

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement”) is reached by and between Plaintiff Daniel A. Munoz (“Plaintiff”), as an individual and on behalf of all members of the Settlement Class (defined below), on one hand, and Defendant S&W Roof Tear-Off Corporation (hereinafter “Defendant”), on the other hand. Plaintiff and Defendant are referred to herein collectively as the “Parties.” Plaintiff and the Settlement Class are represented by Paul K. Haines and Sean M. Blakely of Haines Law Group, APC (“Class Counsel”). Defendant is represented by Craig D. Fuller and Karen L. Wishnev of Fuller Law Group P.C.

On February 15, 2022, Plaintiff submitted a letter to the Labor and Workforce Development Agency (the “LWDA”) and mailed it via certified mail to Defendant (the “LWDA Exhaustion Letter”), in accordance with the requirements of Labor Code section 2699.3(a)(1)(A), to notify the LWDA of the alleged violations of the California Labor Code by Defendant arising from Plaintiff’s employment with Defendant. The LWDA Exhaustion Letter instituting LWDA Case No. LWDA-CM-868385-22, alleged that Defendant had violated California Labor Code sections 201, 202, 203, 204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1174, 1182.12, 1194, 1194.2, 1197, 1198 and Wage Order 16, including sections 3, 4, 10 and 11. The LWDA Exhaustion Letter also indicated Plaintiff intended to pursue a representative civil action under PAGA against Defendant as well as a class action. The LWDA declined to investigate the alleged violations, permitting Plaintiff to initiate a PAGA action in court.

On February 15, 2022, Plaintiff filed a class action complaint against Defendant in the matter entitled *Daniel A. Munoz v. S&W Roof Tear-Off Corporation*, San Diego County Superior Court Case No. 37-2022-00005924-CU-OE-CTL (the “Action”) On April 22, 2022, Plaintiff filed the operative First Amended Class and Representative Action Complaint (“FAC”) which alleges the following causes of action: (1) minimum wage violations; (2) failure to pay all overtime wages; (3) meal period violations; (4) rest period violations; (5) waiting time penalties; (6) wage statement violations; (7) unfair competition; and (8) civil penalties under the Private Attorneys General Act (“PAGA”).

Given the uncertainty of litigation, Plaintiff and Defendant wish to settle each individually and on behalf of the Settlement Class. Accordingly, Plaintiff and Defendant agree as follows:

1. **Settlement Class.** For the purposes of this Settlement Agreement only, Plaintiff and Defendant stipulate to the certification of the following Settlement Class:

All current and former non-exempt employees employed by Defendant S&W Roof Tear-Off Corporation in California at any time from February 15, 2018 through the date of preliminary approval of this Settlement (the “Class Period”).

The Parties agree that certification for purposes of this Settlement Agreement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure or under Rule 23 of the Federal Rule of Civil Procedure. If for any reason this Settlement Agreement is not approved, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations,

and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement.

Release by Settlement Class Members and Plaintiff. Upon the Effective Date and the complete funding of the Maximum Settlement Amount, Plaintiff and every member of the Settlement Class (except those who opt out and except as to the PAGA claims specified below) will fully release and discharge Defendant, and all of its past, present and future, officers, directors, shareholders, partners, employees, agents, principals, heirs, family members, predecessors, successors, members, managers, representatives, accountants, auditors, consultants, insurers, and their respective successors and predecessors in interest, subsidiaries, affiliates, assigns, parents, PEOs, attorneys, and/or any other individual or entity which could be liable for the acts or omissions (collectively the “Released Parties”), as follows:

- A. Settlement Class members will release all claims, demands, rights, liabilities and causes of action that were pled in the operative First Amended Class and Representative Action Complaint, or which could have been pled in the First Amended Class and Representative Action Complaint, that arose during the Class Period, including: (a) failure to pay all overtime wages; (b) failure to pay all minimum wages; (c) failure to provide all meal periods, or premium pay for non-compliant meal periods; (d) failure to authorize and permit all rest periods, or premium pay for non-compliant rest periods; (e) failure to furnish accurate and compliant itemized wage statements; (f) failure to timely pay all wages due or final wages due; and (g) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories of relief pled in the Action (“Class Member Released Claims”). The period of the Class Member Released Claims shall extend to the limits of the Class Period.
- B. **Release of PAGA Claims.** In addition, all Settlement Class members (regardless of whether they opt out) who worked for Defendant at any time from February 15, 2021 through the date of preliminary approval of the Settlement (the “PAGA Period”) are “Aggrieved Employees” and shall release the Released Parties from all claims for civil penalties that could have been premised on the facts alleged within the February 15, 2022 exhaustion letter filed with the LWDA by Plaintiff Munoz (“the PAGA Released Claims”).
- C. **Release by Plaintiff.** In light of Plaintiff’s Class Representative Enhancement Payment, and upon Defendant’s complete funding of the Maximum Settlement Amount, Plaintiff has agreed to release, individually and in addition to the Class Member Released Claims described above, all claims, whether known or unknown, under federal law or state law against the Released Parties. The Parties understand and agree that Plaintiff is not, by way of this release, releasing any workers’ compensation claims nor any other claims which cannot be released as a matter of law. Notwithstanding the foregoing, Plaintiff understands that this release includes unknown claims and that Plaintiff is, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

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

Specifically excluded from Plaintiff's Released Claims are any claims that cannot be released as a matter of law, such as claims for workers' compensation benefits or unemployment benefits. No workers' compensation claims are being resolved under this Settlement.

