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Attorneys for Plaintiff, on a representative basis and on behalf of the Proposed Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

EDUARDO RIVERA, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

PATRIOT PAVING, INC., a California
Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: CIVSB2210619
*[Assigned to the Hon. Jessica Morgan, Dept.
S26, for all purposes]*

**DECLARATION OF BRIAN J. MANKIN,
ESQ., IN SUPPORT OF MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

Hearing:
Date: November 13, 2023
Time: 8:30 a.m.
Dept.: S26

I, Brian J. Mankin, state and declare:

1. I am an attorney licensed to practice before all of the courts of the State of California. I am a partner with the law firm of Lauby Mankin Lauby LLP, which has offices in Orange County and Riverside County, and I manage the firm's employment law practice. I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I submit this declaration in support of Plaintiffs' Motion for Final Approval of this Class Action

1 Settlement. If called as a witness, I could and would competently testify thereto.

2 **COUNSEL'S EXPERIENCE**

3 2. I have been a member, in good standing, of the State Bar of California since 2001.
4 I am admitted to practice in the United States District Courts for the Central and Southern
5 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
6 courts in California.

7 3. I have handled well over 500 employee vs. employer litigation matters during my
8 22 years in practice. Over the last 15 years, my practice has almost entirely consisted of
9 representing employees, the majority of which has included class action and representative
10 action wage and hour matters. In total, I have handled over 250 class action and representative
11 action wage/hour cases, and have been appointed by the court as class counsel and have received
12 final court approval and judgment in over half of those actions to date, and anticipate receiving
13 final approval in many more of those in the future.

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

21 5. I have tried two major class and PAGA cases against Fortune 100 companies. In
22 2018, I was lead counsel in a PAGA case that my firm tried in the Orange County Superior Court
23 and received a \$425,000 judgment. In 2019, I was co-counsel in a class action case against
24 Walmart in District Court, wherein the jury awarded Plaintiffs and the class over \$6 million.
25 Both cases were appealed.

26 6. I was named by the LA Times as one "Southern California Leading Lawyers" in
27 the May 2023 issue of Consumer Attorney's of Southern California (a recognition given to 17
28 employment/labor law attorneys in 2023). Additionally, over the last five consecutive years, I

1 have been selected by my peers as a “Super Lawyer” in Employment Litigation, a distinction that
2 only 5% of lawyers receive.

3 **ADEQUACY OF THE SETTLEMENT**

4 7. The Class, as conditionally certified by this Court, consists of 74 current and
5 former nonexempt employees employed by Defendant Patriot Paving, Inc., in California at any
6 time during the Class Period of May 27, 2018, through April 10, 2023 (the “Class Period”).

7 8. As set forth in the Declaration of the Administrator, the Net Settlement Amount is
8 approximately \$165,432.05, after the deductions set forth in the chart below:

<i>Gross Settlement Amount</i>	\$ 299,000.00
Attorneys’ Fees (1/3)	\$ 99,666.66
Litigation Costs	\$ 10,401.28
Administrator Costs	\$ 6,000.00
PAGA Penalties	\$ 10,000.00
Class Representative Service Award	\$ 7,500.00
<i>Net Settlement Amount</i>	\$ 165,432.05

13
14 9. The process of mailing the Notice Packets was very successful, as all Class
15 Notices were determined to be deliverable, resulting in a 100% success rate in mailing the
16 notices.

17 10. The response from the Class Members was overwhelmingly positive, as no Class
18 Member has objected to the settlement and only one person opted-out.

19 11. As discussed at length in Plaintiffs’ motion for preliminary approval, as well as in
20 the Motion for Final Approval, this Settlement is favorable to the Class and the release is
21 narrowly limited to the claims alleged.

22 12. Sufficient information existed to allow Class Counsel to intelligently value this
23 case. Given the parties’ arms’ length bargaining facilitated by a reputable and experienced wage
24 and hour mediator, the exchange of informal discovery, the experience of Class Counsel, the fact
25 that 98.6% of the Class has elected to participate and no objections were submitted thus far, the
26 presumption of fairness is justified.

27 13. I believe that the Settlement is fair, reasonable and adequate, and in the best
28 interests of the Class, given the litigation risks and delay inherent in further litigation and

possible appeals. As set forth in Plaintiff's motion for preliminary approval and the declarations submitted in support thereof, Defendant vigorously contested Plaintiff's claims, and Plaintiff faced real challenges in certifying the Class and obtaining a recovery on the claims in this matter. Nonetheless, the Parties concluded that further litigation would be protracted and expensive, and that it is desirable that the action be fully and finally settled in the manner and upon the terms and conditions set forth in the Settlement Agreement in order to limit further expense, inconvenience and distraction, to dispose of burdensome and protracted litigation, and to permit the operation of Defendant's business without further expensive litigation and the distraction and diversion of its personnel with respect to matters at issue. All parties took into account the uncertainty of risks inherent in any litigation, especially in complex cases such as this case. The parties determined that it is desirable and beneficial to both the Class and Defendant that this case be settled. Risks on both sides were considered in reaching the Settlement Agreement. The recoveries contemplated by the Settlement represent a good result for the Class, fairly proportioned to the likely risk-adjusted recovery in litigation.

ADEQUACY OF COUNSEL AND

REASONABLENESS OF REQUESTED FEE AND COST AWARDS

14. As set forth above, I have handled over 250 class and representative actions, have been appointed as class counsel and have successfully resolved over half of those cases, and many others remain pending and will successfully resolve in the future while recovering hundreds of millions of dollars for my clients and Class Members. This is substantially better than average accordingly to Mayer Brown LLP's study entitled, *An Empirical Analysis of Class Actions*, cited in *Laguna v. Coverall North America, Inc.*, No. 12-55479 (9th Cir. 2014), which found that only one-third of class actions are successful, compared to two-thirds that are defeated and result in no payment to the class members.¹

15. When this case was taken on a contingency fee basis, with Plaintiff's counsel agreeing to assume responsibility for all litigation costs, the ultimate result was far from certain. In the course of this litigation, Class Counsel paid all costs including filing fees, court costs,

¹ www.mayerbrown.com/files/uploads/Documents/PDFs/2013/December/DoClassActionsBenefitClassMembers.pdf

1 research fees, and mediation costs. There was never a guarantee that we would recoup those
2 expenditures.

