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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

DARREL NORTHRUP, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

GUYOU CONSTRUCTION, INC., a
California Corporation; MARCUS A.
GUYOU, an individual; and DOES 1 through
20, inclusive;

Defendants.

Case No.: CVRI2105858
*[Assigned to Hon. Judge Craig Riemer, Dept
1, for all purposes]*

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

Hearing

Date: May 8, 2023
Time: 8:30 a.m.
Dept. 1

Reservation #: 049315798005

Complaint filed: December 29, 2021

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. Within our firm, I am a partner and manage the employment practice. 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.

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 well over 500 employee vs. employer litigation matters during my
7 22 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 250 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 over half those actions to date, and anticipate receiving final
12 approval in many more of those in the future. I estimate that in cases that I’ve been involved in
13 as lead counsel or co-counsel that my team and I have certified approximately one dozen cases in
14 contested class certification processes.

15 4. As part of these settlements and judgments, I have recovered in excess of
16 \$250 million in damages for my clients and the class members (who often work as nurses,
17 ambulance drivers, technicians, warehouse workers, truck drivers, sales, professional
18 occupations and countless other trades). My team and I once held the record for the largest
19 known PAGA-only case in California’s history as of the end of 2018 - a \$12.5 million-dollar
20 court approved settlement, which followed extensive litigation, summary adjudication and writs
21 to the CA Supreme Court against a Fortune 50 company (*Garcia v. Macy’s*, San Bernardino
22 Superior Court).

23 5. I have tried two major class and PAGA cases against Fortune 100 companies. In
24 2018, I was lead counsel in a PAGA case that my firm tried to the bench in the Orange County
25 Superior Court and received a \$425,000 judgment. In 2019, I was co-counsel in a class action
26 case against Walmart that we tried to the jury in District Court, wherein the jury awarded
27 Plaintiff over \$6 million. Both cases were appealed.

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1 6. Over the last few years, I have been consecutively selected by my peers as a
2 “Super Lawyer” in Employment Litigation.

3 **BRIEF SUMMARY OF THE SETTLEMENT**

4 7. Following a contested but productive mediation, Plaintiff and Defendants
5 (collectively, the “Parties”) entered into a Class Action Settlement Agreement resolving the
6 wage and hour claims of the putative class (the “Settlement Agreement” or “S.A.”). A true and
7 correct copy of the Settlement Agreement is attached hereto as **Exhibit A** and is incorporated
8 herein by reference.

9 8. The Settlement Agreement seeks to fully release and discharge Defendants from
10 the claims brought against them in this matter in exchange for Defendants’ agreement to pay
11 \$300,000 on a non-reversionary, non-claims made basis (each Class Member will receive his/her
12 share of the Net Settlement Amount without having to submit a claim form or taking action,
13 except for those who opt-out).

14 9. Plaintiff seeks to represent the “Class” or “Class Members” defined as “all current
15 and former non-exempt (i.e., hourly paid) employees employed by Defendant Guyou
16 Construction, Inc., under the job titles of inspection technician, installation foreman, installation
17 technician, or operation & maintenance/service technician in California during the Class Period.”
18 The Class Period is defined as any time during the period of December 29, 2017, through
19 January 26, 2023.

20 10. Under the terms of the Settlement, Defendant will not oppose Plaintiffs’
21 Counsel’s application for a reasonable award of attorney’s fees not to exceed one-third of the
22 Settlement Amount (\$100,000), litigation expenses not to exceed \$20,000, Settlement
23 Administrator costs of \$7,000, PAGA penalties of \$30,000 (with 75% to the LWDA and 25% to
24 the “Aggrieved Employees”), and a Service Payment not to exceed \$7,500 to Plaintiff. After all
25 these deductions from the Settlement Amount, it is estimated that \$135,500 will be available to
26 pay the Individual Class Payments to the Class Members who do not opt-out of the settlement, as
27 follows:

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	Total Amount
<i>Gross Settlement Amount</i>	\$ 300,0000
Attorneys' Fees (1/3)	\$ 100,000
Litigation Costs	\$ 20,000
Administrator Costs	\$ 7,000
PAGA Penalties	\$ 30,000
Class Representative Service Awards	\$ 7,500
<i>Net Settlement Amount</i>	\$ 135,500

11. The Net Settlement Amount will be paid to the Settlement Class Members on a pro rata basis based on their relative number of weeks worked as compared to the Class. And each Class Member will receive the Class Notice, explaining the nature of the case, and the process for participating, objecting and opting-out, and advising of his/her estimated settlement payment and the number of weeks he/she is credited with working during the Class and PAGA Periods. True and correct copies of the Class Notice, Request for Exclusion Form, Objection Form and Dispute Form are attached hereto as **Exhibits B, C, D and E**, respectively.

PROCEDURAL BACKGROUND

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

13. On December 10, 2021, Plaintiff submitted a letter to the California Labor Workforce Development Agency (the "LWDA") for civil penalties under the Private Attorney General Act of 2004 (the "PAGA") and concurrently sent a letter to Defendant requesting the production of his personnel and timekeeping records in order to further evaluate the wage and hour claims. A true and correct copy of the LWDA Notice Letter is attached hereto as **Exhibit F**. The LWDA declined to assert jurisdiction over the PAGA claims.

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1 14. On December 29, 2021, Plaintiff filed a putative class action complaint in the
2 Court, alleging Class Claims and representative PAGA Claims, including: (1) failure to pay
3 minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal periods, (4)
4 failure to provide rest breaks, (5) failure to timely pay wages each period, (6) failure to timely
5 pay final wages, (7) failure to provide accurate itemized wage statements, (8) unfair and
6 unlawful competition, and (9) related claims under PAGA.

7 15. Defendant retained counsel and fully denied the allegations. Defendant argued
8 that the claims were subject to binding arbitration and, on July 8, 2022, Defendant filed a motion
9 to compel arbitration and dismiss all class and PAGA claims. Defendant further disagreed with
10 Plaintiff's version of the facts and claims and noted in the Joint CMC Statement that Defendant
11 "adequately compensated all employees for hours worked, including overtime. All employees
12 were afforded appropriate breaks as is required by law. In the event of a missed meal or rest
13 break, all employees were paid appropriate meal premiums. At no time did Defendant fail to pay
14 all wages owed, either during or at the termination of employment. All employees received
15 accurate itemized wage statements at the conclusion of pay periods." Plaintiff advised that it
16 intended to oppose the motion to compel arbitration, and further pointed out that the arbitration
17 agreement provided that the Parties must "agree to first mediate and may then submit to binding
18 arbitration." As a result, Defendant agreed to withdraw its motion to compel arbitration, and in
19 exchange, the Parties agreed to attend mediation in order to avoid significant costs and fees
20 associated with a motions and/or a class certification hearing.

21 16. In preparation for mediation, the Parties agreed to an informal discovery process
22 where information was exchanged relating to the applicable policies and procedures, payroll and
23 time keeping records, size of the class, and potential value of the case. The exchange included
24 Defendant's policies and procedures relating to the claims at issues, a sampling of timekeeping
25 and payroll records, information relating to the size of the class. The robust exchange allowed
26 Plaintiff and his expert to take a deep dive into the claims by evaluating nearly 19,000 individual
27 shifts and over 4,400 pay periods. As such, Plaintiff and his counsel were essentially given a
28 roadmap to analyze, research, and investigate the potential claims of all similarly situated

employees. Moreover, due to Defendant's claims of financial hardship, Defendant informally provided extensive financial records to support its claims. The parties engaged in significant discussions regarding the financial condition of the company including telephone exchanges between counsel, Plaintiff's financial consultant, and Defendant's officers. Ultimately, Plaintiff's counsel received a report from its own consultant indicating there are indeed severe financial problems and that a reduction in settlement value was substantiated.

17. The mediation took place on January 26, 2023 with Jeff Winikow, a well-respected mediator. At the conclusion of mediation, Mr. Winikow issued a mediator's proposal that called for a class-wide settlement for \$300,000. Thereafter, the Parties memorialized the terms of the settlement in a long-form Settlement Agreement.

SUMMARY OF THE CLAIMS AND DEFENSES

18. Plaintiff alleged numerous wage and hour violations on behalf of the Class. However, Defendant vigorously contested and denied each of Plaintiff's material allegations on the merits and as to the propriety of a class action or PAGA representative action, as discussed herein.

19. First, Plaintiff alleged that he was not provided proper minimum and overtime wages due to Defendants' failure to accurately record and compensate for all hours worked due to Defendants' routine practice of altering clock-in, clock-out, and meal period timekeeping records resulting in unpaid off-the-clock work leading to unpaid minimum, regular, and overtime wages. Moreover, Plaintiff was expected to travel to various worksites throughout Southern California often resulting in unreasonable unpaid, off-the-clock travel time.

20. Second, Plaintiff also earned additional compensation in the form of nondiscretionary bonuses based upon the number of inspections the crew passed. However, on the occasions when Plaintiff worked in excess of 8 and/or 12 hours per day and/or 40 hours per week and received additional earned compensation during the pay period, Defendants failed to properly include these amounts in the calculations for the regular rate of pay. Therefore, Defendants failed to pay proper overtime.

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1 21. Third, during his employment with Defendant, Plaintiff alleged that he was
2 denied compliant meal and rest periods. The sampling of timekeeping records produced by
3 Defendant in preparation for mediation confirms systemic violations. For instance, Defendants’
4 records reveal that Class members were denied compliant meal periods on a significant
5 percentage of total shifts worked due to a variety of reasons, including no first meals for shifts of
6 six hours or more, short/interrupted/late meal periods and no second meal periods. Importantly,
7 Defendants’ liability for these meal violations does not require any individualized inquiry;
8 instead, Defendants’ objective records, which show the missed, late, and short meals, will
9 establish Defendants’ certain liability for each violation.

10 22. Fourth, Plaintiff received inaccurate and incomplete wage statements that failed to
11 accurately state all necessary items required under Labor Code § 226..

12 23. Finally, due to its failure to pay all wages, Plaintiff alleged that Defendants also
13 failed to comply with the mandates of Labor Code § 204 regarding the timing of the payment of
14 wages each period and failed to comply with the mandates of Labor Code §§ 201 – 203
15 regarding payment of final wages upon separation of employment triggering the full 30-day
16 waiting time penalty for each former employee.

17 24. Despite that each of the claims were disputed, the Parties concluded that further
18 litigation of the Action would be protracted and expensive, and that it is desirable that the Action
19 be fully and finally settled in order to limit further risk, expense and protracted litigation.

