

SETTLEMENT AGREEMENT AND RELEASE OF PAGA CLAIM

This Settlement Agreement and Release of PAGA Claim ("Settlement Agreement") is made by and between Plaintiff Ernesto A. Rivera-Galicia ("Plaintiff"), on behalf of himself and as a deputized representative for the California Labor & Workforce Development Agency ("LWDA"), and Defendant NP Mechanical, Inc. ("Defendant"), who may collectively be referred to herein as the "Parties," and each may be individually referred to as a "Party."

A. Definitions

The following terms, when used in this settlement agreement, shall have the following meanings:

1. "Action" or "Lawsuit" means *Ernesto A. Rivera-Galicia v. NP Mechanical, Inc.*, Case Number: CIVSB2223483.
2. "Agreement," "Stipulation," or "Settlement Agreement," mean this Settlement Agreement and Release of PAGA Claim, including any attached Exhibits.
3. "Attorneys' Fees and Costs" means the amount of up to \$83,250.00 (thirty-three and one-third percent of the Settlement Amount) which shall be allocated to Plaintiff's Counsel for attorneys' fees, and actual costs in the amount of up to \$13,851.26, all of which shall be paid out of the Gross Settlement Amount. This Settlement is not conditioned on approval of the Attorneys' Fees and/or Costs; in other words, this Settlement shall remain in full force and effect if the Court awards less than the requested Attorneys' Fees and Costs. If less than \$97,101.26 is awarded for Attorneys' Fees and Costs, the difference shall return to the Net Settlement Amount.
4. "Court" (or "Judge") means the San Bernardino Superior Court, the Honorable David Cohn, Judge Presiding.
5. "Defendant's Counsel" means Kyle D. Kring and Kerri N. Kramer of Kring & Chung, LLP.
6. "Effective Date" means the date that the Court enters the Final Judgment and Order approving the PAGA settlement contemplated by this Agreement.
7. "Eligible Pay Period" means any pay period in which a PAGA Employee worked at least one day during the PAGA Release Period.
8. "Final Approval Date" means the date that the Court enters the Final Order and Judgment.
9. "Final Order and Judgment" means the Court's order approving this Private Attorneys General Act of 2004 ("PAGA") Settlement and Final Judgment. The Final Order and Judgment will be submitted, substantially in the form attached hereto as **Exhibit 1**, in connection with the Stipulation for Approval of this Settlement.

10. “Gross Settlement Amount” means the maximum settlement amount that Defendant will pay in connection with this Settlement, which is \$250,000.00. This is a non-reversionary Settlement; no portion of the Gross Settlement Amount will return to Defendant under any circumstances.

11. “LWDA Settlement Proceeds” means the seventy-five percent (75%) of the Net Settlement Amount that shall be paid to the Labor & Workforce and Development Agency (“LWDA”).

12. “Net Settlement Amount” means the amount that remains after deducting Attorneys’ Fees and Costs, Settlement Administration Costs, and the Service Award, from the Gross Settlement Amount.

13. “Notice” means the notice that will be sent to the PAGA Employees with payment after the Final Order and Judgment is entered by the Court. The Notice will be sent to PAGA Employees substantially in the form attached hereto as **Exhibit 2**. The Notice will also be sent in Spanish.

14. “LWDA Notice” means the notice letter submitted on January 21, 2022, by Plaintiff, to LWDA notifying the LWDA of alleged violations by Defendant.

15. “PAGA Employees” means all non-exempt employees of Defendant who worked for Defendant in California at any time from January 21, 2021, through February 13, 2023.

16. “PAGA Employees Settlement Proceeds Fund” means the twenty-five percent (25%) of the Net Settlement Amount that shall be paid to the PAGA Employees.

17. “PAGA Representative Claims” means Plaintiff’s PAGA claims under California Labor Code § 2698 *et. seq.* based on alleged predicate violations of the California Labor Code including, without limitation, §§ 201, 202, 203, 204, 210, 225.5, 226, 226.2, 226.3, 226.7, 246, 248.1, 248.2, 248.6, 510, 512, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1199, 2802, and 2699, and violations of the accompanying and relevant IWC Wage Order provisions (including the Minimum Wage Order and Wage Order 16-2001) cited in Plaintiff’s LWDA Notice and/or alleged in the Operative Complaint (the “PAGA Claims”).

18. “PAGA Settlement” or “Settlement” means the settlement of the Action as memorialized in this Agreement.

19. “PAGA Release Period” means January 21, 2021 through February 13, 2023.

20. “Plaintiff’s Counsel” means Scott E. Wheeler and Justin A. Wheeler of the Law Office of Scott E. Wheeler.

21. “Released Parties” means Defendant and its parents, subsidiaries, affiliates, predecessors, successors, assigns, owners, officers, directors, employees, insurers, agents, and attorneys.

22. “Settlement” means the collective settlement of the PAGA Representative Claims as memorialized in this Agreement.

23. “Settlement Administrator” means Phoenix Settlement Administrators. The Settlement Administrator will agree to enter into a confidentiality agreement by which it agrees to maintain as

confidential the information so designated by Defendant and not to disseminate any designated information without the written approval of Defendant. The Settlement Administrator will be responsible for, *inter alia*, sending Notice and payments to PAGA Employees and the LWDA and distributing other payments as set forth in this Agreement or otherwise reasonably necessary to effectuate the Settlement.

24. "Settlement Administration Costs" means the amount of up to \$6,995 which shall be paid to Phoenix Settlement Administrators ("Phoenix") for performing the duties provided under the Settlement. The Settlement Administration Costs shall be no more than \$6,995 and if less than \$6,995 is approved for Settlement Administration costs, the difference shall return to the Net Settlement Amount.

25. "Service Award" means the amount of up to \$6,000.00 which shall be allocated to Plaintiff, subject to Court approval, in recognition for his efforts in prosecuting the case, obtaining the benefit of the Settlement, and as consideration for Plaintiff's released claims, which includes a broad general release, against Defendant. The Service Award shall be paid from the Settlement Amount. This Settlement is not conditioned on approval of the Service Award; in other words, this Settlement shall remain in full force and effect if the Court awards less than the requested \$6,000.00. If less than \$6,000.00 is awarded to Plaintiff, the difference shall return to the Net Settlement Amount.