3 16. It has been my experience that the benchmark for attorney fee awards in
4 California state cases is one-third of a common settlement fund, which the CA Supreme Court
5 upheld in the *Robert Half* case. Here, in accordance with the Settlement Agreement, Class
6 Counsel is seeking a fee of one-third of the Settlement Amount.

7 17. There are several additional factors why I believe that the Court should award
8 one-third of the common fund as reasonable attorneys' fees. First, Class Counsel's efforts
9 resulted in a common fund settlement amount of \$299,000, whereby the Class Members will
10 receive approximately **\$2,266.19 on average** and **up to a maximum of \$6,517.05** for those
11 employees that worked the entire Class Period. This is an *excellent result* in light of the disputed
12 nature of the claims alleged. This result was achieved by the work and success of my office,
13 who negotiated the settlement after extensive litigation, discovery, preparation, investigation,
14 mediation, and substantial work thereafter.

15 18. Second, Plaintiff faced significant risks going forward with the litigation. As
16 discussed in the motion for preliminary approval, Defendant raised various defenses throughout
17 this litigation, any one of which, if successful, could have decimated Plaintiff's case. And
18 Defendant vowed to raise all these defenses at trial. Accordingly, Plaintiff faced risky issues
19 going forward with this litigation, and it would have taken several more years to realize any
20 recovery in this action along with the possibility of post-trial appeals.

21 19. Third, Class Counsel are experienced class action litigators. This experience and
22 expertise, combined with the high quality of work performed in this case, resulted in the
23 settlement achieved in this case.

24 20. Fourth, Class Counsel have been representing Plaintiff in this matter strictly on a
25 contingency fee basis. To that end, we have incurred the risk of non-recovery after investing a
26 substantial amount of time, money, and resources, and have done so since the inception of this
27 case without any payment or compensation. If Plaintiff had lost this case, we would have
28 recovered nothing, and would have lost our out-of-pocket costs. This is not an easy burden for

1 my office, which is a small firm. If, despite these hardships and risks, the best my office could
2 hope for is merely to be paid our hourly rate, then Class Counsel would not be compensated for
3 the hardships and serious risks we faced litigating this contingency case, and would not be
4 incentivized to take on similar cases in the future. Indeed, not all class/PAGA cases are
5 successful. Many cases end with no fees or a greatly reduced fee that is far less than lodestar,
6 often due to no fault of counsel (i.e., bankruptcy, change in the law, consolidation- coordination-
7 preemption, being top filed, etc.). As noted in the Mayer Brown LLP's study discussed above,
8 only one-third of class actions are successful, compared to two-thirds that are defeated and result
9 in no payment to the class members.

10 21. Fifth, the request for attorney's fees in the amount of one-third of the common
11 fund falls well within the norms accepted by state and federal courts in California in comparable
12 wage and hour actions actually handled by my office. Moreover, the award of a one-third fee
13 recovery under the common fund doctrine was approved by the California Supreme Court in
14 *Laffitte, supra*, 1 Cal.5th 480, 503.

15 22. For all of the above reasons, a common fund fee award here in the amount of one-
16 third of the common fund created by Plaintiff and Class Counsel is fair and reasonable.

17 23. At my office, through mediation this case was primarily handled by my senior
18 associate attorney, Peter Carlson, while I performed the role of the supervising attorney, but after
19 mediation I took on a leading role in handling the case so that Mr. Carlson could focus on new
20 cases. As set forth in his declaration, Mr. Carlson works exclusively with me on employment
21 law matters and has been in practice for 9 years. He bills at the hourly rate of \$575/hour. I have
22 been in practice for 22 years, with most of those years handling complex litigation and for over
23 the last 15 years, my practice has almost entirely consisted of handling class action wage and
24 hour matters. My billing rate is \$775/hour. I believe these rates are consistent with Plaintiff and
25 Defense attorneys who handle complex class action litigation, if not somewhat lower.

26 24. The hourly rates above are comparable to those of other attorneys with equal or
27 similar experience, if not somewhat lower (i.e., the Laffey Matrix at www.laffeymatrix.com
28 indicates that the benchmark rate for an 8–10-year attorney to be \$676/hour and a 11-19 year

attorney at \$764/hour, and a 20+ year attorney at \$919/hour). Moreover, the Wolters Kluwer Real Rate Report (“Real Rate Report”), provides directly applicable information in this regard. The Real Rate Report is based on an enormous and statistically significant compilation of data. For instance, in 2017, the report was based on 25.8 million billing entries and 23.9 million hours billed by over 112,100 individual timekeepers from 4,620 law firms, totaling \$9.02 billion in fees billed. The Real Rate Report then compiles and analyzes this data to provide the hourly rates for partners and associates in major metropolitan areas. In 2018, for the southern California area, which is based on billing entries for 999 partners and 1,361 associates, the Real Rate Report states that: (a) the median rate for partners in Los Angeles is \$695 and the upper quartile is \$995 per hour, and (b) the median rate for associates in Los Angeles is \$550 and the upper quartile is \$721 (2018 Kluwer Real Rate Report, page 21). And, perhaps most importantly, the information provided in the Real Rate Report is not based on self-reported numbers, surveys, sampling, or reviews or other publications – instead, the Real Rate Report is based on the actual hours and fees billed by law firms.

25. The table below includes a summary of the hours worked by my office and my co-counsel (as reported in their declarations), plus an estimated 20 hours that I will bill in finalizing and filing the motion, preparing for and attending the approval hearing, and working with the Settlement Administrator and defense counsel to finalize this matter. Thus, the actual aggregated lodestar between the attorneys that have worked on this case is approximately \$151,788, resulting in a *negative multiplier*, which is summarized in the following table:

Attorney/Timekeeper	Role	Yrs Experience	Rate	Hours	Fee
Brian J. Mankin (Partner – LML)	Trial Counsel	22	\$775	42	\$32,550
Peter Carlson (Senior Associate – LML)	Handling Attorney	9	\$575	107.4	\$61,755
Kirk Hanson (Principal – Hanson Law Firm)	Trial Counsel	29	\$900	63.8	\$57,483
Grand Total for All Attorneys					\$151,788

1 26. Pursuant to the retainer agreement, a 20% referral fee will be paid to the Law
2 Offices of Amador L. Corona, and the remaining 80% will be split between my office and Kirk
3 Hanson's office. The fee is warranted because of the results achieved for the Class Members,
4 both in terms of the immediate cash settlement, as well as the fact that the Class Members
5 resoundingly supported the Settlement. Defendant does not oppose this fee request.

