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**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

**DECLARATION OF JONATHAN M. GENISH
IN SUPPORT OF PLAINTIFF'S MOTION
FOR PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: June 5, 2024
Time: 8:30 a.m.
Dept.: S17

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

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1 Angeles Times, Deadline, The Hollywood Reporter, Business Insider, Law360, and others. Super
2 Lawyers has regularly honored me as a Southern California Rising Star since 2012.

3 5. In February 2018, I started the law firm of Blackstone Law, APC, representing
4 plaintiffs in individual and representative employment litigation. The firm has grown exponentially
5 over the past four-plus years, now maintaining eleven highly pedigreed attorneys working on almost
6 exclusively labor and employment class actions, California Labor Code Private Attorney General Act
7 of 2004 (“PAGA”) cases, and individual matters, with roughly 15% of the firm focused on other
8 complex general litigation matters.

9 6. I have considerable experience in handling class and representative action lawsuits
10 throughout my career and have been approved as counsel in a number of cases, including, most
11 recently:

- 12 • *Anthony DiRico v. Seek Capital, LLC*, Los Angeles Superior Court, Case No. BC698076,
13 a wage and hour class action brought on behalf of a class of hourly-paid employees
14 working in the State of California.
- 15 • *Consumer Protection Group, LLC v. A. D. Sutton & Sons, Inc.*, Los Angeles Superior
16 Court, Case No. 19STCV29979, a private attorney general action for penalties pursuant
17 to Health and Safety Code section 25249.7.
- 18 • *Consumer Protection Group, LLC v. Shaxon Industries, Inc., et al.*, Los Angeles Superior
19 Court, Case No. 19STCV30306, a private attorney general action for penalties pursuant
20 to Health and Safety Code section 25249.7.
- 21 • *Consumer Protection Group, LLC v. Home Depot U.S.A., Inc.*, Los Angeles Superior
22 Court, Case No. 19STCV30445, a private attorney general action for penalties pursuant
23 to Health and Safety Code section 25249.7.
- 24 • *Eric Savoy v. Collector’s Universe, Inc., et al.*, Central District Court of California, Case
25 No.: 8:20-cv-00632-DOC-ADS (recently remanded to Orange County Superior Court,
26 Case No. 30-2020-01130892-CU-RI-CXC), a consumer fraud class action.

27 7. Blackstone Law, APC has been counsel of record on several class action and PAGA
28 actions, the most recent of which are as follows:

- *Lexy Barajas, et al. v. H. W. Hunter, Inc.*, Los Angeles County Superior Court, Case No. 22STCV01892, approved as counsel in settlement of representative wage and hour action pursuant to PAGA.
- *Maria Ayala, et al. v. SDH Services West, LLC, et al.*, Kern County Superior Court, Case No. BCV-21-101933, preliminarily approved as class counsel in settlement of wage and hour class action.
- *Alejandro Valdez v. C.H.I. Automart, Inc.*, Los Angeles County Superior Court, Case No. 21STCV40168, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Sheizan Bawa v. Meathead Movers, Inc.*, Orange County Superior Court, Case No. 30-2021-01211895-CU-OE-CXC, approved as counsel in settlement of representative wage and hour action pursuant to PAGA.
- *Tanisha Lopez, et al. v. Restorix Health, Inc.*, Los Angeles County Superior Court, Case No. 21STCV33067, approved as class counsel, in association with other counsel, in final settlement of wage and hour class and PAGA action.
- *Oscar Bryant v. Midwest Construction Services, Inc. dba Trillium*, San Bernardino County Superior Court, Case No. CIVSB2121529, preliminarily approved as class counsel in settlement of wage and hour class action.
- *Perla Soto, et al. v. Nippon Express U.S.A., Inc.*, Los Angeles Superior Court, Case No. 21STCV24902, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Angel Garcia, et al. v. J&B Investments, Inc., et al.*, San Bernardino Superior Court, Case No. CIVSB2208601, approved as class counsel, in association with other counsel, in final settlement of wage and hour class and PAGA action.
- *Sindy Aviles, et al. v. Freeway Insurance Services America, LLC*, Los Angeles County Superior Court, Case No. 21STCV34864, approved as counsel, in association with other counsel, in settlement of representative wage and hour action pursuant to PAGA.

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- *Alexander Gnaedig, et al. v. Favorite Healthcare Staffing, Inc.*, Los Angeles County Superior Court, Case No. 21STCV20904, approved as class counsel, in association with other counsel, in final settlement of wage and hour class and PAGA action.
- *Richard Evans v. My Paint Stop, LLC, et al.*, Contra Costa Superior Court, Case No. MSC21-01812, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Jose Luis Parada George v. Main Electric Supply Company, LLC, et al.*, Orange County Superior Court, Case No. 30-2021-01220136-CU-OE-CXC, approved as counsel in settlement of representative wage and hour action pursuant to PAGA.
- *Samia Salazar Yunis v. Sharif Jewelers*, Sacramento Superior Court, Case No. 34-2020-00290080, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Daniel Analco v. Felix Chevrolet, LP, et al.*, Los Angeles Superior Court, Case No. 21STCV36654, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Sasha Aiono v. Benefit Cosmetics*, Los Angeles Superior Court, Case No. 21STCV33719, approved as counsel in settlement of representative wage and hour action pursuant to PAGA.

8. I am currently the managing partner overseeing roughly 100 labor and employment cases, approximately 80% of which include a wage and hour component. The majority of those cases are wage-and-hour putative class actions or representative PAGA actions seeking relief on behalf of thousands of California employees.

Procedural History of the Action

9. On May 25, 2022, Plaintiff provided written notice to the California Labor and Workforce Development Agency (“LWDA”) by online submission and to Defendant Northwest Pipe Company (“Defendant”) by U.S. Certified Mail, pursuant to California Labor Code Section 2699.3, of the specified provisions of the California Labor Code alleged to have been violated by Defendant (“PAGA Letter”). A true and correct copy of the PAGA Letter is attached hereto as **Exhibit 1**.

1 10. On May 25, 2022, Plaintiff filed a Class Action Complaint for Damages in the action
2 entitled *Victor De La Cruz v. Northwest Pipe Company*, San Bernardino County Superior Court Case
3 No. CIVSB2211140 (“Action”), thereby commencing a putative class action against Defendant.

4 11. On October 27, 2022, Plaintiff propounded written formal discovery onto Defendant
5 (specifically, Form Interrogatories – General (Set One), Special Interrogatories (Set One), Requests
6 for Admission (Set One), and Requests for Production of Documents (Set One)).

7 12. On November 7, 2022, Defendant propounded written formal discovery onto Plaintiff
8 (specifically, Form Interrogatories – General (Set One), Form Interrogatories – Employment (Set
9 One), Special Interrogatories (Set One), Requests for Admission (Set One), and Request for
10 Production of Documents (Set One)).

11 13. On November 8, 2022, Plaintiff served a notice of deposition of Defendant’s Person
12 Most Knowledgeable along with request for production of documents.

13 14. On February 2, 2023, Plaintiff filed a First Amended Class Action Complaint for
14 Damages and Enforcement Action Under the Private Attorneys General Act, California Labor Code
15 §§ 2698, *Et Seq.* (“Operative Complaint”) in the Action, which added a cause of action under PAGA.

16 15. On July 21, 2023, Plaintiff propounded additional written formal discovery onto
17 Defendant (specifically, Special Interrogatories (Set Two) and Requests for Production of Documents
18 (Set Two)) and served an amended notice of deposition of Defendant’s Person Most Knowledgeable
19 along with request for production of documents and a proposed Belaire-West notice. On August 21,
20 2023, Plaintiff served a second amended notice of deposition of Defendant’s Person Most
21 Knowledgeable along with request for production of documents. On September 5, 2023, Plaintiff
22 served a third amended notice of deposition of Defendant’s Person Most Knowledgeable along with
23 request for production of documents. On September 18, 2023, Plaintiff served a fourth amended notice
24 of deposition of Defendant’s Person Most Knowledgeable along with request for production of
25 documents.

26 16. On September 26, 2023, Plaintiff served responses to Defendant’s discovery requests
27 (specifically, Form Interrogatories – General (Set One), Form Interrogatories – Employment (Set
28 One), Special Interrogatories (Set One), Requests for Admission (Set One), and Request for

1 Production of Documents (Set One)).

2 17. On September 26, 2023, Defendant served responses to Plaintiff's discovery requests
3 (specifically, Form Interrogatories – General (Set One), Special Interrogatories (Sets One and Two),
4 Requests for Admission (Set One), and Requests for Production of Documents (Sets One and Two))
5 along with a production of documents. On October 11, 2023, Defendant noticed the deposition of
6 Plaintiff and served a production of documents in response to Plaintiff's discovery requests. On
7 October 12, 2023, Defendant served a response and objections to Plaintiff's fourth amended notice of
8 deposition.

9 18. On October 18, 2023, Blackstone Law, APC took the deposition of Defendant's Person
10 Most Knowledgeable (Vice President of Human Resources).

11 19. On October 31, 2023, a Belaire-West notice was mailed to three hundred and fifty-six
12 (356) putative class members by a third-party administrator. Thirteen (13) putative class members
13 timely opted out by the response deadline.

14 20. On November 9, 2023, Blackstone Law, APC defended the deposition of Plaintiff.

15 21. On November 15, 2023, Plaintiff propounded additional written formal discovery onto
16 Defendant (specifically, Requests for Production of Documents (Set Three)).

17 22. On November 17, 2023, Defendant served a notice of continued deposition of Plaintiff.

18 23. The Operative Complaint alleges nine (9) causes of action for violations of the
19 California Labor Code for failure to pay overtime wages, failure to pay minimum wages, failure to
20 provide compliant meal periods and premium payments in lieu thereof, failure to provide compliant
21 rest periods and premiums payments in lieu thereof, failure to provide accurate wage statements,
22 failure to timely pay wages upon termination, and failure to reimburse necessary business expenses,
23 for violations of California Business & Professions Code Section 17200, *et seq.* based on the
24 aforementioned California Labor Code violations, and for civil penalties under PAGA based on the
25 aforementioned California Labor Code violations.

26 24. On July 17, 2023, Plaintiff and Defendant (together, the "Parties") participated in a
27 formal mediation conducted by Todd Smith, Esq. ("Mediator"), a neutral and respected mediator with
28 extensive experience in complex wage and hour matters, which did not result in a settlement at that

time. After continued negotiations, and with the assistance of the Mediator, the Parties were able to reach an agreement to resolve this dispute on a class and representative basis, and shortly thereafter executed a memorandum of understanding memorializing the key settlement terms. The Parties worked diligently to negotiate and memorialize the terms in a long form settlement agreement.

25. On March 13, 2024, the Parties executed the Joint Stipulation of Class Action and PAGA Settlement (“Settlement” or “Settlement Agreement”). A true and correct copy of the Settlement Agreement is attached as **Exhibit 2** hereto.

Summary of the Terms of the Settlement Agreement

26. For purposes of settlement only, the Parties have agreed that the Class shall be defined as: “all current and former hourly-paid and/or non-exempt employees who worked for Defendant in the State of California at any time during the Class Period. This shall include both individuals employed pursuant to a collective bargaining agreement and individuals not employed pursuant to a collective bargaining agreement.” (“Class Members” or “Class”). The Class Period is defined as the period from May 25, 2018 through July 17, 2023. Based on information provided by Defendant, it is estimated that there are a total of three hundred and fifty-one (351) Class Members.