20 **CMO COMPLIANCE**

21 25. In accordance with CMO ¶ G, this section of my declaration will specifically
22 identify and address each CMO requirement, which was compiled with the assistance of Misty
23 Lauby, who was responsible for preparing the pre-mediation data and calculations, and primarily
24 assisted in the preparation of the Kullar analysis. As such, the following is based largely on
25 information and belief, as it was largely prepared with Ms. Lauby’s assistance.

26 **CMO ¶ G(3)(a)(i)**

27 26. According to data provided by Defendant and as set forth in the Settlement
28 Agreement ¶ 15, we estimate that there are approximately 231 individuals that fall within the

1 defined Class, who collectively worked a total of approximately 8,359 Workweeks during the
2 Class Period. In addition, there are approximately 222 individuals that are Aggrieved Employees
3 (*i.e.*, Class Members during the PAGA Period).

4 **CMO ¶ G(3)(a)(ii), CMO ¶ G(3)(a)(iii), and CMO ¶ G(9)(b)**

5 27. The following paragraphs provide the total and risk-adjusted values for each
6 claim, including on a class and PAGA basis, as required by the CMO.

7 **Failure to Pay Wages**

8 28. Plaintiff alleges that Defendant employed policies and practices that required
9 employees to work off the clock without compensation. Minimum wage claims include
10 allegations that Defendant had an illegal practice of adjusting timeclock entries to deduct
11 minutes of time with no explanation. Moreover, Plaintiff claims that he and Class Members
12 were required to clock out for lunch even though they were still performing work, they were
13 prevented from leaving the jobsite during lunch due to work duties, and when lunch was taken
14 the hours were rounded and not accurately recorded resulting in uncompensated compensable
15 time. Plaintiff estimated that the maximum potential value of this claims was \$220,994 in
16 unpaid wages. This is based on an estimated 10,448.75 (25% of shifts) with deductions of
17 approximately 2 minutes per shift at a rate of \$58.75 for a total of \$20,462. The meal deduction
18 claim is based on 18,808 shifts with 30 minutes meal auto deduct multiplied by the average rate
19 of pay of \$23.50 (30 minutes = \$11.75) for a maximum value on that claim of \$220,994.
20 Together the maximum value of the minimum wage claims is \$220,994. Moreover, Plaintiff
21 alleges that Defendant failed to pay overtime rate due to its failure to include non-discretionary
22 bonuses in the regular rate calculation for overtime. Here, Plaintiff estimates that there was an
23 overtime underpayment of approximately \$10 on 50% of 8,359 workweeks for a maximum value
24 of \$41,795.

25 29. At mediation, Defendant argued that employees were not required to work off-
26 the-clock and that this claim could not be certified due to the individualized nature of the proof.
27 As a result, Plaintiff assigned a 50% class certification discount and a 50% merits discount to
28 these claims for a risk adjusted valuation of \$55,249. The same risk adjustment was made to

overtime claims for a risk adjusted value of \$10,449. The total risk adjusted value for all wage claims is \$65,698.

30. Plaintiff also pursued PAGA claims based on the same theory of liability and calculated a risk adjusted total is for minimum wage penalties is \$545,900 ($5459 \times \$100 = \$545,900 - 75\% = \$136,475$). Since overtime claims applied to only 50% of pay periods, the maximum overtime penalties is \$272,950 with a risk adjusted value of \$68,237.50.

Meal and Rest Break Claims

31. Plaintiff also alleged meal and rest break claims against Defendant. Plaintiff estimated a maximum value based on 36,361 unique meal period violations amounting to a maximum value of \$854,449 in class damages for meal periods ($36,361 \times \$23.50$ avg. rate of pay). Plaintiff also alleged rest break claims with a maximum value of \$471,448 assuming a 50% violation rate on 20,061 (50% of 40,123 shifts over 3.5 hours) total shifts multiplied by the average rate of pay of \$23.50.

32. However, these calculations do not account for various risks and defenses. For instance, Defendant strongly disputed that Plaintiff could obtain class certification, arguing a lack of commonality of the legal claims and injuries. Defendant further argued that it complied with the applicable law and that any purported deviations therefrom were individualized in nature, thereby limiting Plaintiff's ability to certify the class. While Plaintiff asserts that this is a suitable case for certification, we realize that there is always a significant risk associated with class certification proceedings, which could significantly limit the claims that we could pursue on a class basis. Moreover, Defendant provided certain authorities suggesting that Plaintiff's main argument regarding rest periods, namely that employees were forbidden from leaving the premises during breaks, was not viable.

33. Considering the many risks and defenses to these claims, Plaintiff placed a 50% class certification risk and 50% merits risk for a risk-adjusted value of \$213,625 for meal period claims. Adjusting for risk at 50% for class certification and 50% for merits, Plaintiffs assigned an adjusted value of \$117,862 to the rest claims.

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34. Additionally, based on the same risk factors in addition to potential risk associated with stacking of PAGA penalties, Plaintiff assigned a 75% risk adjustment to both meal and rest claims and assigned the risk-adjusted value of the related PAGA claims. Maximum penalties for meal periods were estimated to be \$436,720 (80% of 5459 PAGA pay periods x \$100) minus 75% for a total risk adjusted value of \$109,180. The maximum penalty for rest periods was estimated to be \$272,950 (50% of 5459 PAGA pay periods x \$100) minus 75% for a total risk adjusted value of \$68,237.50.

Failure to Timely Pay Wages Upon Separation of Employment and Each Period

35. Additionally, Plaintiff alleged that Defendant failed to timely pay all wages owed to the Class Members upon separation of employment. Based on this theory of liability, Plaintiff calculated the maximum waiting time penalties to be \$1,167,480 based on 207 former employees x \$188 per day x 30. Defendant argued that it would defeat Plaintiff's unpaid wage claims and, because the waiting time penalty claims were derivative of the unpaid wages, Plaintiff's Labor Code § 203 would fail. Therefore, Plaintiff assigned a 50% class certification risk adjustment and a 50% merits adjustment for a total risk adjusted value of \$291,870.

36. Plaintiff assigned the same 75% adjustment to the total PAGA penalty value of \$12,400 (124 former employees during PAGA period x 100) for a risk adjusted penalty value of \$3,100. Additionally, Plaintiff made PAGA claims related to Defendants failure to pay wages timely each pay period with a maximum value of \$545,900 (5459 PAGA pay periods x \$100) with a 75% risk reduction for an adjusted value of \$148,725.

Wage Statement Claims

37. Plaintiff also alleged claims that Defendant failed to provide accurate itemized wage statements in compliance with Labor Code § 226 making it impossible for Plaintiffs and employees to determine whether they were paid correctly. At mediation, Defendant denied that the wage statements provided were improper.

38. Plaintiff calculated the maximum potential value of this claim as \$534,800 by multiplying one paystub per class member during the wage statement period (222) by \$50, then multiplying the remainder of the 5,237 paystubs by \$100. Plaintiff assigned a risk adjustment of

5% that the class would not be certified and 30% as to the merits, with a risk-adjusted value of \$355,642.

39. Additionally, Plaintiff calculated the 75% risk-adjusted value of the PAGA penalties to be \$136,475 (5459 PAGA pay periods x \$100 = \$545,900 reduced by 75%).

40. In sum, the total maximum value of the class damages is \$3,028,227. when factoring in the defenses and risks of ongoing litigation, Plaintiffs estimate the risk-adjusted class recovery as follows:

• Unpaid Wages	\$ 65,698
• Meal Periods	\$ 213,625
• Rest Breaks	\$ 117,862
• 203	\$ 291,870
• Wage Statements	<u>\$ 355,642</u>
Total	\$ 978,999

41. While the proposed Settlement is approximately 30% of the risk-adjusted class damages, as noted above, Plaintiff also had to take into account the dire financial condition of the company. Due to these concerns and potential for the Defendant to file bankruptcy, Plaintiff believes that the settlement was the best possible outcome for the Class. For these reasons, the Partis submit that the agreed-upon Settlement is fair and reasonable.

PAGA PENALTIES

42. Plaintiff calculated the maximum penalty for the 5459 PAGA pay periods at \$2,681,720 as follows:

• Wages	\$ 818,850
• Meal Periods	\$ 436,720
• Rest Breaks	\$ 272,950
• Wage Statements	\$ 545,900
• 204	\$ 545,900
• 203 (57 former employees x \$100))	<u>\$ 12,400</u>
Total	\$ 2,681,720

43. Plaintiffs applied a 75% risk adjustment to each PAGA claim to account for the various defenses and potential judicial reduction for an adjusted value of \$670,430.

44. The proposed Settlement allocates \$30,000 of the gross settlement amount to PAGA claims, of which 75% (or \$22,500) will be paid to the California LWDA and 25% (or \$10,000) will be allocated to the Aggrieved Employees as payment of the settlement. The Mankin Declaration provides all information required under CMO ¶ G(9) regarding valuation of the PAGA claims, along with information as to why this allocation is fair. [CMO ¶ G(9)(iii) and (iv)]

CMO ¶ G(3)(a)(iv)

45. Defendant advises that 231 Class Members collectively worked 8,359 Workweeks through the end of the Class Period. Based on this information, it is estimated that: (1) the average payment will be \$586.58, (2) the value per work week will be \$16.21, (3) the high class payment will be approximately \$4,295.65 (based on an estimated 265 weeks in the Class Period), and (4) the low payment will be approximately \$64.84 (based on an estimated 4 weeks worked).

CMO ¶ G(3)(a)(v)

46. Defendant advises that there were 222 aggrieved employees during the PAGA period who will receive an average of \$45 each.

CMO ¶ G(3)(a)(vi)

47. Please see paragraph 16, above, regarding the discovery and investigation conducted to determine the size of the class and strength of claims.

CMO ¶ G(3)(a)(viI)

48. After making reasonable inquiry of members of other members of my firm (there are no associated law firms), my team has informed me that there are no other pending cases that asserts claims similar to those asserted in this action on behalf of a putative class of individuals that appear to fall within the defined Class here.

SUPPORT FOR ASSESSMENT OF PAGA PENALTIES

49. The sections above provide most of the information required by CMO ¶ G(9)(b). The following paragraphs provide the remainder.

1 50. The proposed Settlement allocates \$30,000 of the gross settlement amount to
2 PAGA claims, of which 75% (or \$22,500) will be paid to the California LWDA and 25% (or
3 \$7,500) will be allocated to the Aggrieved Employees as payment of the settlement. This
4 allocation is inherently reasonable given similar settlements.