2. **Maximum Settlement Amount.** As consideration, Defendant agrees to pay a non-reversionary "Maximum Settlement Amount" of Two Hundred Seventy-Five Thousand Dollars and Zero Cents (\$275,000.00) in full and complete settlement of the Action, as follows:

- A. The Parties have agreed to engage Phoenix Settlement Administrators as the "Settlement Administrator" to administer this Settlement.
- B. The Maximum Settlement Amount shall be deposited with the Settlement Administrator upon the Effective Date (which, for this purpose, shall be defined as the later of (1) date on which the Court enters an Order granting Final Approval of the Settlement Agreement or, (2) solely in the event that there are any objections to the Settlement Agreement (the filing of an objection being a prerequisite to the filing of an appeal), the later of: (i) the last date on which any appeal might be filed or (ii) the successful resolution of any appeal(s) – including expiration of any time to seek reconsideration or further review), and by September 1, 2024. In the event that the Settlement Agreement is not granted Final Approval, or does not become Final, any funds deposited with the Settlement Administrator by Defendant shall be returned to Defendant within fifteen (15) days of a Court Order or other decision denying final approval of the Settlement Agreement.
- C. This is a non-reversionary settlement. The Maximum Settlement Amount includes:
 - (1) All payments (including interest) to the Settlement Class;
 - (2) All costs of the Settlement Administrator and settlement administration, which are anticipated to be no greater than Twelve Thousand Dollars and Zero Cents (\$12,000.00);
 - (3) Up to Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to Plaintiff, for Plaintiff's Class Representative Enhancement Payment, in recognition of his contributions to the Lawsuit and his service to the Settlement Class. Even in the event that the Court reduces or does not approve the requested Class Representative Enhancement Payment, Plaintiff shall not have the right to revoke this Settlement Agreement, and it will remain binding;

- (4) Up to one-third of the Maximum Settlement Amount in Class Counsel's attorneys' fees, plus actual costs and expenses incurred by Class Counsel related to the Lawsuit as supported by declaration, which are currently estimated to be no greater than Twenty Thousand Dollars and Zero Cents (\$20,000.00). In the event that the Court reduces or does not approve the requested Class Counsel attorneys' fees or costs, Class Counsel shall not have the right to revoke this Settlement Agreement, and it will remain binding; and
- (5) Twenty Thousand Dollars and Zero Cents (\$20,000.00) of the Maximum Settlement Amount has been set aside by the Parties as PAGA civil penalties. Per Labor Code § 2699(i), seventy-five percent (75%) of such penalties, or Fifteen Thousand Dollars and Zero Cents (\$15,000.00) will be payable to the Labor & Workforce Development Agency ("LWDA"), and the remaining twenty-five percent (25%), or Five Thousand Dollars and Zero Cents (\$5,000.00), will be payable to certain Settlement Class members as the "PAGA Amount," which PAGA Amount will be distributed as described below.

D. **Escalator Clause.** The Maximum Settlement amount is based on Defendant's representations that there are approximately 321 total Settlement Class members employed by Defendant during the Class Period. If, at the time of preliminary approval, the number of employees has increased by 10% or more (i.e., if there are 353 or more employees), Plaintiff shall have the sole right to terminate the Settlement. Defendant can preempt Plaintiff's right to terminate the Settlement by increasing the Maximum Settlement Amount by a proportional basis (i.e., if there is a 20% increase in the number of Class Members, Defendant can preempt Plaintiff's right to terminate the Settlement by increasing the Maximum Settlement Amount by 20%).

E. Defendant's share of payroll taxes shall be paid by Defendant separately from, and in addition to, the Maximum Settlement Amount.

4. **Payments to the Settlement Class.** Settlement Class members are not required to submit a claim form to receive a payment ("Individual Settlement Payment") from the Settlement. Individual Settlement Payments will be determined and paid as follows:

- A. The Settlement Administrator shall first deduct from the Maximum Settlement Amount the amounts approved by the Court for Class Counsel's attorneys' fees, Class Counsel's costs and expenses, Plaintiff's Class Representative Enhancement Payment, the Settlement Administrator's fees and expenses for administration, and the total amount designated as PAGA civil penalties. The remaining amount shall be known as the "Net Settlement Amount."
- B. From the Net Settlement Amount, the Settlement Administrator will calculate each Settlement Class member's Individual Settlement Payment based on the following formula:

- i. Payments to all participating Settlement Class members: The Net Settlement Amount will be distributed to all participating Settlement Class members based on each participating Settlement Class member's proportionate Workweeks worked during the Class Period, and will be calculated by multiplying the Net Settlement Amount by a fraction, the numerator of which is the participating Settlement Class member's number of Workweeks worked during the Class Period, and the denominator of which is the total Workweeks worked by all participating Settlement Class members during the Class Period.
 - ii. In addition to the Net Settlement Amount, the PAGA Amount will be allocated as follows. Each Aggrieved Employee who was employed by Defendant at any time during the PAGA Period (including those who submit a valid and timely Request for Exclusion from the class action settlement), shall receive a portion of the PAGA Amount proportionate to the number of Workweeks worked during the PAGA Period, and which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the Aggrieved Employee's gross number of Workweeks worked during the PAGA Period, and the denominator of which is the total number of Workweeks worked by all Aggrieved Employees (including those who submit a valid and timely Request for Exclusion from the class action settlement) during the PAGA Period.
- C. Within ten (10) calendar days following Defendant's deposit of the Maximum Settlement Amount with the Settlement Administrator, the Settlement Administrator will calculate Individual Settlement Payment amounts and provide the same to the Parties' counsel for review and approval. Within seven (7) calendar days of approval by the Parties' counsel, the Settlement Administrator will prepare and mail Individual Settlement Payments, less applicable taxes and withholdings, to participating Settlement Class members. The Settlement Administrator shall simultaneously pay the withholdings to the applicable authorities with the necessary reports, submitting copies to Defendant's counsel.
- D. For purposes of calculating applicable taxes and withholdings, each Settlement Payment shall be allocated as follows: Any payment from the PAGA Amount will be classified as 100% penalties. Any payment from the NSA shall be classified as eighty percent (80%) as penalties and interest; and twenty percent (20%) as wages. The Settlement Administrator will be responsible for issuing to participating Settlement Class members IRS Forms W-2 for amounts deemed "wages" and IRS Forms 1099 for the amounts allocated as penalties and interest. Notwithstanding the treatment of the payments to each Settlement Class member above, none of the payments called for by this Settlement Agreement, including the wage portion, are to be treated as earnings, wages, pay or compensation for any purpose of any applicable benefit or retirement plan, unless required by such plans.

- E. Each member of the Settlement Class who receives an Individual Settlement Payment must cash the check(s) within one hundred eighty (180) days from the date the Settlement Administrator mails it/them. Any funds associated with a check that is not negotiated within 180 days of mailing to a Settlement Class member shall be transferred to Ronald McDonald House Charities of San Diego, Inc., 2929 Children's Way, San Diego, CA 92123, to the attention of Charles Day, President and CEO, Phone: 858-598-2420; Email: cday@rmhcsd.org (the "*cy pres* recipient"). In the event the designated *cy pres* recipient states in writing that it is unable to accept the funds, any funds associated with a check that is not negotiated to a Settlement Class member shall escheat to the California State Controller's Office for deposit in the Unclaimed Property Fund, in the name of the Settlement Class member.
- F. Neither Plaintiff nor Defendant shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.

5. **Attorneys' Fees and Costs.** Defendant will not object to Class Counsel's request for a total award of attorneys' fees of one-third of the Maximum Settlement Amount, which is currently estimated to be Ninety-One Thousand Six Hundred Sixty-Six Dollars and Sixty-Six Cents (\$91,666.66). Additionally, Class Counsel will request an award of actual costs and expenses as supported by declaration, in an amount not to exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00) from the Maximum Settlement Amount. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator when the Settlement Administrator pays the fee award allowed by the Court.

6. **Class Representative Enhancement Payment.** Defendant will not object to a request for a Class Representative Enhancement Payment of up to Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) for Plaintiff, for his time and risk in prosecuting this case, and his service to the Settlement Class. This Enhancement Payment will be in addition to Plaintiff's respective Settlement Payment as a Settlement Class member and shall be reported on an IRS Form 1099 issued by the Settlement Administrator. In the event that the Court reduces or does not approve the requested Enhancement Payment, Plaintiff shall not have the right to revoke this Settlement, and it will remain binding.

7. **Settlement Administrator.** Defendant will not object to the appointment of Phoenix Settlement Administrators as Settlement Administrator. Defendant will not object to Plaintiff's request to the Court to pay up to Twelve Thousand Dollars and Zero Cents (\$12,000.00) for its services from the Maximum Settlement Amount. The Settlement Administrator shall be responsible for sending notices and for calculating Individual Settlement Payments and preparing all checks and mailings, calculating Defendant's share of taxes payable on the wages, which shall be deducted from the Maximum Settlement Amount, and other duties as described in this

Settlement Agreement. The Settlement Administrator shall be authorized to pay itself from the Maximum Settlement Amount by Class Counsel only after Individual Settlement Payments have been mailed to all participating Settlement Class members. The Settlement Administrator shall also be responsible for posting the Final Judgment to its website.

8. **Preliminary Approval.** Within a reasonable time after execution of this Settlement Agreement by the Parties, Plaintiff shall apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for purposes of this Settlement Agreement;
- B. Appointing Paul K. Haines and Sean M. Blakely of Haines Law Group, APC as Class Counsel;
- C. Appointing Plaintiff Daniel A. Munoz as Class Representative for the Settlement Class;
- D. Approving Phoenix Settlement Administrators as Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- F. Approving the form and content of the Notice Packet (which is comprised of the Class Notice and Notice of Estimated Settlement Payment, drafts of which are attached hereto as Exhibits A and B, respectively), and directing the mailing of same; and
- G. Scheduling a Final Approval hearing.

