

Jonathan M. Genish (State Bar No. 259031)
jgenish@blackstonepc.com
Miriam L. Schimmel (State Bar No. 185089)
mschimmel@blackstonepc.com
Joana Fang (State Bar No. 309623)
jfang@blackstonepc.com
Alexandra Rose (State Bar No. 329407)
arose@blackstonepc.com
BLACKSTONE LAW, APC
8383 Wilshire Boulevard, Suite 745
Beverly Hills, California 90211
Tel: (310) 622-4278 / Fax: (855) 786-6356

Attorneys for Plaintiff Victor De La Cruz and the Class

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

VICTOR DE LA CRUZ, individually, and on
behalf of other members of the general public
similarly situated,

Plaintiff,

vs.

NORTHWEST PIPE COMPANY, an Oregon
corporation; and DOES 1 through 25, inclusive,

Defendants.

Case No. CIVSB2211140

Honorable Joseph T. Ortiz
Department S17

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

Date: September 18, 2024
Time: 1:30 p.m.
Dept.: S17

Complaint Filed: May 25, 2022
FAC Filed: February 2, 2023
Trial Date: Not Set

1 Plaintiff Victor De La Cruz’s (“Plaintiff”) Motion for Final Approval of Class Action and
2 PAGA Settlement, Attorneys’ Fees and Costs, Enhancement Payment, and Settlement Administration
3 Costs came before this Court on **September 18, 2024 at 1:30 p.m.** before the Honorable Joseph T.
4 Ortiz in Department S17 of the above-captioned Court located at 247 West Third Street, San
5 Bernardino, California 92415.

6 Having received and considered the Joint Stipulation of Class Action and PAGA Settlement
7 (“Settlement Agreement” or “Settlement”), Plaintiff’s Motion for Final Approval of Class Action and
8 PAGA Settlement, Attorneys’ Fees and Costs, Enhancement Payment, and Settlement Administration
9 Costs, the supporting papers filed by the Parties, the Declarations of Class Counsel (Jonathan M.
10 Genish and Miriam L. Schimmel), the Class Representative (Victor De La Cruz), and the Settlement
11 Administrator (Madely Nava on behalf of Apex Class Action LLC), and the evidence and argument
12 received by the Court in conjunction with the Motion for Preliminary Approval of Class Action and
13 PAGA Settlement and documents thereto, the Court grants final approval of the Settlement and
14 **HEREBY ORDERS AND MAKES THE FOLLOWING DETERMINATION:**

15 1. This Court has jurisdiction over the subject matter of the above-captioned action and
16 over Plaintiff and Defendant Northwest Pipe Company (“Defendant”) (together, with Plaintiff, the
17 “Parties”), including all members of the Class.

18 2. The Court finds that the following Class is properly certified as a class for settlement
19 purposes only: “All current and former hourly-paid and/or non-exempt employees who worked for
20 Defendant in the State of California at any time during the Class Period. This shall include both
21 individuals employed pursuant to a collective bargaining agreement and individuals not employed
22 pursuant to a collective bargaining agreement.” The “Class Period” is defined as the period from May
23 25, 2018 through July 17, 2023.

24 3. The Court appoints Plaintiff Victor De La Cruz as the Class Representative for
25 settlement purposes only.

26 4. The Court appoints Jonathan M. Genish, Miriam L. Schimmel, Joana Fang, and
27 Alexandra Rose of Blackstone Law, APC as Class Counsel for settlement purposes only.

28 ///

1 5. The Notice of Class Action Settlement (“Class Notice”) provided to the Class conforms
2 with the requirements of California Code of Civil Procedure section 382, California Civil Code section
3 1781, California Rules of Court 3.766 and 3.769, the California and United States Constitutions, and
4 any other applicable law, and constitutes the best notice practicable under the circumstances, by
5 providing individual notice to all Class Members who could be identified through reasonable effort,
6 and by providing due and adequate notice of the proceedings and of the matters set forth therein to the
7 other Class Members. The Class Notice fully satisfied the requirements of due process.

8 6. The Court finds the Settlement was entered into in good faith, that the Settlement is
9 fair, reasonable, and adequate, and that the Settlement satisfies the standards and applicable
10 requirements for final approval of this class action settlement under California law, including the
11 provisions of California Code of Civil Procedure section 382 and California Rules of Court, Rule
12 3.769.

