For more detailed information, you may review the Settlement Agreement, containing the complete terms of the proposed Settlement, which is on file with the Court and attached to the Declaration of Brian J. Mankin in Support of Motion for Preliminary Approval of Class Action Settlement filed on XXXX, 2024 and which is available to be inspected at any time during regular business hours the Office of the Clerk, San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415.

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

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 for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

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

EXHIBIT “3”



December 17, 2021

Submitted Via Online Filing to the LWDA

California LWDA
Attn: PAGA Administrator
455 Golden Gate Ave., 9th Fl.
San Francisco, CA 94102

Sent Via U.S. Mail and Certified Mail

MSI Structural Steel, LLC
11810 Center Street
South Gate, CA 90280

Dion Michael Genchi
11810 Center Street
South Gate, CA 90280

Re: PAGA Civil Penalty Claim
Mark Ramos v. MSI Structural Steel, LLC, et al.

To the Labor and Workforce Development Agency; MSI Structural Steel, LLC; and Dion Michael Genchi:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as notification of the PAGA civil penalty claim of aggrieved employee Mark Ramos (“Claimant”), on behalf of the State of California and all Aggrieved Employees, against his former employer(s), MSI Structural Steel, LLC (“MSI”), and/or any affiliated entities, as well as its owners Dion Michael Genchi and others (the “Owners”) (collectively, the “Company”), for violations of Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802 among possibly other sections inadvertently omitted, and/or sections of the applicable IWC Wage Order(s).

FACTUAL BACKGROUND

Claimant was employed by the Company from approximately May through November 2021. Claimant alleges that, at all relevant times, he and all other non-exempt employees employed by the Company in California (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and corresponding wage and hour violations that Claimant was subjected during his employment.

At all relevant times, Claimant and the Aggrieved Employees were not provided proper minimum and overtime wages due to the Company’s failure to accurately record and compensate for all hours worked. For instance, the hours worked by Claimant and the Aggrieved Employees was recorded on an electronic timekeeping system which accurately recorded all hours worked. However, after the Aggrieved Employees submitted their actual time worked, the Company would frequently edit the timekeeping entries, thus illegally reducing the hours paid to the Aggrieved Employees (*e.g.*, Claimant submitted 8.1 hours worked but the Company edited and reduced the time entry to only 8.0 hours). See *Morillion v. Royal Packing Co.* (2000) 22 Cal. 4th 575 (employees must be paid for all time that the employer either knew, or

reasonably should have known, that its employees are subject to its control or otherwise working). Additionally, the Company failed to pay Claimant and the Aggrieved Employees for drivetime and other compensable time spent under the direction and control of the Company. As a result, the Company failed to pay Claimant and the Aggrieved Employees for all hours worked, including minimum and overtime wages for all hours worked in excess of 8 and/or 12 per day and/or 40 per week.

Claimant was also not provided 30-minute off-duty meal periods, as mandated by California law, during employment with the Company. As a result of the Company's policies and practices, as well as the hectic and demanding workload, Claimant was subjected to meal period violations when he was: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal period while under the control of the Company (such as while driving), (3) forced to take a shortened meal period, (4) forced to take a meal period after the 5th hour of work, and (5) not provided mandated second or third meal periods for shifts in excess of 10 hours and 15 hours, respectively.

The Company also failed to provide Claimant with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. The Company did not schedule Claimant's rest breaks and Claimant was often not authorized and/or permitted to take mandated rest breaks due to the lack of adequate staffing and coverage and being overwhelmed by the hectic workload. Furthermore, on occasions when Claimant worked in excess of 10 hours in a shift, the Company failed to authorize and/or permit a third mandated rest break.

Moreover, at all relevant times, the Company required Claimant and the Aggrieved Employees to incur necessary business-related expenses and costs without reimbursement. For example, Claimant was required to incur substantial expenses without reimbursement during employment, including: (1) driving to and from various job sites across without a mileage reimbursement, and (2) acquiring and maintaining a smart phone and related monthly data plan to communicate with the Company via phone, text message, and e-mail.

The Company also failed to comply with the mandates of Labor Code §§ 204 and 210 regarding the timing of the payment of wages to its employees each period, including minimum and overtime wages, as well as meal and rest period premiums. Also, the Company failed to comply with the mandates of Labor Code §§ 201–203 regarding timing of payment of final wages and failed to pay all wages due and owing upon separation of employment including minimum wages, overtime, and vacation wages. Finally, during his employment with the Company, Claimant received inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a).