9. **Notice to Settlement Class.** Following preliminary approval, the Settlement Class shall be notified as follows:

- A. Within ten (10) business days after entry of an order preliminarily approving this Settlement, Defendant will provide the Settlement Administrator with the names, last known addresses, phone numbers, social security numbers, the dates of employment, and the number of workweeks worked by each Settlement Class member while employed during the Class Period (the “Class Data”). The Class Data shall be provided to the Settlement Administrator in an electronic format satisfactory to the Settlement Administrator.
- B. Within ten (10) business days from receipt of this information, the Settlement Administrator shall (i) run the names of all Settlement Class members through the National Change of Address (“NCOA”) database to determine any updated addresses for Settlement Class members; (ii) update the address of any Settlement Class member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Individual Settlement Payment for each Settlement Class member; and (iv) mail a Notice Packet to each Settlement Class member at

his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.

- C. Requests for Exclusion. Any Settlement Class member who wishes to opt-out of the Settlement must complete and mail a Request for Exclusion (defined below) to the Settlement Administrator within forty-five (45) calendar days of the date of the initial mailing of the Notice Packets (the “Response Deadline”).
- i. The Notice Packet shall state that Settlement Class members who wish to exclude themselves from the Settlement must submit a Request for Exclusion by the Response Deadline. The Request for Exclusion must: (1) contain the name, address, telephone number and the last four digits of the Social Security number of the Settlement Class member; (2) contain a statement that the Settlement Class member wishes to be excluded from the Settlement; (3) be signed by the Settlement Class member; and (4) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion does not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from the Settlement, except a Request for Exclusion not containing a Settlement Class member’s telephone number and/or last four digits of the Social Security number will be deemed valid. The date of the postmark on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class member who requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement and will not be bound by the terms of the Settlement or have any right to object, appeal or comment thereon. Notwithstanding the foregoing, the PAGA settlement and release provisions will apply to all Settlement Class members whether or not they exclude themselves from the class action settlement. Settlement Class members who were employed by Defendant at any time during the PAGA Period and submit a valid and timely Request for Exclusion shall still be entitled to their portion of the PAGA Amount described above, and will release all PAGA Released Claims, whether they submit a valid and timely Request for Exclusion or not.
- D. Objections. Members of the Settlement Class who do not request exclusion may object to this Settlement Agreement as explained in the Class Notice by filing a written objection with the Settlement Administrator (who shall serve all objections as received on Class Counsel and Defendant’s counsel, as well as file all such objections with the Court). Defendant’s counsel and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval, unless the objections are filed within ten (10) days of the Motion for Final Approval filing deadline, in which case Defendant’s counsel and Class Counsel shall have ten (10) days to file a response to the objections. To be valid, any written objection should: (1) contain the objecting Settlement Class member’s full name and current address, as well as contact information for any attorney representing the objecting Settlement Class member for purposes of the objection; (2) include all objections and the factual and legal bases for same; (3) include any

and all supporting papers, briefs, written evidence, declarations, and/or other evidence; and (4) be postmarked no later than the Response Deadline. Members of the Settlement Class who do not request exclusion may also object to the Settlement by appearing at the Final Approval Hearing. Members of the Settlement class who request exclusion *may not* object to the Settlement.

- E. Notice of Estimated Settlement Payment / Disputes. Each Notice Packet mailed to a Settlement Class member shall disclose the amount of the Settlement Class member's estimated Individual Settlement Payment as well as all of the information that was used from Defendant's records in order to calculate the Settlement Payment. Settlement Class members will have the opportunity, should they disagree with Defendant's records regarding the information stated in the Notice of Estimated Settlement Payment, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement Payments under the terms of this Settlement Agreement. The Settlement Administrator's determination of the eligibility for and amount of any Individual Settlement Payment shall be binding upon the Settlement Class member and the Parties.
- F. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a "skip trace," to obtain an updated mailing address within five (5) business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet to the Settlement Class member immediately, and in any event within three (3) business days of obtaining the updated address. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class member. Settlement Class members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator shall have fourteen (14) calendar days from the date of re-mailing, or until the Response Deadline has expired, whichever is later, to submit a Request for Exclusion, Objection, or dispute. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline. If a Settlement Class member's Notice Packet is returned to the Settlement Administrator more than once as non-deliverable, then an additional Notice Packet shall not be mailed. Nothing else shall be required of, or done by, the Parties, Class Counsel, or Defendant's Counsel to provide notice of the proposed settlement.

10. **Final Approval.** Following preliminary approval and the close of the period for filing requests for exclusion, objections, or disputes under this Settlement Agreement, Plaintiff shall apply to the Court for entry of an Order:

- A. Granting final approval of the Settlement, adjudging the terms thereof to be fair, adequate, and reasonable, and directing consummation of its terms and provisions;
- B. Approving Plaintiff's and Class Counsel's request for attorneys' fees and reimbursement of costs, Class Representative Enhancement Payment, and settlement administration costs; and
- C. Entering Final Judgment pursuant to California Rule of Court 3.769. Said Judgment shall be posted on the Settlement Administrator's website.

11. **Non-Admission of Liability.** Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this Settlement. Each of the Parties has entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to Federal Evidence Code Section 408 and California Evidence Code Section 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by Federal Evidence Code Section 408 and the California Evidence Code Section 1152.