6 27. In the course of prosecuting this action, Class counsel have incurred expenses that
7 were incidental and necessary to the effective representation of the Class. These expenses
8 included but were not limited to: court filings, messenger services, postage, fax transmission
9 expenses, transportation, mediator fees, and other incidental expenses directly related to this
10 action. The Settlement Agreement provided up to \$20,000 in costs. Through final approval, my
11 office incurred \$7,738.78 in litigation costs (see Exhibit "B" attached hereto), plus \$2,662.50 by
12 Law Offices of Kirk Hanson, for total combined costs of \$10,401.28. The saving will be placed
13 in the Net Settlement Amount for payment to the Class Members. Defendant does not oppose
14 this request for costs.

15 **REASONABLENESS OF REQUESTED SERVICE AWARD**

16 28. I also believe that the service award of \$7,500 to Plaintiff is fair and warranted for
17 the reasons outlined in his declaration and in the motion. He came forward and worked directly
18 with our offices in analyzing the claims and documents, providing valuable information. Indeed,
19 his participation was an essential element of Defendant's desire to mediate and of the pre and
20 post mediation analysis that allowed Class Counsel to settle the case. In addition to foregoing to
21 separate individual claims, he also took on various risks, including the risk that he could have
22 been ordered to pay Defendant's costs if he lost and the risk of retaliation and being black-balled
23 in the industry. He also provided a full release of all claims. Defendant does not oppose the
24 requested service award.

25 **SUBMISSION TO THE LWDA**

26 29. The Motion and declarations, including the Settlement Agreement, have
27 concurrently been submitted to the LWDA. (See Exhibit "C").

28 ///

30. A true and correct copy of the Settlement Agreement is attached hereto as Exhibit “A.”

32. The LWDA's confirmation of receipt of this Motion and Declaration is attached hereto as Exhibit "C."

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 19, 2023, at Riverside, California.

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

EXHIBIT “A”

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Attorneys for Defendant, Patriot Paving, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

EDUARDO RIVERA, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

PATRIOT PAVING, INC., a California
Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: CIVSB2210619
*[Assigned to Hon. Judge David Cohn, Dept
S26, for all purposes]*

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

1 This Class Action Settlement Agreement and Release of Claims is entered into by and
2 between Plaintiff Eduardo Rivera, individually and on behalf of all others similarly situated, and
3 on behalf of the State of California, and Defendant Patriot Paving, Inc., and is approved by their
4 respective counsel of record, subject to the terms and conditions hereof and the Court's approval.

5 **A. Definitions**

6 1. "Action" or "Lawsuit" means and refers to the case entitled *Rivera v. Patriot*
7 *Paving, Inc.*, San Bernardino County Superior Court, Case No. CIVSB2210619.

8 2. "Administrator" means and refers to Phoenix Class Action Administration
9 Solutions, the third-party class action settlement administrator agreed to by the Parties, that will
10 provide the Notice to the Class Members and distribute the settlement amounts as described in
11 this Agreement.

12 3. "Administration Costs" means the costs payable from the Settlement Amount to
13 the Administrator for administering this Settlement, including, but not limited to, printing,
14 distributing, and tracking documents for this Settlement, tax reporting, and deposit of the
15 employee and employer share of payroll taxes, unclaimed property due diligence, reporting and
16 remittance obligations, distributing the Settlement Amount, and providing necessary reports and
17 declarations, as requested by the Parties. The Administration Costs shall be paid from the
18 Settlement Amount, including, if necessary, any such costs in excess of the amount represented
19 by the Administrator as being the maximum costs necessary to administer the Settlement.

20 4. "Aggrieved Employee(s)" means all current and former nonexempt employees
21 employed by Defendant in California at any time during the PAGA Period.

22 5. "Agreement" or "Settlement Agreement" or "Settlement" shall mean this Class
23 Action and PAGA Settlement Agreement and Release of Claims.

24 6. "Class" is defined all current and former nonexempt employees employed by
25 Defendant in California at any time during the Class Period.

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

27 8. "Class Counsel" refers to Brian Mankin and Peter Carlson of Lauby, Mankin &
28 Lauby LLP and Kirk Hanson of the Law Offices of Kirk D. Hanson.

1 9. “Class Data” means a complete list that Defendant will diligently and in good
2 faith compile from their records and provide to the Administrator on one spreadsheet which shall
3 include, for each Class Member, the individual’s full name; last known address; Social Security
4 Number; total Weeks Worked during the PAGA Period and the Class Period.

5 10. “Class Period” is deemed to be any time during the period of May 27, 2018,
6 through April 10, 2023.

7 11. “Class Representative” or “Plaintiff” means and refers to Plaintiff Eduardo
8 Rivera.

9 12. “Complaint” refers to the operative class and PAGA representative action
10 complaint filed in the San Bernardino County Superior Court on May 27, 2022.

11 13. “Court” (or “Judge”) means the California Superior Court, County of San
12 Bernardino.

13 14. “Defendant” means and refers to Patriot Paving, Inc.

14 15. “Defendant’s Counsel” or “Defense Counsel” means and refers to Fisher &
15 Phillips LLP.

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

25 17. “Escalator Clause:” Defendant represents that there are approximately 72 Class
26 Members, who collectively worked a total of 6,259 Workweeks during the Class Period. Should
27 the number of Workweeks exceed 6,885 (which is 10% more than Defendant’s representation),
28 then the Settlement Amount shall increase by \$47.77 for each additional Workweek above 6,885.

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

4 19. “Individual Class Payment” refers to each Participating Class Members share of
5 the Net Settlement Amount, as further discussed in Paragraph 47(c) below.

6 20. “Individual PAGA Payment” refers to each Aggrieved Employees share of the
7 PAGA Penalties, as further discussed in Paragraph 47(c) below.

