

HAINES LAW GROUP, APC

Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Sean M. Blakely (SBN 264384)
sblakely@haineslawgroup.com
Alexandra R. McIntosh (SBN 320904)
amcintosh@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE 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

*[Assigned for all purposes to Hon. Matthew
C. Braner in Dept. C-60]*

**DECLARATION OF SEAN M.
BLAKELY IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: September 1, 2023
Time: 9:00 a.m.
Dept.: C-60

Complaint Filed: February 15, 2022
Trial Date: None Set

1 I, SEAN M. BLAKELY, declare as follows:

2 1. I am a Partner at Haines Law Group, APC, and counsel for the named Plaintiff
3 Daniel A. Munoz (“Plaintiff”) and the proposed Settlement Class in the above-captioned matter.
4 I am a member in good standing of the bar of the State of California and am admitted to practice
5 in this Court. I have personal knowledge of the facts stated in this declaration and could testify
6 competently to them if called upon to do so.

7 2. I am a 2008 graduate of Southwestern Law School. I was admitted to the California
8 State Bar in September 2009. From December 2010 to September 2011, I worked as a Law Clerk
9 for Rose, Klein & Marias, a civil litigation firm in Long Beach, California. At Rose, Klein &
10 Marias I assisted trial attorneys in employment and personal injury cases. From September 2011
11 to May 2016, I worked as an associate at the employment law firm of Mahoney Law Group, APC
12 in Long Beach, California. The vast majority of my work at Mahoney Law Group, APC focused
13 on representing employees in wage and hour class actions. My work at Mahoney Law Group,
14 APC also included representing employees in individual claims for wrongful termination,
15 harassment, discrimination, and retaliation. Although non-exhaustive, the types of work I
16 performed at Mahoney Law Group, APC included: conducting client intakes performing pre-
17 filing research and analysis, drafting complaints, attending court hearings, corresponding with
18 opposing counsel, drafting and responding to written discovery, preparing for and taking and
19 defending depositions, analyzing payroll and timekeeping records and employee handbooks,
20 opposing motions for summary judgment, as well as a variety of other motions such as motions
21 for remand, demurrers and motions to dismiss, motions to strike, motions to compel, motions to
22 quash, and motions for class certification, drafting mediation briefs, attending mediations,
23 drafting long-form settlement agreements, drafting motions for preliminary and final settlement
24 approval, and overseeing the notice process.

25 3. Since November 8, 2016, I have worked at my current firm, Haines Law Group,
26 APC, where, in 2020, I became a Partner. I am currently responsible for managing over forty (40)
27 active wage and hour class and representative actions in both state and federal court.

28 4. The following is a non-exhaustive list of wage and hour class actions in which I

1 have been appointed as class counsel and/or played a significant role in prosecuting the litigation,
2 and which have received final approval: *Santimateo v. Sun Healthcare Group, Inc., et al*, Case
3 No. BC471884, California Superior Court, Los Angeles County, Judge Jane L. Johnson presiding
4 (granted final approval of settlement on behalf of employees at rehabilitation facility involving
5 claims for unpaid wages and meal and rest period violations, and other claims, in which I was
6 approved at an hourly rate of \$325 for work performed in 2012-2013); *Teyuca v. Pacific Alliance*
7 *Medical Center, Inc.*, California Superior Court, Los Angeles County, Judge William F.
8 Highberger presiding (granting final approval of settlement on behalf of healthcare workers for
9 unpaid wages, meal and rest period violations, and other claims, in which I was approved at an
10 hourly rate of \$325 for work performed in 2012-2013); *Arteaga v. Command Center Security,*
11 *Inc.*, Case No. BC480496, California Superior Court, Los Angeles County, Judge John Shepard
12 Wiley, Jr. presiding (granting final approval of settlement on behalf of security guards involving
13 claims for unpaid overtime, meal and rest period violations, and other claims, in which I was
14 approved at an hourly rate of \$425 for work performed in 2012-2015); *Casadine v. Maxim*
15 *Healthcare Services, Inc.*, Case No. CV 12-10078-DMG (CWx), United States District Court,
16 Central District of California, Judge Dolly M. Gee presiding (granting final approval of settlement
17 on behalf of home health care employees involving claims for unpaid wages and other claims, in
18 which I was approved at an hourly rate of \$425 for work performed in 2012-2015); *Guzman v.*
19 *Andrew Lauren Interiors, Inc., et al.*, Case No. BC567757, California Superior Court, Los
20 Angeles County, Judge Elihu M. Berle presiding (granting final approval of settlement on behalf
21 of construction workers involving claims for unpaid wages, meal and rest period violation, and
22 other claims, in which I was approved at an hourly rate of \$425 for work performed in 2014-
23 2016); *Booker v. The Goodyear Tire and Rubber Company*, Case No. BC498399, California
24 Superior Court, Los Angeles County, Judge Amy Hogue presiding (granting final approval of
25 settlement on behalf of tire mechanics involving claims for unpaid wages, meal and rest period
26 violations, and other claims, in which I was approved at an hourly rate of \$425 for work performed
27 in 2013-2015); *Nunez v. CompuCom Systems, Inc.*, Case No. BC618385, California Superior
28 Court, Los Angeles County, Judge John Shepard Wiley, Jr. presiding (granting final approval of