5 51. There are also other facts that tend to suggest that the Court could utilize its
6 discretion to reduce any potential PAGA penalties awarded at trial. During negotiations,
7 Defendant raised arguments that the assessment of significant PAGA penalties would be “unjust,
8 arbitrary and oppressive, or confiscatory” in light of “the facts and circumstances of [this] case.”
9 *See* Labor Code § 2699(h). Under a potentially-similar “mistake of law” fact pattern, the *Cotter*
10 court approved a 97.5% reduction in PAGA penalties as “appropriate” based on the “unjust,
11 arbitrary and oppressive, or confiscatory” factors because (i) the employer did not “deliberately
12 evad[e] a clear obligation to provide legally required pay and benefits to employees,” (ii) the
13 employer did not “negligently fail to learn about its obligations under the wage and hour laws,”
14 and (iii) the employer’s obligations were “genuinely unclear” because “there is no straight
15 answer to the question.” *Cotter v. Lyft, Inc.* (N.D. Cal. 2016) 193 F.Supp.3d 1030, 1037.

16 52. Under this same theory, Defendant would likely argue that significant PAGA
17 penalties would be unjust, arbitrary, oppressive, and confiscatory because it believed that its
18 practices are in compliance with all applicable requirements, and also believed that its system
19 correctly paid employees for all hours worked. As such, Defendant would likely argue they did
20 not “deliberately evade” any legal obligations. Furthermore, Defendant would likely argue that
21 it did not “fail to learn about its obligations” because it believed its practices are compliant, and
22 that it also created and implemented policies and practices to ensure compliance.

23 53. Also, while a PAGA claim for violation of Labor Code § 226 does not require a
24 showing of knowledge or willfulness (*Lopez v. Friant & Associates, LLC* (2017) 15 Cal.App.5th
25 773), Defendant would likely argue that its good faith belief in the legality of its practices shows
26 that it did not evade or fail to learn of its obligations. Additionally, Defendant would likely
27 argue that it would be “unjust” to impose significant penalties for the alleged violations because
28 the class members did not suffer any injury in relation to certain claims (such as wage statement

violations).

54. Finally, the parties only reached settlement and the agreed-upon PAGA penalties after extensive informal discovery and arms-length negotiation between the parties and through an experienced mediator. Notably, Defendant raised many defenses which, if accepted by the Court, could result in a significant reduction of penalties, or the elimination of penalties altogether through dispositive motions. As such, an assessment of penalties greater than those agreed-upon would be unjust at this stage because this settlement reflects an informed, fundamentally fair, and reasonable settlement of the PAGA claims herein based on the unique facts, defenses, and risks in this case.

THE SETTLEMENT IS FAIR, JUST, AND REASONABLE

55. 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.

56. The settlement will result in a fair payment to each class member based on the number of Weeks Worked by each Class Member. As set forth hereinabove, we 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.

57. Based on my experience in other cases, including wage and hour matters, I believe I am qualified to evaluate the class claims and viability of defenses in this class action. In this case, the recovery for each class member is reasonable, fair, and adequate, and a settlement

1 at this time is in the best interests of the class. The settlement provides each class member with
2 compensation for the alleged violations when viewed in relation to the costs and risks inherent in
3 obtaining class certification and proceeding to trial.

4 58. My office, as well as Defendant's counsel, fully endorse the terms and conditions
5 of the settlement as set forth in the abovementioned Settlement Agreement.

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

10 **PLAINTIFF'S REQUESTED ENHANCEMENT PAYMENTS**

11 60. We seek an enhancement payment of \$7,500 for Plaintiff. As further set forth in
12 the concurrently filed declarations. I believe this requested amount is fair and appropriate.
13 Plaintiff came forward and brought this class action despite risk to himself and, in doing so, put
14 the interests of the Class ahead of their own. He assumed significant risk in bringing this
15 litigation—namely, had he lost, he would have been ordered to pay Defendant's costs.

16 61. Plaintiff provided invaluable assistance to my office and the Class in this case,
17 including providing factual background for the pleadings; reviewing the litigation documents;
18 providing information and documents about Defendant's policies and practices; participating in
19 phone calls to discuss litigation and settlement strategy; making himself available throughout the
20 litigation to assist with analyzing the claims and defenses; helping Class Counsel prepare for the
21 mediation; making himself available for a full-day mediation, and reviewing the settlement
22 documents. Plaintiff agreed to participate in this case with no guarantee of personal benefit.

23 **ADEQUACY OF COUNSEL AND THE PROVISIONAL REASONABLENESS OF THE**
24 **REQUESTED FEES AND COSTS**

25 62. As set forth above, I have handled over 250 class and representative actions, have
26 been appointed as class counsel and have successfully resolved over half of those class actions,
27 and many others remain pending and will successfully resolve in the future.

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

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

11 **SETTLEMENT ADMINISTRATOR**

12 65. The parties propose that the Court appoint Phoenix Settlement Administrators to
13 serve as the Settlement Administrator. In accordance with **CMO G(3)(d)(i)**, we requested bids
14 from 5 different settlement administrators, which are summarized as follows: 1) Phoenix -
15 \$7,000; 2) ILYM - \$7,500; 3) Rust - \$10,328; 4) CPT - \$12,200; 5) AB Data – declined due to
16 class size. Based on these bids, the Parties mutually agreed to retain Phoenix as the Settlement
17 Administrator based on its low bid. Phoenix provided an all-in (fixed) fee of to administer the
18 settlement, as permitted by the CMO. *See* Declaration of Mike Moore of Phoenix filed
19 concurrently herewith.

20 **SUBMISSION TO THE LWDA**

21 66. Plaintiff have concurrently submitted the settlement to the LWDA in accordance
22 with Labor Code § 2699(1)(2). The proof of submission is attached hereto as **Exhibit G**.

23 **EXHIBITS AND CONCLUSION**

24 67. The signed Settlement Agreement is attached hereto as **Exhibit A**.

25 68. The proposed Class Notice is attached as **Exhibit B**.

26 69. The proposed Request for Exclusion Form is attached as **Exhibit C**.

27 70. The proposed Objection Form is attached as **Exhibit D**.

28 71. The proposed Dispute Form is attached as **Exhibit E**.

72. A true and correct copy of the notice letter we submitted to the LWDA on behalf of Plaintiff is attached as **Exhibit F**.

73. The LWDA's confirmation of receipt of this Motion and Declaration is attached hereto as **Exhibit G**.

74. Counsel has carefully reviewed both the terms and the terminology of the order and the accompanying forms (notice, objection form, exclusion form) to confirm that the various documents are internally consistent, consistent with each other, and consistent with the settlement agreement.

75. 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 Representatives.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on April 14, 2023, at Riverside, California.

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

EXHIBIT “A”

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Attorneys for Defendants Guyou Construction, Inc. and Marcus Gayou

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

DARREL NORTHRUP, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

GUYOU CONSTRUCTION, INC., a
California Corporation; MARCUS A.
GUYOU, an individual; and DOES 1 through
20, inclusive;

Defendants.

Case No.: CVRI2105858
*[Assigned to Hon. Judge Craig Riemer, Dept
1, for all purposes]*

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

1 This Class Action Settlement Agreement and Release of Claims is entered into by and
2 between Plaintiff Darrel Northrup, individually, and on behalf of all others similarly situated, and
3 on behalf of the State of California, and Defendants Guyou Construction, Inc. and Marcus
4 Gayou, and is approved by their respective counsel of record, subject to the terms and conditions
5 hereof and the Court's approval.

6 **A. Definitions**

7 1. "Action" or "Lawsuit" means and refers to the case entitled *Northrup v. Guyou*
8 *Construction, Inc. and Marcus A. Gayou*, Riverside County Superior Court, Case No.
9 CVRI2105858.

10 2. "Aggrieved Employee(s)" means all current and former non-exempt (i.e., hourly
11 paid) employees employed by Defendant Guyou Construction, Inc., under the job titles of
12 inspection technician, installation foreman, installation technician, or operation &
13 maintenance/service technician in California during the PAGA Period.

14 3. "Agreement" or "Settlement Agreement" or "Settlement" shall mean this Class
15 Action Settlement Agreement and Release of Claims.

16 4. "Class" includes all current and former non-exempt (i.e., hourly paid) employees
17 employed by Defendant Guyou Construction, Inc., under the job titles of inspection technician,
18 installation foreman, installation technician, or operation & maintenance/service technician in
19 California during the Class Period.

20 5. "Class Counsel" refers to Brian Mankin and Misty Lauby of Lauby, Mankin &
21 Lauby LLP.

22 6. "Class Data" means a complete list that Defendants will diligently and in good
23 faith compile from their records and provide to the Settlement Administrator on one spreadsheet
24 which shall include, for each Class Member, the individual's full name; last known address;
25 Social Security Number; total Weeks Worked during the PAGA Period and the Class Period.

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

27 8. "Class Period" is deemed to be any time during the period of December 29, 2017,
28 through January 26, 2023.

1 9. “Class Representative” or “Plaintiff” means and refers to Darrel Northrup.

2 10. “Complaint” refers to the operative class action and representative action
3 complaint filed in the Riverside Superior Court on December 29, 2021.

4 11. “Court” (or “Judge”) means the California Superior Court, County of Riverside.

5 12. “Defendants” mean and refer to Guyou Construction, Inc., and Marcus Gayou.

6 13. “Defendant’s Counsel” or “Defense Counsel” means and refers to Tyson &
7 Mendes, LLP.

8 14. “Effective Date” means the latest of the following dates: (i) if no Class Member
9 timely and properly intervenes, or files a motion to vacate the judgment approving the Settlement
10 Agreement under Code of Civil Procedure § 663, then the date of the Court’s Notice of Entry of
11 Order regarding Final Approval of the Settlement; (ii) if a Class Member intervenes, or files a
12 motion to vacate the judgment approving the Settlement Agreement, then sixty-one (61) calendar
13 days following the date the Court enters an order granting Final Approval, assuming no appeal is
14 filed; or (iii) if a timely appeal is filed, the date of final resolution of that appeal (including any
15 requests for rehearing and/or petitions for *certiorari*), resulting in final judicial approval of the
16 Settlement.

17 15. “Escalator Clause:” Defendants represent that there are approximately 231 Class
18 Members, who collectively worked a total of approximately 8,359 Workweeks during the Class
19 Period. If the total count of 8,359 Workweeks (as contained in the Class Data) increases by
20 more than 10% of this number (i.e., above 9,194 Workweeks), then the Settlement Amount shall
21 increase by \$35.89 for each Workweek above 9,194.