B. General

1. On December 28, 2022, Plaintiff commenced this Action by filing the Operative Complaint alleging one PAGA cause of action against Defendant based upon violations of the California Labor Code for: 1) failure to provide meal periods; 2) failure to provide rest periods, 3) failure to pay overtime wages, 4) failure to pay minimum wages, 5) failure to timely pay all wages earned, 6) failure to pay all wages owed and due to former employees upon discharge or termination, 7) failure to provide accurate itemized wage statements, 8) failure to maintain required records, 9) California COVID-19 Supplemental Paid Sick Leave violations, 10) failure to provide suitable seating, 11) failure to maintain reasonable temperatures in work areas, and 12) failure to indemnify employees for necessary employment expenditures. Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint and denies any and all liability for the causes of action alleged.

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

4. On December 15, 2022, the Parties participated in an all-day mediation with Steve Pearl, Esq., which led to this Agreement to settle the Action.

5. Defendant denies all of the allegations and claims asserted in the Lawsuit and denies that it has committed any misconduct, statutory or regulatory violation, wrongdoing, or any other actionable conduct of any kind.

6. The Parties have conducted a thorough investigation into the facts of the Action. This included, *inter alia*, conducting extensive informal discovery that involved the exchange of information and documents relating to the PAGA Representative Claims. Defendant produced documents consisting of employee handbooks and policy documents, etc. Defendant also produced the electronic and manual time and payroll records for PAGA Employees which consisted of thousands of pages of documents.

Plaintiff retained an expert to analyze this data and conduct an exposure analysis consistent with Plaintiff's theories of liability. Based on the foregoing data and on their own independent investigation and evaluation, Plaintiff's Counsel is of the opinion that the settlement with Defendant 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 LWDA and PAGA Employees in light of all known facts and circumstances, including the risk of significant delay, uncertainty associated with litigation, various defenses asserted by Defendant, and potential appellate issues. Defendant and counsel for Defendant also agree that the settlement is fair.

7. The Parties understand, acknowledge, and agree that this Agreement constitutes a compromise of Plaintiff's PAGA Representative Claims and that it is the desire and intention of the Parties to affect a final and complete resolution of the Action, including the PAGA Representative Claims, against Defendant. The Parties further acknowledge that this Agreement is a compromise of disputed claims and that nothing in this Agreement shall be construed as an admission of liability by Defendant.

8. Under California Law, the State may assess and collect civil penalties from employers for violations of certain provisions of the California Labor Code. (*See* Cal. Lab. Code §§ 2698 *et seq.*) Under PAGA, however, if an "aggrieved employee" "give[s] written notice by certified mail to the [State] and the employer of the specific provision of the [Labor Code] alleged to have been violated," and the State thereafter decides not to investigate, as was the case here, or does investigate and determines that a citation against the employer should not be issued, the employee may, "as an alternative" to enforcement by the State, act as a proxy or agent of the state's labor law enforcement agencies and bring a civil action under PAGA to recover civil penalties "on behalf of himself or herself and other current or former employees." *Id.* "[C]ivil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the state and 25 percent to the aggrieved employees." *Id.*

9. California Labor Code § 2699(1)(2) provides that the trial court shall "review and approve any settlement of any civil action filed pursuant to this part." Plaintiff will submit this Settlement Agreement to the LWDA concurrently with the filing of the Stipulation for Approval with the Court.

10. In consideration of the promises and agreements contained herein, the Parties agree and covenant as follows:

C. Terms of Settlement

1. Subject to the Court's approval of the Settlement pursuant to California Labor Code § 2699(1)(2), which counsel and the Parties agree to recommend in good faith to the Court, the Parties agree to the following binding settlement of the Action.

2. The Gross Settlement Amount will be distributed in the following manner:

- a. **Settlement Administration Costs:** The costs associated with settlement administration (e.g. preparing and mailing payments to LWDA and PAGA Employees, tax documentation, etc.) shall be paid from the Settlement Amount and shall not exceed \$6,995. The Parties agree to use as the Settlement Administrator. The Parties and their counsel represent that they do not have any involvement in the governance or work of the Settlement Administrator.

- b. **Attorneys' Fees and Costs:** The Parties agree that, subject to the Court's review and approval, Plaintiff's Counsel will be paid up to one-third of the Gross Settlement Amount as attorneys' fees (\$83,250.00), plus actual litigation costs not to exceed \$20,000.00 (actual costs total \$13,851.26, incurred in connection with work performed to litigate the Action and obtain Court approval of the Settlement, which will be paid from the Settlement Amount.
- c. **Service Award to Plaintiff.** The Parties agree that, subject to the Court's review and approval, Plaintiff will be paid a service award of up to \$6,000.00, which will be paid from the Gross Settlement Amount.
- d. **Net Settlement Amount:** After deducting Settlement Administration Costs, Attorney's Fees and Costs, and the Service Award from the Gross Settlement Amount, the remainder forms the Net Settlement Amount (which totals \$139,903.74 if the amounts set forth above are approved in full by the Court). The Net Settlement Amount shall be allocated seventy-five percent (75%) to the California Labor & Workforce Development Agency ("LWDA Settlement Proceeds"), which is estimated to total approximately \$104,927.80. The remaining twenty-five percent (25%) of the Net Settlement Amount, which is estimated to total approximately \$34,975.94 shall be paid to the PAGA Employees on a *pro rata* basis ("PAGA Employees Settlement Proceeds Fund"), which shall be determined based on the number of Eligible Pay Periods that each PAGA Employee worked for Defendant during the PAGA Release Period and shall be calculated as follows:

The PAGA Employees Settlement Proceeds Fund will be divided by the total number of Eligible Pay Periods worked by all PAGA Employees during the PAGA Release Period, and the resulting figure will be referred to as the "Multiplier." Each PAGA Employee's *pro rata* share of the PAGA Employees Settlement Proceeds Fund will be determined by multiplying the Eligible Pay Periods that the PAGA Employee worked by the Multiplier. That amount shall be referred to as the PAGA Employee's "Individual Share."