8 21. “Settlement Amount” is \$299,000.00, subject to the Escalator Clause and
9 exclusive of Defendant’s obligation to fund its share of payroll taxes, as further discussed in
10 Paragraph 48(c) below.

11 22. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 47(b)
12 below.

13 23. “Notice” means the notice of proposed class settlement that will be sent to the
14 Class Members and which will advise each Class Member of the settlement and his or her
15 estimated Individual Class Payment and Individual PAGA Payment and will further advise of the
16 setting of a Final Approval Hearing.

17 24. “Response Deadline” is 30 calendar days from the date the Notice is mailed to the
18 Class Members.

19 25. “Objecting Class Member” means a Class Member, other than Plaintiff, who
20 submits a valid and timely objection to the terms of this Agreement, pursuant to Paragraph 68(c)
21 below.

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

26 27. “PAGA Period” is deemed to be any time during the period of May 27, 2021,
27 through April 10, 2023.

28 ///

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

4 29. “Parties” or “Settling Parties” mean Plaintiff and Defendant, collectively.

5 30. “Preliminary Approval Date” means the date the Court approves the Settlement
6 Agreement and enters the Preliminary Approval Order.

7 31. “Preliminary Approval Order” means the judicial Order to be entered by the
8 Court, upon the application or motion of the Plaintiff, preliminarily approving this Settlement
9 and providing for the issuance of the Notice Packet to the Class, an opportunity to opt out of the
10 Settlement, an opportunity to submit timely objections to the Settlement, and setting a final
11 approval hearing on the fairness of the terms of Settlement, including approval of attorneys’ fees
12 and costs. Provided that the motion is consistent with the terms herein, Defendant will not object
13 to Plaintiff’s motion for preliminary approval but will be provided with an opportunity to review
14 and comment upon the motion before it is filed.

15 32. “QSF” means the Qualified Settlement Fund set up by the Administrator for the
16 benefit of the Participating Class Members and Aggrieved Employees, and from which the
17 settlement payments shall be made.

18 33. “Released Class Claims” or “Class Claims” by the Participating Class Members
19 upon Final Approval of the Settlement will include all claims alleged in the Complaint or which
20 could have been alleged based solely upon the facts in the Complaint, including: (a) failure to pay
21 minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal periods and failure
22 to pay premiums at the regular rate, (d) failure to provide rest breaks and failure to pay premiums
23 at the regular rate, (e) failure to reimburse business expenses, (f) failure to timely pay wages upon
24 separation of employment, (g) failure to provide accurate itemized wage statements, (h) unfair and
25 unlawful competition, and (i) all other claims for statutory penalties based on the facts or claims
26 alleged in the Complaint.

27 34. “Released PAGA Claims” or “PAGA Claims” means any and all PAGA claims
28 that Plaintiff alleged against the Released Parties, on behalf of the Aggrieved Employees and the

1 State of California, based on the facts stated in the Complaint or which could have been stated
2 based solely upon the facts in the Complaint and in the relevant LWDA notice letters, including
3 all PAGA claims seeking civil penalties premised upon: (a) failure to pay minimum wages, (b)
4 failure to pay overtime wages, (c) failure to provide meal periods and failure to pay premiums at
5 the regular rate, (d) failure to provide rest breaks and failure to pay premiums at the regular rate,
6 (e) failure to reimburse business expenses, (f) failure to timely pay wages each period and upon
7 separation of employment, (g) failure to provide accurate itemized wage statements, and (h) all
8 other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code
9 §§ 2698 *et seq.* based on the facts or claims alleged in the Complaint. The time period governing
10 the Released PAGA Claims shall be any time during the PAGA Period.

11 35. “Released Parties” means Defendant and its parents, subsidiaries, directors,
12 owners, shareholders, officers, agents, attorneys, servants, joint employers and employees, past
13 and present, and each of them and anyone acting in concert with foregoing.

14 36. “Release” shall mean the release and discharge of the Released Class Claims by
15 Plaintiff and all Participating Class Members and their assignees.

16 37. “Request for Exclusion” shall have the meaning ascribed to it in Paragraph 68(a)
17 below.

18 38. “Service Payment” or “Service Award” means the amount approved by the Court
19 to be paid to Class Representative Eduardo Rivera in addition to his Individual Class Payment as
20 a Participating Class Member and Individual PAGA Payment as an Aggrieved Employee.

21 39. “Work Weeks” or “Weeks Worked” in the context of a Class Member means any
22 and all work weeks during the Class Period during which the Class Member worked at least one
23 day for Defendant. Likewise, in the context of Aggrieved Employees, it means any and all
24 weeks worked during the PAGA Period during which the Aggrieved Employee worked at least
25 one day for Defendant.

26 **B. General Terms**

27 40. On May 27, 2022, Plaintiff filed a putative class and representative PAGA action
28 in San Bernardino County Superior Court, alleging Class Claims and PAGA Claims, including:

1 (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal
2 periods, (d) failure to provide rest breaks, (e) failure to reimburse business expenses, (f) failure to
3 timely pay wages upon separation of employment, (g) failure to provide accurate itemized wage
4 statements, (h) unfair and unlawful competition, and (i) related claims under PAGA.

5 41. Defendant denies Plaintiff's claims and allegations and contends that the Action is
6 not suitable for class certification.

7 42. The Class Representative believes he can proceed with the representative and
8 class claims, that the Action is meritorious, and that class certification is appropriate.

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

20 44. On April 10, 2023, Plaintiff and Defendant participated in a full-day mediation
21 with Gail Glick, a well-respected wage-and-hour mediator. At the conclusion of mediation and
22 extensive arms-length negotiations, the Parties reached a global settlement and entered into a
23 Memorandum of Understanding.

24 45. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts
25 to be performed or judgment to be entered pursuant to the terms of the Settlement and
26 Agreement, shall be construed as an admission by Defendant of any wrongdoing or violation of
27 any statute or law or liability on the claims or allegations in the Action.

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

13 **C. Terms of Settlement**

14 47. The financial terms of the Settlement are as follows:

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

21 (b) Net Settlement Amount: The "Net Settlement Amount" is defined as the
22 Settlement Amount less the Attorneys' Fees and Costs Award, the Service Payment to the Class
23 Representative as awarded by the Court, the Administration Costs, and PAGA Penalties. If the
24 Court reduces the Attorneys' Fees and Costs Award, Service Award, or Administrator Costs, or
25 either increases or decreases the amount allocated to the PAGA Penalties, the difference shall be
26 placed in the Net Settlement Amount and allocated to the Class.