27. The Parties have agreed to settle the class and PAGA claims at issue in the Operative Complaint for a non-reversionary Gross Settlement Amount of Six Hundred Fifty-One Thousand Dollars and Zero Cents (\$651,000.00), exclusive of employer-side payroll taxes. The Gross Settlement Amount is a common fund and therefore includes all requested costs, fees, and other allocations. The Gross Settlement Amount includes: (1) Class Counsel’s fees in the amount of one-third (1/3) of the Gross Settlement Amount (i.e., \$217,000.00 if the Gross Settlement Amount is \$651,000.00); (2) Class Counsel’s actual litigation costs and expenses, not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00); (3) Settlement Administration Costs, not to exceed Ten Thousand Dollars and Zero Cents (\$10,000.00); (4) Enhancement Payment in the amount of Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00); and (5) PAGA Amount in the amount of Forty Thousand Dollars and Zero Cents (\$40,000.00). After the above-estimated amounts are deducted from the Gross Settlement Amount, the Net Settlement Amount that will be available for Class Members is currently estimated to be Three Hundred Fifty-One Thousand Five Hundred Dollars

1 and Zero Cents (\$351,500.00). Additionally, 25% of the PAGA Amount (“PAGA Employee
2 Amount”), which is \$10,000.00 out of \$40,000.00 will be fully distributed to: “all current and former
3 hourly-paid and/or non-exempt employees who worked for Defendant in the State of California at any
4 time during the PAGA Period. This shall include both individuals employed pursuant to a collective
5 bargaining agreement and individuals not employed pursuant to a collective bargaining agreement.”
6 (“PAGA Employees”). The “PAGA Period” is defined as the period from May 25, 2021 through July
7 17, 2023.

8 28. Defendant has represented that the Class Members worked a total of 46,500
9 Workweeks during the Class Period. If it is determined by the Settlement Administrator that the total
10 number of Workweeks worked by the Class Members during the Class Period actually exceeds 46,500
11 by more than 10% (i.e., by more than 51,150 Workweeks), then the Gross Settlement Amount will be
12 increased on a *pro rata* basis equal to the percentage increase in the number of Workweeks worked
13 by the Class Members above 10%. For example, if the number of Workweeks increases by 11% to
14 51,615 Workweeks, then the Gross Settlement Amount will increase by 1%.

15 29. The Net Settlement Amount will be distributed and paid to all Class Members who do
16 not submit a timely and valid Request for Exclusion (“Settlement Class Members”) on a *pro rata* basis
17 based on the number of weeks each Class Member worked for Defendant as an hourly-paid and/or
18 non-exempt employee in California during the Class Period (“Workweeks”). The *pro rata* share of
19 the Net Settlement Amount that a Class Member may be eligible to receive under the Class Settlement
20 (“Individual Settlement Share”) will be calculated by the Settlement Administrator, in accordance with
21 the Settlement Agreement.

22 30. The PAGA Employee Amount will be distributed and paid to all PAGA Employees on
23 a *pro rata* basis based on the number of weeks each PAGA Employee worked for Defendant as an
24 hourly-paid and/or non-exempt employee in California during the PAGA Period (“PAGA
25 Workweeks”). The *pro rata* share of the PAGA Employee Amount that a PAGA Employee may be
26 eligible to receive under the PAGA Settlement (“Individual PAGA Payment”) will be calculated by
27 the Settlement Administrator, in accordance with the Settlement Agreement.

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1 31. Each Individual Settlement Share will be allocated as twenty percent (20%) wages and
2 eighty percent (80%) penalties, interest, and non-wage damages. The portion allocated to wages will
3 be reported on an IRS Form W-2 and the portions allocated to penalties, interest, and non-wage
4 damages will be reported on an IRS Form 1099 (if applicable) by the Settlement Administrator. The
5 Settlement Administrator will withhold the employee's share of taxes and withholdings with respect
6 to the wages portion of the Individual Settlement Shares, and issue checks to Settlement Class
7 Members for their net payment of their Individual Settlement Share ("Individual Settlement
8 Payment"). The employer's share of taxes and contributions in connection with the wages portion of
9 Individual Settlement Shares shall be paid by Defendant separately and in addition to the Gross
10 Settlement Amount. Each Individual PAGA Payment will be allocated as one hundred percent (100%)
11 penalties and will be reported on an IRS Form 1099 (if applicable) by the Settlement Administrator.

12 32. The Settlement Agreement is a non-reversionary and non-claims made settlement. The
13 Net Settlement Amount will be fully distributed to Settlement Class Members and the PAGA Amount
14 will be fully distributed to the LWDA and PAGA Employees, in accordance with the Settlement
15 Agreement. No money will revert to Defendant.

16 33. 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, shall be canceled. Any funds associated with such canceled checks will be
19 distributed by the Settlement Administrator to the State of California's Unclaimed Property Division
20 in the name of the Settlement Class Member and/or PAGA Employee.

21 **The Settlement is Reasonable**

22 ***Informed Arms-Length Negotiations***

23 34. The Parties' settlement negotiations were at all times made at arm's-length and were
24 adversarial. The Settlement was reached following a full day of mediation with a highly respected
25 mediator with substantial experience mediating wage and hour cases and continued negotiations.
26 Plaintiff engaged in additional negotiations in order to finalize the long-form agreement presently
27 before the Court.

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1 35. The Parties engaged in extensive formal and informal discovery prior to reaching a
2 settlement. Prior to mediation, Defendant produced a random sampling of putative class members'
3 time and pay data, as well as Defendant's employee handbooks, relevant wage and hour policies,
4 collective bargaining agreements, and information regarding the total number of putative class
5 members, the total number of former putative class members, the average rate of pay of the putative
6 class members, and the number of workweeks and pay periods of the putative class members.

7 36. This allowed Class Counsel to conduct an informed assessment and analysis of the
8 strengths and weaknesses of the claims and the potential class-wide damages.

9 37. Based on the information exchanged, the Parties extensively briefed issues regarding
10 class certification and liability and provided their analyses to the Mediator who helped the Parties
11 debate the strengths and weakness of their respective positions.

12 ***Estimate of Potential Value of Claims***

13 38. My office analyzed all available data and estimated Defendant's maximum potential
14 exposure to be approximately \$9,066,343, assuming the litigation was successful at trial on all claims
15 at issue and every employee had a violation for each claim on every shift worked, and then reduced
16 this exposure analysis based on the challenges facing the likelihood of obtaining class certification,
17 prevailing at trial, and other attendant risks. This estimate is based off an estimated maximum liability
18 for all claims at issue and the total aggregate workweeks during the relevant time period, less interest,
19 and based on the analysis of the data which was extrapolated out for all class members across the entire
20 putative class period, which included: \$348,125 for meal period violations (the damages assuming a
21 100% violation is \$1,702,048, however, Defendant asserted that Class Members entered into valid
22 meal period waivers and based thereon, the damages are \$348,125); \$4,483,576 for rest period
23 violations at a 100% violation rate; \$1,983,376 for unpaid overtime wages; \$852,016 for waiting time
24 penalties; \$1,136,000 in wage statement penalties; and \$263,250 for unreimbursed business expenses
25 (based on unreimbursed purchases of one pair of steel-toed boots per employee per year during the
26 Class Period). Plaintiff further estimated that Defendant faced an additional exposure of \$2,046,300
27 in potential, non-stacked (i.e., one penalty, per employee, per pay period during the PAGA statutory
28 period) PAGA penalties. Together with the PAGA penalties, Defendant's maximum potential

1 exposure totaled \$11,112,643 in damages.

2 ***Specific Risks Considered***

3 39. Although the investigation and information discovered supports Plaintiff's contentions,
4 Defendant raised potential defenses and other circumstances that impacted the risk of proceeding on
5 a class-wide basis. Consideration of these risks factored into the decision to enter the Settlement.

6 40. My colleagues and I were aware of Defendant's defenses and arguments and have also
7 taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and
8 delays inherent in such litigation, including those involved in class and/or representative adjudication.
9 Plaintiff further recognizes the burdens of proof necessary to establish liability for the claims asserted
10 in the Action, Defendant's defenses, and the difficulties in establishing entitlement to monetary
11 recovery. Plaintiff has also considered the Parties' settlement discussions, as well as the evaluations
12 of the Mediator, who is experienced and well-regarded in complex labor and employment matters.

13 41. Defendant denied and continues to deny any liability and wrongdoing of any kind
14 associated with the claims alleged in the Action, and further denies that class certification is
15 appropriate for any purpose other than the Settlement. Defendant believes that it would ultimately
16 prevail in the Action. Defendant proffered defenses to both certification and to the merits of Plaintiff's
17 claims. In addition to maintaining it complied with all relevant wage-and-hour laws throughout the
18 relevant time period, Defendant contended that Plaintiff's claims are not suitable for class certification
19 because individual issues would predominate should this case go to trial. As with all class actions,
20 these complex cases raise difficult management and proof issues and, accordingly, there is a significant
21 risk that the Court may deny class certification.

22 42. For example, Plaintiff's meal period claims, which were based on Defendant's alleged
23 failure to provide lawful meal periods, have been increasingly difficult to certify in recent years.
24 Plaintiff's theory of liability for meal period violations was based on allegations that Defendant had
25 failed to implement its policies and that its practices failed to allow Class Members to take meal breaks
26 in the manner required under California law. Defendant contended that its policies and practices at all
27 times during the Class Period were lawful and asserted valid meal period waivers. More specifically,
28 Defendant asserted that its company-wide practice was to have each department take their meal breaks

1 at the same time each day, and as such, the majority of employees received timely and complete meal
2 breaks. Defendant further argued that the rate of purported meal period violations reflected in the data
3 would require individualized inquiry and that such inquiry would prohibit a class from being certified.
4 We also had to consider the risk that the Court would find validity in the individualized proof defense
5 to certification of Plaintiff's meal period claim.

6 43. Additionally, a large portion of Defendant's overall liability lies in Plaintiff's rest
7 period allegations. As with the meal period allegations, Defendant contended that it had a lawful
8 written rest period policy, provided compliant rest breaks and relieved Class Members of all duties as
9 required under California law. Defendant also contended that, as with meal breaks, employees took
10 rest breaks consistently and timely. Additionally, this claim was even more uncertain given the
11 difficulties associated with proving the alleged rest period violations, as Defendant was not required
12 to record these breaks. Given the lack of records demonstrating rest period violations, there were
13 legitimate concerns Plaintiff would not be able to certify these claims or prove substantial damages
14 with requisite certainty, which made the estimated value of this claim subject to much challenge.

15 44. Plaintiff also faced challenges certifying and proving liability for his minimum wage
16 and overtime claims. These claims were largely based on unrecorded, off-the-clock work performed
17 by the putative class members both before and after their shifts and during purported meal and rest
18 periods. However, the individualized nature of why this work was performed and the individualized
19 nature of damages presented substantial concerns regarding the manageability of the case and the risk
20 the Court could find these issues prevented certification, and the estimated damages for this claim
21 were based on an assumption that all putative class members worked off the clock for at least one hour
22 per week.

23 45. There are also substantial risks associated with Plaintiff's waiting time penalties and
24 wage statement claims. First, these claims were derivative of Plaintiff's claims for unpaid meal period
25 premiums, unpaid rest period premiums, unpaid minimum wages, and unpaid overtime wages, and if
26 certification was denied on those underlying claims, these derivative claims for penalties would also
27 likely fail. Further, even if Plaintiff prevailed on his underlying claims, he would still be required to
28 demonstrate that Defendant's violations of California Labor Code section 203 were *willful* violations.

1 Wage statement claims have also seen varying treatment at the appellate level because such claims
2 have an element of discretion attached to them rather than a pure calculation of damages after liability
3 is proven. Accordingly, these derivative claims, which comprised a substantial portion of Defendant's
4 estimated liability, were therefore uncertain.

5 46. My office also recognized that, even if Plaintiff prevailed at class certification, proving
6 the amount of wages due to each Class Member would be an expensive, time-consuming, and
7 extremely uncertain proposition. In order to prove liability and damages, my office would need to
8 request and analyze thousands of pages of documents, contact the Class Members, and obtain
9 declarations. Obtaining the cooperation of current employees would also be difficult, given the likely
10 reluctance to aid prosecution of a lawsuit against a current employer. On the other hand, Defendant
11 would likely be able to obtain the cooperation of their employees. Moreover, even if Plaintiff
12 prevailed at class certification and trial, possible appeals would substantially delay any recovery by
13 the Class.