- e. **Taxes and Reporting:** The PAGA Employees' Individual Share represents a compromise of civil penalties and will be treated as non-wage income and reported by the Settlement Administrator on IRS Form 1099 (if applicable) to the respective PAGA Employee and applicable governmental authorities. The payment of PAGA Employees' Individual Shares shall not obligate Defendant to confer any additional benefits or make any additional payments to PAGA Employees (such as 401(k) contributions or bonuses).

D. Release as to the PAGA Representative Claims

1. Upon the Effective Date, Plaintiff, as the representative for the State of California, and on behalf of all PAGA Employees, along with all PAGA Employees themselves, are deemed to forever completely release and discharge, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties with respect to any claim for the recovery of civil penalties under the California Private Attorneys General Act,

California Labor Code Section 2698, *et seq.* only. It is expressly understood and agreed that this Settlement includes a release of all the PAGA Representative Claims.

2. The release shall be effective as of the Effective Date, and it shall apply to claims within the above scope impacting PAGA Employees arising within the PAGA Period.

3. Upon the Effective Date, without waiving their rights to the Court approved fees and reimbursement of costs as provided pursuant to Paragraph A.3, Plaintiff's Counsel release on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for Attorneys' Fees and Costs incurred in connection with the Operative Complaint and PAGA Notice and the PAGA Period facts stated in the Operative Complaint and the PAGA Notice.

4. In accordance with California law as stated in *inter alia* *Arias v. Superior Court* (2009) 46 Cal.4th 969, 985, a judgment in "a representative action brought by an aggrieved employee under the Labor Code Private Attorneys General Act of 2004 . . . is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding," which the Final Order shall so reflect. Accordingly, the Final Order and Judgment shall be binding on all PAGA Employees (including all nonparty aggrieved employees) as to all the PAGA Representative Claims. A statement to this effect shall be included in the Notice sent to the PAGA Employees. The Final Order shall not bind nor release the PAGA Employees of any individual wage claims (or other individual claims), unless such claim is subject to res judicata, issue preclusion, or collateral estoppel.

E. Release by Named Plaintiff Only

1. Release and Covenant Not to Sue

- a. In consideration for the terms and provisions of the Agreement, Plaintiff, for himself, and for his heirs, assigns, partners, executors, conservators, administrators, agents, employees, attorneys, past and present (collectively, "Plaintiff Affiliates"), hereby fully and without limitation releases, covenants not to sue, and forever discharges Defendant, its subsidiaries, divisions, affiliated companies, affiliated partnerships, trustees, directors, officers, supervisors, shareholders, partners, agents, designees, employees, legal and equitable owners, members, associates, representatives, consultants, insurers, reinsurers, attorneys, heirs, assigns, executors, beneficiaries, and administrators, predecessors and successors, past and present, (collectively "Defendant Releasees"), both individually and collectively, from any and all rights, claims, contracts, agreements, debts, demands, liabilities, actions, and causes of action, whether in law or in equity, suits, damages, liabilities, losses, attorneys' fees, costs, and expenses, of whatever nature whatsoever, known or unknown, fixed or contingent, suspected or unsuspected ("Claims"), that Plaintiff or the Plaintiff Affiliates now have, or may ever have, against Defendant, or any of Defendant's Releasees, for any matter, occurring on or before the Effective Date of this Agreement.
- b. Without limiting the generality of the foregoing, Plaintiff acknowledges that the foregoing general release applies to any and all claims he or the Plaintiff Affiliates now have, or may ever have, against Defendant, or any of Defendant's Releasees, that arise out of or are in any way related to any alleged violation of any federal or state law that regulates any aspect of the employer-employee relationship, including any claims for any alleged violations of

any federal or state employment discrimination, harassment, and retaliation laws, including the California Fair Employment and Housing Act (which prohibits discrimination, harassment, and retaliation based upon one's actual or perceived ancestry, race, religion, sex, sexual orientation, gender, gender identity, gender expression, age, color, national origin, disability, medical condition, military or veteran status and marital status), the California Family Rights Act, Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, and the Family Medical Leave Act; as well as the Equal Pay Act; the Fair Labor Standards Act, the Employee Retirement Income Security Act of 1974, the California Business and Professions Code, the California Labor Code, and the California wage orders; as well as any claims for any alleged violation of public policy or retaliation; any claims for wages, hours, unpaid overtime, failure to pay minimum wage, failure to pay for downtime or waiting time, failure to provide meal or rest breaks or pay one hour's wages in lieu thereof, failure to indemnify for all work related expenditures and losses, and all related statutory claims, including but not limited to, alleged violation of California Labor Code sections 201-204, 208, 210, 215-216, 218.5, 225.5, 226, 226.3, 226.6, 226.7, 450, 500, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, 2810.5, 2926, 2927, 201, 202, 203, 204, 210, 225.5, 226, 226.2, 226.3, 226.7, 246, 248.1, 248.2, 248.6, 510, 512, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1199, 2802, and 2699, California Business and Professions Code sections 17000 and 17200 et. seq., the relevant Wage Orders issued by the Industrial Welfare Commission, Civil Code sections 52 and 52.1, or any other claim for any statutory penalty that could have been asserted under California law that arise from the allegations as described, any claims concerning or related to meal and/or rest breaks, inaccurate wage statements, any other employment-related claims under any federal, state, or local law, statute, regulation, or ordinance; and any and all common-law causes of action, including breach of contract, breach of implied contract, breach of the covenant of good faith and fair dealing, fraud, misrepresentation, unfair competition, unfair business practices, false advertising, negligence, defamation, infliction of emotional distress, invasion of privacy, and wrongful termination, which arise from any and all events occurring on or before the Effective Date of this Agreement, including without limitation, all claims arising from action or inaction by Defendant, or any of Defendant's Releasees.