Claimant alleges that he worked under the joint direction and control of MSI and the Owners and is informed and believes that each of them acted in all respects pertinent to this action as the agent of the others, carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of each are legally attributable to the others. On information and belief, a unity of interest and ownership between each exists such that MSI and the Owners acted as a single employer of Claimant and the Aggrieved Employees. Furthermore, on information and belief, MSI and the Owners are an integrated enterprise and should be treated as a single employer because MSI and the Owners share an interrelation of operations, with common human resources and personnel policies and shared common offices and facilities. Upon information and belief, MSI and the Owners share common management, a centralized control of labor operations, and common ownership or financial control.



Furthermore, Claimant alleges that the Owners are now and at all relevant times were the owners of MSI and were Claimant's and the Aggrieved Employees' actual employer or, in the alternative, were individuals employed by the Company as managerial and/or supervisory employees and/or agents. In addition, Claimant alleges that at all relevant times the Owners had the authority, in the interest of MSI to exercise independent judgment to hire, transfer, promote, discharge, assign, discipline, or take other similar actions against Claimant and the Aggrieved Employees, and were in Claimant's chain of command at the time of and direct participants in the wrongful conduct which constitutes the basis of Claimant's complaint herein. Claimant also alleges that MSI and the Owners are the agents, servants, employees, partners, affiliates, and/or representatives of each other, and were, at all times herein mentioned, acting within the course, scope, and purpose of such relationship(s) and with the knowledge, consent and/or ratification of each other. Furthermore, in conducting themselves in the manner described herein, MSI and the Owners were acting in active concert with one another such that the acts of each were fully attributable to the other in all material respects.

Claimant also alleges MSI and the Owners were merely the alter-ego of the others in that there existed a unity of interest and ownership such that any separateness between them ceased to exist and each exercised undue dominance, control, influence, and management over the others. Claimant further alleges that, at all relevant times, MSI has been inadequately capitalized to conduct business, has failed to follow appropriate corporate formalities, and has simply been a shell and instrumentality through which the Owners have conducted their personal affairs. Adherence to the fiction of the separate existence of MSI would permit abuse of the corporate privilege, thereby sanctioning fraud and promoting injustice. Accordingly, the corporate veil should be pierced, and any liability attached to MSI should be imposed jointly and severally against the Owners.

Finally, in an additional separate, but not necessarily mutually exclusive, alternative theory of liability, the Owners are liable for PAGA civil penalties under Labor Code § 558 as "other person(s)" who caused the violations regarding minimum wage among other claims. See *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 ("if there is evidence and a finding that a party other than the employer 'violates, or causes to be violated' the overtime laws (§ 558(a)) or 'pays or causes to be paid to any employee' less than minimum wage (§ 1197.1(a)), then that party is liable for certain civil penalties regardless of the identity or business structure of the employer"); *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S.Dist.LEXIS 40851 (same)

As a result of these violations, and others described below, Claimant alleges that he and other Aggrieved Employees were denied specific rights to which they are/were entitled under California law and the rules promulgated by the IWC Wage Orders, including the following:

**PAGA ASSESSMENT FOR FAILURE TO
PAY ALL MINIMUM, REGULAR, AND OVERTIME WAGES**

(Labor Code §§ 204, 210, 221-223, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198; IWC Wage Order §§ 3, 4(B))

As discussed above, the Company failed to pay all required minimum, regular, and overtime wages to Claimant and the Aggrieved Employees due to the Company's failure to accurately record and compensate for all hours worked and the failure to pay overtime and/or properly calculate the regular rate of pay for Claimant and other Aggrieved Employees. This resulted in earned, but unpaid, wages due and owing to Claimant and the Aggrieved Employees. Therefore, Claimants and the Aggrieved Employees performed work for the Company without receiving proper payment of the requisite minimum, overtime, and/or doubletime wages.



Accordingly, Labor Code §§ 210, 558, 1194.2, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay all wages including, but not limited to, minimum, regular, and overtime wages in violation of the Labor Code and/or the IWC Wage Orders.

**PAGA ASSESSMENT FOR DENIAL OF MEAL PERIODS,
REST BREAKS, AND WAGE PREMIUMS**

(Labor Code §§ 226.7(b) & (c), 512, 558; Cal. Admin. Code, Title 8, § 11090)

Labor Code § 226.7(b) states that “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ...” Labor Code § 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than 5 hours per day without providing the employee with an uninterrupted meal period of not less than 30 minutes [...] [a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.”