14 47. Therefore, taking into account how each of the above risks potentially effected
15 Plaintiff's ability to first obtain class certification, and then prove the underlying violations, as well as
16 the cost and delay in recovering the alleged potential damages, Class Counsel discounted Defendant's
17 estimated liability by 80% to \$2,222,529. The merits-based risk factors further reduced Defendant's
18 estimated liability by an additional 60%. This resulted in an adjusted estimated liability of \$889,012.
19 In light thereof, the settlement amount of \$651,000 is a significant settlement.

20 48. My office also separately contemplated the risks of proceeding with the PAGA action
21 and potential liability Defendant could face from this claim as part of the global resolution. Existing
22 case law makes PAGA claims subject to the same defenses and risks as Plaintiff's underlying wage
23 claims. Moreover, although California case law clearly states that PAGA actions need not satisfy class
24 action requirements, Class Counsel remained mindful of the fact that some courts have nevertheless
25 held that PAGA claims must meet a threshold "manageability" requirement pursuant to *Wesson v.*
26 *Staples the Office Superstore, LLC*, 68 Cal.App.5th 746 (2021). We also anticipated that even if
27 successful on the merits at trial, the imposition of cumulative civil penalties based on the alleged wage
28 and hour violations could be considered unjust, arbitrary and oppressive, or confiscatory, and that

1 Defendant would argue that it made a good faith attempt to comply with its legal obligations
2 warranting a reduction in penalties. Class Counsel also anticipated Defendant would argue that it
3 made a good faith attempt to comply with its legal obligations and that the violations per pay period
4 were low, warranting an additional reduction in civil penalties. Finally, we were also mindful of the
5 fact that PAGA is fundamentally not intended to be compensatory in nature but is instead intended to
6 facilitate enforcement of California's labor laws by financing state activities and educating and
7 deterring non-compliance.

8 49. Therefore, after considering this multitude of factors, we concluded that it was in the
9 best interest of the State of California and the PAGA Employees to enter into the Settlement, and to
10 allocate Forty Thousand Dollars and Zero Cents (\$40,000.00) of the Gross Settlement Amount towards
11 the PAGA claim, which represents approximately 6.14% of the Gross Settlement Amount. This
12 percentage of the settlement is well-within the range of wage and hour settlements regularly approved
13 in both state and federal court for cases that include both a class and PAGA action. Typically, such
14 hybrid cases allocate only 1% of the gross settlement value to resolve PAGA claims, and, indeed,
15 settlements allocations as little as 0.22% of the gross settlement amount have been approved as
16 reasonable by courts. Moreover, the overall relief obtained by the Settlement is significant, not only
17 from a monetary perspective, but also because it fulfills the public policy objectives of PAGA—to
18 promote enforcement of California's labor laws, provide funds to the state, and deter future non-
19 compliance by the employer.

20 50. I therefore submit that the Settlement is fair, reasonable, and adequate. The Settlement
21 is in the best interest of the Class Members, the PAGA Employees, and the State of California and is
22 within the accepted range of recoveries for this type of litigation given the inherent risk of litigation,
23 the risk of obtaining and maintaining class certification, and the costs of further litigation.

24 ***Enhancement Payment***

25 51. As part of the Settlement Agreement, Plaintiff is requesting a reasonable Enhancement
26 Payment of Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to Plaintiff Victor De
27 La Cruz. This Enhancement Payment is eminently reasonable given the time and effort Plaintiff spent
28 on this case, and the benefit to the Class Members as a result of Plaintiff's actions. Notice of the

1 requested Enhancement Payment is disclosed to the Class Members in the Class Notice.

2 ***Attorneys' Fees and Costs***

3 52. The attorneys' fees incurred by Class Counsel are in line with the common fund
4 requested. The Settlement Agreement provides for Class Counsel to apply for attorneys' fees in an
5 amount of up to one-third (1/3) of the Gross Settlement Amount (i.e., \$217,000.00 if the Gross
6 Settlement Amount is \$651,000.00) and actual litigation costs and expenses in an amount not to exceed
7 Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00), which will be paid out of the Gross
8 Settlement Amount, subject to approval by the Court. Class Counsel has borne all of the risks and
9 costs of litigation and will not receive any compensation until recovery is obtained.

10 53. The effectiveness of Blackstone Law, APC's prosecution of this matter has translated
11 into tangible monetary benefits as follows: (1) Class Members, the State of California, and PAGA
12 Employees will obtain monetary recovery over a relatively short period of time, as opposed to waiting
13 additional years for the same, or potentially worse, result; (2) a guaranteed result that compares
14 favorably with other similar class action settlements of this type, given the strengths and weaknesses
15 of the case; and (3) significant savings in Class Counsel's fees and/or costs that would have only
16 increased significantly had the case progress through certification, trial, and/or upon appeal.

17 54. Class Counsel has litigated this matter for over a year and was actively preparing this
18 matter for class certification and trial. The Motion for Final Approval will elaborate on the nature of
19 the legal services provided, the time incurred in performing those services, and Class Counsel's hourly
20 rates. The Motion for Final Approval will also elaborate on the reimbursement costs sought by Class
21 Counsel. Notice of the requested Attorneys' Fees and Costs is disclosed to the Class Members in the
22 Class Notice.

23 ***Notice to the Class***

24 55. The Parties have agreed to retain Apex Class Action LLC ("Apex" or "Settlement
25 Administrator") to handle the notice and settlement administration process. The Parties respectfully
26 request that the Court appoint Apex to handle these procedures and to serve as the Settlement
27 Administrator. Defendant will provide Apex with the Class List and Apex will calculate each Class
28 Member's estimated Individual Settlement Share and each PAGA Employee's estimated Individual

1 PAGA Payment. Apex will also receive and process Requests for Exclusion, Notices of Objection,
2 and Workweek Disputes; will provide necessary reports and declarations; will calculate, subtract, and
3 transmit necessary taxes and withholdings with respect to the wages portion of the Individual
4 Settlement Shares; will prepare and submit informational and other tax filings and documents; will
5 issue and transmit all payments provided for by the Settlement, including, but not limited to, mailing
6 Individual Settlement Payment checks to the Settlement Class Members and Individual PAGA
7 Payment checks to the PAGA Employees; and perform any other usual and customary duties for
8 administering a class action settlement.

9 56. I am not aware of an alternative method of providing notice to the Class which would
10 result in a higher likelihood of actual notice. The original source of the mailing addresses is from each
11 Class Member, who provided the information to Defendant. As a fail-safe to this highly reliable
12 method, skip tracing will be performed, if necessary.

13 ***Notice of Settlement to the LWDA***

14 57. In accordance with California Labor Code section 2699(1)(2) and concurrently with the
15 filing of this Motion, a copy of the proposed Settlement was submitted to the LWDA via online
16 submission through the LWDA's website.

17 I declare under penalty of perjury under the laws of the State of California that the foregoing
18 is true and correct.

19 Executed on March 15, 2024, at Beverly Hills, California



20 _____
21 Jonathan M. Genish
22
23
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EXHIBIT 1

May 25, 2022

Via Online Electronic Submission

California Labor & Workforce Development Agency

PAGAfilings@dir.ca.gov

RE: *Victor De La Cruz v. Northwest Pipe Company, et al.*

Dear PAGA Administrator:

Our office represents Victor De La Cruz (“Employee”), who was employed by Northwest Pipe Company (including any and all affiliates, subsidiaries, parents, directors, officers, and employees) (collectively referred to as “Employer”) as a non-exempt, hourly-paid Laborer II from approximately December 20, 2021 to approximately February 4, 2022 in the State of California. This letter shall serve as notice, and a request, pursuant to the Private Attorneys General Act of 2004 (“PAGA”) (California Labor Code § 2699.3), of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

Employee intends to bring a representative action seeking penalties for violations of the California Labor Code, which are recoverable under PAGA, and all other remedies available under PAGA, including an amount sufficient to recover underpaid wages pursuant to Labor Code section 558. Employee seeks these remedies on behalf of the State of California and all aggrieved employees. The aggrieved employees on whose behalf Employee will file a PAGA cause of action includes all current and former hourly paid and/or non-exempt employees who worked for Employer in the State of California during the relevant statutory period (referred to herein as “Aggrieved Employees”).

As set forth below, Employer has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174, 1194, 1197, 1197.1, 1198, et seq., 2800, and 2802 and Industrial Welfare Commission Wage Orders including *inter alia*, Wage Order 16-2001.

Failure to Pay Minimum Wages

Employer violated California Labor Code sections 1194, 1197, and 1197.1 by failing to pay Employee and other Aggrieved Employees at least minimum wages for all hours worked. Employee and other Aggrieved Employees were required to perform work duties off-the-clock, including, but not limited to cementing pipes. By failing to pay Employee and other Aggrieved Employees any

wages for off-the-clock work, Employer violated Labor Code sections 1194, 1197, and 1197.1, which require employers to pay at least the legal minimum wage to their employees.

Failure to Pay Overtime Wages

California Labor Code sections 510 and 1198 require employers to pay no less than one and one-half times the regular rate of pay of the employee for hours worked in excess of eight (8) hours in one workday, for hours worked in excess of forty (40) hours in one workweek, and for the first eight (8) hours worked on the seventh day of work in any one workweek, and to pay no less than twice the regular rate of pay of the employee for hours worked in excess of twelve (12) hours in one workday and for any work in excess of eight (8) hours on any seventh day of a workweek. During the relevant time period, Employee and other Aggrieved Employees worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week without the appropriate overtime compensation because Employer failed to pay them for off-the-clock work as described above and failed to correctly calculate the regular rate of pay for purposes of overtime compensation by failing to include non-discretionary bonuses and/or incentives. Therefore, Employee and the other Aggrieved Employees were entitled to receive certain wages for overtime compensation, but were not paid correctly for all overtime hours worked.

Failure to Provide Meal Periods and Rest Periods

California law requires employers to provide their employees with an opportunity to take an uninterrupted meal period of no less than thirty (30) minutes before the end of the fifth hour of work when an employee works more than five (5) hours in a day. Cal. Lab. Code §§ 226.7, 512(a). A second meal period of no less than thirty (30) minutes must be provided before the end of the tenth hour of work when an employee works more than ten (10) hours in a day. Cal. Lab. Code §§ 226.7, 512(a). Further, an uninterrupted rest period of no less than ten (10) minutes must be provided for every four hours, or major fraction thereof, worked. Cal. Lab. Code § 226.7. When an employer fails to provide a meal or rest period, an hour of pay at the employee's regular rate of compensation is owed to the employee. Cal. Lab. Code § 226.7(c).

Employer failed to provide Employee and the other Aggrieved Employees with an opportunity to take timely, uninterrupted meal and rest periods of the requisite length. In addition to failing to provide meal periods and rest periods in compliance with the California Labor Code and applicable IWC Wage Order, Employer failed to issue meal period and rest period premiums on each occasion that a meal period or rest period was not provided. On those occasions when Employer did pay meal and/or rest period premiums, it failed to do so at the correct rate. On occasions when meal period and/or rest period premiums were paid, Employer paid them at the base hourly rate of pay rather than at the regular rate of compensation. Employer failed to include all non-discretionary payments for work performed by Employee and the other Aggrieved Employees in the regular rate of compensation when issuing meal and/or rest period premiums, as required by California Labor Code § 226.7(c).

Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, Employer failed to pay Employee and other Aggrieved Employees all wages due to them, including minimum wages, overtime wages, and meal and rest period premium wages, within any time period specified by California Labor Code section 204.

Failure to Timely Pay Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. During the relevant time period, Employer failed to pay Aggrieved Employees all wages due to them upon termination of their employment, including minimum wages, overtime wages, meal period premiums, and rest period premiums. In addition, Employer failed to pay Aggrieved Employees their last paycheck within any of the time limits required by Labor Code sections 201 and 202.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code section 226(a) requires an employer semimonthly or at the time of each payment of wages to furnish wage statements to its employees setting forth, *inter alia*, (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, and (8) the name and address of the legal entity that is the employer. Employer failed to provide wage statements to Employee and other Aggrieved Employees stating, *inter alia*, the correct name and address of the legal entity that is the employer, the total hours worked (including time spent working off-the-clock) at the correct hourly rates of pay, the correct amount of wages earned, the correct amount of meal period

premium wages, and the correct amount of rest period premium wages.