- c. **Promise Not to Prosecute:** Plaintiff agrees that neither he nor any of his agents or representatives shall, at any time hereafter, commence, maintain or prosecute any action, suit, proceeding, investigation, complaint, claim, grievance, or charge with any court, arbitrator, or any other body or person, whether Federal, State, contractual or otherwise, on his behalf, except in response to governmental agency or court inquiries or as compelled by legal process, against Defendant or any of Defendant's Releasees, based in whole or in part upon, or arising out of or in any way connected with, any of the Released Claims. Plaintiff further agrees that neither he nor any of his agents or representatives, including any of his attorneys, shall, at any time hereafter, aid, represent, or otherwise assist others in prosecuting such action, suit, proceeding, investigation, complaint, claim, grievance, or charge on his behalf, except for the PAGA claim, and except in response to governmental agency or court inquiries or as compelled by legal process, against Defendant or the Defendant's Releasees, based in whole or in part upon, or arising out of or in any way connected with, any of the Released Claims, including, but not limited to, serving as a class representative or participating in a class action against Defendant under the California

Labor Code. Plaintiff further agrees to indemnify and hold Defendant and Defendant's Releasees harmless from and against any and all claims, demands, causes of action, damages or liability of any kind, including the cost of defense and reasonable attorneys' fees arising out of or in connection with, any action, suit, proceeding, investigation, complaint, claim, grievance, or charge commenced, maintained, or prosecuted by him contrary to the terms of this Agreement.

- d. Notwithstanding the generality of the foregoing, Plaintiff also understands and agrees that he is not waiving any right or claim that cannot be waived as a matter of law, such as the right to file a charge (seeking no monetary recovery) with or participate in an investigation by a governmental administrative agency.

2. In addition to the Release of the PAGA Representative Claims, Plaintiff agrees to release all known and unknown claims, including a release under Civil Code Section 1542. To affect a full and complete general release as described above, Plaintiff expressly waives and relinquishes all rights and benefits of section 1542 of the Civil Code of the State of California and does so understanding and acknowledging the significance and consequence of specifically waiving section 1542. Section 1542 of the Civil Code of the State of California states as follows:

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

Thus, notwithstanding the provisions of section 1542, and to implement a full and complete release and discharge of the Released Parties, Plaintiff expressly acknowledges this release is intended to include in its effect, without limitation, all claims Plaintiff does not know or suspect to exist in Plaintiff's favor at the time of signing this Agreement, and Plaintiff expressly acknowledges that this Agreement contemplates the extinguishment of any such claims. Plaintiff warrants Plaintiff has read this Agreement, including this waiver of California Civil Code section 1542, and that Plaintiff has consulted with or had the opportunity to consult with counsel of Plaintiff's choosing about this Agreement and specifically about the waiver of section 1542, and Plaintiff warrants that Plaintiff understands this Agreement and the section 1542 waiver, and Plaintiff freely and knowingly enters into this Agreement. Plaintiff further acknowledges that Plaintiff later may discover facts different from or in addition to those Plaintiff now knows or believes to be true regarding the matters released or described in this Agreement, and even so Plaintiff agrees that the release contained in this Agreement shall remain effective in all respects notwithstanding any later discovery of any different or additional facts. Plaintiff expressly assumes any and all risk of any mistake in connection with the true facts involved in the matters, disputes or controversies released or described in this Agreement or with regard to any facts now unknown to Plaintiff relating thereto.

Plaintiff's general release shall become effective on the Effective Date.

The general release set forth in Paragraph E of this Agreement applies only to Plaintiff. It does not apply to any PAGA Employees.

F. Settlement Approval and Implementation Procedures

1. Pursuant to California Labor Code § 2699(1)(2), or otherwise for the purposes of obtaining court approval of the Settlement, Plaintiff will file a Stipulation for Approval, separate declaration(s) advocating that the Settlement is fair, adequate, and reasonable, and any other documents in support of approval of the Settlement. Defendant shall not oppose the filing of any of these documents so long as they are not inconsistent with the terms of this Agreement. Defendant shall also reasonably cooperate with any efforts to obtain approval of this Settlement.

2. No later than forty-five (45) calendar days after Court order approving this settlement, Defendant shall send to the Settlement Administrator a list of all PAGA Employees consisting of each PAGA Employee's: (1) full name; (2) last known address; (3) social security number; and (4) the number of Eligible Pay Periods they worked as a non-exempt employee of Defendant in California during the PAGA Release Period (the "PAGA Employees List"). This information shall be treated as and remain confidential and shall be used solely to manage the notice and payment process described herein, and it shall not be disclosed to anyone other than the Settlement Administrator, except to applicable taxing authorities, or pursuant to express written authorization of Defendant, the individual in question, or by order of the Court.

3. The Settlement of \$250,000 shall be funded by Defendant within twenty (20) calendar days of a Court order approving this settlement. Within ten (10) calendar days of receiving the Gross Settlement Amount, the Settlement Administrator will make all payments provided under this settlement including: (1) payment of attorneys' fees and costs to Aggrieved Employee's counsel, (2) payment of a service award to Aggrieved Employee, and (3) payment to the LWDA and PAGA Employees for PAGA penalties. With respect to payments to PAGA Employees, the Settlement Administrator shall send by first-class mail, at their last known address, the court-approved notice of this settlement, and their payment. The Settlement Administrator will skip trace and re-mail all returned, undelivered mail within ten (10) days of receiving notice that a notice was undeliverable.

4. The Settlement Administrator will perform all settlement administration duties, including (i) performing a National Change of Address ("NCOA") search to update the addresses of the PAGA Employees, (ii) issuing the Notice and payments to the PAGA Employees, (iii) issuing any required IRS forms, and (iv) issuing payment to the LWDA and Plaintiff's Counsel. The Settlement Administrator shall issue the Notice and a percentage of the payments to the PAGA Employees along with required IRS forms and issue payment to the LWDA for PAGA penalties, a Service Award to Plaintiff, and Attorneys' Fees and Costs to Plaintiff's Counsel based upon the payment, no later than ten (10) calendar days after it receives payment of the full Gross Settlement Amount from Defendant.

5. PAGA Employees shall have one hundred and eighty (180) calendar days after the mailing to cash or deposit their settlement checks. If any PAGA Employee's check is not cashed or deposited within that period, the check will be voided and a stop-payment will be issued. Any funds in the Settlement Administrator's account as a result of a failure to timely cash a settlement check shall be paid to the State of California Controller's Unclaimed Property division. Neither Defendant, Defendant's Counsel, Plaintiff's Counsel, nor Plaintiff will have any liability for lost or stolen settlement checks, forged signatures on settlement checks, unauthorized negotiation of settlement checks or failure to timely cash a settlement check within the 180-day period. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.

