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and on behalf of all others similarly situated.

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Applied Earthworks, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

SARAH ELIZABETH LEWIS, individually and
on behalf of all others similarly situated,

Plaintiffs,

vs.

APPLIED EARTHWORKS, INC.; and DOES 1
through 20, inclusive,

Defendants.

Case No.CIVSB2207045

Assigned for all purposes to:
Hon. David Cohn
Dept. S26

**JOINT STIPULATION OF CLASS AND
REPRESENTATIVE PAGA ACTION
SETTLEMENT**

1 It is stipulated and agreed by and among the undersigned Parties, subject to the approval of
2 the Court pursuant to the California Rules of Court, that the Settlement of these Actions shall be
3 effectuated upon and subject to the following terms and conditions. Capitalized terms used herein
4 shall have the meanings set forth in Article I or as defined elsewhere in this Joint Stipulation of
5 Settlement (“Agreement” or “Settlement”).

6 This Agreement is made by and between Named Plaintiff Sarah Elizabeth Lewis (“Named
7 Plaintiff”) and the Class Members, on the one hand, and Defendant Applied Earthworks, Inc.
8 (“Defendant”), on the other hand. Named Plaintiff and Defendant collectively are referred to in this
9 Agreement as “the Parties.”

10 The Parties agree that the Actions shall be, and hereby are, ended, settled, resolved, and
11 concluded by agreement of Defendant to pay the settlement amount of Four Hundred Thirty-Three
12 Thousand Dollars (\$433,000.00) as provided in Section 3.06(a) below (“Gross Settlement Amount”),
13 pursuant to the terms and conditions of this Agreement and for the consideration set forth herein,
14 including but not limited to, a release of all claims by Named Plaintiff and the Class Members as set
15 forth herein.

16 ARTICLE I

17 DEFINITIONS

18 Unless otherwise defined herein, the following terms used in this Agreement shall have the
19 meanings ascribed to them as set forth below:

20 a. “Action” means the action described as follows: *Sarah Elizabeth Lewis, individually*
21 *and on behalf of all others similarly situated v. Applied Earthworks, Inc.* and DOES 1 through 20,
22 inclusive,” Case No. CIVSB2207045, commenced on April 11, 2022, in the Superior Court of the
23 State of California for the County of San Bernardino.

24 b. “Agreement” means this Joint Stipulation of Settlement, including the attached
25 Exhibit(s).

26 c. “Class” means *all* current and former non-exempt employees who are or were
27 employed by Defendant in California at any time during the Class Period.

28 d. “Class Counsel” means the attorneys for the Class and the Class Members, who are:

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e. “Class List” means a list based on Defendant’s business records that identifies each Class Member’s name, last known home or mailing address, Social Security number or, as applicable, other taxpayer identification number, dates of employment, and the number of Qualifying Workweeks worked during the Class Period.

f. “Class Member(s)” means *any* current or former non-exempt employee(s) who are or were employed by Defendant during the Class Period.

g. “Class Period” mean October 15, 2017 through May 17, 2023.

h. “Court” means the California Superior Court for the County of San Bernardino, where the Actions are currently pending.

i. “Date of Finality” means the later of the following: (1) the date the Final Order is signed if no objections are filed to the Settlement; (2) if objections are filed and overruled, and no appeal is taken of the Final Order, sixty-five (65) days after the Final Order; or (3) if an appeal or other judicial review is taken from the Court’s overruling of objections to the settlement, ten (10) days after the appeal is withdrawn or after an appellate decision affirming the Final Order becomes final.

j. “Defendant” means Defendant Applied Earthworks, Inc.

k. “Defense Counsel” means counsel for Defendant:

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1 l. "Disposition" means the method by which the Court approves the terms of the
2 Settlement and retains jurisdiction over its enforcement, implementation, construction,
3 administration, and interpretation.

4 m. "Final Order Approving Settlement of Class Action" or "Final Order" means the final
5 formal court order signed by the Court following the Final Fairness and Approval Hearing in
6 accordance with the terms herein, approving this Agreement.

7 n. "Gross Settlement Amount" means Four Hundred Thirty-Three Thousand Dollars
8 and Zero Cents (\$433,000.00) to be paid by Defendant as provided by this Agreement to settle the
9 Actions. All payments to the Class, administration costs, attorney's fees and costs, and Incentive
10 Awards, pursuant to Section 3.06(a) below, shall be paid out of the Gross Settlement Amount. The
11 employer's share of payroll taxes arising from the payments made under this settlement shall be paid
12 by Defendant separate from and in addition to the Gross Settlement Amount. The Gross Settlement
13 Amount is subject to a pro rata increase pursuant to Section 3.04(e) below. No part of the Gross
14 Settlement Amount shall revert to Defendant.

15 o. "Incentive Award" means a monetary amount of up to Seven Thousand Five Hundred
16 Dollars (\$7,500.00) for Plaintiff Sarah Elizabeth Lewis, subject to Court approval, in recognition of
17 her effort and work in prosecuting the Actions on behalf of Class Members, and for her general
18 release of claims.

19 p. "Individual Settlement Payment(s)" means each Participating Class Member's
20 respective share of the Net Settlement Amount. Individual Settlement Payments will be determined
21 by the calculations provided in this Agreement.

22 q. "LWDA" means the State of California Labor and Workforce Development Agency.

23 r. "LWDA Payment" means 75% of the PAGA Settlement Amount which, subject to
24 Court approval, will be paid to the LWDA pursuant to Section 3.06(e) of this Agreement, as provided
25 for below.