Failure to Keep Accurate Payroll Records

California Labor Code section 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant time period, Employer failed to keep accurate and complete payroll records showing the actual hours worked daily and the wages paid, to Employee and other aggrieved employees.

Failure to Reimburse Necessary Business Expenses

Labor Code sections 2800 and 2802 require employers to indemnify their employees for all necessary business expenses that they incur in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During the relevant time period, Employee and other Aggrieved Employees incurred necessary business-related expenses and costs that were not fully reimbursed by Employer. These costs include, but are not limited to, the purchase of steel-toe boots for work-related purposes.

This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3. By law, an employee alleging a violation of one of the above referenced sections must notify his or her employer and the Labor and Workforce Development Agency (LWDA) before he or she can invoke the provisions of Sections 2699, et seq., by seeking redress in court. Labor Code § 2699.3(a)(1). The LWDA must then notify the employer and the employee within 60 calendar days regarding whether it intends to investigate the alleged violation. Labor Code § 2699.3(a)(2)(B). If the LWDA advises it will not investigate, or if no notice is provided within 65 calendar days, the employee may file a lawsuit invoking the provisions under Labor Code § 2699. Labor Code § 2699.3(a)(2)(A). It is the intention of this law firm to file a civil complaint and to bring the appropriate claims under Labor Code § 2699 should your office not address these matters within this time. Should you require anything further or have questions, please do not hesitate to contact us.

BLACKSTONE LAW

A handwritten signature in black ink, appearing to read 'Joana Fang', with a stylized flourish at the end.

Joana Fang, Esq.

cc: By U.S. Certified Mail, Return Receipt Requested

Northwest Pipe Company
12351 Rancho Rd.
Adelanto, CA 92301-2711

Corporation Service Company Which Will Do Business in California as CSC - Lawyers
Incorporating Service
Agent for Service of Process
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

EXHIBIT 2

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

2 This Joint Stipulation of Class Action and PAGA Settlement (“Settlement,” “Agreement,” or
3 “Settlement Agreement”) is made and entered into by and between Plaintiff Victor De La Cruz
4 (“Plaintiff” or “Class Representative”), individually, and on behalf of all others similarly situated and
5 on behalf of the State of California with respect to aggrieved employees, and Defendant Northwest
6 Pipe Company (“Defendant”) (together, Plaintiff and Defendant are referred to as “Parties” and
7 individually as “Party”).

8 This Settlement Agreement shall be binding on Plaintiff, Settlement Class Members (as
9 defined herein), the State of California as to the employment of PAGA Employees (as defined herein),
10 PAGA Employees (as defined herein), and Defendant, subject to the terms and conditions hereof and
11 the approval of the Court.

12 **RECITALS**

13 1. On May 25, 2022, Plaintiff provided written notice to the Labor and Workforce
14 Development Agency (“LWDA”) by online submission and to Defendant by U.S. Certified Mail,
15 pursuant to California Labor Code Section 2699.3, of the specific provisions of the California Labor
16 Code alleged to have been violated by Defendant (“PAGA Letter”). Also on May 25, 2022, Plaintiff
17 filed a Class Action Complaint for Damages in the action entitled *Victor De La Cruz v. Northwest*
18 *Pipe Company*, San Bernardino County Superior Court Case No. CIVSB2211140 (“Action”), thereby
19 commencing a putative class action against Defendant. On February 2, 2023, Plaintiff filed a First
20 Amended Class Action Complaint for Damages and Enforcement Action Under the Private Attorneys
21 General Act, California Labor Code §§ 2698 *Et Seq.* (“Operative Complaint”), which added a cause
22 of action under the Private Attorneys General Act of 2004 pursuant to California Labor Code Section
23 2698 *et seq.* (“PAGA”). The Operative Complaint alleges nine (9) causes of action for violations of
24 the California Labor code for failure to pay overtime wages, failure to pay minimum wages, failure to
25 provide compliant meal periods and premium payments in lieu thereof, failure to provide compliant
26 rest periods and premiums payments in lieu thereof, failure to provide accurate wage statements,
27 failure to timely pay wages upon termination, and failure to reimburse necessary business expenses,
28 for violations of California Business & Professions Code Section 17200, *et seq.* based on the

1 aforementioned California Labor Code violations, and for civil penalties under PAGA based on the
2 aforementioned California Labor Code violations.

3 2. Defendant denies all materials allegations set forth in the Action and has asserted
4 numerous affirmative defenses. Notwithstanding, in the interest of avoiding further litigation,
5 Defendant desires to fully and finally settle the Action, Released Class Claims (as defined herein), and
6 Released PAGA Claims (as defined herein).

7 3. Class Counsel diligently investigated the class and PAGA claims against Defendant,
8 including any and all applicable defenses and the applicable law. The investigation included, *inter*
9 *alia*, the exchange of information, data, and documents, and review of corporate policies and practices.
10 The Parties have engaged in sufficient formal and informal discovery and investigation to assess the
11 relative merits of the claims and contentions of the Parties.

12 4. On July 17, 2023, the Parties participated in mediation with Todd Smith, Esq. (the
13 “Mediator”), a respected mediator of complex wage and hour actions, which did not result in a
14 settlement at that time. After continued negotiations, and with the assistance of the Mediator’s
15 evaluations, the Parties reached the settlement that is memorialized herein. The Parties’ settlement
16 discussions were conducted at arms’ length, and the Settlement is the result of an informed and detailed
17 analysis of Defendant’s potential liability and exposure in relation to the costs and risks associated
18 with continued litigation. Based on Class Counsel’s investigation and evaluation, Class Counsel
19 believes that the settlement with Defendant for the consideration and on the terms set forth in this
20 Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the Class Members,
21 State of California, and PAGA Employees in light of all known facts and circumstances, including the
22 risk of significant delay and uncertainty associated with litigation and various defenses asserted by
23 Defendant.

24 5. The Parties expressly acknowledge that this Settlement Agreement is entered into
25 solely for the purpose of compromising significantly disputed claims and that nothing herein is an
26 admission of liability or wrongdoing by Defendant. If for any reason this Settlement Agreement is
27 not approved, it will be of no force or effect, and the Parties shall be returned to their original respective
28 positions.

DEFINITIONS

6. The following definitions are applicable to this Settlement Agreement. Definitions contained elsewhere in this Settlement Agreement will also be effective.

a. “Attorneys’ Fees and Costs” means attorneys’ fees approved by the Court for Class Counsel’s litigation and resolution of the Action and all actual costs and expenses incurred and to be incurred by Class Counsel in connection with the Action, as set forth in Paragraph 9.

b. “Class” or “Class Member(s)” means all current and former hourly-paid and/or non-exempt employees who worked for Defendant in the State of California at any time during the Class Period. This shall include both individuals employed pursuant to a collective bargaining agreement and individuals not employed pursuant to a collective bargaining agreement.

c. “Class Counsel” means Jonathan M. Genish, Miriam L. Schimmel, Joana Fang, and Alexandra Rose of Blackstone Law, APC, who will seek to be appointed counsel for the Class.

d. “Class List” means a complete list of all Class Members that Defendant will diligently and in good faith compile from its records and provide to the Settlement Administrator. The Class List will be formatted in a readable Microsoft Office Excel spreadsheet containing the following information for each Class Member: (1) full name; (2) last known mailing address; (3) Social Security number; (4) dates worked for Defendant during the Class Period; and (5) such other information as is necessary for the Settlement Administrator to calculate Workweeks and PAGA Workweeks (if applicable).

e. “Class Notice” means the Notice of Class Action Settlement, substantially in the form attached hereto as “**Exhibit A**.” The Class Notice shall constitute notice to the Class pursuant to California Rule of Court 3.769(f) and, once approved by the Court, shall be deemed compliant with California Rule of Court 3.766.

f. “Class Period” means the period from May 25, 2018 through July 17, 2023.

g. “Class Settlement” means the settlement and resolution of all Released Class Claims.

h. “Court” means the Superior Court of the State of California for the County of San Bernardino.

1 i. “Defendant’s Counsel” means Bryan L. Hawkins and Robert A. Sarkisian of
2 Stoel Rives LLP.

3 j. “Effective Date” means the date when all of the following events have occurred:
4 (1) the Settlement Agreement has been executed by all Parties, Class Counsel, and Defendant’s
5 Counsel; (2) the Court has given preliminary approval to the Settlement; (3) the Class Notice has been
6 mailed to the Class Members, providing them with an opportunity to object to the terms of the Class
7 Settlement or opt out of the Class Settlement; (4) the Court has had a Final Approval Hearing and
8 entered a Final Approval Order and Judgment; (5) sixty-five calendar days have passed since the Court
9 entered a Final Approval Order and Judgment; and (6) in the event there are written objections to the
10 Class Settlement filed prior to the Final Approval Hearing which are not later withdrawn or denied,
11 the later of the following events: five business days after the period for filing any appeal, writ, or other
12 appellate proceeding opposing the Court’s Final Approval Order and Judgment has elapsed without
13 any appeal, writ, or other appellate proceeding having been filed, or, if any appeal, writ, or other
14 appellate proceeding opposing the Court’s Final Approval Order and Judgment has been filed, five
15 business days after any appeal, writ, or other appellate proceedings opposing the Court’s Final
16 Approval Order and Judgment has finally and conclusively dismissed with no right to pursue further
17 remedies or relief.

18 k. “Employer Taxes” means the employer’s share of taxes and contributions in
19 connection with the wages portion of Individual Settlement Shares, which shall be paid by Defendant
20 in addition to the Gross Settlement Amount.

21 l. “Enhancement Payment” means the amount to be paid to Plaintiff, in
22 recognition of his effort and work in prosecuting the Action on behalf of Class Members and PAGA
23 Employees, and general release of claims, as set forth in Paragraph 10.

24 m. “Final Approval” means the determination by the Court that the Settlement is
25 fair, reasonable, and adequate, and entry of the Final Approval Order and Judgment based thereon.

26 n. “Final Approval Hearing” means the hearing at which the Court will consider
27 and determine whether the Settlement should be granted Final Approval.

28 ///

1 o. “Final Approval Order and Judgment” means the order granting final approval
2 of the Settlement and entering judgment thereon, in a form and content mutually agreed to by the
3 Parties, and subject to approval by the Court.

4 p. “Gross Settlement Amount” means the amount of Six Hundred Fifty-One
5 Thousand Dollars and Zero Cents (\$651,000.00) to be paid by Defendant in full satisfaction of the
6 Action, Released Class Claims, and Released PAGA Claims, which includes all Attorneys’ Fees and
7 Costs, Enhancement Payment, PAGA Amount, Settlement Administration Costs, and Net Settlement
8 Amount to be paid to the Settlement Class Members. Defendant shall pay the Employer Taxes
9 separately and in addition to the Gross Settlement Amount. The Gross Settlement Amount is non-
10 reversionary; no portion of the Gross Settlement Payment will return to Defendant. The Gross
11 Settlement Amount is subject to increase, as provided in Paragraph 13.

12 q. “Individual PAGA Payment” means the *pro rata* share of the PAGA Employee
13 Amount that a PAGA Employee may be eligible to receive under the PAGA Settlement, to be
14 calculated in accordance with Paragraph 15.

15 r. “Individual Settlement Payment” means the net payment of each Settlement
16 Class Member’s Individual Settlement Share, after reduction for the employee’s share of taxes and
17 withholdings with respect to the wages portion of the Individual Settlement Share, as provided in
18 Paragraph 16.

19 s. “Individual Settlement Share” means the *pro rata* share of the Net Settlement
20 Amount that a Class Member may be eligible to receive under the Class Settlement, to be calculated
21 in accordance with Paragraph 14.

22 t. “LWDA Payment” means the amount of Thirty Thousand Dollars and Zero
23 Cents (\$30,000.00), i.e., 75% of the PAGA Amount, that the Parties have agreed to pay to the LWDA
24 under the PAGA Settlement, as set forth in Paragraph 11.