1 settlement on behalf of IT support workers for overtime, meal and period, reimbursement, and
2 related violations, approved at hourly rate of \$475 for work performed in 2016 and 2017); *Galvan*
3 *v. AMVAC Chemical Corporation*, Case No. 30-2014-00716103-CU-OE-CXC, California
4 Superior Court, Orange County, Judge William D. Claster presiding (granting final approval of
5 settlement on behalf of non-exempt employees of a chemical manufacturing company involving
6 claims for unpaid overtime and waiting time penalties); *Razon v. TTM Technologies, Inc., et al.*,
7 Case No. 37-2016-00038326-CU-OE-CTL, California Superior Court, San Diego County, Judge
8 Gregory W. Pollack presiding (granting final approval of settlement involving claims for unpaid
9 overtime wages, wage statement violations, and meal period violations); *Blank v. Coty, Inc., et*
10 *al.*, Case No. BC624850, California Superior Court, Los Angeles County, Judge Williams F.
11 Highberger presiding (granting final approval of settlement involving claims for wage statement
12 violations, meal period violations, and other claims); *Morales v. Caremeridian, LLC, et al.*, Case
13 No. BC593191, California Superior Court, Los Angeles County, Judge William F. Highberger
14 presiding (granting final approval of settlement on behalf of direct support professionals involving
15 claims for unpaid wages, meal and rest period violations, wage statement violations, and other
16 claims); *Aguilar v. Act Fulfillment, Inc.*, Case No. RIC1616643, California Superior Court,
17 Riverside County, Judge Sharon J. Waters presiding (granting final approval of settlement on
18 behalf of non-exempt factory workers involving claims for meal period violations); *Sandoval v.*
19 *AMCOR Flexibles Inc.*, Case No. BC617499, California Superior Court, Los Angeles County,
20 Judge Kenneth R. Freeman presiding (granting final approval of settlement on behalf of
21 manufacturing employees involving claims for unpaid wages, meal period violations, rest period
22 violations, and waiting time penalties); *Le v. GBW Railcar Services, L.L.C.*, Case No.
23 RIC1612209, California Superior Court, Riverside County, Judge Sharon J. Waters presiding
24 (granting final approval of settlement on behalf of non-exempt employees of a freight railcar
25 manufacturer involving claims for unpaid overtime and minimum wages, meal period violations,
26 and rest period violations); *Silva v. ADJ Products, LLC*, Case No. BC618581, California Superior
27 Court, Los Angeles County, Judge William F. Highberger presiding (granting final approval of
28 settlement involving claims for unpaid overtime and minimum wages, rest period violations, wage

statement violations, and waiting time penalties); *Lira v. Discus Dental, LLC, et al.*, Case No. CIVDS1620402, California Superior Court, San Bernardino County, Judge David Cohn presiding (granting final approval of settlement on behalf of non-exempt manufacturing employees involving claims for unpaid minimum and overtime wages, meal and rest period violations, and other claims); *Gonzales v. PathPoint*, Case No. BC657147, California Superior Court, Los Angeles County, Judge Carolyn B. Kuhl presiding (granting final approval of settlement on behalf of non-exempt direct support professionals involving claims for meal and rest period violations and other claims); *Duran v. PRADA USA CORP.*, Case No. BC644319, California Superior Court, Los Angeles County, Judge Maren E. Nelson presiding (granting final approval of settlement on behalf of non-exempt commissioned salespersons involving claims for unpaid overtime wages, meal and rest period violations, failure to reimburse for necessary expenditures, and other claims); *Banegas v. UPM, Inc.*, Case No. BC644438, California Superior Court, Los Angeles County, Judge Carolyn B. Kuhl presiding (granting final approval of settlement on behalf of non-exempt manufacturing employees involving claims for unpaid wages, meal and rest period violations, and other claims); *Palafox v. Pacific Line Clean-Up, Inc.*, Case No. 30-2017-00921632-CU-OE-CXC, California Superior Court, Orange County, Judge William D. Claster presiding (granting final approval of settlement on behalf of non-exempt employees involving claims for unpaid overtime wages, meal and rest period violations, and other claims); *Janet Arroyo v. AST Sportswear, Inc., dba Bayside Apparel Manufacturing, Inc.*, Case No. 30-2017-00909663-CU-OE-CXC, California Superior Court, Orange County, Judge Glenda Sanders presiding (granting final approval of settlement on behalf of non-exempt garment employees involving claims for unpaid minimum wages, meal and rest period violations, and other claims); *Carlos Garcia v. Fabrica International, Inc.*, Case No. 30-2017-00949461-CU-OE-CXC, California Superior Court, Orange County, Judge William D. Claster presiding (granting final approval of settlement on behalf of non-exempt manufacturing employees involving claims for unpaid minimum and overtime wages, meal and rest period violations, and statutory penalties); *Jonathan Leon v. Piercey West, Inc.*, Case No. BC656874, California Superior Court, Los Angeles County, Judge Amy D. Hogue presiding (granting final approval of settlement on behalf of non-exempt