26 s. "Motion for Final Approval" means Plaintiff's submission of a written motion,
27 including any evidence as may be required for the Court to conduct an inquiry into the fairness of
28

the Settlement as set forth in this Agreement, to conduct a Final Fairness and Approval Hearing, and to enter a Final Order in the Actions.

t. “Motion for Preliminary Approval” means Plaintiff’s submission of a written motion, including any evidence as may be required for the Court to grant preliminary approval of the Settlement as required by Rule 3.769 of the California Rules of Court.

u. “Named Plaintiff” means Sarah Elizabeth Lewis.

v. “Net Settlement Amount” means the Gross Settlement Amount less Court-approved administration costs, Class Counsels’ attorney’s fees and costs, Incentive Award, and LWDA Payment, pursuant to Section 3.06(a)-(f) below.

w. “Non-Participating Class Member(s)” means any Class Member(s) who submit to the Settlement Administrator a valid and timely written request to be excluded from the Class pursuant to Section 3.04(b) below.

x. “Notice Packet” means the Notice of Proposed Class and Representative PAGA Action Settlement in a form substantially similar to the Notice Packet attached hereto as **Exhibit A**, subject to Court approval.

y. “PAGA” means the California Private Attorneys General Act of 2004, which is codified in California Labor Code §§ 2698 *et seq.*

z. “PAGA Group Members” means all Class Members employed by Defendant at any time during the PAGA Period.

aa. “PAGA Period” means April 11, 2021 through May 17, 2023.

bb. “PAGA Settlement Amount” means the portion of the Gross Settlement Amount allocated to the resolution of PAGA Group Members’ claims arising under PAGA. The Parties have agreed that the PAGA Settlement Amount is Ten Thousand Dollars (\$10,000.00), subject to Court approval. Of the PAGA Settlement Amount, 75% will be considered the LWDA Payment, and the remaining 25% will be added to the Net Settlement Amount and distributed to PAGA Group Members.

cc. “Participating Class Member(s)” is defined as a Class Member who does not timely exclude himself or herself from the Settlement and will therefore receive his or her share of the Net

1 Settlement Amount automatically without the need to return a claim form. Each Participating Class
2 Member will be paid his/her Individual Settlement Payment.

3 dd. "Preliminary Approval Date" means the date the Court preliminarily approves the
4 Settlement embodied in this Agreement.

5 ee. "Qualified Settlement Fund" or "QSF" means a fund within the meaning of Treasury
6 Regulation § 1.468B-1, 26 CFR § 1.468B-1 *et seq.*, that is established by the Settlement
7 Administrator for the benefit of Participating Class Members.

8 ff. "Qualifying Workweeks" means the number of weeks that a Class Member worked
9 for Defendant as a non-exempt employee during the Class Period.

10 gg. "Qualifying PAGA Workweeks" means the number of weeks that a Class Members
11 worked for Defendant as a non-exempt employee during the PAGA Period.

12 hh. "Released Parties" means Defendant.

13 ii. "Response Deadline" means the deadline by which Class Members must postmark or
14 fax to the Settlement Administrator requests for exclusion or written notices of objection. The
15 Response Deadline will be forty-five (45) calendar days after the initial mailing of the Notice Packet
16 by the Settlement Administrator, unless the sixtieth (60th) calendar day falls on a Sunday or federal
17 holiday, in which case the Response Deadline will be extended to the next day on which the U.S.
18 Postal Service is open. The Response Deadline will be extended as set forth herein if there is a re-
19 mailing.

20 jj. "Settlement Administration Costs" means all costs incurred by the Settlement
21 Administrator in administration of the Settlement, including, but not limited to, mailing of notice to
22 the class, calculation of Individual Settlement Payments, generation of Individual Settlement
23 Payment checks and related tax reporting forms, administration of unclaimed checks, and generation
24 of checks to Class Counsel for attorneys' fees and costs, to Named Plaintiff for her Incentive Awards,
25 and to the LWDA. The Settlement Administration Costs shall be paid from the Gross Settlement
26 Amount.

CONTINGENT NATURE OF THE AGREEMENT

Because the Parties are settling claims under Labor Code section 2699 *et. eq.* and have stipulated to the certification of the Class with respect to all causes of action alleged in the Class Action for settlement purposes only, this Agreement requires approval by the Court in accordance with Labor Code section 2699(l) and California Rule of Court 3.769. Accordingly, the Parties enter into this Agreement on a conditional basis. This Agreement is contingent upon the approval and certification by the Court. If the Date of Finality does not occur, the fact that the Parties were willing to stipulate for the purposes of this Agreement to a Class and agreed to resolution of Plaintiff's claim for PAGA penalties shall have no bearing on, nor be admissible in connection with, the issue of certification of the Class with respect to all causes of action alleged in the Class Action. Defendant does not consent to certification of the Class for any purpose other than to effectuate settlement of the Actions. If the Date of Finality does not occur, or if Disposition of the Actions is not effectuated, any certification of the Class as to Defendant and any approval or award of PAGA penalties will be vacated, and Named Plaintiff, Defendant, and the Class will be returned to their positions with respect to the Actions as if the Agreement had not been entered into. In the event that the Date of Finality does not occur: (a) any Court orders preliminarily or finally approving certification of any class contemplated by this Agreement and/or awarding PAGA penalties shall be null, void, and vacated, and shall not be used or cited thereafter by any person or entity; and (b) the fact of the settlement reflected in this Agreement, the fact that Defendant did not oppose the certification of a Class under this Agreement, or that the Court preliminarily approved the certification of the Class and/or approved an award of PAGA penalties, shall not be used or cited thereafter by any person or entity, including in any manner whatsoever, including without limitation any contested proceeding relating to the certification of any class. If the Date of Finality does not occur, this Agreement shall be deemed

1 null and void, shall be of no force or effect whatsoever, and shall not be referred to or used for any
2 purpose whatsoever. Defendant expressly reserves the right to challenge the propriety of class
3 certification in the Class Action for any purpose, if the Date of Finality does not occur.