25 u. “Net Settlement Amount” means the portion of the Gross Settlement Amount
26 that is available for distribution to Settlement Class Members, which is the Gross Settlement Amount
27 less the Court-approved Attorneys’ Fees and Costs, Enhancement Payment, PAGA Amount, and
28 Settlement Administration Costs.

1 v. “Notice of Objection” means a Settlement Class Member’s written objection to
2 the Class Settlement, which must: (a) contain the case name and number of the Action; (b) contain the
3 objector’s full name, signature, address, telephone number, and the last four (4) digits of the objector’s
4 Social Security number; (c) contain a written statement of all grounds for the objection accompanied
5 by any legal support for such objection; (d) contain copies of any papers, briefs, or other documents
6 upon which the objection is based; and (e) be returned by mail to the Settlement Administrator at the
7 specified address, postmarked on or before the Response Deadline.

8 w. “PAGA Amount” means the allocation of Forty Thousand Dollars and Zero
9 Cents (\$40,000.00) from the Gross Settlement Amount for the PAGA Settlement. Seventy-five
10 percent (75%) of the PAGA Amount, or \$30,000.00, will be paid to the LWDA (i.e., the LWDA
11 Payment) and the remaining twenty-five percent (25%), or \$10,000.00, will be distributed to the
12 PAGA Employees (i.e., the PAGA Employee Amount).

13 x. “PAGA Employees” means all current and former hourly-paid and/or non-
14 exempt employees who worked for Defendant in the State of California at any time during the PAGA
15 Period. This shall include both individuals employed pursuant to a collective bargaining agreement
16 and individuals not employed pursuant to a collective bargaining agreement.

17 y. “PAGA Employee Amount” means the amount of Ten Thousand Dollars and
18 Zero Cents (\$10,000.00), i.e., 25% of the PAGA Amount, to be distributed to PAGA Employees on a
19 *pro rata* basis based on their PAGA Workweeks.

20 z. “PAGA Period” means the period from May 25, 2021 through July 17, 2023.

21 aa. “PAGA Settlement” means the settlement and resolution of all Released PAGA
22 Claims.

23 bb. “PAGA Workweeks” means the number of weeks each PAGA Employee
24 worked for Defendant as an hourly-paid and/or non-exempt employee in California during the PAGA
25 Period. The PAGA Workweeks will be calculated by the Settlement Administrator based on each
26 PAGA Employee’s start date or the beginning of the PAGA Period, whichever is later, and separation
27 date or the last day of the PAGA Period, whichever is earlier, based on the Class List provided by
28 Defendant.

1 cc. “Preliminary Approval” means the date on which the Court enters the
2 Preliminary Approval Order.

3 dd. “Preliminary Approval Order” means the order granting preliminary approval
4 of the Settlement, in a form and content mutually agreed to by the Parties, and subject to approval by
5 the Court.

6 ee. “Released Class Claims” means any and all claims, debts, liabilities, demands,
7 obligations, guarantees, costs, expenses, attorneys’ fees, damages, or causes of action which were
8 alleged or which could have been alleged based on the factual allegations in the Operative Complaint,
9 arising during the Class Period, under any federal, state, or local law, and shall specifically include
10 claims for Defendant’s alleged failure to pay overtime and minimum wages, provide compliant meal
11 and rest periods and associated premium payments, timely pay wages upon termination, provide
12 accurate wage statements, and reimburse necessary business-related expenses in violation of
13 California Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512(a), 1194, 1197, 1197.1, 1198, 2800,
14 and 2802, and Industrial Welfare Commission Wage Orders, and all claims for attorneys’ fees and
15 costs and statutory interest in connection therewith, California Business and Professions Code sections
16 17200, *et seq.*, and any other claims, including claims for statutory penalties, pertaining to the Class
17 Members.

18 ff. “Released PAGA Claims” means any and all claims arising from any of the
19 factual allegations in the Operative Complaint and PAGA Letter, arising during the PAGA Period, for
20 civil penalties under the Private Attorneys General Act of 2004, California Labor Code sections 2698
21 *et seq.*, including all claims for attorneys’ fees and costs related thereto, for Defendant’s alleged failure
22 to pay overtime and minimum wages, provide compliant meal and rest periods and associated premium
23 payments, timely pay wages during employment and upon termination, provide complaint wage
24 statements, maintain complete and accurate payroll records, and reimburse necessary business-related
25 expenses in violation of California Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512(a),
26 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and Industrial Welfare Commission Wage Orders,
27 including *inter alia*, Wage Order 16-2001.

28 ///

1 gg. “Released Parties” means Defendant and its current and former officers,
2 directors, management-level employees, members, insurers, shareholders, subsidiaries, affiliates,
3 predecessors, successors, and assigns.

4 hh. “Request for Exclusion” means a letter submitted by a Class Member indicating
5 a request to be excluded from the Class Settlement, which must: (a) contain the case name and number
6 of the Action; (b) contain the Class Member’s full name, signature, address, telephone number, and
7 last four (4) digits of the Class Member’s Social Security number; (c) clearly state that the Class
8 Member does not wish to be included in the Class Settlement; and (d) be returned by mail to the
9 Settlement Administrator at the specified address, postmarked on or before the Response Deadline.

10 ii. “Response Deadline” means the deadline by which Class Members must submit
11 a Request for Exclusion, Notice of Objection, and/or Workweeks Dispute, which shall be the date that
12 is forty-five (45) calendar days from the initial mailing of the Class Notice by the Settlement
13 Administrator to Class Members, unless the 45th day falls on a Sunday or Federal holiday, in which
14 case the Response Deadline will be extended to the next day on which the United States Postal service
15 is open. The Response Deadline may also be extended by express agreement between Class Counsel
16 and Defendant’s Counsel. Under no circumstances, however, will the Settlement Administrator have
17 the authority to extend the Response Deadline. In the event that a Class Notice is re-mailed to a Class
18 Member, the Response Deadline for that Class Member shall be extended fifteen (15) calendar days
19 from the original Response Deadline.

20 jj. “Settlement Administrator” means Apex Class Action LLC, or any other third-
21 party class action settlement administrator agreed to by the Parties and approved by the Court for
22 purposes of administering the Settlement. The Parties and their counsel each represent that they do
23 not have any financial interest in the Settlement Administrator or otherwise have a relationship with
24 the Settlement Administrator that could create a conflict of interest.

25 kk. “Settlement Administration Costs” means the costs payable from the Gross
26 Settlement Amount to the Settlement Administrator for administering the Settlement, as set forth in
27 Paragraph 12.

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11. “Settlement Class” or “Settlement Class Member(s)” means all Class Members who do not submit a timely and valid Request for Exclusion.

mm. “Workweeks” means the number of weeks each Class Member worked for Defendant as an hourly-paid or non-exempt employee in California during the Class Period. The Workweeks will be calculated by the Settlement Administrator based on each Class Member’s start date or the beginning of the Class Period, whichever is later, and separation date or the last day of the Class Period, whichever is earlier, based on the Class List provided by Defendant.

nn. “Workweeks Dispute” means a letter submitted by a Class Member disputing the number of Workweeks and/or PAGA Workweeks to which they have been credited, which must:

(a) contain the case name and number of the Action; (b) contain the Class Member’s full name, signature, address, telephone number, and the last four (4) digits of the Class Member’s Social Security number; (c) clearly state that the Class Member disputes the number of Workweeks and/or PAGA Workweeks credited to the Class Member and what the Class Member contends is the correct number; and (d) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.

CLASS CERTIFICATION

7. For the purposes of this Settlement only, the Parties stipulate to the certification of the Class.

8. The Parties agree that certification for the purpose of settlement is not an admission that certification is proper under Section 382 of the California Code of Civil Procedure. Should, for whatever reason, the Court not grant Final Approval, the Parties' stipulation to class certification as part of the Settlement shall become null and void ab initio and shall have no bearing on, and shall not be admissible in connection with, the issue of whether or not certification would be inappropriate in a non-settlement context. Defendant expressly reserves the right to oppose class certification and/or to proactively move to deny class certification should this Settlement be modified or reversed on appeal or otherwise not become final.

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1 **TERMS OF THE AGREEMENT**

2 NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements set
3 forth herein, the Parties agree, subject to the Court's approval, as follows:

4 9. **Attorneys' Fees and Costs.** Defendant agrees not to oppose or impede any application
5 or motion by Class Counsel for attorneys' fees in the amount up to one-third (1/3) of the Gross
6 Settlement Amount (i.e., \$217,000.00 if the Gross Settlement Amount is \$651,000.00) and
7 reimbursement of actual costs and expenses associated with Class Counsel's litigation and settlement
8 of the Action, in an amount not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00),
9 both of which will be paid from the Gross Settlement Amount. These amounts will cover any and all
10 work performed and any and all costs incurred by Class Counsel in connection with the litigation of
11 the Action, including without limitation all work performed and costs incurred to date, and all work
12 to be performed and all costs to be incurred in connection with obtaining the Court's approval of this
13 Settlement Agreement, including any objections raised and any appeals necessitated by those
14 objections. Class Counsel shall be solely and legally responsible for correctly characterizing this
15 compensation for tax purposes and for paying any taxes on the amounts received. The Settlement
16 Administrator shall issue an IRS Form 1099 to Class Counsel for the Attorneys' Fees and Costs. Any
17 portion of the requested Attorneys' Fees and Costs that is not awarded by the Court to Class Counsel
18 shall be reallocated to the Net Settlement Amount for the benefit of the Settlement Class Members.
19 The Court's ruling on the request for Attorneys' Fees and Costs shall not affect the enforceability of
20 this Agreement or the terms contained herein.

21 10. **Enhancement Payment.** Defendant agrees not to oppose or impede any application or
22 motion by Plaintiff for an Enhancement Payment in the amount up to Seven Thousand Five Hundred
23 Dollars and Zero Cents (\$7,500.00). The Enhancement Payment, which will be paid from the Gross
24 Settlement Amount, subject to Court approval, will be in addition to his Individual Settlement Payment
25 as a Settlement Class Member and Individual PAGA Payment as a PAGA Employee. Plaintiff shall
26 be solely and legally responsible for correctly characterizing this compensation for tax purposes and
27 for paying any taxes on the amounts received. The Settlement Administrator shall issue an IRS Form
28 1099 to Plaintiff for the Enhancement Payment. Any portion of the requested Enhancement Payment

that is not awarded by the Court to Plaintiff shall be reallocated to the Net Settlement Amount for the benefit of the Settlement Class Members. The Court's ruling on the request for the Enhancement Payment shall not affect the enforceability of this Agreement or the terms contained herein.

11. PAGA Amount. Subject to approval by the Court, the Parties agree that the amount of Forty Thousand Dollars and Zero Cents (\$40,000.00) shall be allocated from the Gross Settlement Amount toward penalties under the Private Attorneys General Act, California Labor Code Section 2698, *et seq.* (i.e., the PAGA Amount), of which seventy-five percent (75%), or \$30,000.00, will be paid to the LWDA (i.e., the LWDA Payment) and twenty-five percent (25%), or \$10,000.00, will be distributed to PAGA Employees (i.e., the PAGA Employee Amount) on a *pro rata* basis, based on the total number of PAGA Workweeks worked by each PAGA Employee during the PAGA Period (i.e., the Individual PAGA Payments).

12. Settlement Administration Costs. The Settlement Administrator will be paid for the reasonable costs of administration of the Settlement and distribution of payments under the Settlement, which is currently not to exceed Ten Thousand Dollars and Zero Cents (\$10,000.00). These costs, which will be paid from the Gross Settlement Amount, subject to Court approval, will include, *inter alia*, translating the Class Notice to Spanish, printing, distributing, and tracking Class Notices and other documents for the Settlement, calculating and distributing payments due under the Settlement, issuing of 1099 and W-2 IRS Forms and all required tax reporting, filings, withholdings, and remittances, providing necessary reports and declarations, and other duties and responsibilities set forth herein to process the Settlement, and as requested by the Parties. To the extent the actual Settlement Administrator's costs are greater than the estimated amount stated herein, such excess amount will be deducted from the Gross Settlement Amount, subject to approval by the Court. Any portion of the estimated, designated, and/or awarded Settlement Administration Costs which are not in fact required to fulfill payment to the Settlement Administrator to undertake the required settlement administration duties shall be reallocated to the Net Settlement Amount for the benefit of the Settlement Class Members.