27 (c) The Individual Class Payment for each Class Member will be calculated
28 by the Administrator using the Class Data provided by Defendant as follows. Compensable

workweeks will be all Weeks Worked by the Class Members during the Class Period. The dollars per compensable work week will be calculated by dividing the total Weeks Worked by Class Members into the Net Settlement Amount to determine a per work week value (“Workweek Value”). The Workweek Value will be multiplied by the number of Weeks Worked by a Participating Class Member during the Class Period to determine the distribution for a Participating Class Member. If there are any timely submitted Requests for Exclusion, the Administrator shall proportionately increase the Individual Class Payments for each Participating Class Member so that the amount actually distributed to Participating Class Members equals 100% of the Net Settlement Amount.

(d) Allocation of Individual Class Payments: The Individual Class Payments to Participating Class Members will be allocated as follows: 20% will be allocated as wages subject to withholding of all applicable local, state and federal taxes; and 80% will be allocated for interest and statutory penalties (pursuant to, *e.g.*, California Labor Code sections 203, 210, 226) from which no taxes will be withheld. The Administrator will issue to each Participating Class Member an Internal Revenue Service Form W-2 and comparable state forms with respect to the wage allocation and a Form 1099 with respect to the penalties and interest allocations.

(e) Service Payment to Class Representative: The amount, if any, awarded to the Class Representative as a Service Payment will be set by the Court in its discretion, not to exceed \$7,500, in exchange for the service that Plaintiff performed on behalf of the Class. Defendant agrees not to oppose this request. The Service Payment to Plaintiff will be paid out of the Settlement Amount. The Class Representative will be issued an IRS Form 1099 in connection with this payment. Plaintiff shall be solely and legally responsible to pay all applicable taxes on this payment. The Parties agree that any amount awarded as the Service Payment to Plaintiff less than the requested amount shall not be a basis for Class Counsel to void this Settlement Agreement. Should the Court approve a lesser amount for the Service Payment, the difference shall be added to the Net Settlement Amount to be distributed to the Participating Class Members.

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

14 (g) Administration Costs: The fees and other charges of the Administrator
15 will be paid from the Settlement Amount, not to exceed \$6,000, unless (1) the Escalator Clause
16 is triggered (whereby any reasonable increase in Administration Costs shall be paid from the
17 increased Settlement Amount, subject to Court approval), or (2) as otherwise approved by all
18 Parties and the Court.

19 (h) PAGA Penalties: The Parties agree that \$10,000 is allocated to PAGA
20 Penalties, and is to be paid from the Settlement Amount, subject to Court approval. Of this
21 amount, \$7,500 (75%) shall be paid to the LWDA in satisfaction of civil penalties under the
22 Private Attorney General Act of 2004 ("PAGA") and \$2,500 (25%) will form the Individual
23 PAGA Payments to the Aggrieved Employees, which shall be calculated and allocated pro-rata
24 on a Work Week basis, which will be treated entirely as civil penalties and shall be reported as
25 required on an IRS Form 1099. Class Counsel shall give proper notice to the LWDA of the
26 Settlement.

27 (i) Tax Liability: Class Counsel and Defendant make no representations as to
28 the tax treatment or legal effect of settlement amounts called for hereunder, and Plaintiff and the

1 Class Members are not relying on any statement or representation by Class Counsel or Defendant
2 in this regard. Plaintiff, Participating Class Members, and Aggrieved Employees understand and
3 agree that they will be solely responsible for the payment of any taxes and penalties assessed on
4 their respective Individual Class Payments and Individual PAGA Payments, described herein.
5 Forms 1099 will be distributed in the manner required by the Internal Revenue Code of 1986 (the
6 “Code”) and consistent with this Agreement. If the Code, the regulations promulgated
7 thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes
8 set forth in this Section may be modified in a manner to bring Defendant into compliance with
9 any such changes. Plaintiff, Participating Class Members, and Aggrieved Employees understand
10 and agree that they will be solely responsible for the payment of any taxes and penalties assessed
11 on their respective payments described herein.

12 (j) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS
13 AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY”
14 AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING
15 PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO
16 PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR
17 DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND
18 OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
19 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
20 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
21 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
22 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
23 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
24 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
25 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY
26 OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT
27 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
28 ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY

1 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
2 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
3 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR
4 ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS
5 LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF
6 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING
7 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

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

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

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

20 48. Upon entry of the Final Approval Order and Defendant's funding of the
21 Settlement Amount and the required employer-side payroll taxes, and except as to such rights or
22 claims as may be created by this Agreement, Plaintiff and the Participating Class Members will
23 forever completely release and discharge the Released Parties from the Released Class Claims
24 for the Class Period.

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

27 50. Class Representative, on behalf of himself and the Class, acknowledges and
28 agrees that the claims for unpaid wages and untimely payment of wages in the Action are

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

7 **E. Release of PAGA Claims**

8 51. Upon entry of the Final Approval Order and Defendant’s funding of the
9 Settlement Amount and the required employer-side payroll taxes, Plaintiff – in his individual
10 capacity and on behalf of the State of California and LWDA – shall completely release and
11 discharge the Released Parties from the Released PAGA Claims for the PAGA Period.

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

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

17 **F. Release by Plaintiff and Class Representative**

18 54. Class Representative does hereby, for himself and his spouses, heirs, successors,
19 beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians,
20 personal representatives, and assigns forever and completely release and discharge the Released
21 Parties from any and all charges, complaints, claims, liabilities, obligations, promises,
22 agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs,
23 losses, debts, and expenses (including back wages, statutory penalties, civil penalties, liquidated
24 damages, exemplary damages, interest, attorneys’ fees, and costs) of any nature whatsoever,
25 from the beginning of time through the execution of this Stipulation, whether known or
26 unknown, suspected or unsuspected, including but not limited to all claims arising out of, based
27 upon, or relating to Class Representative’s employment with Defendant or the remuneration for
28 or termination of such employment (the “Class Representative’s Claims”).