Section 12 of applicable IWC Wage Order states in pertinent part: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

Here, Claimant and other Aggrieved Employees were regularly not provided compliant mandatory meal periods and paid rest breaks due to the Company’s policies described above. Although the Company was required to pay Claimant and all Aggrieved Employees premium wages equal to an additional hour of pay at the employee’s regular rate of pay for each violation under Labor Code § 226.7(c), the Company did not pay the mandatory one-hour wage premiums and did not do so at the proper rate. Labor Code § 558 imposes a penalty for each violation, plus an amount sufficient to recover the underpaid wages. Additionally, the civil assessment set forth in Labor Code § 2699 applies to these violations.

PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES

(Labor Code § 2802; IWC Wage Order § 9(b))

Labor Code § 2802(a) states “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.” IWC Wage Order § 9(b) states “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer.”

Here, the Company required Claimant and the Aggrieved Employees to incur expenses in direct consequence of the discharge of their duties without reimbursement. Accordingly, Labor Code § 2699 imposes a penalty upon the Company for each such violation of Labor Code § 2802

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**PAGA ASSESSMENT FOR FAILURE TO PAY ALL WAGES DUE AND OWING
EACH PAYROLL PERIOD WITHIN THE TIME REQUIRED BY LAW**

(Labor Code §§ 204, 204.1, 208, 210, 256 and 2699)

Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month. Labor Code § 204(d) states “[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

Here, the Company frequently paid wages beyond the timing requirements specified in Labor Code § 204 and, thus, violated the statute. Additionally, as a result of the Company’s failure to pay Claimant and the Aggrieved Employees all compensation to which they were entitled, the Company had a pattern and practice of failing to pay all wages due and owing to Claimant and the Aggrieved Employees within the time mandated by Labor Code § 204. As a result of these violations, penalties may be assessed pursuant to Labor Code §§ 203, 210, 256, and/or 2699.

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201, 202, 203, 256 and 2699)

Labor Code § 201(a) provides in pertinent part: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202(a) states in pertinent part “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours’ previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Labor Code § 203(a) states “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

The Company did not pay the Aggrieved Employees all wages that were due and owing within the required time following the end of their employment in accordance with Labor Code §§ 201-202. As a result, all such Aggrieved Employees are entitled to 30 days of wages as a “waiting time penalty.” (Labor Code § 203.) Labor Code § 2699 also imposes a penalty.

**PAGA ASSESSMENT FOR FAILURE TO PROVIDE ACCURATE,
ITEMIZED WAGE STATEMENTS**

(Labor Code §§ 226, 226.3, and 1174)

Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the pay period, the employee’s name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer, and all



applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all times pertinent hereto, the Company failed to provide accurate itemized wage statements to Claimants and all Aggrieved Employees due to violations including: failure to accurately state total hours worked (the wage statements failed to accurately reflect total compensable hours due to the failure to accurately record all hours worked); failure to accurately state gross wages earned; failure to accurately state all deductions; failure to accurately state net wages earned; failure to state the applicable hourly rates; and failure to accurately state the corresponding number of hours worked at each hourly rate (including the failure to state the accurate overtime rate of pay). Accordingly, Labor Code §§ 226.3 and 2699 also impose a civil penalty and/or assessment for these violations.

PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199

(Labor Code § 1199)

An employer violates Labor Code § 1199 if said employer: (a) requires or causes an employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission; or, (c) violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission. Labor Code § 2699.5 specifically enumerates Labor Code § 1199 as a section to which the civil penalties under the PAGA apply. Therefore, as a result of the Company's violations described herein, the Company is subject to the civil penalties in accordance with Labor Code § 2699.

ATTORNEYS' FEES, INTEREST, AND PENALTIES

(Labor Code §§ 2699(f)(2), 2699(g)(1), 2699.5)

Labor Code § 2699(g)(1), give employees the right to recover in a civil action the unpaid balance of the full amount of wages, including interest thereon, penalties and other damages, as applicable, reasonable attorneys' fees, and costs of suit. Additionally, Claimants seek the assessment of penalties, including civil penalties, under Labor Code §§ 203, 210, 225.5, 226.3, 1174.5, 1197.1, 2699, and/or § 20 of the IWC Wage Orders, among possibly other provisions inadvertently omitted herein. Furthermore, Claimants is entitled to bring a wage/hour claim on behalf of all current and former similarly situated employees of the Company. Thus, the Company is exposed to these same penalties for violations involving all Aggrieved Employees. Additionally, Claimant seeks attorney's fees pursuant to C.C.P. § 1021.5. Please construe this correspondence as Claimants' notification of alleged wrongdoing and attempted resolution in accordance with C.C.P. § 1021.5 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.

CONCLUSION

Based on the foregoing, the Company may be liable for civil penalties related to the foregoing claims and remedies. If Claimant becomes aware of any additional claims for Labor Code violations related to his employment and/or other employees of the Company, he reserves the right to add new claims by supplementing this notice letter. Should you have any questions, please feel free to give me a call. In the meantime, I look forward to your response.