13 7. The Settlement Agreement is not an admission by Defendant, or by any other Released
14 Party, nor is this Order and Judgment a finding of the validity of any allegations or of any wrongdoing
15 by Defendant or any other Released Party. Neither this Order and Judgment, the Settlement, nor any
16 document referred to herein, nor any action taken to carry out the Settlement, may be construed as, or
17 may be used as, an admission of any fault, wrongdoing, omission, concession, or liability whatsoever
18 by or against Defendant or any of the other Released Parties.

19 8. The Court finds that no Class Members have timely and validly opted out of the Class
20 Settlement and no Settlement Class Members have objected to the Class Settlement.

21 9. In addition to any recovery that Plaintiff may receive under the Settlement, and in
22 recognition of Plaintiff’s efforts on behalf of the Class, the Court hereby approves the payment from
23 the Gross Settlement Amount of an Enhancement Payment to Plaintiff in the amount of \$7,500.00.

24 10. The Court approves the payments from the Gross Settlement Amount of attorneys’ fees
25 to Class Counsel in the sum of \$217,000.00 and reimbursement of actual litigation costs and expenses
26 to Class Counsel in the sum of \$17,517.04. The attorneys’ fees and reimbursement of litigation costs
27 and expenses to Class Counsel are reasonable amounts. The reasonableness of the fee award is
28 determined based on a reasonable percentage of the common fund obtained for the Class. Awarding

1 fees on a percentage basis encourages efficient litigation practices and reflects the actual benefit
2 obtained for the Class.

3 11. The Court approves and orders payment from the Gross Settlement Amount in the
4 amount of \$8,500.00 to Apex Class Action LLC for performance of settlement administration services.

5 12. The Court approves and orders payment in the amount of \$30,000.00 to the Labor
6 Workforce and Development Agency (“LWDA”) as 75% of the payment allocated toward PAGA
7 penalties.

8 13. It is hereby ordered that within five (5) business days after the Effective Date,
9 Defendant will deposit the Gross Settlement Amount into an account established by the Settlement
10 Administrator, in accordance with the terms and methodology set forth in the Settlement Agreement.

11 14. It is hereby ordered that within five (5) business days of the funding of the Gross
12 Settlement Amount, the Settlement Administrator will issue the Individual Settlement Payments to
13 Settlement Class Members, Individual PAGA Payments to PAGA Employees, LWDA Payment to the
14 LWDA, Enhancement Payment to Plaintiff, Attorneys’ Fees and Costs to Class Counsel, and
15 Settlement Administration Costs to itself.

16 15. Each Individual Settlement Payment and Individual PAGA Payment check will be
17 valid and negotiable for one hundred and eighty (180) calendar days from the date the checks are
18 issued, and thereafter, will be canceled. Any funds associated with such canceled checks will be
19 distributed by the Settlement Administrator to the California Controller’s Unclaimed Property
20 Division in the name of the Settlement Class Member and/or PAGA Employee.

21 16. Upon the full funding of the Gross Settlement Amount, Plaintiff and all Settlement
22 Class Members will be deemed to have fully, finally, and forever released, settled, compromised,
23 relinquished, and discharged the Released Parties of any and all claims, debts, liabilities, demands,
24 obligations, guarantees, costs, expenses, attorneys’ fees, damages, or causes of action which were
25 alleged or which could have been alleged based on the factual allegations in the Operative Complaint,
26 arising during the Class Period, under any federal, state, or local law, and shall specifically include
27 claims for Defendant’s alleged failure to pay overtime and minimum wages, provide compliant meal
28 and rest periods and associated premium payments, timely pay wages upon termination, provide

1 accurate wage statements, and reimburse necessary business-related expenses in violation of
2 California Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512(a), 1194, 1197, 1197.1, 1198, 2800,
3 and 2802, and Industrial Welfare Commission Wage Orders, and all claims for attorneys' fees and
4 costs and statutory interest in connection therewith, California Business and Professions Code sections
5 17200, *et seq.*, and any other claims, including claims for statutory penalties, pertaining to the Class
6 Members (collectively, "Released Class Claims").