12. **No Prior Assignments.** Plaintiff and Class Counsel represent, covenant, and warrant that they have not directly or indirectly encumbered, assigned, transferred, or otherwise given away any of the claims, demands, causes of actions, or rights that they are releasing by signing this Settlement Agreement, nor has any of them purported to do so.

13. **Non-disclosure and Non-publication.** Plaintiff and Class Counsel agree not to disclose or publicize the Settlement Agreement contemplated herein, the fact of the Settlement Agreement, its terms or contents, or the negotiations underlying the Settlement Agreement, in any manner or form, directly or indirectly, to any person or entity, except to Settlement Class members and as shall be contractually required to effectuate the terms of the Settlement Agreement as set forth herein. However, for the limited purpose of allowing Class Counsel to prove adequacy as class counsel in other Lawsuits, Class Counsel may disclose the names of the Parties in this Lawsuit, the venue/case number of this Lawsuit, and a general description of the Lawsuit, to a court in a declaration by Class Counsel.

14. **Nullification.** If (a) the Court should for any reason fail to approve this Settlement consistent with the material specific terms agreed to by the Parties and set forth herein, (b) the Court should for any reason fail to enter the Final Order, or (c) the Final Order is not entered, reversed, modified, or declared or rendered void, then this Agreement shall automatically be considered null and void *ab initio*, shall be of no force or effect whatsoever, and shall not be referred to or used for any purpose whatsoever unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect. An example of a material change in the terms includes a change in the economic terms of the Settlement.

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In that instance, (i) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect; and (ii) all Parties to this Agreement and the pleadings in this Action shall stand in the same position they were as of March 1, 2023, prior to the negotiation of this Agreement, without prejudice to either Party; and (iii) Defendants will not have any obligation to pay any portion of the Settlement Sum to anyone under the terms of this Agreement (except for the Settlement Administrator's reasonable fees incurred if the Settlement is not approved, which fees will be split 50/50 between Plaintiff and Defendant). If this Agreement is invalidated through any proceeding within the Action, the Settlement Administrator will return any disbursements from the Settlement Sum to Defendant.

15. **Waiver and Amendment.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

16. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and by e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

if to Defendant: Karen L. Wishnev of Fuller Law Group P.C., 9565 Waples Street, Suite 200, San Diego, California 92121; cfuller@fullerlawgroup.co; and kwishnev@fullerlawgroup.co (no "m.")

if to Plaintiff: Paul K. Haines, Haines Law Group, APC, 2155 Campus Drive, Suite 180, El Segundo, California 90245; phaines@haineslawgroup.com.

17. **Cooperation.** The Parties agree to work cooperatively, diligently and in good faith to ensure that all documents necessary to effectuate this Settlement are properly and timely filed.

18. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the Lawsuit contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof. Further, all terms of this Agreement and the exhibits hereto shall be governed by and interpreted according to the laws of the State of California.

19. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

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20. **Enforcement Action.** The Parties agree that the San Diego County Superior Court shall have jurisdiction to enforce this Settlement pursuant to California Code of Civil Procedure section 664.6, and California Rule of Court 3.769. In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

DATED: 06/28/23, 2023

DEFENDANT S&W ROOF TEAR-OFF CORPORATION

By: 
Title: Chief Executive Officer/Director
(Edward Thomas Clare III)

DATED: Jul 20, 2023, 2023

PLAINTIFF DANIEL A. MUNOZ

By: 
[Daniel Antonio Burgueño Muñoz \(Jul 20, 2023 14:39 PDT\)](#)
Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

DATED: June 28, 2023

FULLER LAW GROUP P.C.

By: 
Craig D. Fuller
Karen L. Wishnev
Attorneys for Defendant
S&W ROOF TEAR-OFF CORPORATION

DATED: June 20, 2023

HAINES LAW GROUP, APC

By: 
Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff Daniel A. Munoz

EXHIBIT 1

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

DANIEL A. MUNOZ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

S&W ROOF TEAR-OFF CORPORATION, a
California corporation; and DOES 1 through 100,

Defendants.

Case No. 37-2022-00005924-CU-OE-CTL

**NOTICE OF PENDENCY OF CLASS
ACTION AND PROPOSED
SETTLEMENT**

To: All current and former non-exempt employees employed by Defendant S&W Roof Tear-Off Corporation in California from February 15, 2018 through <<PRELIM APPROVAL DATE>>. These employees will be referred to as the “Settlement Class” or “Settlement Class members.”

**PLEASE READ THIS NOTICE CAREFULLY.
THIS NOTICE IS BEING PROVIDED TO YOU IN BOTH ENGLISH AND SPANISH.
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT.**

Why should you read this notice?

The Court has granted preliminary approval of a proposed settlement (the “Settlement”) in *Daniel A. Munoz v. S&W Roof Tear-Off Corporation*, San Diego County Superior Court Case No. 37-2022-00005924-CU-OE-CTL (the “Lawsuit”). Because your rights may be affected by the Settlement, it is important that you read this Notice carefully.

You may be entitled to money from this Settlement. Defendant S&W Roof Tear-Off Corporation’s (“S&W Roof”) records indicate that you were employed by S&W Roof as a non-exempt employee in California between February 15, 2018 and <<PRELIM APPROVAL DATE>> (the “Class Period”). The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this Notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the proposed Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves this Settlement, you will be bound by the terms of the Settlement and any final judgment.