22 16. “Final Approval” refers to the order of the Court granting final approval of this
23 Settlement Agreement and entering a judgment approving this Agreement on substantially the
24 terms provided herein or as may be modified by subsequent agreement of the Parties.

25 17. “Individual Class Payment” refers to each Participating Class Members share of
26 the Net Settlement Amount, as further discussed in Paragraph 49(c) below.

27 18. “Individual PAGA Payment” refers to each Aggrieved Employees share of the
28 PAGA Penalties, as further discussed in Paragraph 49(c) below.

1 19. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 49(b)
2 below.

3 20. “Notice” means the notice of proposed class settlement that will be sent to the
4 Class Members and which will advise each Class Member of the settlement and his or her
5 estimated Individual Class Payment and will further advise of the setting of a Final Approval
6 Hearing.

7 21. “Notice Packet” means the Notice, Request for Exclusion Form, the Objection
8 Form and the Dispute Form to be sent to all Class Members.

9 22. “Objecting Class Member” means a Class Member, other than Plaintiff, who
10 submits a valid and timely objection to the terms of this Agreement, pursuant to Paragraph 70(c)
11 below.

12 23. “PAGA Penalties” means the amount that the Parties have agreed to pay to the
13 Labor and Workforce Development Agency (“LWDA”) in connection with the California Labor
14 Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”), as well
15 as the Individual PAGA Payment allocated to each Aggrieved Employee.

16 24. “PAGA Period” is deemed to be any time during the period of December 29,
17 2020, through January 26, 2023.

18 25. “Participating Class Member” means any and all Class Members who are deemed
19 to participate and receive an Individual Class Payment and do not opt-out by submitting timely
20 valid Requests for Exclusion.

21 26. “Parties” or “Settling Parties” mean Plaintiff and Defendants, collectively.

22 27. “Preliminary Approval Date” means the date the Court approves the Settlement
23 Agreement and enters the Preliminary Approval Order.

24 28. “Preliminary Approval Order” means the judicial Order to be entered by the
25 Court, upon the application or motion of the Plaintiff, preliminarily approving this Settlement
26 and providing for the issuance of the Notice Packet to the Class, an opportunity to opt out of the
27 Settlement, an opportunity to submit timely objections to the Settlement, and setting a final
28 approval hearing on the fairness of the terms of Settlement, including approval of attorneys’ fees

1 and costs. Provided that the motion is consistent with the terms herein, Defendants will not
2 object to Plaintiff's motion for preliminary approval but will be provided with an opportunity to
3 review and comment upon the motion before it is filed.

4 29. "QSF" means the Qualified Settlement Fund set up by the Settlement
5 Administrator for the benefit of the Participating Class Members and Aggrieved Employees, and
6 from which the settlement payments shall be made.

7 30. "Released Class Claims" or "Class Claims" by the Participating Class Members
8 upon Final Approval of the Settlement will include all claims stated in the operative Complaint
9 and those based solely upon the facts in the Complaint, including: (a) failure to pay minimum
10 wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to
11 provide rest breaks, (e) failure to failure to timely pay wages upon separation of employment, (f)
12 failure to provide accurate itemized wage statements, (g) unfair and unlawful competition, and
13 (h) all other claims for statutory penalties based on the facts or claims alleged in the operative
14 complaint.

15 31. "Released PAGA Claims" or "PAGA Claims" means any and all PAGA claims
16 that Plaintiff alleged against the Released Parties, on behalf of himself and the State of
17 California, based on the facts stated in the operative Complaint in the Action and in the LWDA
18 notice letter, including all PAGA claims seeking civil penalties that premised upon (a) failure to
19 pay minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d)
20 failure to provide rest breaks, (e) failure to failure to timely pay wages each period and upon
21 separation of employment, (f) failure to provide accurate itemized wage statements, and (g) all
22 other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code
23 §§ 2698 *et seq.* based on the facts or claims alleged in the operative complaint. The time period
24 governing the Released PAGA Claims shall be any time during the PAGA Period.

25 32. "Released Parties" means Defendants, and their officers, directors, and agents.

26 33. "Release Period" shall be the time period governing the Released Class Claims,
27 which shall be the same as the Class Period.

28 34. "Release" shall mean the release and discharge of the Released Class Claims by

1 Plaintiff and all Participating Class Members.

2 35. “Request for Exclusion” shall have the meaning ascribed to it in Paragraph 70(a)
3 below.

4 36. “Response Deadline” is 45 calendar days from the date the Notice is mailed to the
5 Class Members.

6 37. “Service Payment” or “Service Award” means the amount approved by the Court
7 to be paid to Class Representative Darrel Northrup in addition to his Individual Class Payment
8 and Individual PAGA Payment.

9 38. “Settlement Administrator” means and refers to Phoenix Settlement
10 Administrators, the third-party class action settlement administrator agreed to by the Parties, that
11 will provide the Notice to the Class Members and distribute the settlement amounts as described
12 in this Agreement.

13 39. “Settlement Administration Costs” means the costs payable from the Settlement
14 Amount to the Settlement Administrator for administering this Settlement, including, but not
15 limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, and
16 deposit of the employee and employer share of payroll taxes, unclaimed property due diligence,
17 reporting and remittance obligations, distributing the Settlement Amount, and providing
18 necessary reports and declarations, as requested by the Parties. The Settlement Administration
19 Costs shall be paid from the Settlement Amount, and shall not exceed the amount approved by
20 the Court, regardless of any additional costs that the Settlement Administrator may request or
21 feel is necessary to administer the Settlement.

22 40. “Settlement Amount” is \$300,000.00, subject to the Escalator Clause and
23 exclusive of Defendants’ obligation to fund its share of payroll taxes, as further discussed in
24 Paragraph 49(c) below.

25 41. “Workweeks” or “Weeks Worked” in the context of a Class Members means any
26 and all Workweeks during the Class Period during which the Class Member worked at least one
27 day for Defendant Guyou Construction in California. Likewise, in the context of Aggrieved
28 Employees, it means any and all weeks worked during the PAGA Period during which the

Aggrieved Employee worked at least one day for Defendant Guyou Construction in California.

B. General Terms

42. On December 29, 2021, Plaintiff filed a class action and representative PAGA action complaint in the Court, alleging Class Claims and PAGA Claims, including: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to timely pay wages each period, (6) failure to timely pay final wages, (7) failure to provide accurate itemized wage statements, (8) unfair and unlawful competition, and (9) related claims under PAGA.

43. Defendants deny Plaintiff's claims and allegations and contend that the Action is not suitable for class certification.

44. The Class Representative believe he can proceed with the representative and class claims, that the Action is meritorious, and that class certification is appropriate.

45. The Parties have conducted a thorough investigation into the facts of the Action. This includes conducting an extensive exchange of informal discovery, including a sampling of payroll and timekeeping records for Class Members. Class Counsel is both knowledgeable about and has done extensive research with respect to the applicable law and potential defenses to the claims of the Class. Class Counsel has diligently pursued an investigation of the Class Members' claims against Defendants. Based on the foregoing data and on their own independent investigation and evaluation, Class Counsel is of the opinion that the settlement with Defendants for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the Class Members in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation, various defenses asserted by Defendants, and numerous potential appellate issues.

46. On January 26, 2023, Plaintiff and Defendants participated in a full-day mediation with Hon. Jeff Winikow (ret.), a well-respected mediator who previously served for many years as a judge. At the conclusion of mediation and extensive arms-length negotiations, Judge Winikow issued a mediator's proposal. The Parties accepted the proposal and entered into a Memorandum of Understanding.

1 47. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts
2 to be performed or judgment to be entered pursuant to the terms of the Settlement and
3 Agreement, shall be construed as an admission by Defendants of any wrongdoing or violation of
4 any statute or law or liability on the claims or allegations in the Action.

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

17 **C. Terms of Settlement**

18 49. The financial terms of the Settlement are as follows:

19 (a) Settlement Amount: The Parties agree to settle this Action for the
20 Settlement Amount, subject to the Escalator Clause and Defendants obligation to separately pay
21 its share of payroll taxes on the wage portion of the Individual Class Payments, which is the
22 maximum amount that will be paid by Defendants and includes Individual Class Payments, Class
23 Counsel's Attorneys' Fees and Costs Award, the Service Payment to the Class Representative,
24 Settlement Administration Costs, and PAGA Penalties.

25 (b) Net Settlement Amount: The "Net Settlement Amount" is defined as the
26 Settlement Amount less the Attorneys' Fees and Costs Award, the Service Payment to the Class
27 Representative as awarded by the Court, the Settlement Administration Costs, and PAGA
28 Penalties. If the Court reduces the Attorneys' Fees and Costs Award, Service Award, or

1 Settlement Administrator Costs, or either increases or decreases the amount allocated to the
2 PAGA Penalties, the difference shall be placed in the Net Settlement Amount and allocated to
3 the Class Members.

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

15 (d) Allocation of Individual Class Payments: The Individual Class Payments
16 to Participating Class Members will be allocated as follows: one-third (33.3%) will be allocated
17 as wages subject to withholding of all applicable local, state and federal taxes; and two-thirds
18 (66.7%) will be allocated for interest and statutory penalties (pursuant to, e.g., California Labor
19 Code sections 203, 210, 226) from which no taxes will be withheld. The Settlement
20 Administrator will issue to each Participating Class Member an Internal Revenue Service Form
21 W-2 and comparable state forms with respect to the wage allocation and a Form 1099 with
22 respect to the penalties and interest allocations.

23 (e) Service Payment to Class Representative: The amount, if any, awarded to
24 the Class Representative as a Service Payment will be set by the Court in its discretion, not to
25 exceed \$7,500 in exchange for the service that Plaintiff performed on behalf of the Class.
26 Defendants agree not to oppose this request. The Service Payment to Plaintiff will be paid out of
27 the Settlement Amount. The Class Representative will be issued an IRS Form 1099 in
28 connection with this payment. Plaintiff shall be solely and legally responsible to pay any and all

1 applicable taxes on this payment. The Parties agree that any amount awarded as the Service
2 Payment to Plaintiff less than the requested amount shall not be a basis for Class Counsel to void
3 this Settlement Agreement. Should the Court approve a lesser amount for the Service Payment,
4 the difference shall be added to the Net Settlement Amount to be distributed to the Participating
5 Class Members.