1 commissioned salespersons and other employees involving claims for unpaid wages, meal and
2 rest period violations, unreimbursed business expenses, and other claims); and *Matthew Tovar, et*
3 *al. v. Rentokil North America, Inc.*, Case No. BC676386, California Superior Court, Los Angeles
4 County, Judge Daniel J. Buckley presiding (granting final approval of settlement on behalf of
5 non-exempt employees involving claims for unpaid overtime, meal and rest break violations, and
6 other claims); *Seungmin Samantha Lee v. Infor (US) Inc.*, Case No. CGC-18-566393, California
7 Superior Court, San Francisco County, Judge Ethan P. Schulman presiding (granting final
8 approval of settlement on behalf of sales development representatives involving claims for unpaid
9 overtime, meal and rest period violations, and penalty claims); *Tracy Aguilar, et al. v. Aero Port*
10 *Services, Inc.*, Case No. BC659234, California Superior Court, Los Angeles County, Judge
11 Carolyn B. Kuhl presiding (granting final approval of settlement on behalf of non-exempt
12 employees involving claims for meal and rest period violations, and other claims); *Carlos Perez,*
13 *et al. v. Moss Bros. Auto Group, Inc., et al.*, Case No. RIC1709905, California Superior Court,
14 Riverside County, Judge Sunshine S. Sykes presiding (granting final approval of settlement on
15 behalf of non-exempt commissioned salespersons involving claims for unpaid wages, meal and
16 rest period violations, other claims); and *Julio Alfaro v. Orange Automotive d/b/a Kia of Orange,*
17 Case No. 30-2017-00945105-CU-OE-CXC, California Superior Court, Orange County, Judge
18 Randall J. Sherman presiding (granting final approval settlement on behalf of non-exempt
19 commissioned employees involving claims for unpaid wages, meal and rest period violations,
20 unreimbursed business expenses, and penalty claims).

21 5. I have also moved to certify and have received an order certifying a class action in
22 *Ontiveros v. Safelite Fulfillment, Inc., et al.*, Case No. CV 15-7118-DMG (RAOx), United States
23 District Court, Central District of California, Honorable Dolly M. Gee presiding (certifying six
24 classes of employees for rest period violations, wage statement violations, meal period violations,
25 and overtime and double-time violations); and *Vazquez v. Kraft Heinz Foods Company*, Case No.
26 16-CV-02749-WQH (BLM), United States District Court, Southern District of California,
27 Honorable William Q. Hayes, presiding (certifying unpaid wages classes, meal period classes,
28 wage statement class, and waiting time penalty class).

1 6. In 2018, 2019, 2020, 2021, and 2022, Thomson Reuters recognized me as a Top
2 Young Attorney in Southern California in the annual Rising Star Edition of Super Lawyers. This
3 is an honor awarded to no more than two-and-a-half percent (2.5%) of attorneys under the age of
4 forty in Southern California each year.

5 7. As counsel for Plaintiff and the proposed Settlement Class, I have been intimately
6 involved in all aspects of this case since its inception and I believe that the proposed Settlement
7 is a favorable result for the Settlement Class.

8 8. Defendant S&W Roof Tear-Off Corporation (“Defendant”) is a construction
9 company that specializes in roof removal services for commercial and residential properties
10 throughout Southern California.

11 9. On February 15, 2022, Plaintiff filed a Class Action Complaint in San Diego
12 County Superior Court, alleging the following causes of action against Defendant: (i) minimum
13 wage violations; (ii) failure to pay all overtime wages; (iii) meal period violations; (iv) rest period
14 violations; (v) failure to pay all final wages due upon separation of employment; (vi) failure to
15 issue accurate, itemized wage statements; and (vii) unfair competition in violation of California
16 Business & Professions Code § 17200 *et seq.* On April 22, 2022, Plaintiff filed the operative First
17 Amended Class and Representative Action Complaint (“FAC”) adding a cause of action for civil
18 penalties under the Private Attorneys General Act of 2004, Labor Code Section 2698, *et seq.* A
19 true and correct copy of Plaintiff’s February 15, 2022 PAGA letter to the Labor & Workforce
20 Development Agency (“LWDA”) is attached hereto as **Exhibit B**.

21 10. In connection with mediation, Defendant produced its written wage and hour
22 policies as well as timekeeping and payroll records for a sampling of putative class members, as
23 well as a class list, which included putative class members’ first paycheck date and last paycheck
24 date. Plaintiff hired a labor economist with a Ph.D. in economics to assist Plaintiff in conducting
25 a comprehensive analysis and extrapolation of the payroll and timekeeping data produced by
26 Defendant to create a detailed exposure analysis for all claims at issue. This discovery allowed
27 the Parties to assess the merits and value of Plaintiff’s claims, the chances of certification of
28 Plaintiff’s claims, and Defendant’s potential defenses. Prior to mediation, Defendant also raised

its financial condition and turned over its financial records to Plaintiff. Plaintiff hired a forensic accountant, Keith D. Messerschmidt, who has consulted or provided expert testimony in dozens of litigation and insurance matters, to assist Plaintiff in evaluating Defendant's financial condition.

11. On March 3, 2023, the Parties participated in a full-day mediation with Hon. Joan M. Lewis (Ret.), a well-respected wage and hour class action mediator. During mediation, the Parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, the legal basis for the claims and defenses, as well as Defendant's financial condition. At the conclusion of mediation, Judge Lewis issued a mediator's proposal for a class-wide settlement, which was ultimately accepted by the Parties. In the months that followed, the Parties negotiated and finalized the long-form Settlement Agreement now before the court. A true and correct copy of the Settlement Agreement is attached hereto as **Exhibit A**. The proposed Class Notice and Notice of Estimated Individual Settlement Payment are attached as **Exhibits 1** and **2**, respectively, to the Settlement Agreement.