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

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

19 57. Plaintiff expressly waives and relinquishes all rights and benefits afforded by
20 Section 1542 of the Civil Code of the State of California and does so understanding and
21 acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code
22 of the State of California states:

23 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
24 THAT THE CREDITOR OR RELEASING PARTY DOES NOT
25 KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
26 THE TIME OF EXECUTING THE RELEASE AND THAT, IF
27 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
28 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
 OR RELEASED PARTY.

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1 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
2 full and complete release and discharge of all parties, Class Representative expressly
3 acknowledges that this Settlement Agreement is intended to include in its effect, without
4 limitation, all claims that Class Representative knew of, as well as all claims that he does not
5 know or suspect to exist in his favor against the Released Parties, or any of them, for the time
6 period from the beginning of time to the execution of this Settlement Agreement, and that this
7 Settlement Agreement contemplates the extinguishment of any such Class Representative's
8 Claims. Notwithstanding the above, the general release by Class Representative shall not extend
9 to claims for workers' compensation benefits (including Workers Comp. Case ADJ 15940637),
10 claims for unemployment benefits, or other claims that may not be released by law.

11 **G. Interim Stay of Proceedings**

12 58. Pending completion of all of the prerequisites necessary to effectuate this
13 Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the Action
14 except such as is necessary to effectuate the Settlement.

15 **H. Notice Process**

16 59. Appointment of Administrator. The Parties have agreed to the appointment of the
17 Administrator to perform the duties of a settlement administrator, including mailing the Notice,
18 using standard devices to obtain forwarding addresses, independently reviewing and verifying
19 documentation associated with any claims or opt-out requests, resolving any disputes regarding
20 the calculation or application of the formula for determining the Individual Class Payment and
21 Individual PAGA Payments, drafting and mailing the settlement checks to Participating Class
22 Members and Aggrieved Employees, issuing all necessary tax forms, and performing such other
23 tasks as set forth herein or as the Parties mutually agree or that the Court orders.

24 60. Disputes Regarding Administration. Any and all disputes relating to
25 administration of the Settlement by the Administrator (except for disputes regarding Class Data)
26 shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms
27 and conditions of this Agreement, until Plaintiff and Defendant notify the Court that all
28 payments and obligations contemplated by this Agreement have been fully carried out. Prior to

1 presenting any issue to the Court, counsel for the Parties will confer in good faith to resolve the
2 dispute without the necessity of Court intervention. The Administrator shall also be responsible
3 for issuing to Plaintiff, Participating Class Members, and Aggrieved Employees, and Class
4 Counsel any Tax Forms as may be required by law for all amounts paid pursuant to this
5 Agreement.

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

14 62. Total Workweeks. At least 5 days prior to mailing the Notice, the Administrator
15 shall provide a spreadsheet to Class Counsel and Defense Counsel containing a preliminary
16 calculation of all payments to be paid from the Settlement Amount, including the estimated
17 Individual Class Payments to each Class Member and Individual PAGA Payments to each
18 Aggrieved Employee (a person's name shall be redacted and a control number used in place of
19 the name). In the event that the total Workweeks worked by all Class Members triggers the
20 Escalator Clause, the Administrator shall notify the Parties of the increased Settlement Amount,
21 and related increased payments from the Settlement Amount, including increased Attorneys'
22 Fees and Costs and any increased Administration Costs, all of which shall be subject to Court
23 approval.

24 63. Notice. The Notice, as approved by the Court, shall be sent by the Administrator
25 to the Class Members, by first class mail, in English, within ten (10) calendar days following the
26 Administrator's receipt of the Class Data. The Administrator shall use standard devices,
27 including a skip trace, to obtain forwarding addresses of Class Members if any envelopes are
28 returned.

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

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

13 66. Disputes Regarding Class Data. Class Members are deemed to participate in the
14 Settlement unless they opt-out, and Aggrieved Employees may not opt out of the Released
15 PAGA Claims. The Notice will inform Class Members of his/her estimated Individual Class
16 Payment and Individual PAGA Payment, as well as the number of weeks he/she worked during
17 the Class Period and the PAGA Period. Class Members may dispute their Weeks Worked if they
18 feel they should be credited with more Weeks Worked in the Class Period and/or PAGA Period
19 in California than Defendant's records show by timely submitting evidence to the Administrator.
20 Defendant's records will be presumed determinative absent reliable evidence to rebut
21 Defendant's records, but the Administrator will evaluate the evidence submitted by the Class
22 Member and provide the evidence submitted to Class Counsel and Defense Counsel who agree to
23 meet and confer in good faith about the evidence to determine the Class Member's actual
24 number of Work Weeks and estimated Individual Class Payment and Individual PAGA Payment.
25 If Class Counsel and Defense Counsel are unable to agree, they agree to submit the dispute to the
26 Court to render a final decision. Class Members and Aggrieved Employees will have until the
27 Response Deadline to dispute Weeks Worked, object or opt out, unless extended by the Court.

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1 67. Declaration of Due Diligence. The Administrator shall provide counsel for the
2 Parties, at least twenty-five (25) days prior to the final approval hearing, a declaration of due
3 diligence and proof of mailing with regard to the mailing of the Notice.

4 68. Class Members' Rights. Each Class Member will be fully advised of the
5 Settlement, the ability to object to the settlement, and the ability to opt-out or request exclusion
6 from the Class Claims portion of the Settlement. The Notice will inform the Class Members of
7 the Court-established deadlines for filing objections or requesting exclusion from the Settlement
8 in accordance with the following guidelines:

9 (a) Requests for Exclusion from Class. Any Class Member, other than
10 Plaintiff, may request to be excluded from the Class by submitting a "Request for Exclusion" to
11 the Administrator, postmarked on or before the Response Deadline. The Request for Exclusion
12 should state:

13 "I WISH TO BE EXCLUDED FROM THE CLASS IN THE
14 PATRIOT PAVING LAWSUIT. I UNDERSTAND THAT IF I
15 ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I
16 WILL NOT RECEIVE MY INDIVIDUAL CLASS PAYMENT
17 FROM THIS LAWSUIT."