What is this case about?

On February 15, 2022, Plaintiff Daniel A. Munoz (“Plaintiff”) filed a class action lawsuit alleging the following causes of action against S&W Roof: (1) minimum wage violations; (2) failure to pay all overtime wages; (3) meal period violations; (4) rest period violations; (5) waiting time penalties; (6) wage statement violations; and (7) unfair competition. On April 22, 2022, Plaintiff filed the operative First Amended Class and Representative Action Complaint (“FAC”) to add a cause of action for civil penalties under the Private Attorneys’ General Act (“PAGA”). Plaintiff Daniel A. Munoz is known as the “Class Representative,” and his attorneys, who also represent the interests of all Settlement Class members, are known as “Class Counsel.”

S&W Roof denies that it has done anything wrong or that it owes Settlement Class members any wages, restitution, penalties, or other damages. Accordingly, this class-wide Settlement constitutes a compromise of highly disputed claims and should not be construed as an admission of liability on the part of S&W Roof, by whom all liability is expressly denied.

The Court has not ruled on the merits of Plaintiff's claims. However, to avoid additional expense, inconvenience, and interference with S&W Roof's business operations, the parties have agreed to settle the Lawsuit on the terms summarized in this Notice. After S&W Roof provided relevant information and documents to Class Counsel, the Settlement was reached after mediation and intensive arm's length negotiations between the parties.

The Class Representative and Class Counsel support this Settlement. Among the reasons for support are the defenses to liability potentially available to S&W Roof, the risk of denial of class certification, the inherent risk of trial on the merits, and the delays and uncertainties associated with ongoing litigation.

Who are the attorneys?

Attorneys for Plaintiff/Settlement Class Members: HAINES LAW GROUP, APC Paul K. Haines phaines@haineslawgroup.com Sean M. Blakely sblakely@haineslawgroup.com 2155 Campus Drive, Suite 180 El Segundo, California 90245 Tel: (424) 292-2350 Fax: (424) 292-2355	Attorneys for Defendant S&W Roof: FULLER LAW GROUP P.C. Craig D. Fuller cfuller@fullerlawgroup.co Karen L. Wishnev kwishnev@fullerlawgroup.co 9565 Waples Street, Suite 200 San Diego, California 92121 Tel: (858) 450-4050 Fax: (858) 450-4051
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What are the terms of the Settlement?

On <<PRELIM APPROVAL DATE>>, the Court preliminarily certified a class, for settlement purposes only, of all current and former non-exempt employees employed by S&W Roof in California from February 15, 2018 through the <<PRELIM APPROVAL DATE>>. Settlement Class members who do not opt out of the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release claims against S&W Roof as specifically described below.

S&W Roof has agreed to pay \$275,000.00 (the "Maximum Settlement Amount") to fully resolve all claims in the Lawsuit, including claims by Settlement Class members, attorneys' fees and costs, settlement administration costs, payment to the Labor & Workforce Development Agency ("LWDA") for its share of civil penalties under the PAGA, and Plaintiff's Enhancement Payment.

The following deductions from the Maximum Settlement Amount will be requested by the Parties:

Settlement Administration Costs. The Court has approved Phoenix Settlement Administrators to act as the "Settlement Administrator," who is sending this Notice to you and will perform many other duties relating to the Settlement. The Court has approved setting aside up to \$12,000.00 from the Maximum Settlement Amount to pay the settlement administration costs.

Attorneys' Fees and Expenses. Class Counsel have been prosecuting the Lawsuit on behalf of the Settlement Class members on a contingency fee basis (that is, without being paid any money to date) and have been paying all

litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys' fees, which will be paid from the Maximum Settlement Amount. Settlement Class members are not personally responsible for any of Class Counsel's attorneys' fees or expenses. Class Counsel will ask for fees of up to one-third of the Maximum Settlement Amount, which is estimated to be \$91,666.66, as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through Settlement finalization. Class Counsel also will ask for reimbursement of up to \$20,000.00 for reimbursement of verified costs Class Counsel incurred in connection with the Lawsuit.

Plaintiff's Enhancement Payment. Class Counsel will ask the Court to approve an Enhancement Payment of \$7,500.00 to Plaintiff Daniel A. Munoz. This payment is to compensate Plaintiff for his services and extra work performed on behalf of the Settlement Class members.

PAGA Payment to State of California. \$15,000.00 will be paid to the LWDA, representing 75% of the \$20,000.00 the parties have agreed to allocate to the settlement of Plaintiff's claim on behalf of the Settlement Class members under the PAGA. The remaining \$5,000.00 will be payable to certain Settlement Class members as the "PAGA Amount," as described below.