12. The monetary terms of the Settlement are summarized below:

• Maximum Settlement Amount ("MSA"):	\$275,000.00
• Minus Court-approved attorneys' fees:	\$91,666.66
• Minus Court-approved verified costs (up to):	\$20,000.00
• Minus Court-approved Enhancement Payment:	\$7,500.00
• Minus amount set aside as PAGA Penalties:	\$20,000.00
• <u>Minus estimated settlement administration costs:</u>	<u>\$12,000.00</u>
Net Settlement Amount ("NSA"):	\$123,833.34
• PLUS 25% "PAGA Payment" to Settlement Class:	\$5,000.00
Total Amount Paid to Settlement Class members:	\$128,833.34

13. According to Defendant, there are approximately 321 Settlement Class members. Therefore, the average Individual Settlement Payment from the NSA is projected to be approximately \$385.77. There are approximately 192 Aggrieved Employees who worked during the PAGA Period. Therefore, each Aggrieved Employee will receive an average of approximately \$26.04 from the PAGA Amount.

14. As detailed in Plaintiff's Motion for Preliminary Approval, Plaintiff alleges that Defendant's timekeeping policies/practices fail to compensate Settlement Class members for all

hours worked. Specifically, Plaintiff alleges that Defendant's supervisors/foremen would record his and other non-exempt employees' hours, and prohibited Plaintiff and other non-exempt employees from accurately recording their own hours worked. Additionally, Plaintiff contends that Defendant has a practice/policy of only compensating Plaintiff and other non-exempt employees for their scheduled hours of work, as opposed to all hours actually worked, resulting in unpaid wages. Plaintiff alleges that Defendant's timekeeping policies/practices resulted in a systematic underpayment of wages to putative class members. Based on Plaintiff's experiences and interviews with Settlement Class members, Plaintiff contends Settlement Class members were underpaid by approximately fifteen (15) minutes per shift. Because Settlement Class members generally worked shifts of at least 8.0 hours, Plaintiff contends the underpaid wages should be paid at an overtime rate of pay. Therefore, Plaintiff estimated Defendant's maximum exposure for this claim at approximately \$400,471 (15 minutes per shift * \$20.36 average hourly rate * 1.5 overtime rate * 52,452 shifts). However, Defendant disputes Plaintiff's allegations and contends that its timekeeping policies/practices complied with California law and that it paid employees for all hours worked. Defendant also argued that its GPS and other tracking data located on company trucks and cell phones showed that employees were often overpaid. Defendant also argues that any unpaid time could have only amounted to a few minutes per day, at most, and was thus *de minimis*. Further, Defendant argues that it is not possible for Settlement Class members to perform compensable work prior to the scheduled start of shift or after the scheduled end of shift. Defendant further contends that Settlement Class members did not work off-the-clock and that Defendant's policies specifically disavow such off-the-clock work. Finally, Defendant asserts that Plaintiff's unpaid claim amounts to an "off-the-clock" claim, which is not appropriate for class treatment. Based on these defenses, Plaintiff discounted the estimated maximum amount by 75% for the risk of non-certification and by an additional 65% to account for the risk of losing on the merits or failure to recover the maximum amount sought to arrive at an estimated exposure of approximately \$35,041.

15. Plaintiff alleges Defendant failed to provide legally compliant first meal periods such that first meal periods were regularly short and often commenced after the completion of the

1 fifth hour of work, and were occasionally not provided at all. Based on Plaintiff's analysis and
2 extrapolation of the timekeeping records, Plaintiff estimates there were approximately 39,339
3 non-compliant first meal periods during the Class Period. In addition, based on data provided by
4 Defendant, Settlement Class members' average hourly rate of pay during the Class Period was
5 \$20.36. Therefore, Plaintiff calculated Defendant's maximum exposure on this first meal period
6 claim at approximately \$800,942 (39,339 non-compliant first meal periods * \$20.36 average meal
7 period premium). However, Defendant counters it has maintained compliant written meal period
8 policies throughout the Class Period and has always provided compliant meal periods in line with
9 those policies. Defendant further contends that it always provides employees the opportunity to
10 take meal periods and is not required to *ensure* they are taken. Thus, Defendant argues that any
11 non-compliant meal periods resulted from lawful employee waiver or choice, rather than any
12 policy and/or practice of Defendant. Defendant further argues that employees signed weekly
13 attestations confirming that they received all off-duty meal periods. Defendant also maintains that
14 the first meal period claim is not suited for class certification, since individual inquiries would be
15 needed to assess which employees took non-compliant meal periods or missed meal periods, how
16 many meal periods were non-compliant or missed, and the reasons why a particular employee did
17 not take a compliant meal period on a particular shift. In light of these defenses and arguments,
18 Plaintiff discounted Defendant's maximum exposure by 65% for the risk of non-certification, and
19 an additional 65% to account for Defendant's defenses on the merits or failure to recover the full
20 amount sought, to arrive at an estimated total of approximately \$98,115.

21 16. Plaintiff further alleges that Settlement Class members were not provided with
22 second meal periods when they worked shifts in excess of 10.0 hours in a workday. Based on the
23 data produced by Defendant, Plaintiff estimates there were approximately 5,245 shifts worked in
24 excess of 10.0 hours which did not reflect a legally compliant second meal period. Plaintiff
25 therefore calculated Defendant's maximum exposure for second meal period violations at
26 approximately \$106,788 (5,245 non-compliant second meal periods * \$20.36 average meal period
27 premium). However, Defendant asserts that many employees choose to waive their second meal
28 periods on shifts over 10.0 hours and under 12.0 hours, as they may do under Labor Code §

512(a), so that they do not need to stay at work for an extra unpaid 30 minutes. As with Plaintiff's first meal period claim, Defendant argues that individualized inquiries would preclude class certification for this claim as well. In light of these risks, Plaintiff discounted the maximum amount that the class could potentially recover by 50% for the risk of non-certification and an additional 75% for the risk of losing on the merits, or having exposure reduced due to Defendant's waiver arguments, to arrive at estimated exposure of \$13,348.