4 The Parties and their respective counsel shall take all steps that may be requested by the Court
5 relating to the approval and implementation of this Agreement and shall otherwise use their
6 respective best efforts to obtain Court approval and implement this Agreement. Plaintiff shall be
7 responsible for submitting the settlement to the LWDA at the same time of filing the Motion for
8 Preliminary Approval. If the Court does not grant the Motion for Preliminary Approval and/or the
9 Motion for Final Approval and/or if the LWDA objects to the PAGA Settlement Amount, the Parties
10 agree to meet and confer to address the Court's and/or LWDA's concerns. If the Parties are unable
11 to agree upon a resolution, the Parties agree to seek the assistance of mediator Hon. Lisa Hart Cole
12 (Ret.) to resolve the dispute.

13 **ARTICLE III**

14 **PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF THE SETTLEMENT**

15 The procedure for obtaining Court approval of and implementing this Agreement shall be as
16 follows:

17 **Section 3.01: Motion for Conditional Class Certification and Preliminary Approval**

18 Named Plaintiff will bring a motion before the Court for an order conditionally certifying the
19 Class to include all claims pled in the Actions based on the preliminary approval of this Agreement.
20 The date that the Court grants preliminary approval of this Agreement will be the "Preliminary
21 Approval Date."

22 **Section 3.02: The Settlement Administrator**

23 The Parties have chosen ILYM Group, Inc. to administer this Settlement and to act as the
24 Settlement Administrator, including but not limited to distributing and responding to inquiries about
25 the Notice Packet, determining the validity of exclusions/opt-outs, calculating the Net Settlement
26 Amount and the Individual Settlement Payments, issuing the Individual Settlement Payment checks
27 and distributing them to Participating Class Members, establishing and maintaining the QSF, and
28 issuing the payment to Class Counsel for attorneys' fees and costs, the Incentive Award checks to

1 Named Plaintiff, and the employer payroll taxes to the appropriate taxing authorities. The Settlement
2 Administrator shall expressly agree to all of the terms and conditions of this Agreement.

3 All costs of administering the Settlement, including but not limited to all costs and fees
4 associated with preparing, issuing and mailing any and all notices to Class Members and/or
5 Participating Class Members, all costs and fees associated with computing, processing, reviewing,
6 and mailing the Individual Settlement Payments, all costs and fees associated with preparing any tax
7 returns and any other filings required by any governmental taxing authority or agency, all costs and
8 fees associated with preparing any other checks, notices, reports, or filings to be prepared in the
9 course of administering disbursements from the Net Settlement Amount, and any other costs and fees
10 incurred and/or charged by the Settlement Administrator in connection with the execution of its
11 duties under this Agreement (“Settlement Administration Costs”), shall be paid to the Settlement
12 Administrator from the Gross Settlement Amount.

13 **Section 3.03: Notice to Class Members**

14 No later than five (5) business days after the Preliminary Approval Date, Defendant will
15 provide the Settlement Administrator with a “Class List” in electronic format based on its business
16 records, identifying the names of the Class Members, their last known home addresses, Social
17 Security numbers or, as applicable, other taxpayer identification number, their dates of employment
18 and weeks worked during the Class Period and PAGA Period (if applicable).

19 Within ten (10) business days of receiving a Class List from Defendant, the Settlement
20 Administrator will send Class Members, by first-class mail, at their last known address, the Court
21 approved Notice Packet, including notice of this Settlement and of the opportunity to opt out of the
22 Settlement Class. The Notice Packet will include a calculation of the Class Member’s approximate
23 share of the Net Settlement Amount. Class Members will have forty-five (45) days from the date of
24 mailing in which to postmark objections or requests for exclusion. Prior to the initial mailing, the
25 Settlement Administrator will check all Class Member addresses against the National Change of
26 Address database and shall update any addresses before mailing. The Settlement Administrator will
27 skip trace and re-mail all returned, undelivered mail within five (5) days of receiving notice that a
28 Notice Packet was undeliverable. If a Class Member’s notice is re-mailed, the Class Member shall

1 have fifteen (15) calendar days from the re-mailing, or sixty (60) calendar days from the date of the
2 initial mailing, whichever is later, in which to postmark objections or requests for exclusion. Class
3 Members shall not be required to submit claim forms in order to receive a proportional share of the
4 Net Settlement Amount.

5 If the Notice Packet is returned with a forwarding address, the Settlement Administrator shall
6 re-mail the Notice Packet to the forwarding address. With respect to those Class Members whose
7 Notice Packet is returned to the Settlement Administrator as undeliverable, the Settlement
8 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or
9 mass search on LexisNexis or comparable databases based on set criteria and, if another address is
10 identified, shall mail the Notice Packet to the newly identified address. It is the intent of the parties
11 that reasonable means be used to locate Class Members and that the Settlement Administrator be
12 given discretion to take steps in order to facilitate notice of the Settlement and delivery of the
13 Individual Settlement Payments to all Participating Class Members.

14 If the Notice Packet is re-mailed, the Settlement Administrator will note for its own records
15 and notify Class Counsel and Defense Counsel of the date of each such re-mailing as part of a weekly
16 status report provided to the Parties.