Calculation of Settlement Class members' Individual Settlement Payments. After deducting the Court-approved amounts above, the balance of the Maximum Settlement Amount will form the Net Settlement Amount, which will be distributed to all Settlement Class members who do not submit a valid and timely Request for Exclusion (defined below). The Net Settlement Amount ("NSA") is estimated to be approximately \$123,833.34 and will be divided as follows:

- (i) Payments to All Participating Settlement Class Members: The Settlement Administrator will calculate payments from the NSA based on each participating Settlement Class member's proportionate Workweeks worked during the Class Period. Specifically, each participating Settlement Class member's payment from the NSA will be calculated by multiplying the NSA by a fraction, the numerator of which is the participating Settlement Class member's number of Workweeks worked during the Class Period, and the denominator of which is the total Workweeks worked by all participating Settlement Class members during the Class Period.
- (ii) PAGA Amount: \$5,000 has been designated as the "PAGA Amount" and will be allocated to all Settlement Class members who were employed by S&W Roof at any time from February 15, 2021 through <<PRELIM APPROVAL DATE>> (the "PAGA Period") (regardless of whether they opt out of the Settlement Class) in proportion to the number of workweeks that he or she worked during the PAGA Period.

Allocation and Taxes. For tax purposes, an Individual Settlement Payment from the NSA shall be treated as follows: twenty percent (20%) of each Individual Settlement Payment shall be designated as wages subject to W-2 reporting and normal payroll withholdings; and eighty percent (80%) of each Individual Settlement Payment shall be designated as penalties and interest. Any payment from the PAGA Amount will be classified as 100% penalties. The Settlement Administrator will be responsible for issuing to Settlement Class members IRS Forms W-2 for amounts deemed "wages" and IRS Forms 1099 for the amounts allocated as penalties and interest. Settlement Class members are responsible for the proper income tax treatment of the Settlement Payments. The Settlement Administrator, S&W Roof and its counsel, and Class Counsel cannot provide tax advice. Accordingly, Settlement Class members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. Upon the Effective Date and the complete funding of the Maximum Settlement Amount, Plaintiff and every Settlement Class member (except those who opt out) will fully release and discharge S&W Roof, and all of its past, present and future officers, directors, shareholders, partners, employees, agents, principals, heirs, family members, predecessors, successors, members, managers, representatives, accountants, auditors, consultants,

insurers, and their respective successors and predecessors in interest, subsidiaries, affiliates, assigns, parents, PEOs, attorneys, and/or any other individual or entity which could be liable for the acts or omissions (collectively the “Released Parties”) from all claims, demands, rights, liabilities, and causes of action that were pled in the operative First Amended Class and Representative Action Complaint, or which could have been pled in the First Amended Class and Representative Action Complaint, that arose during the Class Period, including: (a) failure to pay all overtime wages; (b) failure to pay all minimum wages; (c) failure to provide all meal periods, or premium pay for non-compliant meal periods; (d) failure to authorize and permit all rest periods, or premium pay for non-compliant rest periods; (e) failure to furnish accurate and compliant itemized wage statements; (f) failure to timely pay all wages due or final wages due; and (g) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories of relief pled in the Action (“Class Member Released Claims”). The period of the Class Member Released Claims shall extend to the limits of the Class Period.

In addition, all Settlement Class members (regardless of whether they opt out) who worked for S&W Roof at any time during the PAGA Period are “Aggrieved Employees” and shall release the Released Parties from all claims for civil penalties that could have been premised on the facts alleged within the February 15, 2022 exhaustion letter filed with the Labor and Workforce Development Agency (“LWDA”) by Plaintiff Munoz (“the PAGA Released Claims”).

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate, and in the best interests of the Settlement Class, and the entry of Judgment.

How can I claim money from the Settlement?

Do Nothing. If you do nothing, you will be entitled to your Individual Settlement Payment based on your proportionate number of workweeks worked during the Class Period, the proportionate number of workweeks worked during the PAGA Period, as stated in the enclosed Notice of Estimated Individual Settlement Payment. You will also be bound by the Settlement, including the release of claims stated herein.

If you are issued a Settlement, Check, you must cash the check(s) within 180 days from the date the Settlement Administrator mails it to you. Any checks that were not cashed within 180 days shall be transferred to Ronald McDonald House Charities of San Diego, Inc., the *cy pres* recipient.

What other options do I have?

Disputing Information in Notice of Estimated Individual Settlement Payment. Your estimated Individual Settlement Payment is based on your number of proportionate workweeks worked during the Class Period and the proportionate number of workweeks worked during the PAGA Period. The information contained in S&W Roof’s records regarding each of these factors is listed on the accompanying Notice of Estimated Individual Settlement Payment. If you disagree with what is contained in your Notice of Estimated Individual Settlement Payment, you may submit a dispute, along with any supporting information and documentation, in accordance with the procedures stated in the Notice of Estimated Individual Settlement Payment. Any disputes, along with supporting information and documentation, must be postmarked no later than <<RESPONSE DEADLINE>>. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement Payments, and the Settlement Administrator’s determination shall be binding upon the Settlement Class member and the Parties.

Excluding Yourself from the Settlement. If you **do not** wish to take part in the class action Settlement, you may exclude yourself by sending to the Settlement Administrator a written “Request for Exclusion” letter or card postmarked no later than <<RESPONSE DEADLINE>>, with your full name, current address and telephone number, last four digits of your social security number, and signature. The Request for Exclusion should state:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE *DANIEL A. MUNOZ V. S&W ROOF TEAR-OFF CORPORATION*, LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THE CLASS CALIMS IN THIS LAWSUIT.”