17. Plaintiff alleges that Defendant failed to authorize and permit all legally compliant off-duty rest periods. Specifically, Plaintiff alleges that he and other Settlement Class members were frequently prevented from taking rest periods, or were interrupted during rest periods, as a result of work demands. Additionally, Plaintiff alleges that Defendant failed to authorize and permit Plaintiff and other non-exempt employees a second or third rest period during shifts in excess of 6.0 hours or 10.0 hours. Based on Plaintiff's review of Defendant's timekeeping records, Plaintiff estimates that there were approximately 52,452 shifts in excess of 3.5 hours, entitling employees to at least one rest period. Therefore, assuming a rest period violation for every shift during the Class Period, Plaintiff calculated Defendant's maximum exposure on this claim at approximately \$1,067,922 (52,452 rest period violations * \$20.36 average rest period premium). However, Defendant argues that it has always maintained and enforced lawful rest period practices during the Class Period, and has, in fact, authorized and permitted all required rest periods to Settlement Class members. Additionally, Defendant maintains that any failure to take a rest period was the result of employee choice. As with Plaintiff's meal period claim, Defendant argues that employees signed weekly attestations confirming they received all required rest periods. Defendant also asserts this claim is not amenable to class treatment as individualized inquiries would be required to determine which employees failed to take a rest period, and the reasons why. Defendant also contends that manageability concerns are especially present with respect to rest period claims, since rest periods are not recorded. In light of these defenses, Plaintiff discounted Defendant's maximum exposure by 75% to account for the risk of non-certification, and an additional 75% to account for Defendant's defenses on the merits, to arrive at an estimated exposure of approximately \$66,745.

1 18. As a result of the unpaid wages and unpaid meal and rest period premium wages
2 described above, Plaintiff alleges that Defendant failed to comply with its final pay obligations
3 set forth in Labor Code §§ 201-203. Defendant's records reflected approximately 242 former
4 Settlement Class members who are eligible for waiting time penalties. Based on an hourly rate of
5 \$20.36, Plaintiff estimated the average waiting time penalty per former employee to be
6 approximately \$4,886 ($\$20.36 * 8 \text{ hours per day} * 30 \text{ days}$). Therefore, Plaintiff calculated
7 Defendant's maximum exposure for potential waiting time penalties to be approximately
8 \$1,182,412 ($242 \text{ former employees} * \$4,886 \text{ average penalty}$). However, Defendant argues that
9 it possesses strong, good faith defenses to Plaintiff's underlying claims, thus precluding recovery
10 of waiting time penalties, which are only available for the "willful" failure to pay wages.
11 Defendant further asserts that Plaintiff's waiting time penalty exposure was grossly inflated as
12 not every former employee experienced the alleged Labor Code violations. Moreover, because
13 the waiting time claim is derivative of Plaintiff's underlying wage claims, Plaintiff would need to
14 overcome Defendant's defenses, both as to class certification and on the merits, as to his
15 underlying claims. To account for Defendant's defenses, Plaintiff discounted the maximum
16 exposure by 75% for the risk of non-certification and an additional 75% for the risk of losing on
17 the merits and/or not receiving the maximum penalties sought, to arrive at an estimated exposure
18 of approximately \$73,901.

19 19. As a further result of the unpaid wages and unpaid meal and rest period premium
20 wages described above, Plaintiff alleges that Defendant is liable for wage statement penalties.
21 Those penalties are calculated as \$50 for each "initial" violation and \$100 for each "subsequent"
22 violation, with a maximum of \$4,000 per employee. Plaintiff's analysis reflected that there were
23 approximately 192 unique employees and approximately 3,861 pay periods worked during the
24 liability period applicable to Plaintiff's wage statement claim. Plaintiff, therefore, calculated
25 Defendant's potential wage statement exposure at approximately \$376,500 ($[192 \text{ "initial"} * \$50] + [3,669 \text{ "subsequent"} * \$100]$). Defendant argues any alleged wage
26 statement violations were not "knowing and intentional," and Plaintiff cannot show he or other
27 employees "suffer[ed] injury" due to the alleged wage statement violations, as required by Labor
28

Code § 226(e) for the imposition of penalties. Further, Defendant contends its wage statements always accurately reflected hours worked and amounts paid as well as all other required information, precluding liability for wage statement penalties. In light of Defendant's arguments that no violations occurred, that employees suffered no "injury," that any alleged violations were not "knowing and intentional," and that the wage statements always accurately reflected hours worked and amounts paid to employees, as well as risks associated with Plaintiff's underlying claims discussed above, Plaintiff discounted the maximum exposure by 75% for risk of non-certification, and by an additional 75% for risk of being unsuccessful on the merits, for an estimated realistic exposure of approximately \$23,531.