17 In the event a Class Member's Notice Packet remains undeliverable sixty (60) calendar days
18 after the Notice Packet was initially mailed, the Settlement Administrator will not mail the Class
19 Member's Individual Settlement Payment. The Settlement Administrator will hold the Class
20 Member's Individual Settlement Payment during the check cashing period on behalf of the Class
21 Member. If at the conclusion of the check cashing period the Class Member's Notice Packet and
22 Individual Settlement Payment remain undeliverable and/or unclaimed and uncashed, the Settlement
23 Administrator will distribute the funds from unclaimed/uncashed checks in accordance with the
24 procedures set forth in Section 3.06(g) below.

25 No later than twenty (20) court days prior to the Final Fairness and Approval Hearing, the
26 Settlement Administrator shall provide Defense Counsel and Class Counsel with a declaration
27 attesting to completion of the notice process, including any attempts to obtain valid mailing addresses
28 for and re-sending of any returned Notice Packets, objections that the Settlement Administrator

received, and the identity of those individuals who submitted valid requests for exclusion from the Settlement.

Section 3.04: Responses to Notice

a. Class Member Disputes

If any Class Member disagrees with Defendant's records as to his or her Qualifying Workweeks and/or Qualifying PAGA Workweeks as reflected in the Notice Packet, the Class Member shall set forth in writing the Qualifying Workweeks he/she claims to have worked during the Class Period and/or PAGA Period and submit such writing to the Settlement Administrator by the Response Deadline, along with any supporting documentation. The Notice will also provide a method for the Class Member to challenge the employment data on which his or her Individual Settlement Payment is based. The Settlement Administrator shall contact the Parties regarding the dispute and the Parties will work in good faith to resolve it. If the Parties are unable to resolve the dispute, the Settlement Administrator will be the final arbiter of the Qualifying Workweeks for each Class Member during the Class Period and/or PAGA Period based on the information provided to it.

b. Requests for Exclusion from Class

In order for any Class Member to validly exclude himself or herself from the Class and this Settlement (*i.e.*, to validly opt out), a written request for exclusion must be signed by the Class Member or his or her authorized representative, and must be sent to the Settlement Administrator, postmarked no later than the Response Deadline (or fifteen (15) days after the Settlement Administrator re-mails the Notice to the Class Member, whichever is later). The Notice Packet shall contain instructions on how to validly exclude himself or herself from the Class and this Settlement (*i.e.*, opt out), including the language to be used in a request for exclusion. The date of the initial mailing of the Notice Packet, and the date the signed request for exclusion was postmarked, shall be conclusively determined according to the records of the Settlement Administrator. Any Class Member who timely and validly requests exclusion from the Class and this Settlement will receive his/her share of PAGA Settlement Amount but will not be entitled to the remaining portion of the Individual Settlement Payment which would have been paid to him/her, will not be bound by the

1 terms and conditions of this Agreement, and will not have any right to object, appeal, or comment
2 thereon.

3 Any Class Member who fails to timely submit a request for exclusion shall automatically be
4 deemed a Class Member whose rights and claims with respect to the issues raised in the Actions are
5 determined by the Court's Final Order Approving Settlement n, and by the other rulings in the
6 Actions. Thus, said Class Member's rights to pursue any claims covered by the Actions and/or
7 released in this Agreement will be extinguished.

8 **c. Objections to Settlement**

9 For any Class Member to object to this Agreement, or any term of it, the person making the
10 objection must not submit a request for exclusion (*i.e.*, must not opt out), and should send to the
11 Settlement Administrator, postmarked or faxed no later than the Response Deadline (or fifteen (15)
12 days after the Settlement Administrator re-mails the Notice to the Class Member, whichever is later),
13 a written statement of the grounds of objection, signed by the objecting Class Member or his or her
14 attorney, along with all supporting papers. The date of the initial mailing of the Notice Packet, and
15 the date the signed objection was postmarked, shall be conclusively determined according to the
16 records of the Settlement Administrator. The Settlement Administrator shall send any objections it
17 receives to Defense Counsel and Class Counsel within three (3) business days of receipt. Class
18 Members may also appear at the final approval hearing to object. The Court retains final authority
19 with respect to the consideration and admissibility of any Class Member objections.

20 **d. Encouragement of Class Members**

21 The Parties to this Agreement and the counsel representing such Parties shall not, directly or
22 indirectly, through any person, encourage or solicit any Class Member to exclude him or herself from
23 this Settlement (opt out), or to object to it. However, Class Counsel may respond to inquiries from
24 Class Members.

25 ///

26 ///

e. Right of Plaintiff to Adjust Gross Settlement Amount

If the number of Class Members exceeds 199 by more than 10% (which is more than 218 Class Members) or the number of workweeks exceeds 13,071 by more than 10% (which is more than 14,378 workweeks) as of the end of the Class Period, there will be a pro rata adjustment to the Gross Settlement Amount equal to \$2,175.88 per additional class member or \$33.13 per additional workweek, whichever is greater.

Section 3.05: Final Fairness and Approval Hearing

On the date set forth in the Order for Preliminary Approval and Notice Packet, a Final Fairness and Approval Hearing shall be held before the Court in order to (1) review this Agreement and determine whether the Court should give it final approval, and (2) consider any objections made and all responses by the Parties to such objections. At the Final Fairness and Approval Hearing, the Parties shall ask the Court to grant final approval to this Agreement and shall submit to the Court a Proposed Final Order Approving Settlement of Class and Representative PAGA Action.

Section 3.06: Settlement Payment Procedures

a. Settlement Amount

In exchange for the Released Claims set forth in this Agreement, Defendant agrees to pay the Gross Settlement Amount in the amount of Four Hundred Thirty-Three Thousand Dollars (\$433,000.00), subject to a pro rata increase, if any, under the conditions set forth in Section 3.04(e). The Gross Settlement Amount includes all Individual Settlement Amounts to Participating Class Members, all administration costs, Class Counsel's attorney's fees and costs, the LWDA Payment, and the Incentive Award.