Send the Request for Exclusion directly to the Settlement Administrator at <<INSERT ADMINISTRATOR CONTACT INFO>>. Any person who submits a valid and timely Request for Exclusion shall, upon receipt, no longer be a Settlement Class member, shall be barred from participating in any portion of the class action Settlement, and shall receive no monetary benefits from the class action Settlement. However, all Settlement Class members who worked for S&W Roof during the PAGA Period, including those who opt out, will be bound by the PAGA portion of the Settlement and will receive a portion from the PAGA Amount. **Do not submit both a Dispute and a Request for Exclusion.** If you do, the Request for Exclusion will be invalid, you will be included in the Settlement Class, and you will be bound by the terms of the Settlement.

Objecting to the Settlement. You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you may mail a written objection to the Settlement Administrator at <<INSERT ADMINISTRATOR CONTACT INFO>>. Your written objection should include your full name, current address, the name and address of any attorney representing you, the case name and number, each specific objection, and any legal or factual support for each objection, including any supporting papers, briefs, written evidence, declarations, and/or other evidence. Objections should be submitted by mail to the Settlement Administrator and must be postmarked on or before <<RESPONSE DEADLINE>>.

Members of the Settlement Class who do not request exclusion may also object to the Settlement by appearing at the Final Approval Hearing scheduled for <<FINAL APPROVAL HEARING DATE/TIME>> in Department C-60 of the San Diego County Superior Court, located at 330 West Broadway, San Diego, California 92101. You have the right to appear either in person or through your own attorney at this hearing. You need not file a written objection in order to appear at the Final Approval Hearing. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before <<RESPONSE DEADLINE>>. All objections or other correspondence must state the name and number of the case, which is *Daniel A. Munoz v. S&W Roof Tear-Off Corporation*, San Diego County Superior Court Case No. 37-2022-00005924-CU-OE-CTL.

If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class members who do not object.

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on <<FINAL APPROVAL HEARING DATE/TIME>>, in Department C-60 of the San Diego County Superior Court, located at 330 West Broadway, San Diego, California 92101. The Court will also be asked to rule on Class Counsel’s request for attorneys’ fees and costs, settlement administration costs, and Plaintiff’s Enhancement Payment. The Final Approval Hearing may be postponed without further notice to the Class. You may contact Class Counsel using the contact information provided above to confirm the address and time of the hearing. **You are not required to attend the Final Approval Hearing, although any Settlement Class member is welcome to attend the hearing.**

If the Court grants Final Approval, the Court will issue a final judgment which shall be posted on the Settlement Administrator’s website (<http://www.phoenixclassaction.com>).

How can I get additional information?

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Office of the Clerk of the San Diego County Superior Court, located at 330 West Broadway, San Diego, California 92101, during regular court hours. You may also contact Class Counsel using the contact information listed above for more information.

PLEASE DO NOT CALL OR WRITE THE COURT, S&W ROOF, OR ITS ATTORNEYS FOR INFORMATION ABOUT THIS SETTLEMENT.

Reminder as to time limits

The deadline for submitting any Disputes, Requests for Exclusion, or Objections is <<RESPONSE DEADLINE>>. These deadlines will be strictly enforced.

EXHIBIT 2

NOTICE OF ESTIMATED INDIVIDUAL SETTLEMENT PAYMENT

DANIEL A. MUNOZ V. S&W ROOF TEAR-OFF CORPORATION
San Diego County Superior Court Case No. 37-2022-00005924-CU-OE-CTL

Please complete, sign, date and return this Form to <<ADMINISTRATOR CONTACT INFO>> **ONLY IF** (1) your personal contact information has changed, and/or (2) you wish to dispute any of the items listed in Section (III), below. It is your responsibility to keep a current address on file with the Settlement Administrator.

(I) Please type or print your name:

(First, Middle, Last)

(II) Please type or print the following identifying information if your contact information has changed:

Former Names (if any)

New Street Address

City

State

Zip Code

Phone number (if you wish to be contacted by phone)

(III) Information Used to Calculate Your Estimated Individual Settlement Payment:

According to S&W Roof Tear-Off Corporation ("S&W Roof") records:

- (a) you worked [REDACTED] workweeks between February 15, 2018 through <<PRELIM APPROVAL DATE>> in California for S&W Roof; and
- (b) you worked [REDACTED] workweeks between February 15, 2021 through <<PRELIM APPROVAL DATE>> in California for S&W Roof.

Based on the above, your Individual Settlement Payment is estimated at \$ [REDACTED].

(IV) If you disagree with items (a) and/or (b) in Section (III) above, please explain why in the space provided below and include copies of any supporting documentation with this Form:

If you dispute the above information garnered from S&W Roof's records, S&W Roof's records will control unless you are able to provide documentation that establishes otherwise. If there is a dispute about whether S&W Roof's information or yours is accurate, and the dispute cannot be resolved informally by the Parties,

the dispute will be resolved by the Settlement Administrator as described in the accompanying “Notice of Pendency of Class Action and Proposed Settlement.”

**ANY DISPUTES, ALONG WITH ANY SUPPORTING DOCUMENTATION, MUST BE
POSTMARKED NO LATER THAN <<RESPONSE DEADLINE>>.**