18 To be valid, any Request for Exclusion must include the full name, address, telephone
19 number, last four digits of the social security number or date of birth, and signature of the Class
20 Member requesting exclusion. The Request for Exclusion must be returned by mail to the
21 Administrator at the specified address set forth in the Notice. Any such Request must be made in
22 accordance with the terms set forth in the Notice. A Request for Exclusion will be timely only if
23 postmarked by the Response Deadline, unless the Parties otherwise agree in writing. Any Class
24 Member who timely requests exclusion in compliance with these requirements: (i) will not have
25 any rights under this Agreement, including the right to object, appeal or comment on the
26 Settlement; (ii) will not be entitled to receive the Individual Class Payment under this
27 Agreement; and (iii) will not be bound by this Agreement, or the Judgment. Any Class Member
28 who is an Aggrieved Employee who requests timely exclusion will still be subject to the

1 Released PAGA Claims to the fullest extent permitted by law and receive an Individual PAGA
2 Payment. All Parties and their counsel, including Defendant's respective members, member
3 managers, owners, officers, and directors, shall not encourage or solicit opt-outs or objections,
4 directly or indirectly, through any means.

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

10 (c) Objections to Settlement. Any Class Member, other than Plaintiff, who
11 does not submit a valid and timely Request for Exclusion may object to the terms of this
12 Agreement. To object, a Class Member shall inform the Administrator, in writing, of his or her
13 objection which must be postmarked by the Response Deadline at the address set forth in the
14 Notice. Such objection shall include the Objecting Class Member's full name, address,
15 telephone number, last four digits of the social security number or date of birth, signature, and
16 dates of employment with Defendant, in addition to the case name and number, the basis for the
17 objection, including any legal support and each specific reason in support of the objection, as
18 well as any documentation or evidence in support thereof, and, if the Objecting Class Member is
19 represented by counsel, the name and address of his or her counsel. The Administrator shall
20 provide objections, if any, to Class Counsel and Defense Counsel within three (3) calendar days
21 of receipt, and the Administrator shall attach the same to its declaration of due diligence and file
22 with the Court prior to the Final Approval Hearing. An Objecting Class Member remains
23 eligible to receive monetary compensation from the Settlement. Plaintiff and Defendant shall not
24 be responsible for any fees, costs, or expenses incurred by an Objecting Class Member and/or his
25 or her counsel related to any objections to the Settlement. Submitting an objection does not
26 preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by
27 becoming a party of record by timely and properly intervening or filing a motion to vacate the
28 judgment under Code of Civil Procedure § 663.

1 (d) Failure to Object. Any Class Member who does not timely and properly
2 become a party of record by intervening or filing a motion to vacate the judgment waives any
3 and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding
4 and appellate proceeding, such as a motion to vacate judgment, motion for new trial, a motion
5 under California Code of Civil Procedure section 473, and extraordinary writs.

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

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

13 69. Funding of the Settlement Amount. Defendant shall deposit the Settlement
14 Amount, plus Defendant's share of payroll taxes owed on Individual Class Payments, with the
15 Administrator within fifteen (15) days after the Effective Date.

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

22 71. Deadline for Cashing Settlement Checks. Participating Class Members and
23 Aggrieved Employees shall have 180 calendar days after mailing by the Administrator to cash
24 their settlement checks. The release will be binding upon all Participating Class Members who
25 do not cash their checks within the 180-day period. In the event that any settlement check is
26 returned to the Administrator within 180 days of mailing, the Administrator will, within five (5)
27 business days of receipt of the returned settlement check, perform a skip trace to locate the
28 individual, and notify Defense Counsel and Class Counsel of the results. If a new address is

located by these means, the Administrator will have ten (10) business days to re-issue the check. Neither Defendant, Defense Counsel, Class Counsel, Plaintiff, nor the Administrator will have any liability for lost or stolen settlement checks, forged signatures on settlement checks, or unauthorized negotiation of settlement checks. Without limiting the foregoing, in the event a Participating Class Member and/or Aggrieved Employee notifies the Administrator that he or she believes that a settlement check has been lost or stolen, the Administrator shall immediately stop payment on such check. If the check in question has not been negotiated prior to the stop payment order, the Administrator will issue a replacement check.

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

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

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

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

- (a) Approving as to form and content the proposed Notice;
- (b) Directing the mailing of the Notice by first class mail to the Class Members;
- (c) Preliminarily approving this Settlement;
- (d) Preliminarily certifying the class for purposes of this Settlement;
- (e) Advising the LWDA of the proposed Settlement; and
- (f) Scheduling the Final Approval Hearing on the issue of whether this Settlement should be finally approved as fair, reasonable and adequate.

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

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

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

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

9 (c) Entering judgment approving settlement.

10 **K. Voiding the Agreement**

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

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

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

22 **L. Other Terms**

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

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

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

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

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

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

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

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

5 83. No Publicity. The Parties will not publicize the Settlement or disclose it to third
6 parties prior to the Court granting Preliminary Approval, except as required or necessary to
7 effectuate its terms and comply with law. After the Final Approval Date, Class Counsel and
8 Class Representative agree that they will not discuss the Settlement with the media, any
9 settlement and verdict reporting service, any social media postings or other Internet postings.
10 Nothing herein shall be construed to prevent Class Counsel from the public filing of motions or
11 other case materials in the Action related to seeking and obtaining Court approval of this
12 Settlement and the related awards of attorneys' fees and costs, or to communications with Class
13 Members or their representatives about this Settlement, including through the posting of Court-
14 filed documents on Class Counsel's websites for access solely by the Class Members, or to
15 prevent the Parties or their representatives from communicating with financial or legal advisors
16 regarding the Settlement. In response to any media inquiry, Class Counsel may state only that
17 the Action has been settled on terms mutually agreeable to the Parties.