Within ten (10) calendar days after the Court signs the Final Order, Defendant shall transfer the Gross Settlement Amount plus Defendant's share of employer-side payroll taxes, as set forth herein, into a QSF established by the Settlement Administrator either directly or by sending the funds to the Settlement Administrator to be deposited and distributed. The Settlement Administrator will use these funds to fund payment of the Individual Settlement Payments to Participating Class Members, Class Counsel's attorneys' fees and costs, the Incentive Award, the LWDA Payment, and the Settlement Administration Costs.

1 Within ten (10) court days after receiving Defendant's final payment, funding the Gross
2 Settlement Amount in full, the Settlement Administrator will pay the Individual Settlement Payments
3 to Participating Class Members, Class Counsel's attorneys' fees and costs, LWDA Payment, the
4 Incentive Award, and employer and employee tax withholdings applicable to the Net Settlement
5 Amount allocated to wages. Prior to this distribution, the Settlement Administrator will perform a
6 search based on the National Change of Address Database to update and correct for any known or
7 identifiable address changes.

8 **b. Payment of Attorneys' Fees and Costs**

9 Class Counsel shall submit an application for an award of attorneys' fees of up to one-third
10 of the Gross Settlement Amount, which, based on the current Gross Settlement Amount, is One
11 Hundred Forty-Four Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents
12 (\$144,333.33). Class Counsel shall submit an application for an award of costs not to exceed Twenty
13 Thousand Dollars (\$20,000.00). Such application for attorneys' fees and costs shall be heard by the
14 Court at the Final Fairness and Approval Hearing. Defendant shall not object to or oppose any such
15 application in these amounts. Class Counsel shall serve Defendant with copies of all documents
16 submitted in support of their application for an award of attorneys' fees and costs.

17 Any attorneys' fees and costs awarded to Class Counsel by the Court shall be paid from the
18 Gross Settlement Amount and shall not constitute payment to any Class Member(s). The attorneys'
19 fees and costs for Class Counsel approved by the Court shall encompass all work performed, costs,
20 and expenses related to the investigation, prosecution, and settlement of the Actions incurred through
21 the Date of Finality. To the extent that the Court approves less than the amount of attorney's fees
22 and/or costs that Class Counsel requests, the difference between the requested and awarded amounts
23 will be reallocated to the Net Settlement Amount.

24 **c. Payment of Settlement Administration Costs**

25 The Settlement Administration Costs shall be paid out of the Gross Settlement Amount and
26 shall not constitute payment to any Participating Class Member(s). The amount shall not exceed
27 Seven Thousand Two Hundred Fifty Dollars (\$7,250).
28

d. Payment of Incentive Award to Named Plaintiff

Subject to Court approval, the Named Plaintiff shall receive an Incentive Award of up to Seven Thousand Five Hundred Dollars (\$7,500.00), the request for which Defendant will not object to or oppose. The Incentive Award shall be paid out of the Gross Settlement Amount and shall not constitute payment to any Participating Class Member(s) other than Named Plaintiff. To the extent that the Court approves less than the amount of incentive award that Class Counsel request, the difference between the requested and awarded amounts will be reallocated to the Net Settlement Amount.

Because it is the intent of the Parties that the Incentive Award represent payment to Named Plaintiff for her service to the Class Members, and not wages, the Settlement Administrator will not withhold any taxes from the Incentive Awards. The Incentive Award will be reported on a Form 1099, which the Settlement Administrator will provide to Named Plaintiff and to the pertinent taxing authorities as required by law.

e. Payment to the Labor and Workforce Development Agency

In consideration of claims for penalties made under PAGA, Class Counsel will request that the Court approve allocation of Ten Thousand Dollars (\$10,000.00) of the Gross Settlement Amount to be attributed as the PAGA Settlement Amount. Seventy-five percent (75%) of this payment will be allocated as the LWDA Payment, and twenty-five percent (25%) will be distributed to PAGA Group Members. Defendant will not oppose this request. The entire PAGA Settlement Amount will be paid out of the Gross Settlement Amount. The Court's adjustment, if any, of the amount allocated as the PAGA Settlement Amount will not invalidate this Agreement.

f. Payment of Individual Settlement Payments to Participating Class Members and PAGA Group Members

The Parties agree that the Net Settlement Amount shall be used to fund Individual Settlement Payments. The Parties agree that the Net Settlement Amount shall be divided between all Participating Class Members in proportion to the number of individual Qualifying Workweeks for each Class Member during the Class Period and PAGA Period. To calculate the minimum amount each Class Member will receive based on their individual Qualifying Workweeks, the Net Settlement

1 Amount will be divided by the total number of Qualifying Workweeks by all Class Members during
2 the Class Period and PAGA Period then allocated on a pro rata basis. Qualifying Workweeks will be
3 rounded up to the next whole integer. Each Class Member's approximate Individual Settlement
4 Payment amount will be included in his or her Notice Packet. After final approval by the Court, the
5 Net Settlement Amount will be dispersed to Participating Class Members (those who did not exclude
6 themselves) on a pro rata basis based on the individual Qualifying Workweeks worked during the
7 Class Period by each Participating Class Member. Class Members who were employed during the
8 PAGA Period will receive their share of the PAGA Settlement Amount regardless of whether they
9 Opt-out of the settlement.