6. Upon the Effective Date, the Parties will: (i) be bound by the terms and conditions of this Agreement, and the releases set forth therein; and (ii) be deemed to have waived all objections and oppositions to the fairness, reasonableness, and adequacy of the settlement and the Court's Final Order and Judgment.

G. Miscellaneous Provisions.

1. **Voiding the Agreement:** The Settlement Agreement shall be voidable and unenforceable as to all Parties herein at the option of either Party if (a) the Court should for any reason fail to approve this Settlement in the form agreed to by the Parties, or (b) the Court should for any reason fail to enter a judgment, or (c) the approval of the Settlement and judgment is reversed, modified or declared or rendered void. In that event, then neither the Settlement nor any of the related negotiations or proceedings shall be of any force or effect, and all parties to the Settlement shall stand in the same position, without prejudice, as if the Settlement had been neither entered into nor filed with the Court. Any fees already incurred by the Settlement Administrator shall be split between the Parties. Notwithstanding the foregoing, the Parties shall attempt in good faith to cure any perceived defects in the Settlement to facilitate approval.

2. **Waiver:** The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

3. **Parties' Authority:** The signatories hereto represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.

4. **Mutual Full Cooperation:** The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement Agreement, Plaintiff's Counsel shall, with the assistance and cooperation of Defendant and Defendant's counsel, take all necessary steps to secure the Court's approval of the settlement, and the Final Order.

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

6. **No Admission:** Defendant denies any and all liability to Plaintiff and/or the PAGA Employees in this Lawsuit, as to any and all causes of action that were asserted or that might have been asserted in this Action. In particular, but without limiting the generality of the foregoing, nothing about this Settlement shall be offered or construed as an admission that Defendant violated any obligations under the California Labor Code, applicable Industrial Welfare Commission Wage Orders, or Business and Professions Code, or of liability in general, or any wrongdoing, impropriety, responsibility, or fault whatsoever. Nonetheless, Defendant desires to settle and compromise the matters at issue in the Operative Complaint to avoid further substantial expense and the inconvenience and distraction of protracted and

burdensome litigation. Defendant also has taken into account the uncertainty and risks inherent in litigation and, without conceding any infirmity in the defenses that it has asserted or could assert against Plaintiff and the PAGA Employees, has determined that it is desirable and beneficial that Plaintiff's and the PAGA Employees' claims be settled in the manner and upon the terms and conditions set forth in this Agreement.

7. **Non-Publication.** Plaintiff and Plaintiff's counsel agree not to disclosure or publicize the Settlement, its term or contents, or the negotiations underlying the same, in any manner or form, directly or indirectly, to any person or entity, except as required by law, ordered by the Court, or contractually necessary to effectuate the terms of the Settlement as set forth herein. However, for the limited purpose of allowing Plaintiff's Counsel to prove adequacy as class counsel or counsel for aggrieved employees in other actions, Plaintiff's Counsel may disclose solely the name of the Parties in this action and the venue/case number of this action for such purposes.

8. **Binding Settlement:** Nothing contained herein, nor the consummation of this Settlement Agreement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this Settlement Agreement with the intention of avoiding further disputes and litigation with the attendant inconvenience and expenses. This Settlement Agreement is a settlement document and shall, 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 Settlement Agreement.

9. **Enforcement Actions:** Except as otherwise provided in this Settlement Agreement, in the event that one or more of the Parties to this Settlement Agreement institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement Agreement or to declare rights and/or obligations under this Settlement Agreement, the successful Party or Parties shall be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs incurred in connection with any enforcement actions.

10. **Notices:** All notices shall be provided by United States mail and electronic mail. 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 calendar day after mailing by United States mail and electronic mail, addressed as follows:

To Plaintiff:

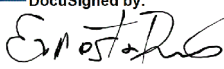
Scott E. Wheeler, Esq.
Justin A. Wheeler, Esq.
Law Office of Scott E. Wheeler
250 West First Street, Suite 216
Claremont, California 91711
Tel: (909) 621-4988
Fax: (909) 621-4622
E-mail: sew@scottwheelerlawoffice.com
jaw@scottwheelerlawoffice.com

18. **Entire Agreement:** This Agreement sets forth the entire agreement between the Parties hereto and fully supersedes any and all prior and/or supplemental understandings, whether written or oral, between the Parties concerning the subject matter of this Agreement. Any modification to this Agreement must be in writing and signed by the Parties.

IN WITNESS WHEREOF, the parties knowingly and voluntarily executed this Settlement Agreement and Release as of the date set forth below.

Dated: 2/2/2023

PLAINTIFF

DocuSigned by:

081D01E7971D453...

Ernesto A. Rivera-Galicia

Dated: _____

DEFENDANT, NP MECHANICAL, INC.

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

Dated: _____

THE LAW OFFICE OF SCOTT E. WHEELER

Scott E. Wheeler
Justin A. Wheeler

Attorney for Plaintiff and the other PAGA
Employees

Dated: _____

KRING & CHUNG, LLP

Kyle D. Kring
Kerri N. Kramer

Attorneys for Defendant NP Mechanical, Inc.

18. **Entire Agreement:** This Agreement sets forth the entire agreement between the Parties hereto and fully supersedes any and all prior and/or supplemental understandings, whether written or oral, between the Parties concerning the subject matter of this Agreement. Any modification to this Agreement must be in writing and signed by the Parties.

IN WITNESS WHEREOF, the parties knowingly and voluntarily executed this Settlement Agreement and Release as of the date set forth below.

Dated: _____

PLAINTIFF

Ernesto A. Rivera-Galicia

Dated: _____

DEFENDANT, NP MECHANICAL, INC.

By: _____



1/27/23

Name: _____

Ernesto Garcia

Title: _____

CFO

APPROVED AS TO FORM:

Dated: _____



THE LAW OFFICE OF SCOTT E. WHEELER

Scott E. Wheeler

Justin A. Wheeler

Attorney for Plaintiff and the other PAGA Employees

Dated: January 30, 2023

KRING & CHUNG, LLP

Kyle D. Krings

Kerri N. Kramer

Attorneys for Defendant NP Mechanical, Inc.