6 (f) Attorneys' Fees and Costs Award: Defendants agree to not oppose a
7 request by Class Counsel to the Court for an award of attorneys' fees of one-third (33.333%) of
8 the Settlement Amount, plus reasonable litigation costs not to exceed \$20,000 ("Attorney's Fees
9 and Cost Award"). Defendants agree not to oppose any contention by Class Counsel that
10 attorneys' fees should be based on the common fund theory. The Attorney's Fee and Cost
11 Award shall be paid from the Settlement Amount, and, except for this award, Defendants shall
12 have no further obligation to pay any attorneys' fees, costs or expenses to Class Counsel. Should
13 the Court approve a lesser amount than what is sought by Class Counsel, the difference shall be
14 added to the Net Settlement Amount to be distributed to the Participating Class Members. Any
15 Court order awarding less than the amount sought by Class Counsel shall not be grounds to
16 rescind the Settlement Agreement or otherwise void the Settlement. The Settlement
17 Administrator shall issue to Class Counsel an IRS Form 1099 reflecting the amount of attorneys'
18 fees and costs awarded by the Court.

19 (g) Settlement Administration Costs: The fees and other charges of the
20 Settlement Administrator will be paid from the Settlement Amount, not to exceed \$7,000.00,
21 unless (1) the Escalator Clause is triggered (whereby any reasonable increase in Settlement
22 Administration Costs shall be paid from the increased Settlement Amount, subject to Court
23 approval), or (2) as otherwise approved by all Parties and the Court.

24 (h) PAGA Penalties: The Parties agree that \$30,000 is allocated to PAGA
25 Penalties, and is to be paid from the Settlement Amount, subject to Court approval. Of this
26 amount, \$22,500 (75%) shall be paid to the LWDA in satisfaction of civil penalties under the
27 Private Attorney General Act of 2004 ("PAGA") and \$7,500 (25%) will form the Individual
28 PAGA Payments to the Aggrieved Employees, which shall be calculated and allocated pro-rata

on a Work Week basis. Individual PAGA Payments which will be treated entirely as civil penalties and shall be reported as required on an IRS Form 1099. Class Counsel shall give proper notice to the LWDA of the Settlement.

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

(j) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX

1 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
2 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY
3 OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT
4 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
5 ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY
6 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
7 ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
8 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR
9 ADVISOR'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS
10 LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF
11 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING
12 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

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

23 (l) Class Counsel and Plaintiff believe that the Settlement is fair and
24 reasonable and will so represent same to the Court.

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

26 50. Upon entry of the Final Approval Order and Defendants funding of the Settlement
27 Amount, and except as to such rights or claims as may be created by this Agreement, Plaintiff
28 and the Participating Class Members will forever completely release and discharge the Released

Parties from the Released Class Claims for the Class Period.

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

52. Class Representative, on behalf of himself and the Class, acknowledges and agrees that the claims for unpaid wages and untimely payment of wages in the Action are disputed, and that the payments set forth herein constitute payment of all sums allegedly due to them. Class Representative, on behalf of himself and the Class, acknowledges and agrees that California Labor Code Section 206.5 is not applicable to the Parties or Settlement. Labor Code § 206.5 provides in pertinent part as follows: “An employer shall not require the execution of any release of any claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made.”

E. Release of PAGA Claims

53. Upon entry of the Final Approval Order and Defendants’ funding of the Settlement Amount, Plaintiff – in his individual capacity and on behalf of the State of California and LWDA – shall completely release and discharge the Released Parties from the Released PAGA Claims for the PAGA Period.

54. Regardless of submitting a valid Request for Exclusion, neither Plaintiff nor any Aggrieved Employee shall have the right to opt-out or otherwise exclude themselves from releasing the Released PAGA Claims.

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

F. Release by Plaintiff and Class Representative

56. Class Representative does hereby, for himself and for his respective spouse, heirs, successors, beneficiaries, and assigns forever and completely release and discharge the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, and expenses (including back wages, statutory penalties, civil penalties, liquidated damages, exemplary damages, interest, attorneys’ fees, and costs) of any nature whatsoever,

1 from the beginning of time through the execution of this Agreement, whether known or
2 unknown, suspected or unsuspected, including but not limited to all claims arising out of, based
3 upon, or relating to Class Representative's employment with Defendants or the remuneration for
4 or termination of such employment (collectively, the "Class Representative's Claims").

5 57. Without limiting the generality of the foregoing, this general release by Plaintiff
6 includes all federal, state and local statutory claims, federal and state common law claims
7 (including but not limited to those for contract, tort and equity), including without limitation the
8 Americans with Disabilities Act, Age Discrimination in Employment Act, Title VII of the Civil
9 Rights Act of 1964 (as amended), 42 USC sec. 1981, 42 USC sec. 1983, the Fair Labor
10 Standards Act, the Employment Retirement Security Income Act of 1974, the California
11 Constitution, the California Fair Employment and Housing Act, the California Unfair
12 Competition Act (California Business and Professions Code section 17200 et seq.), and the
13 California Labor Code.

14 58. Plaintiff agrees that there is a risk that any injury that he may have suffered by
15 reason of the Released Parties' relationship with them might not now be known, and there is a
16 further risk that said injuries, whether known or unknown at the date of this Settlement
17 Agreement, might possibly become progressively worse, and that as a result thereof further
18 damages may be sustained. Nevertheless, Plaintiff agrees to forever and fully release and
19 discharge the Released Parties, and understands that by the execution of this Settlement
20 Agreement no further claims for any such injuries that existed at the time of the execution of this
21 Settlement Agreement may ever be asserted by Plaintiff with respect to claims arising in the time
22 period from the beginning of time to the execution of this Settlement Agreement.

23 59. Plaintiff expressly waives and relinquishes all rights and benefits afforded by
24 Section 1542 of the Civil Code of the State of California and does so understanding and
25 acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code
26 of the State of California states:
27
28

1
2 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
3 THAT THE CREDITOR OR RELEASING PARTY DOES NOT
4 KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
5 THE TIME OF EXECUTING THE RELEASE AND THAT, IF
6 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
7 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
8 OR RELEASED PARTY.

9 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
10 full and complete release and discharge of all parties, Class Representative expressly
11 acknowledges that this Settlement Agreement is intended to include in its effect, without
12 limitation, all claims that Class Representative knew of, as well as all claims that he does not
13 know or suspect to exist in his favor against the Released Parties, or any of them, for the time
14 period from the beginning of time to the execution of this Settlement Agreement, and that this
15 Settlement Agreement contemplates the extinguishment of any such Class Representative's
16 claims. Notwithstanding the above, the general release by Class Representative shall not extend
17 to claims for workers' compensation benefits, claims for unemployment benefits, or other claims
18 that may not be released by law.

19 **G. Interim Stay of Proceedings**

20 60. Pending completion of all of the prerequisites necessary to effectuate this
21 Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the Action
22 except such as are necessary to effectuate the Settlement.

23 **H. Notice Process**

24 61. Appointment of Settlement Administrator. The Parties have agreed to the
25 appointment of the Settlement Administrator to perform the duties of a settlement administrator,
26 including mailing the Notice Packet, using standard devices to obtain forwarding addresses,
27 independently reviewing and verifying documentation associated with any claims or opt-out
28 requests, resolving any disputes regarding the calculation or application of the formula for
determining the Individual Class Payments, drafting and mailing the settlement checks to
Participating Class Members and Aggrieved Employees, issuing all necessary tax forms, and

performing such other tasks as set forth herein or as the Parties mutually agree or that the Court orders.

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

63. Class Data. Within fourteen (14) days after entry of the Preliminary Approval Order, Defendants shall provide the Class Data to the Settlement Administrator. The Settlement Administrator will run a check of the Class Members' addresses against those on file with the U.S. Postal Service's National Change of Address List. The Class Data provided to the Settlement Administrator will remain confidential and will not be used or disclosed to anyone, except as required by applicable tax authorities, pursuant to Defendant's express written consent, or by order of the Court. Although Class Counsel will not be provided with the list of Class Data, nothing herein shall prevent Class Counsel from communicating with Class Members regarding the Action and Settlement.

64. Total Workweeks. At least 5 days prior to mailing the Notice Packet, the Settlement Administrator shall provide a spreadsheet to Class Counsel and Defense Counsel containing a preliminary calculation of all payments to be paid from the Settlement Amount, including the estimated Individual Class Payments to each Class Member and Individual PAGA Payments to each Aggrieved Employee (a person's name shall be redacted and a control number used in place of the name). In the event that the total Workweeks worked by all Class Members triggers the Escalator Clause, the Settlement Administrator shall notify the Parties of the

increased Settlement Amount, and related increased payments from the Settlement Amount, including increased Attorneys Fees and Costs and any increased Settlement Administration Costs, all of which shall be subject to Court approval.

65. Notice Packet. The Notice Packet, as approved by the Court, shall be sent by the Settlement Administrator to the Class Members, by first class mail, in English only, within ten (10) calendar days following the Settlement Administrator's receipt of the Class Data. For all Class Members, the Notice Packet will include the Notice, a Request for Exclusion Form, an Objection Form and a Dispute Form. The Settlement Administrator shall use standard devices, including a skip trace, to obtain forwarding addresses of Class Members if any envelopes are returned.

66. Returned Notice Packets. The Settlement Administrator will take steps to ensure that the Notice Packet is received by all Class Members, including utilization of the National Change of Address Database maintained by the United States Postal Service to review the accuracy of and, if possible, update a mailing address. Notices will be re-mailed to any Class Member for whom an updated address is located within ten (10) calendar days following both the Settlement Administrator learning of the failed mailing and its receipt of the updated address. The Notice Packet shall be identical to the original Notice Packet, except that it shall notify the Class Member that the exclusion (opt-out) request or objection must be returned by the later of the Response Deadline or fifteen (15) days after the remailing of the Notice Packet.

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

68. Disputes Regarding Class Data. Class Members are deemed to participate in the Settlement unless they opt-out, and Aggrieved Employees may not opt out of the Released PAGA Claims. The Notice will inform Class Members of his/her estimated Individual Class Payment and Individual PAGA Payment, as well as the number of Workweeks worked during the Class Period and the PAGA Period. Class Members may dispute their Weeks Worked if they believe they worked more Workweeks in the Class Period and/or PAGA Period than Defendants'

1 records show by timely submitting evidence to the Settlement Administrator. Defendants'
2 records will be presumed determinative absent reliable evidence to rebut Defendants' records,
3 but the Settlement Administrator will evaluate the evidence submitted by the Class Member and
4 provide the evidence submitted to Class Counsel and Defense Counsel who agree to meet and
5 confer in good faith about the evidence to determine the Class Member's actual number of
6 Workweeks and estimated Individual Class Payment. If Class Counsel and Defense Counsel are
7 unable to agree, they agree to submit the dispute to the Court to render a final decision. Class
8 Members and Aggrieved Employees will have until the Response Deadline to dispute Weeks
9 Worked, object or opt out, unless extended by the Court.