7 17. Upon the full funding of the Gross Settlement Amount, Plaintiff, the State of California
8 with respect to all PAGA Employees, and all PAGA Employees will be deemed to have fully, finally,
9 and forever released, settled, compromised, relinquished, and discharged the Released Parties of any
10 and all claims arising from any of the factual allegations in the Operative Complaint and PAGA Letter,
11 arising during the PAGA Period, for civil penalties under the Private Attorneys General Act of 2004,
12 California Labor Code sections 2698 *et seq.*, including all claims for attorneys' fees and costs related
13 thereto, for Defendant's alleged failure to pay overtime and minimum wages, provide compliant meal
14 and rest periods and associated premium payments, timely pay wages during employment and upon
15 termination, provide complaint wage statements, maintain complete and accurate payroll records, and
16 reimburse necessary business-related expenses in violation of California Labor Code §§ 201, 202, 203,
17 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and Industrial
18 Welfare Commission Wage Orders, including *inter alia*, Wage Order 16-2001 (collectively, "Released
19 PAGA Claims").

20 18. Upon the full funding of the Gross Settlement Amount, Plaintiff, individually and on
21 his own behalf, will be deemed to have fully, finally, and forever released, settled, compromised,
22 relinquished, and discharged the Released Parties from any and all claims, debts, liabilities, demands,
23 obligations, guarantees, costs, expenses, attorneys' fees, damages, or causes of action of any kind or
24 nature whatsoever, known or unknown, suspected or unsuspected, asserted or unasserted, which
25 Plaintiff, at any time of execution of the Settlement Agreement, had or claimed to have or may have,
26 including but not limited to any and all claims arising out of, relating to, or resulting from his
27 employment and/or separation of employment with the Released Parties, including any claims arising
28 under any federal, state, or local law, statute, ordinance, rule, or regulation or Executive Order relating

1 to employment, including, but in no way limited to, any claim under Title VII of the Civil Rights Act
2 of 1964, as amended (“Title VII”), 42 U.S.C. § 1981; the Americans with Disabilities Act (“ADA”);
3 the Family and Medical Leave Act (“FMLA”); the Employee Retirement Income Security Act
4 (“ERISA”); the California Family Rights Act (“CFRA”); the California Fair Employment and Housing
5 Act (“FEHA”); all claims for wages or penalties under the Fair Labor Standards Act (“FLSA”); all
6 claims for wages or penalties under the California Labor Code; Business and Professions Code
7 sections 17200 *et seq.*; all laws relating to violation of public policy, retaliation, or interference with
8 legal rights; any and all other employment or discrimination laws; whistleblower claims; any tort,
9 fraud, or constitutional claims; and any breach of contract claims or claims of promissory estoppel. It
10 is agreed that this is a general release and is to be broadly construed as a release of all claims, provided
11 that, notwithstanding the foregoing, this Paragraph expressly does not include a release of any claims
12 that cannot be released hereunder by law. Plaintiff understands and expressly agrees that the
13 Settlement Agreement extends to claims that he has against Defendant, of whatever nature and kind,
14 known or unknown, suspected or unsuspected, vested or contingent, past, present, or future, arising
15 from or attributable to an incident or event, occurring in whole or in part, on or before the execution
16 of the Settlement Agreement. Any and all rights granted under any state or federal law or regulation
17 limiting the effect of the Settlement Agreement, including the provisions of Section 1542 of the
18 California Civil Code, ARE HEREBY EXPRESSLY WAIVED. Section 1542 of the California Civil
19 Code reads as follows:

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

24 19. “Released Parties” means Defendant and its current and former officers, directors,
25 management-level employees, members, insurers, shareholders, subsidiaries, affiliates, predecessors,
26 successors, and assigns.

27 ///

28 ///

1 20. This Court shall retain jurisdiction with respect to all matters related to the
2 administration and consummation of the Settlement, and any and all claims, asserted in, arising out of,
3 or related to the subject matter of the lawsuit, including but not limited to all matters related to the
4 Settlement and the determination of all controversies relating thereto.

5 21. Notice of entry of this Order and Judgment shall be given to the Class Members by
6 posting a copy of this Order and Judgment on the Administrator's website for a period of at least sixty
7 (60) calendar days after the date of entry of this Order and Judgment.

8 22. A Non-Appearence Case Review re: Final Report is set for
9 _____ at _____ in Department S17 of this Courthouse located at
10 247 West Third Street, San Bernardino, California 92415. The Settlement Administrator shall file a
11 Final Report by _____.

12 **IT IS SO ORDERED.**

13 Dated: _____

Honorable Joseph T. Ortiz