10 Each Individual Settlement Payment will represent wages and penalties. Settlement Payments
11 for the Class Period will be allocated using the following formula: 20% allocated to wages; 80%
12 allocated to interest and penalties. Payments for the PAGA Settlement Amount will be allocated as
13 100% penalties. The amounts paid as wages shall be subject to all tax withholdings customarily made
14 from an employee's wages and all other authorized and required withholdings and shall be reported
15 by W-2 forms. The employer-side taxes will be paid separate from and in addition to the Gross
16 Settlement Amount. The amounts paid as penalties and interest shall be subject to all authorized and
17 required withholdings other than the tax withholdings customarily made from employees' wages and
18 shall be reported by IRS 1099 forms.

19 No later than ten (10) business days after receiving the Gross Settlement Amount from
20 Defendant, the Settlement Administrator shall prepare and mail the checks for the Individual
21 Settlement Payments to Participating Class Members and PAGA Group Members. Individual
22 Settlement Payments paid from the Net Settlement Amount allocated to wages will be reduced by
23 applicable employer and employee tax withholdings, and the Settlement Administrator will issue a
24 Form W-2 for the wage portion of the Individual Settlement Payments. The Settlement Administrator
25 will issue a Form 1099 to the extent required by law for the interest and penalty portions of the
26 Individual Settlement Payments. Participating Class Members and PAGA Group Members shall
27 have 180 days from the date their Individual Settlement Payment checks are dated to cash their
28 checks. Any checks that are not cashed upon the expiration of that 180-day time period will be void,

1 and the uncashed funds shall be paid to the State Controller Unclaimed Property Fund in the name
2 of the Class Member for whom the funds are designated.

3 If a check is returned to the Settlement Administrator as undeliverable, the Settlement
4 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or
5 a mass search on LexisNexis or a comparable databases based on set criteria and, if another address
6 is identified, the Settlement Administrator shall mail the check to the newly identified address. If the
7 Settlement Administrator is unable to obtain a valid mailing address through this process, the
8 Settlement Administrator will tender the funds from the undeliverable checks to the State Controller
9 Unclaimed Property Fund in the name of the Class Member for whom the funds are designated.

10 **g. Default on Payment.**

11 Defendant's failure to fund the Gross Settlement Amount within ten (10) calendar days after
12 the date that the Court grants final approval of the Settlement shall be considered a default. In the
13 event Defendant fails to timely fund the Gross Settlement Amount, the Settlement Administrator will
14 provide notice to Class Counsel and Defendant's counsel within three (3) business days of the missed
15 payment. Thereafter, Defendant will have seven (7) calendar days to cure the default and tender
16 payment to the Settlement Administrator. In the event Defendant fails to cure the default within the
17 times set forth herein, Named Plaintiff may elect to enter judgment against Defendant, on an ex parte
18 basis, for the balance of the unpaid Gross Settlement Amount to date, and Named Plaintiff will be
19 entitled to recover interest at ten percent (10%) per year from the due date for such payment and
20 reasonable attorneys' fees and costs.

21 **h. No Credit Toward Benefit Plans.**

22 The Individual Settlement Payments made to Participating Class Members under this
23 Agreement, as well as any other payments made pursuant to this Agreement, will not be utilized to
24 calculate any additional benefits under any benefit plans to which any Class Members may be
25 eligible, including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase
26 plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties'
27 intention that this Agreement will not affect any rights, contributions, or amounts to which any Class
28 Members may be entitled under any benefit plans.

i. No Additional Contribution from Defendant

Defendant's monetary obligation under this Agreement is limited to the Gross Settlement Amount and any employer side payroll taxes owed on amounts characterized as wages under this Agreement (with the express exception of any potential pro rata increase to the Gross Settlement Amount, as described in Section 3.04(e)). All other costs and expenses arising out of or in connection with the performance of this Agreement shall be paid from the Gross Settlement Amount, unless expressly provided otherwise herein. However, in the event this agreement is deemed null and void pursuant to Section 2.01, because the Court, in its independent determination, finds that the Agreement does not meet the standards for settlement approval, then Defendant and Plaintiff shall be equally responsible for the costs of the Settlement Administrator incurred between the date the Agreement was executed and the date of such event.

ARTICLE IV

LIMITATIONS ON USE OF THIS SETTLEMENT

Section 4.01: No Admission

Defendant disputes the allegations in the Actions and disputes that, but for this Settlement, a Class should not have been certified in the Class Action and that any wages or penalties are due or should be awarded. This Agreement is entered into solely for the purpose of settling highly disputed claims. Nothing in this Agreement is intended nor will be construed as an admission of liability or wrongdoing by Defendant or any of the Released Parties.

Section 4.02: Non-Evidentiary Use

Whether or not the Date of Finality occurs, neither this Agreement, nor any of its terms, nor the Settlement itself, will be: (a) construed as, offered, or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Defendant or any other of the Released Parties, including but not limited to, evidence of a presumption, concession, indication, or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or (b) disclosed, referred to, or offered in evidence against any of the Released Parties in any further proceeding in the Actions, except for the purposes of effectuating the Settlement pursuant to this

1 Agreement or for Defendant to establish that a Class Member has resolved any of his or her claims
2 released through this Agreement.