10 69. Declaration of Due Diligence. The Settlement Administrator shall provide
11 counsel for the Parties, at least twenty-five (25) days prior to the final approval hearing, a
12 declaration of due diligence and proof of mailing with regard to the mailing of the Notice Packet.

13 70. Class Members' Rights. Each Class Member will be fully advised of the
14 Settlement, the ability to object to the settlement, and the ability to opt-out or request exclusion
15 from the Class Claims portion of the Settlement. The Notice Packet will inform the Class
16 Members of the Court-established deadlines for filing objections or requesting exclusion from
17 the Settlement in accordance with the following guidelines:

18 (a) Requests for Exclusion from Class. Any Class Member, other than
19 Plaintiff, may request to be excluded from the Class by completing the Request for Exclusion
20 Form provided within the Notice Packet. The Request for Exclusion Form must be mailed to the
21 Settlement Administrator and postmarked on or before the Response Deadline in order to be
22 timely, unless the Parties otherwise agree in writing. Any such Request must be made in
23 accordance with the terms set forth in the Notice Packet. The Settlement Administrator shall
24 attach each Request for Exclusion to its declaration of due diligence and file with the Court prior
25 to the Final Approval Hearing. Any Class Member who timely requests exclusion in compliance
26 with these requirements: (i) will not have any rights under this Agreement, including the right to
27 object, appeal or comment on the Settlement; (ii) will not be entitled to receive any payments
28 under this Agreement; and (iii) will not be bound by this Agreement, or the Judgment. Any

1 Class Member who is an Aggrieved Employee who requests timely exclusion will still be subject
2 to the Released PAGA Claims to the fullest extent permitted by law and receive an Individual
3 PAGA Payment. All Parties and their counsel, including Defendants' respective members,
4 member managers, owners, officers, and directors, shall not encourage or solicit opt-outs or
5 objections, directly or indirectly, through any means.

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

11 (c) Objections to Settlement. Any Class Member, other than Plaintiff, who
12 does not submit a valid and timely Request for Exclusion, may object to the terms of this
13 Agreement by completing the Objection Form provided within the Notice Packet. To object, the
14 Class Member must mail the Objection Form to the Settlement Administrator, postmarked by the
15 Response Deadline in order to be timely, unless the Parties otherwise agree in writing.
16 Additionally, any objection must be made in accordance with the terms set forth in the Notice
17 Packet. The Settlement Administrator shall provide any objections to Class Counsel and
18 Defense Counsel within three (3) days of receipt, and the Settlement Administrator shall attach
19 the same to its declaration of due diligence and file with the Court prior to the Final Approval
20 Hearing. Any Participating Class Member who files an objection remains eligible to receive an
21 Individual Class Payment. Plaintiff and Defendants shall not be responsible for any fees, costs,
22 or expenses incurred by any Class Member and/or his or her counsel related to any objections to
23 the Settlement. Submitting an objection does not preserve the right to appeal a final judgment.
24 Rather, the right to appeal is preserved by becoming a party of record by timely and properly
25 intervening or filing a motion to vacate the judgment under Code of Civil Procedure § 663.

26 (d) Failure to Object. Any Class Member who does not timely and properly
27 become a party of record by intervening or filing a motion to vacate the judgment waives any
28 and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding

1 and appellate proceeding, such as a motion to vacate judgment, motion for new trial, a motion
2 under California Code of Civil Procedure section 473, and extraordinary writs.

3 (e) Responses to Objections. Counsel for the Parties may file a response to
4 any objections submitted by Objecting Class Members at least five (5) court days before the date
5 of the Final Approval Hearing.

6 (f) Class Members will have until the Response Deadline to object or submit
7 a Request for Exclusion to the Settlement Administrator by U.S. Mail. The Settlement
8 Administrator shall disclose jointly to Class Counsel and Defense Counsel what objections or
9 Requests for Exclusion were timely submitted on a weekly basis, and upon the request of Class
10 Counsel or Defense Counsel.

11 71. Funding of the Settlement Amount. Defendants shall, jointly and severally,
12 deposit the Settlement Amount with the Settlement Administrator within fifteen (15) days after
13 the Effective Date.

14 72. Distribution of Funds. No later than ten (10) calendar days after the deposit of the
15 Settlement Amount by Defendants, the Settlement Administrator shall mail the Individual Class
16 Payments to the Participating Class Members, the Individual PAGA Payments to the Aggrieved
17 Employees, the payment to Class Counsel for the Attorneys' Fees and Costs Award, the Service
18 Payment to the Class Representative, the payment to the LWDA for PAGA Penalties, and will
19 pay itself the Settlement Administration Costs.

20 73. Deadline for Cashing Settlement Checks. Participating Class Members and
21 Aggrieved Employees shall have 180 calendar days after mailing by the Settlement
22 Administrator to cash their settlement checks. The release will be binding upon all Participating
23 Class Members who do not cash their checks within the 180-day period. In the event that any
24 settlement check is returned to the Settlement Administrator within 180 days of mailing, the
25 Settlement Administrator will, within five (5) business days of receipt of the returned settlement
26 check, perform a skip trace to locate the individual, and notify Defense Counsel and Class
27 Counsel of the results. If a new address is located by these means, the Administrator will have
28 ten (10) business days to re-issue the check. Neither Defendants, Defense Counsel, Class

1 Counsel, Plaintiff, nor the Settlement Administrator will have any liability for lost or stolen
2 settlement checks, forged signatures on settlement checks, or unauthorized negotiation of
3 settlement checks. Without limiting the foregoing, in the event a Participating Class Member
4 and/or Aggrieved Employee notifies the Settlement Administrator that he or she believes that a
5 settlement check has been lost or stolen, the Settlement Administrator shall immediately stop
6 payment on such check. If the check in question has not been negotiated prior to the stop
7 payment order, the Settlement Administrator will issue a replacement check.

8 a. If any Participating Class Member's check is not cashed within the time
9 periods noted above, the check will be void and a stop-payment will be issued,
10 and the Settlement Administrator shall issue the unclaimed funds to the California
11 State Controller's Office in the name of the Class Member.

12 b. If any Aggrieved Employee's check is not cashed within the time periods
13 noted above, the check will be void and a stop-payment will be issued, and the
14 Settlement Administrator shall issue the unclaimed funds to the California State
15 Controller's Office in the name of the Aggrieved Employee.

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

17 74. Promptly after execution of this Agreement, Plaintiff will move the Court for
18 Preliminary Approval of this Settlement and entry of the Preliminary Approval Order
19 accomplishing the following:

20 (a) Scheduling the Final Approval Hearing on the issue of whether this
21 Settlement should be finally approved as fair, reasonable and adequate as to the Class Members
22 and a hearing on fees, costs and the Service Payment;

23 (b) Approving as to form and content the proposed Notice Packet;

24 (c) Directing the mailing of the Notice Packet by first class mail to the Class
25 Members;

26 (d) Preliminarily approving this Settlement;

27 (e) Preliminarily certifying the class for purposes of this Settlement; and

28 (f) Advising the LWDA of the proposed Settlement.

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

2 75. In connection with the Final Approval Hearing provided for in this Agreement,
3 Class Counsel shall submit a proposed Final Approval Order:

4 (a) Approving the Settlement, adjudging the terms thereof to be fair,
5 reasonable and adequate, and directing consummation of its terms and provisions;

6 (b) Approving Class Counsel's application for an award of attorneys' fees and
7 reimbursement of litigation costs and expenses, the Service Payment to the Class Representative,
8 and the payment to the Settlement Administrator for costs of administering the settlement; and

9 (c) Entering judgment approving settlement.

10 **K. Voiding the Agreement**

11 76. If the Court fails or refuses to issue the Final Approval Order or fails to approve
12 any material condition of this Agreement which effects a fundamental change of the Settlement,
13 the entire Agreement shall be rendered voidable and unenforceable as to all Parties herein at the
14 option of either Party.

15 77. If the Settlement is voided or fails for any reason, Plaintiff and Defendants will
16 have no further obligations under the Settlement, including any obligation by Defendants to pay
17 the Settlement Amount, or any amounts that otherwise would have been owed under this
18 Settlement.

19 78. If the Settlement is voided or fails for any reason, any costs incurred by the
20 Settlement Administrator shall be borne equally by Defendants and Plaintiff, unless otherwise
21 specified in this Agreement.

22 **L. Other Terms**

23 79. Waiver. The waiver by one Party of any breach of this Agreement by another
24 Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

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

27 81. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
28 accomplish the terms of this Agreement, including but not limited to, execution of such

1 documents and to take such other action as may reasonably be necessary to implement the terms
2 of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts
3 contemplated by this Agreement and any other efforts that may become necessary by order of the
4 Court, or otherwise, to effectuate this Agreement and the terms set forth herein. As soon as
5 practicable after execution of this Agreement, Class Counsel shall, with the assistance and
6 cooperation of Defendants and Defense Counsel, take all necessary steps to secure the Court's
7 preliminary and final approval of the settlement, and the final entry of judgment.

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

12 83. No Admission. Defendants deny any and all liability to Plaintiff and/or any Class
13 Member and/or Aggrieved Employee in this Action, as to any and all causes of action that were
14 asserted or that might have been asserted in this Action. Nonetheless, Defendants wish to settle
15 and compromise the matters at issue in the Complaint to avoid further substantial expense and
16 the inconvenience and distraction of protracted and burdensome litigation. Defendants have
17 taken into account the uncertainty and risks inherent in litigation, and without conceding any
18 infirmity in the defenses that it has asserted or could assert against Plaintiff, have determined that
19 it is desirable and beneficial that Plaintiff's claims be settled in the manner and upon the terms
20 and conditions set forth in this Agreement.