20. As a result of the foregoing Labor Code violations, Plaintiff alleges that Defendant is liable for civil penalties under the PAGA. Plaintiff estimated a maximum total PAGA exposure of approximately \$386,100 (3,861 pay periods * \$100 "initial" penalty). Since Plaintiff's PAGA claim is derivative of Plaintiff's underlying wage claims, Defendant asserts the PAGA claim would fail with those claims. Defendant further maintains that, given its good faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find Defendant liable for any of Plaintiff's claims. Therefore, Plaintiff discounted the maximum figure by 75% for the risk of losing on the merits and/or not recovering a PAGA penalty for each and every pay period, and an additional 75% to account for the possibility of this Court reducing penalties to arrive at an estimated exposure of approximately \$24,131.

21. Using these estimated figures for each of the claims described above, Plaintiff predicted that the potential recovery for the Settlement Class would be approximately \$334,812. The proposed Settlement of \$275,000.00 represents approximately 82.1% of the reasonably forecasted recovery for the Settlement Class.

22. Although the parties engaged in significant informal discovery prior to mediation, the parties still had significant formal discovery to complete had the matter not been settled. This would have required the expenditure of substantial time and resources by both parties that would have very likely spanned several years. Even if Plaintiff was to certify the classes, the parties would incur considerably more attorneys' fees and costs through a possible decertification

1 motion, trial, and possible appeal. This Settlement avoids those risks and the accompanying
2 expenses.

3 23. Class Counsel will also apply for an attorneys' fees award of one-third of the
4 Maximum Settlement Amount, which is currently estimated to be \$91,666.66, and up to
5 \$20,000.00 in verified costs reimbursement. Plaintiff submits the requested fee is fair
6 compensation for undertaking complex, risky, expensive, and time-consuming litigation on a
7 purely contingent fee basis. Class Counsel has incurred substantial attorneys' fees conducting
8 pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, conducting
9 extensive informal discovery, working with his retained expert to analyze Settlement Class
10 members' timekeeping and payroll records, creating a comprehensive damages model,
11 interviewing Settlement Class members, preparing for and attending mediation, reviewing and
12 analyzing Defendant's financial condition, negotiating and preparing the long-form Settlement
13 Agreement, preparing this Motion, and otherwise litigating the case. Class Counsel expects to
14 expend additional attorney time in attending the hearing on this Motion, overseeing the Notice
15 process and fielding questions from Settlement Class members, preparing the final approval
16 papers, and attending the Final Approval hearing.

17 24. Plaintiff will apply for Class Representative Enhancement Payment at the time of
18 seeking final approval of the proposed class action settlement in the amount of \$7,500.00 for his
19 service to the Settlement Class. I believe this is reasonable given Plaintiff's efforts in this case as
20 well as the significant risks Plaintiff undertook by agreeing to serve as the named Plaintiff in this
21 case. Plaintiff was integral in the prosecution of this action, by, among other things, providing
22 substantial factual information and documents to Class Counsel, discussing the claims and
23 theories at issue in the litigation, actively participating in the prosecution of his claims, as well as
24 the significant risks Plaintiff undertook by agreeing to serve as the named Plaintiff in this case,
25 and the fact that Plaintiff agreed to a general release of all claims subject to a waiver of Civil
26 Code § 1542.

27 25. Under the proposed Settlement in this case, uncashed funds will be sent to *cy pres*
28 recipient Ronald McDonald House Charities of San Diego. Neither I nor any attorney at my law

1 firm have any personal and/or financial interest and/or connection with Ronald McDonald House
2 Charities of San Diego.

3 I declare under penalty of perjury under the laws of the State of California that the
4 foregoing is true and correct. Executed on July 28, 2023, at El Segundo, California.

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6 Sean M. Blakely
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EXHIBIT A

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>>.**

EXHIBIT B

HAINES LAW GROUP
EMPLOYMENT ATTORNEYS

February 15, 2022

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Daniel A. Munoz v. S & W Roof Tear-Off Corporation*

To Whom It May Concern:

Please be advised that this law firm represents Daniel A. Munoz (“Mr. Munoz”) in claims arising from his employment with S & W Roof Tear-Off Corporation, a California corporation, and Does 1 through 100 (collectively “Defendants”). Mr. Munoz is an “aggrieved employee” as defined by Labor Code Section 2698 *et seq.*, due to Defendants’ numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code Section 2699.3, which requires aggrieved employees to notify their employer and the Labor & Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, “aggrieved employees” includes all of Defendants’ non-exempt employees who worked for Defendants in California during the one year and 178 days immediately preceding the date of this letter through the present.

Defendants provide roof removal services to commercial and residential properties throughout Southern California. Mr. Munoz worked for Defendants as a non-exempt employee from approximately 2010 until approximately September 14, 2021, when he injured his back. Throughout Mr. Munoz’s employment, Mr. Munoz was regularly scheduled to work a shift that began at 7:00 a.m., and Mr. Munoz’s end time varied depending on Defendants’ projects.

Throughout Mr. Munoz’s employment with Defendants, Mr. Munoz was to report to a trolley/train station at 7:00 a.m. where Mr. Munoz along with other aggrieved employees would be picked up and transported to a work site. Despite arriving at the trolley/train station at 7:00 a.m. each workday, Defendants only began compensating Mr. Munoz and other aggrieved employees once they arrived at the work site. As a result, Mr. Munoz and other aggrieved employees were not paid for all hours actually worked, resulting in unpaid minimum and overtime wages.