To Defendant:

Kyle D. Kring, Esq.
Kerri N. Kramer, Esq.
Kring & Chung, LLP
38 Corporate Park
Irvine, California 92606
E-mail: kkring@kringandchung.com
kkramer@kringandchung.com

11. **Construction:** The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or her or its counsel participated in the drafting of this Settlement Agreement. To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday, or legal holiday, that deadline shall be continued until the following business day.

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

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

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

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

16. **Binding On Assigns:** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

17. **Counterparts:** This Settlement Agreement may be executed in counterparts, and when each 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 Settlement Agreement, which shall be binding upon and effective as to all Parties. Electronic delivery shall be deemed an original.

EXHIBIT 1

1 **LAW OFFICE OF SCOTT E. WHEELER**

Scott E. Wheeler (SBN 187998)

2 Justin A. Wheeler (SBN 342226)

250 West First Street, Suite 216

3 Claremont, CA 91711

Telephone: (909) 621-4988

4 Facsimile: (909) 621-4622

E-mail: sew@scottwheelerlawoffice.com

5 jaw@scottwheelerlawoffice.com

6 *Attorneys for Plaintiff and the other Aggrieved*
7 *Employees*

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF SAN BERNARDINO**

13 ERNESTO A. RIVERA-GALICIA,
14 individually, and on behalf of all other
aggrieved employees,

15 Plaintiff,

16 v.

17 NP MECHANICAL, INC., a California
18 corporation; and DOES 1 through 50,
inclusive,

19 Defendants.

Case No.: CIVSB2223483

[Assigned for all purposes to the Honorable
David Cohn, Department S-26]

**[PROPOSED] FINAL ORDER AND
JUDGMENT APPROVING PAGA
SETTLEMENT**

1 **[PROPOSED] FINAL ORDER AND JUDGMENT**

2 Plaintiff Ernesto A. Rivera-Galicia's unopposed Motion for Approval of PAGA Settlement
3 came on for hearing on April 18, 2023, at 9:00 a.m. before the Honorable David Cohn, Department
4 S-26 of the above-entitled Court. The Court has considered the proposed PAGA Settlement
5 Agreement, and all evidence filed in support thereof. This Order and Judgment incorporates the
6 following defined terms.

7 **DEFINED TERMS**

8 1. "Operative Complaint" means Plaintiff's PAGA Complaint filed by Plaintiff in this
9 action (the "Action") on December 28, 2022.

10 2. "LWDA Notice" means the January 21, 2022, letter submitted by Plaintiff to the
11 Labor and Workforce Development Agency (LWDA) notifying the LWDA of alleged California
12 Labor Code violations by Defendant.

13 3. "PAGA Employees" means all non-exempt employees of Defendant who worked
14 for Defendant in California from January 21, 2021 through February 13, 2023.

15 4. "PAGA Representative Claims" means Plaintiff's PAGA claims under California
16 Labor Code § 2698 *et. seq.* based on alleged predicate violations of the California Labor Code
17 including, without limitation, §§ 201, 202, 203, 204, 210, 225.5, 226, 226.2, 226.3, 226.7, 246,
18 248.1, 248.2, 248.6, 510, 512, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1199, 2802, and 2699, and
19 violations of the accompanying and relevant IWC Wage Order provisions (including the
20 Minimum Wage Order and Wage Order 16-2001) cited in Plaintiff's LWDA Notice and/or alleged
21 in the Operative Complaint (the "PAGA Claims").

22 5. "PAGA Settlement" or "Settlement" means the settlement of the Action as
23 memorialized in the Settlement Agreement.

24 6. "PAGA Release Period" means January 21, 2021 through February 13, 2023.

25 **TERMS OF THE ORDER AND JUDGMENT**

26 The Court has determined that the Settlement provides genuine and meaningful relief that
27 benefits the public, is fair, adequate, reasonable, and otherwise being fully informed and good cause
28 appearing therefor, it is hereby ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1 1. Unless otherwise provided herein, all capitalized terms used herein shall have the
2 same meaning as defined in the Settlement Agreement and Release (“Settlement Agreement”). The
3 Court has jurisdiction over the subject matter of this lawsuit and all matters relating thereto, and
4 over all parties to the action.

5 2. The Court finds that the Settlement has been reached as a result of serious and non-
6 collusive, arm’s-length negotiations. The Court has considered the nature of the claims, the
7 procedural history of this case, the amounts to be paid under the Settlement, the involvement of an
8 experienced private mediator to facilitate the Settlement, the risks of continued litigation that
9 Plaintiff would face, the civil penalties recoverable if Plaintiff was to prevail at trial on his theories
10 of liability under his PAGA claim, the allocation of settlement proceeds among the PAGA
11 Employees, and the fact that a settlement represents a compromise of the Parties’ respective
12 positions rather than the result of a finding of liability at trial.

13 3. The Court hereby finds the Settlement involves the resolution of a bona fide dispute,
14 was entered into in good faith, and is fair, reasonable, and adequate. The Court also finds that the
15 Settlement provides genuine and meaningful relief that benefits the public consistent with the
16 purpose of the Private Attorneys General Act of 2004, California Labor Code § 2699 *et seq.*

17 4. The Court therefore approves the Settlement as set forth in the Settlement
18 Agreement and directs the Parties to effectuate the Settlement according to the terms set forth in the
19 Settlement Agreement.

20 5. Neither the Settlement nor any of the terms set forth in the Settlement Agreement are
21 admissions by Defendant, or any of the other Released Parties, of liability on any of the allegations
22 alleged in the Action or otherwise, nor is this Order a finding of the validity of any claims in the
23 Action, or of any wrongdoing by the Defendant, or any of the other Released Parties.

24 6. The Court finds that Plaintiff’s Counsel has adequately represented the Plaintiff, the
25 PAGA Employees, and the LWDA for purposes of entering into and implementing the Settlement.

26 7. The Court finds that the Settlement, and in particular the Gross Settlement Amount
27 (“GSA”) of \$250,000.00 total to be distributed as set forth herein and in the Settlement Agreement,
28

1 is in all respects fair, reasonable, and adequate and is hereby approved. *See* California Labor Code
2 § 2699(1)(2).