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1 13. Escalator Clause. Defendant has represented that the Class Members worked a total of
2 46,500 Workweeks during the Class Period. If it is determined by the Settlement Administrator that
3 the total number of Workweeks worked by the Class Members during the Class Period actually
4 exceeds 46,500 by more than 10% (i.e., by more than 51,150 Workweeks), then the Gross Settlement
5 Amount will be increased on a *pro rata* basis equal to the percentage increase in the number of
6 Workweeks worked by the Class Members above 10%. For example, if the number of Workweeks
7 increases by 11% to 51,615 Workweeks, then the Gross Settlement Amount will increase by 1%.

8 14. Individual Settlement Share Calculations. Individual Settlement Shares will be
9 calculated and apportioned from the Net Settlement Amount based on the Class Members' number of
10 Workweeks, as follows:

11 a. After Preliminary Approval, the Settlement Administrator will divide the Net
12 Settlement Amount by the Workweeks of all Class Members to yield the "Estimated Workweek
13 Value," and multiply each Class Member's individual Workweeks by the Estimated Workweek Value
14 to yield each Class Member's estimated Individual Settlement Share that each Class Member may be
15 entitled to receive under the Class Settlement.

16 b. After Final Approval, the Settlement Administrator will divide the final Net
17 Settlement Amount by the Workweeks of all Settlement Class Members to yield the "Final Workweek
18 Value," and multiply each Settlement Class Member's individual Workweeks by the Final Workweek
19 Value to each Settlement Class Member's final Individual Settlement Share.

20 15. Individual PAGA Payment Calculations. Individual PAGA Payments will be
21 calculated and apportioned from the PAGA Employee Amount based on the PAGA Employees'
22 number of PAGA Workweeks, as follows: The Settlement Administrator will divide the PAGA
23 Employee Amount, i.e., 25% of the PAGA Amount, by the PAGA Workweeks of all PAGA
24 Employees to yield the "PAGA Workweek Value," and multiply each PAGA Employee's individual
25 PAGA Workweeks by the PAGA Workweek Value to yield each PAGA Employee's Individual
26 PAGA Payment.

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1 16. Tax Treatment of Individual Settlement Shares and Individual PAGA Payments. Each
2 Individual Settlement Share will be allocated as follows: twenty percent (20%) wages and eighty
3 percent (80%) penalties, interest, and non-wage damages. The portion allocated to wages will be
4 reported on an IRS Form W-2 and the portions allocated to penalties, interest, and non-wage damages
5 will be reported on an IRS Form 1099 (if applicable) by the Settlement Administrator. The Settlement
6 Administrator will withhold the employee's share of taxes and withholdings with respect to the wages
7 portion of the Individual Settlement Shares, and issue checks to Settlement Class Members for their
8 Individual Settlement Payments (i.e., payment of their Individual Settlement Share net of these taxes
9 and withholdings). The Employer Taxes will be paid separately and in addition to the Gross
10 Settlement Amount. Each Individual PAGA Payment will be allocated as one hundred percent (100%)
11 penalties and will be reported on an IRS Form 1099 (if applicable) by the Settlement Administrator.

12 17. Administration of Taxes by the Settlement Administrator. The Settlement
13 Administrator will be responsible for issuing to Plaintiff, Settlement Class Members, PAGA
14 Employees, and Class Counsel any tax forms (i.e., IRS Forms W-2, IRS Forms 1099, etc.) as may be
15 required by law for all amounts paid pursuant to this Settlement Agreement. The Settlement
16 Administrator will also be responsible for calculating the Employer Taxes and forwarding all payroll
17 taxes and other legally required withholdings to the appropriate government authorities.

18 18. Tax Liability. Plaintiff, Class Counsel, Defendant, and Defendant's Counsel do not
19 intend anything contained in this Settlement Agreement to constitute advice regarding taxes or
20 taxability, nor shall anything in this Settlement Agreement be relied on as such. Plaintiff, Settlement
21 Class Members, and PAGA Employees are not relying on any statement, representation, or calculation
22 by Defendant, the Settlement Administrator, or Class Counsel in this regard. Plaintiff, Settlement
23 Class Members, and PAGA Employees understand and agree that Plaintiff, Settlement Class
24 Members, and PAGA Employees will be solely responsible for the payment of any taxes and penalties
25 assessed on the payments described in this Settlement Agreement. Plaintiff, Settlement Class
26 Members, and PAGA Employees should consult with their tax advisors concerning the tax
27 consequences of any payment they receive under the Settlement. The Parties agree that except for the
28 PAGA Amount, which is a civil penalty, all other portions of the Gross Settlement Amount are not,

1 and are not intended to be made as amounts paid or incurred to, or at the direction of, a government,
2 governmental entity, or non-governmental entity in relation to the violation of law, or investigation or
3 inquiry into a potential violation of such law within the meaning of section 162(f) of the Internal
4 Revenue Code of 1986, as amended. Except for the PAGA Amount, all payments under the Gross
5 Settlement Amount are considered restitution, remediation, or are being paid to come into compliance
6 with the law.

7 19. Circular 230 Disclaimer. EACH PARTY TO THIS SETTLEMENT AGREEMENT
8 (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY
9 TO THIS SETTLEMENT AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN
10 “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
11 SETTLEMENT AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE
12 BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS
13 OR WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE
14 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE
15 MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART
16 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY
17 UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE
18 (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS SETTLEMENT AGREEMENT, (B)
19 HAS NOT ENTERED INTO THIS SETTLEMENT AGREEEMNT BASED UPON THE
20 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY
21 OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR
22 DISCLOSURE BY ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY
23 TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
24 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT
25 PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISOR’S TAX
26 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING)
27 UPON DISCLOSURE BY THE ACKNOWLEDING PARTY OF THE TAX TREATMENT OR
28 TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION

1 CONTEMPLATED BY THIS SETTLEMENT AGREEMENT.

2 20. Settlement Awards Do Not Trigger Additional Benefits. All payments made under the
3 Settlement shall be deemed to be paid to the payee solely in the year in which such payments actually
4 are issued to the payee. It is expressly understood and agreed that payments made under this
5 Settlement shall not in any way entitle Plaintiff, Settlement Class Members, or any PAGA Employee
6 to additional compensation or benefits under any new or additional compensation or benefits, or any
7 bonus, contest, or other compensation or benefit plan or agreement in place during the Class Period,
8 nor will it entitle Plaintiff, Settlement Class Members, or any PAGA Employee to any increased
9 retirement, 401K benefits or matching benefits, or deferred compensation benefits (notwithstanding
10 any contrary language or agreement in any benefit or compensation plan document that might have
11 been in effect during the Class Period).

12 21. Duties of the Parties with Respect to Obtaining Preliminary Approval of the Settlement.
13 Upon execution of this Settlement Agreement, Plaintiff will obtain a hearing date from the Court for
14 Plaintiff's motion for preliminary approval of the Settlement, which Plaintiff and Class Counsel will
15 be responsible for drafting, and submit this Settlement Agreement to the Court in support of said
16 motion. Class Counsel will provide Defendant's Counsel a draft of the preliminary approval motion
17 before filing it with the Court to give Defendant's Counsel an adequate opportunity to review and
18 provide comments to the motion in good-faith. Defendant agrees not to oppose the jointly-approved
19 motion for preliminary approval of the Settlement consistent with this Settlement Agreement. By way
20 of said motion, Plaintiff will apply for the entry of the Preliminary Approval Order seeking the
21 following:

- 22 a. Conditionally certifying the Class for settlement purposes only;
- 23 b. Granting Preliminary Approval of the Settlement;
- 24 c. Preliminarily appointing Plaintiff as the representative of the Class;
- 25 d. Preliminarily appointing Class Counsel as counsel for the Class;
- 26 e. Approving as to form and content, the mutually-agreed upon and proposed
- 27 Class Notice and directing its mailing by First Class U.S. Mail;

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1 f. Approving the manner and method for Class Members to request exclusion
2 from or object to the Class Settlement as contained herein and within the Class Notice;

3 g. Scheduling a Final Approval Hearing at which the Court will determine whether
4 Final Approval of the Settlement should be granted.

5 22. Notice of Settlement to the LWDA. Pursuant to California Labor Code § 2699(1)(2),
6 Class Counsel shall notify the LWDA of the Settlement upon filing the motion for preliminary
7 approval of the Settlement.

8 23. Delivery of Class List. Within fourteen (14) calendar days of Preliminary Approval,
9 Defendant will provide the Class List to the Settlement Administrator. If any or all this information
10 is unavailable to Defendant, Defendant will inform Class Counsel, and the Parties will make their best
11 efforts to reconstruct or otherwise agree upon how to deal with the unavailable information.

12 24. Notice by First-Class U.S. Mail.

13 a. Within seven (7) calendar days after receiving the Class List from Defendant,
14 the Settlement Administrator will perform a search based on the National Change of Address Database
15 or any other similar services available, such as provided by Experian, for information to update and
16 correct for any known or identifiable address changes, and will mail a Class Notice in English and
17 Spanish (in the form attached as **Exhibit A** to this Settlement Agreement) to all Class Members via
18 First-Class U.S. Mail, using the most current, known mailing addresses identified by the Settlement
19 Administrator.

20 b. Any Class Notice returned to the Settlement Administrator as undeliverable on
21 or before the Response Deadline will be sent promptly via First-Class U.S. Mail to the forwarding
22 address affixed thereto and the Settlement Administrator will indicate the date of such re-mailing on
23 the Class Notice. If no forwarding address is provided, the Settlement Administrator will promptly
24 attempt to determine the correct address using a skip-trace or other search, using the name, address,
25 and/or Social Security number of the Class Member, and perform a single re-mailing within five (5)
26 calendar days.

27 c. Compliance with the procedures described herein above shall constitute due and
28 sufficient notice to Class Members of the Settlement and shall satisfy the requirements of due process.

1 Nothing else shall be required of or done by the Parties, Class Counsel, or Defendant's Counsel to
2 provide notice of the Settlement.

3 25. Disputes Regarding Workweeks and/or PAGA Workweeks. Class Members will have
4 an opportunity to dispute the number of Workweeks and/or PAGA Workweeks to which they have
5 been credited, as reflected in their respective Class Notices, by submitting a timely and valid
6 Workweeks Dispute to the Settlement Administrator, by mail, postmarked on or before the Response
7 Deadline. The date of the postmark on the return mailing envelope will be the exclusive means to
8 determine whether a Workweeks Dispute has been timely submitted. Absent evidence rebutting the
9 accuracy of Defendant's records and data as they pertain to the number of Workweeks and/or PAGA
10 Workweeks to be credited to a disputing Class Member, Defendant's records will be presumed to be
11 correct and determinative of the dispute. However, if a Class Member produces information and/or
12 documents to the contrary, the Settlement Administrator will evaluate the materials submitted by the
13 Class Member and the Settlement Administrator will resolve and determine the number of eligible
14 Workweeks and/or PAGA Workweeks that the disputing Class Member should be credited with under
15 the Settlement. The Settlement Administrator's decision on such disputes will be final.