Furthermore, during Mr. Munoz’s employment with Defendants, Defendants’ timekeeping policies and/or practices resulted in Mr. Munoz and other aggrieved employees not being compensated for all hours actually worked, whether by rounding,

time-shaving, or otherwise. Specifically, throughout Mr. Munoz's employment, there was no mechanism for Mr. Munoz to record his hours worked. Rather, Defendants' supervisor and/or foreman recorded the hours worked by Mr. Munoz and other aggrieved employees, and prevented Mr. Munoz from recording his hours worked in any manner. Upon information and belief, Defendants failed to accurately record Mr. Munoz's and other aggrieved employees' hours worked, and instead recorded Mr. Munoz's and other aggrieved employees' hours worked in quarter-hour increments. Defendants' timekeeping policies/practices were not even handed and have resulted in Mr. Munoz and other aggrieved employees not being compensated for all hours worked. As a result of Defendants' failure to pay Mr. Munoz and other aggrieved employees for their actual hours worked, Defendants failed to pay Mr. Munoz and other aggrieved employees for all minimum and overtime wages earned.

Defendants failed to provide Mr. Munoz and other aggrieved employees with all legally compliant meal periods due to Defendants' meal period policies/practices, which have frequently resulted in late (commencing after the fifth hour of work), short (less than 30 minutes), and missed meal periods. Specifically, due to work demands imposed by Defendants, Mr. Munoz was often prevented from taking any meal period during his workday. Moreover, on the occasions when Mr. Munoz was provided with a first meal period, Mr. Munoz was provided with a first meal period that commenced after the completion of five hours of work. Although Mr. Munoz began his work shift at 7:00 a.m., he was often not provided with a meal period until 1:00 p.m. or later, which is after the completion of five hours of work. Additionally, Defendants failed to provide Mr. Munoz and other aggrieved employees with second meal periods on shifts over 10.0 hours. Defendants did not require Plaintiff and other aggrieved employees to record their meal periods, rather, Defendants' supervisors and/or foreman would mark "30 minutes" on a timesheet for a purported meal period. Upon information and belief, Defendants automatically deducted 30 minutes from the total hours worked for each shift worked regardless of whether the employee actually took a full 30-minute compliant meal period. On those occasions when Mr. Munoz was not provided with all legally-compliant meal periods to which he was entitled, Defendants failed to compensate Mr. Munoz with the required meal period premium(s) for each workday there was a meal period violation as mandated by Labor Code § 226.7. Upon information and belief, Defendants maintained no mechanism for the payment of meal period premium payments as required by Labor Code § 226.7, in the event that a legally-compliant meal period was not provided to their non-exempt employees.

Mr. Munoz and other aggrieved employees were not authorized and permitted to take all required rest periods due to Defendants' unlawful rest period policies/practices, which failed to authorize and permit a net 10-minute rest period for every four hours worked, or major fraction thereof. For the vast majority of Mr. Munoz's employment with Defendants, Mr. Munoz was not authorized and permitted to take any rest periods during his work shift. During the last year of his employment with Defendants, Mr. Munoz and other aggrieved employees were only authorized and permitted to take a single rest break during their work day, despite working shifts in excess of 6.0 hours. Additionally,

Defendants failed to authorize and permit Mr. Munoz and other aggrieved employees a third rest period during shifts in excess of 10.0 hours. On those occasions when Mr. Munoz was not authorized and permitted to take all legally-compliant rest periods to which he was entitled, Defendants failed to compensate Mr. Munoz with the required rest period premium(s) for each workday there was a rest period violation as mandated by Labor Code § 226.7. Upon information and belief, Defendants maintained no mechanism for the payment of rest period premium payments as required by Labor Code § 226.7, in the event that a legally-compliant rest period was not authorized and permitted to their non-exempt employees.

As a result of Defendants' failure to pay all minimum and overtime wages and failure to pay all meal and rest period premium wages, Defendants failed to timely pay all final wages to Mr. Munoz and other aggrieved employees upon their separation of employment from Defendants. As a further result of Defendants' failure to pay all minimum and overtime wages and failure to pay all meal and rest period premium wages, Defendants maintained inaccurate payroll records and failed to issue accurate and compliant itemized wage statements.

As described above, Defendants committed the following violations of the Labor Code, and Industrial Welfare Commission Wage Order 16 ("Wage Order 16"):

Minimum Wage Violations

Defendants were, and are, required to pay Mr. Munoz and other aggrieved employees an hourly rate at least equal to the minimum wage for each hour actually worked. *See* Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1198, and Wage Order 16, § 4. As alleged above, Defendants maintained, and continues to maintain, timekeeping policies/practices and pay policies/practices that regularly, systematically, and impermissibly fail to compensate Mr. Munoz and other aggrieved employees for all hours worked. As a result of these policies/practices, Mr. Munoz and other aggrieved employees have been, and continue to be, deprived of all required minimum wages.

Overtime Wage Violations

Defendants are required to compensate non-exempt employees, including Mr. Munoz and other aggrieved employees, for all overtime hours worked pursuant to Labor Code §§ 204, 510, 558, 1194, 1198 and Wage Order 16. Wage Order 16, § 3 requires an employer to pay an employee "one and one-half (1½) times [the] employee's regular rate of pay" for work in excess of 8 hours per workday or over 40 hours in a workweek, and for the first eight (8) hours on the seventh (7th) day of work. Wage Order 16, § 3 also requires an employer to pay an employee double the employee's regular rate of pay for work in excess of 12 hours on any workday and for work in excess of eight hours on the seventh consecutive day of work in the workweek.