3 8. Pursuant to the terms of the Settlement, Administration Costs in the amount of
4 \$6,995, which are necessary to administer the Settlement, are hereby granted and shall be paid to
5 Phoenix Settlement Administrators, the designated third-party Settlement Administrator.

6 9. Pursuant to the terms of the Settlement, the requested attorneys' fees in the amount
7 of \$83,250.00 are reasonable under the common fund method and the lodestar method. The GSA of
8 a total of \$250,000.00 represents a true and common fund, as Defendant must pay the full GSA and
9 no amount of the GSA will return to Defendant under any circumstances. It is recognized that
10 attorneys who recover a common fund are entitled to a reasonable fee award from the fund. *See*,
11 *e.g.*, *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478 ("a litigant or a lawyer who recovers a
12 common fund for the benefit of persons other than himself or his client is entitled to a reasonable
13 attorney's fee from the fund as a whole."); *In re Washington Public Power Supply Sys. Sec. Litig.*
14 (9th Cir. 1994) 19 F.3d 1291, 1300 ("[T]hose who benefit from the creation of the fund should share
15 the wealth with the lawyers whose skill and effort helped create it."); *Serrano v. Priest* (1977) 20
16 Cal.3d 25, 34 ("[W]hen a number of persons are entitled in common to a specific fund, and an
17 action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation
18 of that fund, such plaintiff or plaintiffs may be awarded attorney's fees out of the fund.
19 [Citations.]"). Moreover, one-third of the common fund is standard in settlements similar to this
20 one. *See, e.g.*, *Laffitte v. Robert Half International Inc.* (2016) 1 Cal.5th 480, 506 (approving fees
21 of one-third of the common fund); *In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558
22 n.13 ("Empirical studies show that, regardless whether the percentage method or the lodestar method
23 is used, fee awards in class actions average around one-third of the recovery."); *Chavez v. Netflix,*
24 *Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (recognizing that fee awards in class actions average around
25 one-third of the recovery"). Courts also regularly approve fee awards in excess of one-third of the
26 fund. *See, e.g.*, *Cubillas v. Dav-El Los Angeles*, 2018 WL 3760657, at *3-4 (Cal. Super.) (awarding
27 \$1.12 million in attorneys' fees, equivalent to 40% of the common fund, where lodestar-multiplier
28 exceeded the fee request).

1 10. The Court also finds that the requested attorneys' fees are reasonable under the
2 lodestar method, or as a crosscheck on the percentage fee. *See Laffitte*, 1 Cal.5th at 506. Plaintiff's
3 counsel's lodestar exceeds the attorneys' fees amount of \$83,250.00. In fact, the fee award amounts
4 to an implied negative multiplier on Plaintiff's counsel's lodestar.

5 11. The Court further finds that Plaintiff's counsel's requested litigation costs of
6 \$13,851.26 are reasonable and were necessary to prosecute the action.

7 12. Accordingly, and consistent with California Labor Code § 2699(g)(1), which
8 authorizes an award of attorneys' fees and costs, the requested attorneys' fees in the amount of
9 \$83,250.00 and litigation costs in the amount of \$13,851.26, are hereby granted and shall be paid
10 to the Law Office of Scott E. Wheeler pursuant to the terms of the Settlement.

11 13. Pursuant to the terms of the Settlement, a service award to Plaintiff Ernesto A.
12 Rivera-Galicia in the amount of \$6,000.00 in recognition of his efforts in prosecuting this action for
13 the benefit of the State of California and PAGA Employees, and Plaintiff's broad general release of
14 all of his individual claims against Defendant, is hereby granted and shall be paid to Plaintiff Ernesto
15 A. Rivera-Galicia. Comparable service awards are routinely issued to named plaintiffs in analogous
16 wage-and-hour class action settlements, *see, e.g., In re Yahoo Mail Litig.*, No. 13-CV-4980-LHK,
17 2016 WL 4474612, at *11 (N.D. Cal. Aug. 25, 2016) ("Ninth Circuit has established \$5,000 as a
18 reasonable benchmark [for service awards]."); *Alikhan v. Goodrich Corp.*, 2020 WL 4919382, at *
19 (C.D. Cal. Jun. 25, 2020) (approving a \$10,000 service award), as well as PAGA settlements like
20 this one. *See, e.g., Abelar v. American Residential Services, L.L.C.*, 2019 WL 6054607, at *6 (C.D.
21 Cal. Nov. 14, 2019) (approving PAGA only settlement and holding "[t]he service award of \$5000
22 is reasonable compensation for the time and acceptance of adverse employment risk by Plaintiff.").

23 14. After deducting Settlement Administration Costs, Attorneys' Fees and Costs, and the
24 Service Awards from the GSA, the remainder of \$139,903.74, consistent with California Labor
25 Code § 2699(i), shall be allocated seventy-five percent (75%) to the LWDA and twenty-five percent
26 (25%) to PAGA Employees. Accordingly, \$104,927.80 shall be paid to the LWDA, and
27 \$34,975.94 shall be paid to PAGA Employees. The payments to the PAGA Employees will be paid
28

1 proportionally based on the number of pay periods that each individual employee worked for
2 Defendant during the PAGA Release Period.

3 15. As of the Effective Date, Plaintiff, as the representative for the State of California,
4 and on behalf of all PAGA Employees, will forever completely release and discharge the Released
5 Parties from any claim for the recovery of civil penalties under the California Private Attorneys
6 General Act, California Labor Code § 2698, *et. seq.* only. It is expressly understood and agreed that
7 this settlement includes a release of all PAGA Representative Claims based on violations of
8 California Labor Code, including, without limitation, §§ 201, 202, 203, 204, 210, 225.5, 226, 226.2,
9 226.3, 226.7, 246, 248.1, 248.2, 248.6, 510, 512, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1199,
10 2802, and 2699, and violations of the accompanying and relevant IWC Wage Order provisions
11 (including the Minimum Wage Order and Wage Order 16-2001) cited in Plaintiff's LWDA Notice
12 and/or alleged in the Operative Complaint (the "PAGA Claims"). The release shall be effective as
13 of the Effective Date, and it shall apply to claims within the above scope impacting the PAGA
14 Employees arising within the PAGA Release Period. This settlement agreement shall not impact
15 any PAGA Employee's ability to assert Labor Code claims other than PAGA claims (i.e., a claim
16 brought under California Labor Code § 2698, *et. seq.*) unless such claim is subject to res judicata,
17 issue preclusion, or claim estoppel.