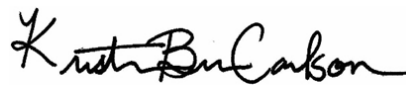


Re: Ramos v. MSI Structural Steel, LLC, et al.

December 17, 2021

Page 7

Very Truly Yours,

A handwritten signature in black ink, reading "Kristina Bui Carlson". The signature is fluid and cursive, with the first name "Kristina" and last name "Carlson" being more prominent than the middle name "Bui".

By: Kristina Bui Carlson, Esq.

E-mail: kristina@lmfirm.com



4590 Allstate Drive, Riverside, CA 92501
Toll Free 888.959.8508

EXHIBIT “4”



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

January 29, 2024

CASE ASSUMPTIONS

Class Members	200
Opt Out Rate	1%
Opt Outs Received	2
Total Class Claimants	198
Subtotal Admin Only	\$7,953.57

Flat Fee Total **\$7,500.00**

For 200 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

Language Translation, Printing & Mailing Included

Case: Ramos v. MSI , Opt-Out & PAGA Administration

Phoenix Contact: Michael E. Moore
Contact Number: 949.331.0131
Email: mike@phoenixclassaction.com

Requesting Attorney: Brian J. Mankin
Firm: Lauby, Mankin & Lauby
Contact Number: (951) 320-1444
Email: brian@lmfirm.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PHX will need to adjust this Estimate accordingly.
Estimate is based on **200** Class Members. Class data **Must** be sent in Microsoft Excel or uploaded in the same format. Class Data Must be sent in one spreadsheet, with no additional programming needed. A rate of \$150 per hour will be charged for any additional analysis or programming. Pricing good for 90 day

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item	Estimate
Programming Manager	\$100.00	2		\$200.00
Programming Database & Setup	\$100.00	2		\$200.00
Toll Free Setup*	\$100.00	1		\$100.00
Call Center & Long Distance	\$2.00	28		\$56.00
NCOA (USPS)	\$40.00	1		\$40.00
Total				\$596.00

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Language Translation / Website

Project Action	Rate	Hours/Units	Line Item	Estimate
Notice Packet Formatting	\$100.00	2		\$200.00
Language Translation	\$1,000.00	1		\$1,000.00
Data Merge & Duplication Scrub	\$0.10	200		\$20.00
Notice Packet & Opt-Out Form	\$1.35	200		\$270.00
Estimated Postage (up to 2 oz.)*	\$0.87	200		\$174.00
Static Website	\$200.00	1		\$200.00
Total				\$1,864.00

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



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CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Associate	\$55.00	2		\$110.00
Skip Tracing Undeliverables	\$1.00	30		\$30.00
Remail Notice Packets	\$1.00	27		\$27.00
Estimated Postage	\$0.87	27		\$23.49
Programming Undeliverables	\$50.00	2		\$100.00
			Total	\$290.49

Database Programming / Processing Opt-Outs, Deficiencies or Disputes

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Database	\$150.00	1		\$150.00
Non Opt-Out Processing	\$200.00	1		\$200.00
Case Associate	\$55.00	4		\$220.00
Deficiency & Dispute Letters	\$10.00	4		\$40.00
Case Manager	\$85.00	3		\$255.00
			Total	\$865.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Calculations	\$135.00	1		\$135.00
Disbursement Review	\$135.00	1		\$135.00
Programming Manager	\$95.00	2		\$190.00
QSF Bank Account & EIN	\$135.00	1		\$135.00
Check Run Setup & Printing	\$135.00	3		\$405.00
Mail Class Checks *	\$0.90	198		\$178.20
Estimated Postage	\$0.64	198		\$126.72
			Total	\$1,304.92

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing & Instructions for downloading tax forms from PHX secure portal



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CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Supervisor	\$115.00	2		\$230.00
Remail Checks (Postage Included)	\$2.00	42		\$83.16
Case Associate	\$55.00	3		\$165.00
Reconcile Uncashed Checks	\$85.00	5		\$425.00
Conclusion Reports	\$115.00	2		\$230.00
Case Manager Conclusion	\$85.00	3		\$255.00
Final Reporting & Declarations	\$115.00	3		\$345.00
IRS & QSF Annual Tax Reporting * (1 State Tax Reporting & Escheating to the State of CA Included)	\$1,300.00	1		\$1,300.00
Check to Cy-Pres	\$150.00	1		Included
Total				\$3,033.16

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$7,953.57



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CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

EXHIBIT “5”