21 84. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
22 Order, nothing contained herein, nor the consummation of this Agreement, is to be construed or
23 deemed an admission of liability, culpability, negligence, or wrongdoing on the part of
24 Defendants or any of the other Released Parties. Each of the Parties hereto has entered into this
25 Agreement with the intention of avoiding further disputes and litigation with the attendant
26 inconvenience and expenses. This Agreement is a settlement document, and it, along with all
27 related documents such as the notices, and motions for preliminary and final approval, shall,
28 pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be

inadmissible in evidence in any proceeding, except an action or proceeding to approve the settlement, and/or interpret or enforce this Agreement. The stipulation for class certification as part of this Agreement is for settlement purposes only and if, for any reason the settlement is not approved, the stipulation will be of no force or effect.

85. No Publicity. The Parties will not publicize the Settlement or disclose it to third parties prior to the Court granting Preliminary Approval, except as required or necessary to effectuate its terms and comply with law.

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

To the Class:

Brian Mankin
brian@lmlfirm.com
Lauby, Mankin & Lauby LLP
5198 Arlington Ave, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

To Defendant:

Kathryn Lee
klee@tysonmendes.com
Emily Meeson
emeeson@tysonmendes.com
TYSON & MENDES, LLP
5661 La Jolla Boulevard
La Jolla, CA 92037
Tel: (858) 459-4400

87. Construction. The Parties hereto agree that the terms and conditions of this Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and that this Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his or its counsel participated in the drafting of this Agreement. Plaintiff and Defendants expressly waive the common-law and statutory rule of construction that ambiguities should be construed against the drafter of an agreement and further agree, covenant,

1 and represent that the language in all parts of this Agreement shall be in all cases construed as a
2 whole, according to its fair meaning.

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

7 89. Modification. This Agreement may not be changed, altered, or modified, except
8 in writing and signed by the Parties hereto, and approved by the Court. This Settlement
9 Agreement may not be discharged except by performance in accordance with its terms or by a
10 writing signed by all of the Parties hereto.

11 90. Choice of Law. This Settlement Agreement shall be governed by and construed,
12 enforced and administered in accordance with the laws of the State of California, without regard
13 to its conflicts-of-law rules.

14 91. Integration Clause. This Settlement Agreement contains the entire agreement
15 between the Parties relating to the settlement and transaction contemplated hereby, and all prior
16 or contemporaneous agreements, understandings, representations, and statements, whether oral
17 or written and whether by a Party or such Party's legal counsel, are merged herein. No rights
18 hereunder may be waived except in writing.

19 92. Binding On Assigns. This Agreement shall be binding upon and inure to the
20 benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
21 successors and assigns.

22 93. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
23 because the members of the Class are numerous, it is impossible or impractical to have each
24 Class Member execute this Agreement. The Notice Packet will advise all Class Members of the
25 binding nature of the release provided herein and such shall have the same force and effect as if
26 this Agreement were executed by each Class Member.

27 94. Counterparts. This Agreement may be executed in counterparts, and when each
28 Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an

original, and, when taken together with other signed counterparts, shall constitute one fully signed Agreement, which shall be binding upon and effective as to all Parties. Electronic signatures shall have the same force and effect as an original.

Dated: March 14, 2023

PLAINTIFF AND CLASS REPRESENTATIVE:


Darrel Northrup (Mar 14, 2023 09:56 PDT)

Darrel Northrup

Dated: March __, 2023

DEFENDANT GUYOU CONSTRUCTION, INC.

By: Marcus Guyou, CEO

Dated: March __, 2023

DEFENDANT MARCUS GUYOU

APPROVED AS TO FORM:

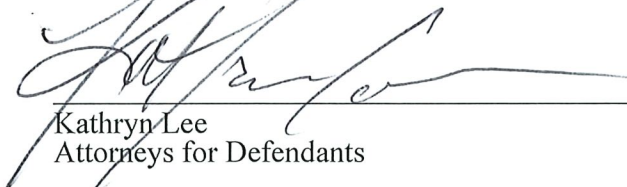
Dated: March 14, 2023

CLASS COUNSEL
LAUBY, MANKIN & LAUBY LLP


Brian J. Mankin
Attorneys for Plaintiff

Dated: March 14, 2023

DEFENSE COUNSEL:
TYSON & MENDES LLP


Kathryn Lee
Attorneys for Defendants

END OF DOCUMENT

original, and, when taken together with other signed counterparts, shall constitute one fully signed Agreement, which shall be binding upon and effective as to all Parties. Electronic signatures shall have the same force and effect as an original.

Dated: March __, 2023

PLAINTIFF AND CLASS REPRESENTATIVE:

Darrel Northrup

Dated: March 3, 2023

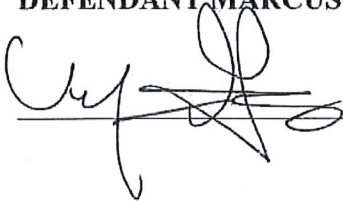
DEFENDANT GUYOU CONSTRUCTION, INC.



By: Marcus Guyou, CEO

Dated: March 3, 2023

DEFENDANT MARCUS GUYOU



APPROVED AS TO FORM:

Dated: March __, 2023

**CLASS COUNSEL
LAUBY, MANKIN & LAUBY LLP**

Brian J. Mankin
Attorneys for Plaintiff

Dated: March __, 2023

**DEFENSE COUNSEL:
TYSON & MENDES LLP**

Kathryn Lee
Attorneys for Defendants

EXHIBIT “B”

COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT

Darrel Northrup v. Guyou Construction, Inc.
(Riverside Superior Court, Case No. CVRI2105858)

***The Riverside 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 an employee class action lawsuit (“Action”) against Guyou Construction, Inc., (“Defendant” or “Guyou Construction”) for alleged wage and hour violations. The Action was filed by Darrel Northrup, a former Guyou employee (“Plaintiff” or “Class Representative”) and seeks payment of (1) unpaid wages, statutory damages and penalties, interest and attorneys’ fees on behalf of a class of non-exempt (i.e., hourly paid) employees employed by Guyou Construction, Inc., under the job titles of inspection technician, installation foreman, installation technician, or operation & maintenance/service technician in California (“Class Members”) during the Class Period (December 29, 2017, through January 26, 2023); and (2) penalties under the California Private Attorney General Act (“PAGA”) for all non-exempt (i.e., hourly paid) employees employed by Guyou Construction, Inc., under the job titles of inspection technician, installation foreman, installation technician, or operation & maintenance/service technician in California during the PAGA Period (December 29, 2020 to January 26, 2023) (“Aggrieved Employees”).

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 pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

[CLASS MEMBER NAME] **[ID/CONTROL NUMBER]**

Two Parts	Weeks Worked During Class Period (Class Member); Weeks Worked During 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 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 likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendant’s records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.)

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**, 2023 (“**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 Plaintiff and Plaintiff’s attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Defendant to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendant.

Plaintiff is represented by attorneys in the Action (“Class Counsel”). See Section 9 below for their contact information.

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

So far, the Court has made no determination whether Defendant or Plaintiff is 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 merit 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 \$300,000 as the Settlement Amount. Defendant has agreed to deposit the Settlement Amount into an account controlled by the Settlement Administrator of the Settlement. The Administrator will use the Settlement Amount to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorney’s 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 Amount not more than 15 days after the Judgment entered by the Court becomes final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
2. Court Approved Deductions from Settlement Amount. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Settlement Amount, which will be decided by the Court at the Final Approval Hearing:
 - A. Up to one-third of the Settlement Amount (\$100,000) to Class Counsel for attorneys’ fees 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 \$7,500 to the 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 \$7,000 to the Settlement Administrator for services administering the Settlement.
 - D. Up to \$30,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees 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 one-third (33.3%) of each Individual Class Payment to taxable wages (“Wage Portion”) and two-thirds (66.7%) 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.

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.

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Settlement, unless you opt-out of the Settlement, not 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. Plaintiff and Defendant have agreed that, in either case, the Settlement will be void and Defendant will not pay any money and Class Members will not release any claims against Defendant.
8. Settlement Administrator. The Court has appointed a neutral company, Phoenix Settlement Administrators (the “Settlement Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. 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 Released Class Claims under the Settlement for the duration of the Class Period. If you do not wish to be bound by the Released Class Claims, you must Opt-Out in which case you will not receive an Individual Class Payment.

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

All Participating Class Members, on behalf of themselves and their respective representatives, agents, heirs, and assigns, release the Released Parties from all claims stated in the operative 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 failure to timely pay wages upon separation of employment, (f) failure to provide accurate itemized wage statements, (g) unfair and unlawful competition, and (h) all other claims for statutory penalties based on the facts or claims alleged in the operative Complaint (the “Released Class Claims” or “Class Claims”). The operative release period for the Released Class Claims is the Class Period. Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.

10. Release of Released PAGA Claims. After the Court’s judgment is final, and Defendant has paid the Settlement Amount (and separately paid the employer-side payroll taxes), Plaintiff on behalf of himself, the State of California and the LWDA shall release the Released Parties from all PAGA claims that Plaintiff alleged against the Released Parties, on behalf of himself and the State of California, based on the facts stated in the operative Complaint in the Action and in the LWDA notice letter, including all PAGA claims seeking civil penalties that 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 failure to timely pay wages each period and upon separation of employment, (f) failure to provide accurate itemized wage statements, and (g) all other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.* based on the facts or claims alleged in the operative complaint (“Released PAGA Claims.”) The time period governing the Released PAGA Claims shall be any time during the 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 the Response Deadline to dispute the number of Workweeks credited to you by mailing the enclosed Dispute Form to the Settlement Administrator on or before the Response Deadline. Section 9 of this Notice has the Administrator’s contact information.

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 doesn't 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?

You will be treated as a Participating Class Member, participating fully in the Settlement, unless you opt-out of the Settlement, not later than the Response Deadline. The easiest way to opt-out by completing, signing, and mailing the accompanying Request for Exclusion Form to the Settlement Administrator, postmarked on or before the Response Deadline (as a reminder, **the “Response Deadline” is DATE, 2023**). 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 Claims remain eligible to receive an Individual PAGA Payment.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. A Participating Class Member who disagrees with any aspect of the Settlement may wish to object. If you wish to object to the proposed Settlement, you or your own attorney must submit a written objection, on the enclosed Objection Form and include any and all evidence and supporting papers. The Objection Form and any accompanying evidence and papers must be sent to the Settlement Administrator at the address listed in Section 9 on the Objection Form, **postmarked** on or before the Response Deadline. 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 below for specifics regarding the Final Approval Hearing.