As alleged above, Defendants have caused Mr. Munoz and other aggrieved

employees to work overtime hours but has not compensated Mr. Munoz or other aggrieved employees at one and one-half times (or two times, in the case of double-time) their “regular rate” of pay for such hours.

Meal Period Violations

As alleged above, Defendants failed to provide Mr. Munoz and other aggrieved employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 16, § 10. As a result, Mr. Munoz and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 (“If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”).

Rest Period Violations

As alleged above, Defendants also failed to authorize and permit Ms. Munoz and other aggrieved employees to take all required rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 16, § 11. As a result, Ms. Munoz and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 (“If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest period is not provided.”).

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees are paid all of their final wages at the time of their separation of employment. As alleged above, Defendants failed to timely pay aggrieved former employees all of their final wages at the time of separation, including all minimum and overtime wages as well as all meal and rest period premiums. Pursuant to Labor Code § 203, Defendants’ failure to pay all final wages due to aggrieved former employees was willful and, consequently, entitles aggrieved former employees to waiting time penalties equal to one day of wages at their standard rate for each day Defendants failed to pay their final wages after their separation, up to a maximum of thirty days.

Wage Statement Violations

Defendants have knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Mr. Munoz and other aggrieved employees with complete and accurate wage statements with respect to their total hours worked, total gross wages

earned, total net wages earned, meal and rest period premium wages earned, and the name of the legal entity that is the employer, in violation of Labor Code § 226 *et seq.* Defendants' failure in furnishing Mr. Munoz and other aggrieved employees with complete and accurate itemized wage statements resulted in injury, as said failures led to, among other things, the non-payment of all earned wages and all meal and rest period premiums, and deprived them of the information necessary to identify the discrepancies in Defendants' reported data.

As an "aggrieved employee," Mr. Munoz will initiate a civil action on behalf of himself and other aggrieved employees to recover civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Munoz's own investigation, and on information and belief, Defendants committed and continue to commit the following Labor Code violations:

- a. Defendants violated Labor Code §§ 1182.12, 1194, 1194.2, 1197, and 1198 by failing to pay Mr. Munoz and other aggrieved employees the statutory minimum wage for all hours worked;
- b. Defendants violated Labor Code §§ 204, 510, 1194, and 1198 by failing to pay Mr. Munoz and other aggrieved employees all overtime compensation earned;
- c. Defendants violated Labor Code §§ 226.7, 512, 558, and 1198 by failing to provide meal periods as required by law and failing to pay meal period premiums to Mr. Munoz and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations;
- d. Defendants violated Labor Code §§ 226.7, 516, 558, and 1198 by failing to authorize and permit Mr. Munoz and other aggrieved employees all required rest periods and failing to pay rest period premiums to Mr. Munoz and other aggrieved employees at these employees' respective regular rates of compensation for rest period violations;
- e. Defendants violated Labor Code §§ 201-203 by failing to timely pay all final wages due to Mr. Munoz and other aggrieved former employees upon their separation of employment;
- f. Defendants violated Labor Code § 226 *et seq.*, by failing to furnish Mr. Munoz and other aggrieved employees with accurate and compliant itemized wage statements;
- g. Defendants violated Labor Code § 204 by failing to pay Mr. Munoz and other aggrieved employees all wages earned at least twice during each calendar month; and
- h. Defendants violated Labor Code §§ 1174 and 1198 by failing to maintain accurate records on behalf of Mr. Munoz and other aggrieved employees.

LWDA
February 15, 2022
Page 6 of 6

Pursuant to Labor Code Section § 2699.3(a)(2)(A), please notify us and Defendants if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
HAINES LAW GROUP, APC



Paul K. Haines

cc: S & W Roof Tear-Off Corporation, c/o Edward Thomas Clare, Agent for Service of Process (via certified mail)

PROOF OF ACCEPTANCE (ELECTRONIC)

PRODUCED DATE: 02/16/2022

HAINES LAW GROUP:

The following is information for Certified Mail™/RRE item number:

9214 8901 9403 8300 0066 5167 04

Our records indicate that this item was accepted by the USPS at:

SHIPMENT RECEIVED ACCEPTANCE PENDING EL SEGUNDO, CA 90245 02/15/2022

ORIGINAL INTENDED RECIPIENT:

S & W ROOF TEAR-OFF CORPORATION

C/O EDWARD THOMAS CLARE, AGENT FOR SERVICE
OF PROCESS

8900 GROSSMONT BLVD., #3

LA MESA, CA 91941



Mailer: Haines Law Group

Date Produced: 02/21/2022

ConnectSuite Inc.:

The following is the delivery information for Certified Mail™/RRE item number 9214 8901 9403 8300 0066 5167 04. Our records indicate that this item was delivered on 02/18/2022 at 10:49 a.m. in LA MESA, CA 91941. The scanned image of the recipient information is provided below.

Signature of Recipient :
(Authorized Agent)

LF 41111 C19
A P66DLITTLE

Address of Recipient :

8900
GROSSMONT
BL # 3

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,
United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

This USPS proof of delivery is linked to the customers mail piece information on file as shown below:

S & W ROOF TEAR-OFF CORPORATION
C/O EDWARD THOMAS CLARE, AGENT FOR SERVICE
OF PROCESS
8900 GROSSMONT BLVD., #3
LA MESA, CA 91941

Customer Reference Number: C3233000.18812222