3 **Section 4.03: Nullification**

4 The Parties have agreed to the certification of the Class encompassing all claims alleged in
5 the Actions for the sole purpose of effectuating this Agreement. If (a) the Court should for any reason
6 fail to certify this Class for settlement, or (b) the Court should for any reason fail to approve this
7 Settlement, or (c) the Court should for any reason fail to enter the Final Order, or (d) the Final Order
8 is reversed, or declared or rendered void, or (e) the Court should for any reason fail to dispose of the
9 Actions in their entirety, then (i) this Agreement shall be considered null and void; (ii) neither this
10 Agreement nor any of the related negotiations or proceedings shall be of any force or effect; (iii) all
11 Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had
12 been neither entered into nor filed with the Court; and (iv) the fact that the Parties were willing to
13 stipulate to class certification of all causes of action pled in the Actions as part of the Settlement will
14 have no bearing on, and will not be admissible in connection with, the issue of whether the Class
15 should be certified by the Court in a non-settlement context in the Actions or any other action, and
16 in any of those events, Defendant expressly reserves the right to oppose certification of the Class.

17 In the event of a timely appeal from the Final Order, the Final Order shall be stayed and the
18 Gross Settlement Amount shall not be distributed pending the completion of the appeal.

19 **ARTICLE V**

20 **RELEASES**

21 **Section 5.01: Released Claims by Class Members**

22 Upon the date Defendant transfers the Gross Settlement Amount to the Settlement
23 Administrator, Named Plaintiff and Participating Class Members release the Released Parties from
24 any and all claims alleged, or that could have been alleged, in the Action, during the Class Period
25 based on the facts alleged therein, including but not limited to (1) failure to pay minimum wages; (2)
26 failure to pay overtime wages; (3) failure to authorize or provide meal periods; (4) failure to authorize
27 or permit rest periods; (5) failure to reimburse necessary business expenses; (6) failure to furnish
28 accurate itemized wage statements wage statement violations; (7) failure to timely pay wages during

employment; (8) failure to pay wages upon separation of employment and within the required time; and (9) violation of California Business and Professions Code §§17200, *et seq.*, based on the preceding claims("Released Claims").

Section 5.02: Released Claims by PAGA Group Members

Upon the date Defendant transfers the Gross Settlement Amount to the Settlement Administrator, the State of California and PAGA Group Members release the Released Parties from all claims for civil penalties under Labor Code § 2698 *et seq.* exhausted in Plaintiff's notice(s) sent to the LWDA and alleged in the Action, which arose during the PAGA Period, regardless of whether PAGA Group Members opt out of the Class Settlement.

Section 5.03: Named Plaintiff's General Release of Unknown Claims

Upon the date Defendant transfers the Gross Settlement Amount to the Settlement Administrator, Named Plaintiff waives, releases, acquits, and forever discharges the Released Parties from any and all claims, actions, charges, complaints, grievances, and causes of action, of any nature arising from Named Plaintiff's employment with Defendant, whether known or unknown, which exist or may exist as of the Parties' execution of this Agreement, including but not limited to: any and all wage-and-hour claims arising under the laws of the State of California, including, without limitation, statutory, constitutional, contractual, and/or common law claims for wages, damages, restitution, unreimbursed expenses, equitable relief, penalties, liquidated damages, and/or punitive damages (including, without limitation, claims under any applicable Industrial Welfare Commission Wage Order, PAGA, or any other provision of the California Labor Code); Title VII of the Civil Rights Act of 1964; 42 U.S.C. § 1981; the Americans With Disabilities Act; Sections 503 and 504 of the Rehabilitation Act of 1973; the Family Medical Leave Act; the Fair Labor Standards Act; the Employee Retirement Income Security Act; the Occupational Safety and Health Act; the Worker Adjustment and Retraining Notification Act, as amended; the California Unfair Competition Law (Cal. Bus. & Prof. Code § 17200 *et seq.*); the California Fair Employment and Housing Act; any state, civil, or statutory laws, including any and all human rights laws and laws against discrimination; any other federal, state, or local statutes, codes, or ordinances; any common law, contract law, or tort law cause of action; and any claims for interest, attorneys' fees, and/or costs.

1 Section 1542 of the California Civil Code provides as follows:

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

6 Named Plaintiff’s general release provided herein is made with an express waiver and
7 relinquishment of any claim, right, or benefit under California Civil Code § 1542.

8 **ARTICLE VI**

9 **MISCELLANEOUS PROVISIONS**

10 **Section 6.01: Amendments or Modification**

11 The terms and provisions of this Agreement may be amended or modified only by an express
12 written agreement that is signed by all the Parties (or their successors-in-interest) and their counsel,
13 and approved by the Court.

14 **Section 6.02: Assignment**

15 None of the rights, commitments, or obligations recognized under this Agreement may be
16 assigned by any Party, Class Member, Class Counsel, or Defense Counsel without the express written
17 consent of each other Party and their respective counsel. The representations, warranties, covenants,
18 and agreements contained in this Agreement are for the sole benefit of the Parties under this
19 Agreement and shall not be construed to confer any right or to avail any remedy to any other person.

20 **Section 6.03: Governing Law**

21 This Agreement shall be governed, construed, and interpreted, and the rights of the Parties
22 shall be determined, in accordance with the laws of the State of California, without regard to conflicts
23 of laws.

24 **Section 6.04: Entire Agreement**

25 This Agreement, including the Exhibits referred to herein, which form an integral part hereof,
26 contains the entire understanding of the Parties with respect to the subject matter contained herein.
27 In case of any conflict between text contained in Articles I through VI of this Agreement and text
28 contained in the Exhibits to this Agreement, the former (i.e., Articles I through VI) shall be

controlling, unless the Exhibits are changed by or in response to a Court order. There are no restrictions, promises, representations, warranties, covenants, or undertakings governing the subject matter of this Agreement other than those expressly set forth or referred to herein. This Agreement supersedes all prior agreements and understandings among the Parties with respect to the settlement of the Actions, including correspondence between Class Counsel and Defense Counsel and drafts of prior agreements or proposals.