16 26. Requesting Exclusion from the Class Settlement. Any Class Member wishing to be
17 excluded from the Class Settlement must submit a timely and valid Request for Exclusion to the
18 Settlement Administrator, by mail, postmarked on or before the Response Deadline. The date of the
19 postmark on the return mailing envelope will be the exclusive means to determine whether a Request
20 for Exclusion has been timely submitted. The Settlement Administrator will certify jointly to Class
21 Counsel and Defendant's Counsel the number of timely and valid Requests for Exclusion that are
22 submitted, and also identify the individuals who have submitted a timely and valid Request for
23 Exclusion in a declaration that is to be filed with the Court in advance of the Final Approval Hearing.
24 At no time will any of the Parties or their counsel seek to solicit or otherwise encourage Class Members
25 to request exclusion from the Class Settlement. Any Class Member who submits a Request for
26 Exclusion is prohibited from making any objection to the Class Settlement. Any Class Member who
27 submits a timely and valid Request for Exclusion will not be bound by the Class Settlement and will
28 not be issued an Individual Settlement Payment. Any Class Member who does not affirmatively

1 request exclusion from the Class Settlement by submitting a timely and valid Request for Exclusion
2 will be bound by all of the terms of the Class Settlement, including and not limited to those pertaining
3 to the Released Class Claims, as well as any judgment that may be entered by the Court if it grants
4 Final Approval to the Settlement. Notwithstanding the above, all PAGA Employees will be bound to
5 the PAGA Settlement and will be issued their Individual PAGA Payment, irrespective of whether they
6 submit a Request for Exclusion.

7 27. Objecting to the Class Settlement. To object to the Class Settlement, Settlement Class
8 Members must submit a timely and complete Notice of Objection to the Settlement Administrator, by
9 mail, postmarked on or before the Response Deadline. The date of the postmark on the return mailing
10 envelope will be the exclusive means to determine whether a Notice of Objection has been timely
11 submitted. The Settlement Administrator will certify jointly to Class Counsel and Defendant's
12 Counsel the number of Notices of Objection that are submitted (specifying which ones were timely
13 and complete and which were not), and also attach them to a declaration that is to be filed with the
14 Court in advance of the Final Approval Hearing. At no time will any of the Parties or their counsel
15 seek to solicit or otherwise encourage Settlement Class Members to object to the Class Settlement or
16 appeal from the Final Approval Order and Judgment. Settlement Class Members, individually or
17 through counsel, may also present their objection orally at the Final Approval Hearing, regardless of
18 whether they have submitted a Notice of Objection.

19 28. Reports by the Settlement Administrator. The Settlement Administrator shall provide
20 weekly reports to counsel for the Parties providing: (a) the number of undeliverable and re-mailed
21 Class Notices; (ii) the number of Class Members who have submitted Workweeks Disputes; (iii) the
22 number of Class Members who have submitted Requests for Exclusion; and (iv) the number of
23 Settlement Class Members who have submitted Notices of Objection. Additionally, the Settlement
24 Administrator will provide to counsel for the Parties any updated reports regarding the administration
25 of the Settlement Agreement as needed or requested, and immediately notify the Parties when it
26 receives a request from an individual or any other entity regarding inclusion in the Class and/or
27 Settlement or regarding a Workweeks Dispute.

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1 29. Defendant's Right to Rescind. If more than ten percent (10%) of the Class Members
2 submit timely and valid Requests for Exclusion, Defendant may elect to rescind the Settlement
3 Agreement. Defendant must exercise this right of rescission in writing that is provided to Class
4 Counsel within fourteen (14) calendar days of the Settlement Administrator notifying the Parties of
5 the number of Class Members who have submitted timely and valid Requests for Exclusion following
6 the Response Deadline. If Defendant exercises this option, Defendant shall pay any costs of settlement
7 administration owed to the Settlement Administrator incurred up to that date.

8 30. Certification of Completion. Upon completion of administration of the Settlement, the
9 Settlement Administrator will provide a written declaration under oath to certify such completion to
10 the Court and counsel for all Parties.

11 31. Duties of the Parties with Respect to Obtaining Final Approval of the Settlement. After
12 the Response Deadline, a Final Approval Hearing will be conducted to determine whether Final
13 Approval of the Settlement should be granted, along with the amounts properly payable for: (a)
14 Individual Settlement Shares; (b) Individual PAGA Payments; (c) LWDA Payment; (d) Attorneys'
15 Fees and Costs; (e) Enhancement Payment; and (e) Settlement Administration Costs. The Final
16 Approval Hearing will not be held earlier than thirty (30) calendar days after the Response Deadline.
17 Plaintiff and Class Counsel will be responsible for drafting the motion seeking Final Approval of the
18 Settlement. Class Counsel will provide Defendant's Counsel a draft of the final approval motion
19 before filing it with the Court to give Defendant's Counsel an adequate opportunity to review and
20 provide comments to the motion in good-faith. By way of said motion, Plaintiff will apply for the
21 entry of the Final Approval Order and Judgment, which will provide for, in substantial part, the
22 following:

23 a. Approval of the Settlement as fair, reasonable, and adequate, and directing
24 consummation of its terms and provisions;

25 b. Certification of the Settlement Class;

26 c. Approval of the application for Attorneys' Fees and Costs to Class Counsel;

27 d. Approval of the application for Enhancement Payment to Plaintiff;

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1 e. Directing Defendant to fund all amounts due under the Settlement Agreement
2 and ordered by the Court; and

3 f. Entering judgment in the Action, while maintaining continuing jurisdiction, in
4 conformity with California Rules of Court 3.769 and the Settlement Agreement.

5 32. Funding of the Gross Settlement Amount. No later than five (5) business days after
6 the Effective Date, Defendant will deposit the Gross Settlement Amount into a Qualified Settlement
7 Fund (“QSF”) within the meaning of Treasury Regulation Section 1.468B-1, *et seq.*, to be established
8 by the Settlement Administrator. Defendant shall provide all information necessary for the Settlement
9 Administrator to calculate necessary payroll taxes including its official name, 8-digit state
10 unemployment insurance tax ID number, and other information requested by the Settlement
11 Administrator, no later than five (5) business days after the Effective Date.

12 33. Distribution of the Gross Settlement Amount. Within five (5) business days of the
13 funding of the Gross Settlement Amount, the Settlement Administrator will issue the Individual
14 Settlement Payments to Settlement Class Members, Individual PAGA Payments to PAGA Employees,
15 LWDA Payment to the LWDA, Enhancement Payment to Plaintiff, Attorneys’ Fees and Costs to Class
16 Counsel, and Settlement Administration Costs to itself. The Settlement Administrator shall also set
17 aside the Employer Taxes and all employee-side payroll taxes, contributions, and withholding, and
18 timely forward these to the appropriate government authorities.

19 34. Settlement Checks. The Settlement Administrator will be responsible for undertaking
20 appropriate deductions, required tax reporting, and issuing the Individual Settlement Payments by way
21 of check to the Settlement Class Members and the Individual PAGA Payments by way of check to the
22 PAGA Employees in accordance with this Settlement Agreement. When issuing payments, the
23 Settlement Administrator may combine the Individual Settlement Payment and Individual PAGA
24 Payment into one check if the intended recipient for both payments is one individual. Settlement Class
25 Members and PAGA Employees are not required to submit a claim to be issued an Individual
26 Settlement Payment and/or Individual PAGA Payment. Each Individual Settlement Payment and
27 Individual PAGA Payment check will be valid and negotiable for one hundred and eighty (180)
28 calendar days from the date the checks are issued, and thereafter, shall be canceled. Any funds
associated with such canceled checks shall be distributed by the Settlement Administrator to the State

1 of California's Unclaimed Property Division in the name of the Settlement Class Member and/or
2 PAGA Employee. The Parties agree that this disposition results in no "unpaid residue" under
3 California Civil Procedure Code § 384, as the entire Net Settlement Amount will be paid out to
4 Settlement Class Members, whether or not they cash their settlement checks. Therefore, Defendant
5 will not be required to pay any interest on such amounts. The Settlement Administrator shall undertake
6 amended and/or supplemental tax filings and reporting required under applicable local, state, and
7 federal tax laws that are necessitated due to the cancelation of any Individual Settlement Payment
8 and/or Individual PAGA Payment checks. Settlement Class Members whose Individual Settlement
9 Payment checks are canceled shall, nevertheless, be bound by the Class Settlement, and PAGA
10 Employees whose Individual PAGA Payment checks are cancelled shall, nevertheless, be bound by
11 the PAGA Settlement.

12 35. Class Settlement Release. Upon the full funding of the Gross Settlement Amount,
13 Plaintiff and all Settlement Class Members will be deemed to have fully, finally, and forever released,
14 settled, compromised, relinquished, and discharged the Released Parties of all Released Class Claims.
15 Settlement Class Members further covenant not to sue concerning the Released Class Claims. It is the
16 intent of the Parties that the Final Approval Order and Judgment when entered by the Court shall have
17 full res judicata effect and be final and binding upon Settlement Class Members regarding the Released
18 Class Claims.

19 36. PAGA Settlement Release. Upon the full funding of the Gross Settlement Amount,
20 Plaintiff, the State of California with respect to all PAGA Employees, and all PAGA Employees will
21 be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and
22 discharged the Released Parties of all Released PAGA Claims.

23 37. Plaintiff's General Release. Upon the full funding of the Gross Settlement Amount,
24 Plaintiff, individually and on his own behalf, will be deemed to have fully, finally, and forever
25 released, settled, compromised, relinquished, and discharged the Released Parties from any and all
26 claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages,
27 or causes of action of any kind or nature whatsoever, known or unknown, suspected or unsuspected,
28 asserted or unasserted, which Plaintiff, at any time of execution of this Settlement Agreement, had or

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

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

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1 38. Final Approval Order and Judgment. The Parties shall provide the Settlement
2 Administrator with a copy of the Final Approval Order and Judgment once it is entered by the Court,
3 and the Settlement Administrator shall post the Final Approval Order and Judgment on its website for
4 sixty (60) calendar days. No individualized notice of the Final Approval Order and Judgment to the
5 Class will be required.

6 39. Continued Jurisdiction. After entry of the judgment pursuant to the Settlement, the
7 Court will have continuing jurisdiction pursuant to Rule 3.769 of the California Rules of Court and
8 Section 664.6 of the California Code of Civil Procedure, for purposes of addressing: (a) the
9 interpretation and enforcement of the terms of the Settlement, (b) settlement administration matters,
10 and (c) such post-judgment matters as may be appropriate under court rules or as set forth in this
11 Settlement Agreement.

12 40. Effects of Termination or Rescission of Settlement. Termination or rescission of the
13 Settlement Agreement shall have the following effects:

14 a. The Settlement Agreement shall be void and shall have no force or effect, and
15 no Party shall be bound by any of its terms;

16 b. In the event the Settlement Agreement is terminated, Defendant shall have no
17 obligation to make any payments to any Party, Class Member, or attorney, except that the terminating
18 Party shall pay the Settlement Administrator for services rendered up to the date the Settlement
19 Administrator is notified that the Settlement has been terminated;

20 c. The Preliminary Approval Order, Final Approval Order and Judgment,
21 including any order certifying the Class, shall be vacated;

22 d. The Settlement Agreement and all negotiations, statements, and proceedings
23 relating thereto shall be without prejudice to the rights of any of the Parties, all of whom shall be
24 restored to their respective positions in the Action prior to the execution of the Settlement Agreement;

25 e. Neither this Settlement Agreement, nor any ancillary documents, actions,
26 statements, or filings in furtherance of the Settlement (including all matters associated with the
27 mediation) shall be admissible or offered into evidence in the Action or any other action for any
28 purpose whatsoever; and

1 f. Any documents generated to bring the Settlement into effect, will be null and
2 void, and any order or judgment entered by the Court in furtherance of this Settlement Agreement will
3 likewise be treated as void from the beginning.

4 41. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant
5 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
6 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause
7 of action or right herein released and discharged.

8 42. Exhibits Incorporated by Reference. The terms of this Settlement include the terms set
9 forth in any attached exhibits, which are incorporated by this reference as though fully set forth herein.
10 Any exhibits to this Settlement Agreement are an integral part of the Settlement.