18 16. In accordance with California law as stated in *inter alia* *Arias v. Superior Court*
19 (2009) 46 Cal.4th 969, 985, a judgment in "a representative action brought by an aggrieved
20 employee under the Labor Code Private Attorneys General Act of 2004 . . . is binding not only on
21 the named employee plaintiff but also on government agencies and any aggrieved employee not a
22 party to the proceeding." Thus, both the named employee plaintiff and nonparty aggrieved
23 employees (i.e. all PAGA Employees) are bound by this Order and Judgment. *Id.* at 986. However,
24 the Parties' Settlement Agreement shall not impact any PAGA Employee's ability to assert Labor
25 Code claims other than the PAGA claims (i.e., a claim brought under California Labor Code § 2698,
26 *et. seq.*) unless such claim is subject to res judicata, issue preclusion, or claim estoppel.

27 17. Neither this Order nor the Settlement Agreement (nor any other document referred
28 to herein, nor any action taken to carry out this Order) is, may be construed as, or may be used as,

1 an admission or concession by or against Defendant or the Released Parties of the validity of any
2 claim or actual or potential fault, wrongdoing, or liability. Entering into or carrying out the
3 Settlement Agreement, and any negotiations or proceedings related to it, shall not be considered as,
4 or deemed evidence of, an admission or concession as to Defendant's denials or defenses and shall
5 not be offered or received in evidence in any action or proceeding against any party hereto in any
6 court, administrative agency or other tribunal for any purpose whatsoever, except as evidence of the
7 Settlement or to enforce the provisions of this Order and the Settlement Agreement; provided,
8 however, that this Order and the Settlement Agreement may be filed in any action against or by
9 Defendant or the Released Parties to support a defense of res judicata, collateral estoppel, release,
10 waiver, good-faith settlement, judgment bar or reduction, full faith and credit, or any other theory
11 of claim preclusion, issue preclusion or similar defense or counterclaim.

12 18. Judgment in this matter is entered in accordance with the terms of the Settlement
13 Agreement and Approval Order. This judgment is intended to be a final disposition of the above
14 captioned action in its entirety and is intended to be immediately appealable.

15 19 The Court reserves exclusive and continuing jurisdiction over the lawsuit for the
16 purposes of supervising the implementation, enforcement, construction, administration, and
17 interpretation of the Settlement Agreement and this Order.

18 **IT IS SO ORDERED.**

19 DATED: _____
20

21 _____
22 HONORABLE DAVID COHN
23 JUDGE OF THE SUPERIOR COURT
24
25
26
27
28

EXHIBIT 2

<<DATE>>

<<FIRST_NAME>> <<LAST_NAME>>

<<ADDRESS 1>>

<<ADDRESS 2>>

Re: Payment From PAGA Settlement

Dear <<FIRST_NAME>> <<LAST_NAME>>:

Enclosed is your payment from the Court-approved settlement of the lawsuit entitled *Ernesto A. Rivera-Galicia v. NP Mechanical, Inc.*, San Bernardino Superior Court, Case No. _____ (the "Lawsuit"). You are receiving this payment as your share of the Settlement. You have 180 days to cash or deposit the settlement check. If you do not cash or deposit your settlement check by on or before _____, those funds will be paid in your name to the State of California Controller's Unclaimed Property division. You are responsible for correctly characterizing this compensation for tax purposes and paying any taxes that may be due on the payment.

The Lawsuit was filed by Ernesto A. Rivera-Galicia ("Plaintiff") against NP Mechanical, Inc. ("Defendant") pursuant to the California Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et seq.* (called "PAGA"). The claim was brought on behalf of the State of California and all aggrieved employees of Defendant (the "PAGA Employees"). You have been identified as one of the PAGA Employees on whose behalf the case was brought.

Plaintiff claimed that Defendant owed penalties under PAGA for violations of California Labor Code §§ 201, 202, 203, 204, 210, 225.5, 226, 226.2, 226.3, 226.7, 246, 248.1, 248.2, 248.6, 510, 512, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1199, 2802, and 2699, and violations of the accompanying and relevant IWC Wage Order provisions (including pursuant to the Minimum Wage Order and Wage Order 16-2001) cited in Plaintiff's LWDA Notice and/or alleged in the Operative Complaint (the "PAGA Claims").

Defendant denies that it did anything wrong and denies that it owes any penalties. **No court has made a decision about the allegations, the lawfulness of Defendant's conduct, or the merits of Plaintiff's claims.** In order to avoid the time and expense of continued litigation, Defendant has agreed to resolve the claims raised in the Lawsuit without further court action. The parties agreed to resolve the case, and as part of that settlement, Defendant agreed to pay a certain amount of money categorized as PAGA penalties.

The Court approved the Settlement on _____. Under California law and the terms of the parties' agreement, Plaintiff's counsel received one-third of the settlement for attorneys' fees along with their actual costs incurred, Plaintiff received a service award of \$6,000, and the Settlement Administrator received \$6,995 for their administration of the Settlement; 75 percent of the remaining amount is awarded to the State of California and 25 percent is paid to the non-exempt employees who worked during the applicable period.

In exchange for this payment, the settlement releases any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, action or causes of action contingent or accrued for, arising out of the PAGA Claims for the period of January 21, 2021 through February 13, 2023 (the "Released Claims"). The Final Order and Judgment entered by the Court is binding on all the PAGA Employees, including you, as to the Released Claims. The settlement does not release any individual claims belonging to you, unless such claim is subject to res judicata, issue preclusion, or collateral estoppel.

This Notice summarizes the Action and the basic terms of the Settlement. For more complete information, the pleadings and other records in this litigation may be examined during regular court hours at the San Bernardino Superior Court, located at 247 West 3rd Street, San Bernardino, CA 92415, between 8:30 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

If you have any questions about this payment, contact the Settlement Administrator at [CONTACT]. Please note that the Settlement Administrator, the Parties, and their attorneys cannot provide tax advice.