8. WHEN IS THE FINAL APPROVAL HEARING?

On **DATE**, 2023, the Court will hold a public hearing in Department 1 of the Superior Court for the State of California, County of Riverside, 4050 Main St, Riverside, CA 92501, 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 enclosed Request for Exclusion Form and Objection Form, 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 Settlement Administrator for more information or to request that a copy of this Notice and request for Exclusion Form and Objection Form be sent to you in the mail. If you wish to communicate directly with Class Counsel, you may contact them – contact information noted below in Section 9. 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 **DATE**, 2023 and available to be inspected at any time during regular business hours at the Clerk's Office, Superior Court for the State of California, County of Riverside, 4050 Main St, Riverside, CA 92501. You may also review the pleadings, records, and other papers on file in this lawsuit at the Clerk's Office or online at <https://epublic-access.riverside.courts.ca.gov/public-portal/>. To access the case file, click on "Case Number Search," then create a free online account, then type in the case number (CVRI2105858) where requested, and click "Search." You may also email Class Counsel and request a copy of the Settlement Agreement.

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

The contact information for Class Counsel and the Settlement Administrator are below:

Class Counsel:

Brian Mankin, Esq.
brian@LMLfirm.com
 Misty Lauby, Esq.
misty@LMLfirm.com
 Lauby Mankin Lauby LLP
 5198 Arlington Ave, PMB 513
 Riverside, CA 92504
 Tel: (951) 320-1444

Settlement Administrator:

Name
Mailing Address
Telephone Number

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Settlement 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 “C”

REQUEST FOR EXCLUSION FORM

Darrel Northrup v. Guyou Construction, Inc.
(Riverside Superior Court, Case No. CVRI2105858)

[NAME]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

DO YOU WANT TO PARTICIPATE IN THE SETTLEMENT AND RECEIVE A SETTLEMENT CHECK? (check the box that applies)

☐

YES: STOP HERE -- DO NOT RETURN THIS FORM. NO FURTHER ACTION IS NEEDED TO PARTICIPATE IN THE SETTLEMENT.

☐

NO: SIGN, DATE AND RETURN THIS FORM TO EXCLUDE YOURSELF FROM THE SETTLEMENT.

By signing below, I am excluding myself from the Settlement:

I do NOT want to participate in the settlement in *Northrup v. Guyou Construction, Inc.*, (Riverside Superior Court Case No. CVRI2105858). I understand by excluding myself from the settlement that I will not receive any money from the settlement other than an Individual PAGA Payment if I qualify as an Aggrieved Employee (see first page of the Court Approved Notice of Class Action Settlement).

Signed on _____, 2023

[NAME]

MAIL TO THE SETTLEMENT ADMINISTRATOR, BY U.S. MAIL, POSTMARKED NO LATER THAN [INSERT DEADLINE]:

Settlement Administrator:

Name

Mailing Address

Telephone Number

EXHIBIT “D”

OBJECTION FORM

Darrel Northrup v. Guyou Construction, Inc.
(Riverside Superior Court, Case No. CVRI2105858)

Please verify and/or complete any missing identifying information:

[NAME]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

DO YOU OBJECT TO THE SETTLEMENT? (check the box that applies)

☐

NO: STOP HERE -- DO NOT RETURN THIS FORM

☐

YES: COMPLETE THE REVERSE SIDE AND RETURN THIS FORM

The Court will consider your objection at the Final Approval Hearing if you submit a timely and valid written statement of objection. Any objection should describe the nature of and basis for the objection, and any other information that you would like the Court to consider.

I OBJECT to the Settlement in the case of *Northrup v. Guyou Construction, Inc.*, on the following grounds (if additional space is necessary, please include additional sheets of paper):

Signed on _____, 2023

[NAME]

MAIL TO THE SETTLEMENT ADMINISTRATOR, BY U.S. MAIL, POSTMARKED NO LATER THAN [INSERT OBJECTION DEADLINE]:

Settlement Administrator:

Name
Mailing Address
Telephone Number

EXHIBIT “E”

REQUEST FOR EXCLUSION FORM

Darrel Northrup v. Guyou Construction, Inc.
(Riverside Superior Court, Case No. CVRI2105858)

[NAME]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

DO YOU WANT TO PARTICIPATE IN THE SETTLEMENT AND RECEIVE A SETTLEMENT CHECK? (check the box that applies)

☐

YES: STOP HERE -- DO NOT RETURN THIS FORM. NO FURTHER ACTION IS NEEDED TO PARTICIPATE IN THE SETTLEMENT.

☐

NO: SIGN, DATE AND RETURN THIS FORM TO EXCLUDE YOURSELF FROM THE SETTLEMENT.

By signing below, I am excluding myself from the Settlement:

I do NOT want to participate in the settlement in *Northrup v. Guyou Construction, Inc.*, (Riverside Superior Court Case No. CVRI2105858). I understand by excluding myself from the settlement that I will not receive any money from the settlement other than an Individual PAGA Payment if I qualify as an Aggrieved Employee (see first page of the Court Approved Notice of Class Action Settlement).

Signed on _____, 2023

[NAME]

MAIL TO THE SETTLEMENT ADMINISTRATOR, BY U.S. MAIL, POSTMARKED NO LATER THAN [INSERT DEADLINE]:

Settlement Administrator:

Name

Mailing Address

Telephone Number

EXHIBIT “F”



December 10, 2021

Sent 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

Guyou Construction
9880 Indiana Ave., Ste 2
Riverside, CA 92503

Marcus A. Guyou
9880 Indiana Ave, Suite 2
Riverside, CA 92503

**Re: PAGA Civil Penalty Claim
*Darrel Northrup v. Guyou Construction, Inc.***

To the Labor and Workforce Development Agency, Guyou Construction, Inc., and Marcus A. Guyou:

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 Darrel Northrup (“Claimant”), on behalf of the State of California and all Aggrieved Employees, against his employer(s), Guyou Construction, Inc., and/or any affiliated entities, Mr. Marcus A. Guyou (the “Company”), for violations of Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 256, 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 Industrial Welfare Commission Wage Order(s).

FACTUAL BACKGROUND

Claimant has been employed by the Company since November 2020. 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 to Claimant was subjected during his employment.

For instance, 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. Among other violations, the Company routinely altered clock in, clock out, and meal period timekeeping records resulting in unpaid off the clock work. Moreover, Claimant and the Aggrieved Employees were expected to travel to various worksites throughout Southern California often resulting in unreasonable unpaid, off-the-clock travel time. Also, at all relevant times, the Aggrieved Employees earned additional compensation in the form of nondiscretionary bonuses. However, on the occasions when the Aggrieved Employees worked in excess of 8 and/or 12 hours per day and/or 40 hours per week and received additional earned compensation during the pay period, the Company failed to properly include these amounts in the calculations for the regular rate of pay. Therefore, the Company failed to pay proper overtime for the 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, 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, (3) forced to take a meal period after the 5th hour of work, and (4) not provided mandated second or third meal periods on shifts in excess of 10 hours or 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, Claimant was unable to leave the premises for breaks, and Claimant was often not authorized and/or permitted to take mandated rest breaks due to 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.

The Company also failed to comply with the mandates of Labor Code § 204 regarding the timing of the payment of wages to its employees each period, including meal and rest period premiums. Also, the Company failed to comply with the mandates of Labor Code §§ 201 – 203 regarding payment of final wages upon separation of employment. 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). Specifically, Claimant alleges that the Company failed to provide wage statements that listed all applicable rates of pay and total hours worked, among other violations - in direct violation of Labor Code § 226(a).

Furthermore, Claimant alleges that Marcus Guyou is now and at all relevant times was the owners of Guyou Construction, Inc., 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 Mr. Guyou had the authority, in the interest of Guyou Construction, Inc. 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 Guyou Construction, Inc. and Mr. Guyou 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, Guyou Construction, Inc. and Mr. Guyou were acting in active concert with on another such that the acts of each were fully attributable to the other in all material respects.

Claimant also alleges that Guyou Construction, Inc. and Mr. Guyou were merely the alter-ego of the other 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 other. Claimant further alleges that, at all relevant times, Guyou Construction, Inc. has been inadequately capitalized to conduct business, has failed to follow appropriate corporate formalities, and has simply been a shell and instrumentality through which Mr. Guyou has conducted his personal affairs. Adherence to the fiction of the separate existence of Guyou, Inc. 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 Guyou, Inc. should be imposed jointly and severally against Mr. Guyou.



Finally, in an additional separate, but not necessarily mutually exclusive, alternative theory of liability, Mr. Guyou is 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, 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. This resulted in earned, but unpaid, overtime wages due and owing to Claimant and the Aggrieved Employees. Therefore, Claimants and the Aggrieved Employees worked in excess of 8 and/or 12 hours per day, and/or forty hours per week without receiving proper payment of the requisite overtime and/or doubletime wages for all hours worked pursuant to Labor Code §§ 204 and 510 and/or the applicable IWC Wage Order.

Accordingly, Labor Code §§ 210, 558, 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. 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 PAY ALL WAGES DUE AND OWING
EACH PAYROLL PERIOD WITHIN THE TIME REQUIRED BY LAW**

(Labor Code §§ 204, 204.1, 208, 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."

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, 256.) 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 the failure to state total hours worked during the period and the failure to state all applicable hourly rates of pay and number of hours worked at each date. Additionally, the Company's wage statements failed to accurately state gross wages earned, all deductions, net wages earned, and the name and address of the legal entity that is the employer. Accordingly, Claimants are entitled to damages under Labor Code § 226(e), including reasonable attorneys' fees. Labor Code §§ 226.3 and 2699 also impose a civil penalty and/or assessment for these violations.

PAGA ASSESSMENT FOR FAILURE TO MAINTAIN EMPLOYMENT RECORDS

(Labor Code §§ 1174, 1174.5, 1198, and § 7 of the IWC Wage Orders)

Labor Code § 1174(d), and § 7 of the IWC Wage Orders require employers to maintain accurate employment records, including accurate payroll records showing the total number of regular and overtime hours worked each day by employees, including meal periods, and the gross wages earned by the employee, including all applicable pay rates and the corresponding number of hours worked at each pay rate, among other requirements.

Here, the Company failed to maintain accurate employment records as mandated by California law. Therefore, in addition to recovering the amount of attorneys' fees and cost incurred herein, Claimant is entitled to the assessment of civil penalties in accordance with Labor Code §§ 1174(d), 1174.5, 1199, and 2699.

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 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 amending this claim letter.

Should you have any questions, please feel free to give me a call. In the meantime, I look forward to your response.

Very Truly Yours,



By: Misty M. Lauby, Esq.

E-mail: misty@lmlfirm.com
www.LMLfirm.com



EXHIBIT “G”