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

22 *To the Class:*

23 Brian J. Mankin
24 *brian@lmlfirm.com*
25 Lauby, Mankin & Lauby LLP
26 5198 Arlington Ave, PMB 513
27 Riverside, CA 92504
28 Tel: (951) 320-1444 | Fax: (951) 320-1445

///

///

To Defendant:

Boris Sorsher
bsorsher@fisherphillips.com
FISHER & PHILLIPS LLP
2050 Main Street, Suite 1000
Irvine, California 92614-8240
Telephone: (949) 851-2424
Facsimile: (949) 851-0152

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

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

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

88. Dispute Resolution. Prior to instituting legal action to enforce the provisions of this Agreement or to declare rights and/or obligations under this Agreement, a Party shall provide written notice to the other Party and allow an opportunity to cure the alleged deficiencies, and Plaintiff and Defendant may agree to seek the help of the Mediator to resolve any dispute they are unable to resolve informally. During this period, the Parties shall bear their own attorneys' fees and costs. This provision shall not apply to any legal action or other

proceeding instituted by any person or entity other than Plaintiff or Defendant.

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

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

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

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

93. Counterparts. This Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully signed Agreement, which shall be binding upon and effective as to all Parties. Electronic signatures shall have the same force and effect as an original.

-- Signatures on Next Page --

1 Dated: Jun 9, 2023
2 _____

PLAINTIFF AND CLASS REPRESENTATIVE:

3 
4 Eduardo Rivera Dominguez (Jun 9, 2023 13:30 PDT)

Eduardo Rivera

5 Dated: _____
6

DEFENDANT PATRIOT PAVING, INC.

7 _____
8 By: _____ (name)
9 _____ (title)
10 _____

11 **APPROVED AS TO FORM:**
12

13 Dated: June 9, 2023
14 _____

CLASS COUNSEL
LAUBY, MANKIN & LAUBY LLP

15 
16 _____
17 Brian J. Mankin
Attorneys for Plaintiff

18 Dated: _____
19

DEFENSE COUNSEL
FISHER & PHILLIPS LLP

20 _____
21 Boris Sorsher, Esq.
22 Attorneys for Defendant
23
24
25
26
27
28

1 Dated: _____

PLAINTIFF AND CLASS REPRESENTATIVE:

2
3
4 Eduardo Rivera

5 Dated: 6/13/2023

DEFENDANT PATRIOT PAVING, INC.

6
7
8 By: Michael Drapeau (name)

9 President (title)

10
11 **APPROVED AS TO FORM:**

12
13 Dated: _____

CLASS COUNSEL
LAUBY, MANKIN & LAUBY LLP

14
15
16 Brian J. Mankin
17 Attorneys for Plaintiff

18 Dated: 6-15-23

DEFENSE COUNSEL
FISHER & PHILLIPS LLP

19
20
21 Boris Sorsher, Esq.
22 Attorneys for Defendant

EXHIBIT “B”

All Expenses

Lauby, Mankin & Lauby LLP

Staff Member = All (Active Only)
Group By Staff Member Group
Client - Project = 14000-00500 Rivera v Patriot
Paving (Active Only)
Activity Code = All
Expense Code = All
View = Original
Approval Status = All
Selected Expenses = All
From Earliest To Latest

Entered	Status	Approval	BillableType	Expense	Staff Member	Price	Mark Up %	Qty	Amount
Eduardo Rivera 14000-00500 Rivera v Patriot Paving									
05-25-2022	Approved		Non-Billable	E101 Copying	Chiarito, Tracie	0.06	0.00	84.00	5.04
84 copies at .06 each - Initial letters to company									
05-27-2022	Approved		Non-Billable	E112 Court fees L.	Grossi, Tracie	75.00	0.00	1.00	75.00
Receipt for LWDA to submit PAGA letter									
05-27-2022	Approved		Non-Billable	E108 Postage	Chiarito, Tracie	16.92	0.00	1.00	16.92
Postage for May 2022									
06-09-2022	Approved		Non-Billable	E112 Court fees	Chiarito, Tracie	1,476.80	0.00	1.00	1,476.80
Fax file complaint in SBSC									
06-20-2022	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	105.00	0.00	1.00	105.00
BOSCO INV# 7209229									
Serve: Patriot Paving, Inc., a California Corporation Summons; Complaint; Civil Case Cover Sheet; Certificate of Assignment; ADR Court: San Bernardino County Superior Court - Central District Completed on: 06/14/2022									
08-01-2022	Approved		Non-Billable	E101 Copying	Chiarito, Tracie	0.06	0.00	8.00	0.48
8 copies @ .06 for Nlc of Change of Address									
11-21-2022	Approved		Non-Billable	E125 Mediation fees	Chiarito, Tracie	2,662.50	0.00	1.00	2,662.50
Judicate West Invoice #581190 for 4/10/2023 mediation w Gail Glick									
02-14-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	30.69	0.00	1.00	30.69
TurboCourt Order #7681261 - file Slip and Order to Continue CMC									
04-26-2023	Approved		Non-Billable	E119 Experts	Chiarito, Tracie	2,730.00	0.00	1.00	2,730.00
Berger Consulting Group Inv #8522									
05-11-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	72.00	0.00	1.00	72.00
Courtcall ID #11693830 for 5/10/23 CMC									
06-22-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	195.85	0.00	1.00	195.85

All Expenses
Lauby, Mankin & Lauby LLP

Staff Member = All (Active Only)
Group By Staff Member Group
Client - Project = 14000-00500 Rivera v Patriot
Paving (Active Only)
Activity Code = All
Expense Code = All
View = Original
Approval Status = All
Selected Expenses = All
From Earliest To Latest

Entered	Status	Approval	BillableType	Expense	Staff Member	Price	Mark Up %	Qty	Amount
<u>Eduardo Rivera</u>									
<u>14000-00500 Rivera v Patriot Paving</u>									
Bosco Inv #9066900									
File and Conform:									
Motion									
Proposed Order									
Declaration (4)									
Court: San Bernardino County Superior Court - Central District									
Completed on: 06/21/2023									
07-18-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	72.00	0.00	1.00	72.00
Courtcall ID #11719473 for 7/14/23 MPA									
07-19-2023	Approved		Non-Billable	E112 Court fees	Chiarito, Tracie	2.50	0.00	1.00	2.50
Receipt for San Bernardino Superior Court for copy of signed PA order									
10-19-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	150.00	0.00	1.00	150.00
Estimated cost to file Motion for Final Approval and supporting documents via OneLegal									
11-13-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	144.00	0.00	1.00	144.00
Estimated cost for Courtcall for Motion Final Approval									

Project Total 7,738.78
Client Total 7,738.78
Grand Total 7,738.78

EXHIBIT “C”