Section 6.05: Waiver of Compliance

Any failure of any Party, Defense Counsel, or Class Counsel hereto to comply with any obligation, covenant, agreement, or condition set forth in this Agreement may be expressly waived in writing, to the extent permitted under applicable law, by the Party or Parties and their respective counsel entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

Section 6.06: Counterparts and Fax/PDF Signatures

This Agreement, and any amendments hereto, may be executed in any number of counterparts and any Party and/or their respective counsel may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original. All counterparts taken together shall constitute one instrument. A fax or PDF signature on this Agreement shall be as valid as an original signature.

Section 6.07: Meet and Confer Regarding Disputes

Should any dispute arise among the Parties or their respective counsel regarding the implementation or interpretation of this Agreement, a representative of Class Counsel and a representative of Defense Counsel shall meet and confer in an attempt to resolve such disputes prior to submitting such disputes to the Court.

Section 6.08: Agreement Binding on Successors

This Agreement will be binding upon, and inure to the benefit of, the successors in interest of each of the Parties.

1 **Section 6.09: Cooperation in Drafting**

2 The Parties have cooperated in the negotiation and preparation of this Agreement. This
3 Agreement will not be construed against any Party on the basis that the Party, or the Party's counsel,
4 was the drafter or participated in the drafting of this Agreement.

5 **Section 6.10: Fair and Reasonable Settlement**

6 The Parties believe that this Agreement reflects a fair, reasonable, and adequate settlement of
7 the Actions and have arrived at this Agreement through arm's-length negotiation and in the context
8 of adversarial litigation, taking into account all relevant factors, current and potential. The Parties
9 further believe that the Settlement is and is consistent with public policy, and fully complies with
10 applicable law.

11 **Section 6.11: Headings**

12 The descriptive heading of any section or paragraph of this Agreement is inserted for
13 convenience of reference only and does not constitute a part of this Agreement and shall not be
14 considered in interpreting this Agreement.

15 **Section 6.12: Notice**

16 Except as otherwise expressly provided in the Agreement, all notices, demands, and other
17 communications under this Agreement must be in writing and addressed as follows:

18 *To Named Plaintiff and the Class:*

19 Kashif Haque
20 Samuel A. Wong
21 Jessica L. Campbell
22 Kristy R. Connolly
23 AEGIS LAW FIRM, PC
24 9811 Irvine Center Drive, Suite 100
25 Irvine, California 92618
26 Telephone: (949) 379-6250
27 Facsimile: (949) 379-6251

28 And

To Defendant:

 S. Brett Sutton
 Jonathan W. Black
 SUTTON HAGUE LAW CORPORATION

5200 N Palm Ave #203
Fresno, CA 93704
Telephone: (559) 325-0500
Facsimile: (559) 981-1217
brett@suttonhague.com
jonathan@suttonhague.com

Section 6.13: Enforcement of Settlement and Continuing Court Jurisdiction

To the extent consistent with class action procedure, this Agreement shall be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6 and California Rule of Court 3.769(h). The Final Order entered by the Court will not adjudicate the merits of the Actions or the liability of the Parties resulting from the allegations of the Actions. Its sole purpose is to adopt the terms of the Settlement and to retain jurisdiction over its enforcement. To that end, the Court shall retain continuing jurisdiction over the Actions and over all Parties and Class Members, to the fullest extent to enforce and effectuate the terms and intent of this Agreement. 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, 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.

Section 6.14: Mutual Full Cooperation

The Parties agree fully to cooperate with each other to accomplish the terms of this Agreement, including but not limited to the execution of such documents, and the taking of such other action, as may reasonably be necessary to implement the terms of this Agreement. The Parties to this Agreement shall use their best efforts, to effectuate and implement this Agreement and its terms. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of the Settlement, the Parties agree to seek the assistance of the Court.

Section 6.15: Authorization to Act

Class Counsel warrants and represents that they are authorized by Named Plaintiff, and Defense Counsel warrants that they are authorized by Defendant, to take all appropriate action required to effectuate the terms of this Agreement, except for signing documents, including but not

limited to this Agreement, that are required to be signed by the Parties themselves. Defendant represents and warrants that the individual executing this Agreement on its behalf has the full right, power, and authority to enter into this Agreement and to carry out the transactions contemplated herein.

Section 6.16: No Reliance on Representations

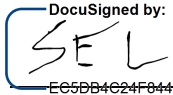
The Parties have made such investigation of the facts and the law pertaining to the matters described herein and to this Agreement as they deem necessary, and have not relied, and do not rely, on any statement, promise, or representation of fact or law, made by any of the other parties, or any of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted rights, or with regard to the advisability of entering into and executing this Agreement, or with respect to any other matters. No representations, warranties, or inducements, except as expressly set forth herein, have been made to any party concerning this Agreement.

EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: 04/12/2023

SARAH ELIZABETH LEWIS

By: 
EC5DB4C24F0441E...
Named Plaintiff

Dated: 4/20/2023

APPLIED EARTHWORKS, INC.

By: 
(Signature)
Jennifer L. Barbee
(Printed Name)
President/CFO
(Title)

1 **APPROVED AS TO FORM AND CONTENT ONLY:**

2
3 Dated: 4/13/2023

AEGIS LAW FIRM, PC

4
5
6 By: 

Kashif Haque

Kristy R. Connolly

7
8 Attorneys for Named Plaintiff Sarah Elizabeth
9 Lewis

10 Dated: April 26, 2023

SUTTON HAGUE LAW CORPORATION

11 By: 

12
13 S. Brett Sutton

Jonathan W. Black

14 Attorneys for Defendant Applied Earthworks Inc.
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