11 43. Limitations on Publicity. Plaintiff and Class Counsel agree that, prior to Preliminary
12 Approval, they will keep the terms of this Settlement confidential except for purposes of
13 communicating with Plaintiff only. Plaintiff shall be informed that the Settlement is confidential and
14 shall be advised to keep the Settlement confidential. From and after Preliminary Approval, Plaintiff
15 and Class Counsel agree to limit their statements regarding the terms of this Settlement, whether oral,
16 written, or electronic, to say the Action has been resolved. Nothing in this Paragraph is intended to
17 interfere with Class Counsel's duties and obligations to faithfully discharge their duties as Class
18 Counsel, including but not limited to, communicating with Class Members regarding this Settlement.
19 Nothing herein will restrict Class Counsel from including publicly available information regarding
20 this Settlement in future judicial submissions regarding Class Counsel's qualifications and experience.
21 Furthermore, Plaintiff and Class Counsel will undertake any and all disclosures required to be made
22 to the LWDA in conformity with PAGA.

23 44. Entire Agreement. This Settlement Agreement and any attached exhibits constitute the
24 entirety of the Parties' agreement relating to the settlement and transaction completed thereby, and all
25 prior or contemporaneous agreements, understandings, representations, and statements, whether oral
26 or written and whether by a Party or such Party's legal counsel, are merged herein. No other prior or
27 contemporaneous written or oral agreements may be deemed binding on the Parties. The Parties
28 expressly recognize California Civil Code § 1625 and California Code of Civil Procedure § 1856(a),
which provide that a written agreement is to be construed according to its terms and may not be varied
or contradicted by extrinsic evidence, and the Parties agree that no such extrinsic oral or written

1 representations or terms will modify, vary, or contradict the terms of this Settlement Agreement.

2 45. Interim Stay of Proceedings. The Parties agree to hold in abeyance all proceedings in
3 the Action (including with respect to California Code of Civil Procedure § 583.310), except such
4 proceedings necessary to implement and complete this Settlement Agreement, pending the Final
5 Approval Hearing to be conducted by the Court.

6 46. Amendment or Modification. Prior to the filing of the motion for preliminary approval
7 of the Settlement, the Parties may not amend or modify any provision of this Settlement Agreement
8 except by written agreement signed by counsel for all Parties. After the filing of the motion for
9 preliminary approval of the Settlement, the Parties may not amend or modify any provision of this
10 Settlement Agreement except by written agreement signed by counsel for all the Parties and subject
11 to Court approval. A waiver or amendment of any provision of this Settlement Agreement will not
12 constitute a waiver of any other provision.

13 47. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and
14 represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement
15 Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant
16 to this Settlement Agreement to effectuate its terms and to execute any other documents required to
17 effectuate the terms of this Settlement Agreement. The Parties warrant that they understand and have
18 full authority to enter into this Settlement Agreement, and further intend that this Settlement
19 Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible
20 and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation
21 confidentiality provisions that otherwise might apply under state or federal law.

22 48. Signatories. It is agreed that because the members of the Class are so numerous, it is
23 impossible or impractical to have each Settlement Class Member or PAGA Employee execute this
24 Settlement Agreement. The Class Notice will advise all Class Members of the binding nature of the
25 Class Settlement as to the Settlement Class Members and the binding nature of the PAGA Settlement
26 as to the PAGA Employees, and the releases provided for by this Settlement Agreement shall have
27 the same force and effect as if this Settlement Agreement were executed by each Settlement Class
28 Member and PAGA Employee.

49. Binding on Successors and Assigns. This Settlement Agreement will be binding upon,
and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

1 50. California Law Governs. All terms of this Settlement Agreement and attached exhibits
2 hereto will be governed by and interpreted according to the laws of the State of California.

3 51. Execution and Counterparts. This Settlement Agreement is subject only to the
4 execution of all Parties. However, this Settlement Agreement may be executed in one or more
5 counterparts. All executed counterparts and each of them, including facsimile, electronic, and scanned
6 copies of the signature page, will be deemed to be one and the same instrument.

7 52. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this
8 Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at
9 this Settlement after arm's length negotiations and in the context of adversarial litigation, taking into
10 account all relevant factors, present and potential. The Parties further acknowledge that they are each
11 represented by competent counsel and that they have had an opportunity to consult with their counsel
12 regarding the fairness and reasonableness of this Settlement Agreement. In addition, if necessary to
13 obtain approval of the Settlement, the Mediator may execute a declaration supporting the Settlement
14 and the reasonableness of the Settlement and the Court may, in its discretion, contact the Mediator to
15 discuss the Settlement and whether or not the Settlement is objectively fair and reasonable.

16 53. Invalidity of Any Provision. Before declaring any provision of this Settlement
17 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent
18 possible consistent with applicable precedents so as to define all provisions of this Settlement
19 Agreement valid and enforceable.

20 54. Plaintiff's Cooperation. Plaintiff agrees to sign this Settlement Agreement and, by
21 signing this Settlement Agreement, is hereby bound by the terms herein and agrees to fully cooperate
22 to implement the Settlement.

23 55. Non-Admission of Liability. The Parties enter into this Settlement Agreement to
24 resolve the dispute that has arisen between them and to avoid the burden, expense, and risk of
25 continued litigation. In entering into this Settlement Agreement, Defendant does not admit, and
26 specifically denies, it has violated any federal, state, or local law; violated any regulations or guidelines
27 promulgated pursuant to any statute or any other applicable laws, regulations, or legal requirements;
28 breached any contract; violated or breached any duty; engaged in any misrepresentation or deception;

1 or engaged in any other unlawful conduct with respect to its employees. Neither this Settlement
2 Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be
3 construed as an admission or concession by Defendant of any such violations or failures to comply
4 with any applicable law. Except as necessary in a proceeding to enforce the terms of this Settlement
5 Agreement, this Settlement Agreement and its terms and provisions shall not be offered or received
6 as evidence in any action or proceeding to establish any liability or admission on the part of Defendant
7 or to establish the existence of any condition constituting a violation of, or a non-compliance with,
8 federal, state, local or other applicable law.

9 56. Captions. The captions and paragraph numbers in this Settlement Agreement are
10 inserted for the reader's convenience, and in no way define, limit, construe, or describe the scope or
11 intent of the provisions of this Settlement Agreement.

12 57. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and
13 conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be
14 construed more strictly against one Party than another merely by virtue of the fact that it may have
15 been prepared by counsel for one of the Parties, it being recognized that, because of the arms-length
16 negotiations between the Parties, all Parties have contributed equally to the preparation of this
17 Settlement Agreement.

18 58. Representation By Counsel. The Parties acknowledge that they have been represented
19 by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and
20 that this Settlement Agreement has been executed with the consent and advice of counsel, and
21 reviewed in full.

22 59. All Terms Subject to Final Court Approval. All amounts and procedures described in
23 this Settlement Agreement herein will be subject to final Court approval.

24 60. Notices. All notices, demands, and other communications to be provided concerning
25 the Settlement Agreement shall be in writing and deemed to have been duly given as of the third
26 business day after mailing by First Class U.S. Mail, or the day sent by email or messenger, addressed
27 as follows:

28 ///

To Plaintiff and Class Counsel:

Jonathan M. Genish

jgenish@blackstonepc.com

Miriam L. Schimmel

mschimmel@blackstonepc.com

Joana Fang

jfang@blackstonepc.com

Alexandra Rose

arose@blackstonepc.com

BLACKSTONE LAW, APC

8383 Wilshire Boulevard, Suite 745

Beverly Hills, California 90211

Tel: (310) 622-4278 / Fax: (855) 786-6356

To Defendant:

Bryan L. Hawkins

bryan.hawkins@stoel.com

Robert A. Sarkisian

robert.sarkisian@stoel.com

STOEL RIVES LLP

500 Capitol Mall, Suite 1600

Sacramento, California 95814

Tel: (916) 447-0700 / Fax: (916) 447-4781

61. Cooperation and Execution of Necessary Documents. All Parties and their counsel will cooperate with each other in good faith and use their best efforts to implement the Settlement, including and not limited to, executing all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement Agreement, the Parties may seek the assistance of the Mediator and then the Court to resolve such disagreement.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Class Action and PAGA Settlement between Plaintiff and Defendant:

IT IS SO AGREED.

PLAINTIFF VICTOR DE LA CRUZ

Dated: 02/27/2024



Plaintiff Victor De La Cruz

**DEFENDANT NORTHWEST PIPE
COMPANY**

Dated: _____

Full Name: _____

Title: _____
On behalf of Defendant Northwest Pipe
Company

APPROVED AS TO FORM ONLY:

BLACKSTONE LAW, APC

Dated: February 27, 2024


Jonathan M. Genish
Attorneys for Plaintiff Victor De La Cruz
and Proposed Class Counsel

STOEL RIVES LLP

Dated: _____

Bryan L. Hawkins
Robert A. Sarkisian
Attorneys for Defendant Northwest Pipe
Company

**DEFENDANT NORTHWEST PIPE
COMPANY**

Dated: 3/12/2024

MKendrick

Full Name: Megan Kendrick

Title: Vice President of Human Resources
On behalf of Defendant Northwest Pipe
Company

APPROVED AS TO FORM ONLY:

BLACKSTONE LAW, APC

Dated: _____

Jonathan M. Genish
Attorneys for Plaintiff Victor De La Cruz
and Proposed Class Counsel

STOEL RIVES LLP

Dated: 3/13/2024

Robert Sarkisian
Bryan L. Hawkins
Robert A. Sarkisian
Attorneys for Defendant Northwest Pipe
Company

EXHIBIT A

NOTICE OF CLASS ACTION SETTLEMENT

Victor De La Cruz v. Northwest Pipe Company **Superior Court of California for the County of San Bernardino, Case No. CIVSB2211140**

PLEASE READ THIS CLASS NOTICE CAREFULLY.

You have received this Class Notice because Defendant's records indicate that you may be eligible to take part in the class action settlement reached in the above-referenced case.

You do not need to take any action to receive a settlement payment.

This Class Notice is designed to advise you of your rights and options with respect to the settlement, and how you can request to be excluded from the Class Settlement, object to the Class Settlement, and/or dispute the number of Workweeks and/or PAGA Workweeks that you are credited with, if you so choose.

YOU ARE NOTIFIED THAT: A class and representative action settlement has been reached between Plaintiff Victor De La Cruz ("Plaintiff") and Defendant Northwest Pipe Company ("Defendant") (Plaintiff and Defendant are collectively referred to as the "Parties") in the case entitled *Victor De La Cruz v. Northwest Pipe Company*, San Bernardino County Superior Court, Case No. CIVSB2211140 ("Action"), which may affect your legal rights. On [date of Preliminary Approval], the Court granted preliminary approval of the settlement and scheduled a hearing on [hearing date] at [hearing time] ("Final Approval Hearing") to determine whether or not the Court should grant final approval of the settlement.

I. IMPORTANT DEFINITIONS

"Class" or "Class Member" means all current and former hourly-paid and/or non-exempt employees who worked for Defendant in the State of California at any time during the Class Period. This shall include both individuals employed pursuant to a collective bargaining agreement and individuals not employed pursuant to a collective bargaining agreement.

"Class Period" means the period from May 25, 2018 through July 17, 2023.

"Class Settlement" means the settlement and resolution of all Released Class Claims.

"PAGA Employees" means all current and former hourly-paid and/or non-exempt employees who worked for Defendant in the State of California at any time during the PAGA Period. This shall include both individuals employed pursuant to a collective bargaining agreement and individuals not employed pursuant to a collective bargaining agreement.

"PAGA Period" the period from May 25, 2021 through July 17, 2023.

"PAGA Settlement" means the settlement and resolution of all Released PAGA Claims.

II. BACKGROUND OF THE ACTION

On May 25, 2022, Plaintiff provided written notice to the California Labor and Workforce Development Agency ("LWDA") and Defendant of the specific provisions of the California Labor Code that Plaintiff contends were violated ("PAGA Letter"). Also on May 25, 2022, Plaintiff commenced a putative class action lawsuit by filing a Class Action Complaint for Damages in the San Bernardino County Superior Court, Case No. CIVSB2211140. On February 2, 2023, Plaintiff filed a First Amended Class Action Complaint for Damages and Enforcement Action Under the Private Attorneys General Act, California Labor Code §§ 2698 *Et Seq.* ("Operative Complaint"), adding a cause of action under the Private Attorneys General Act of 2004 pursuant to California Labor Code Section 2698, *et seq.* ("PAGA").

Plaintiff contends that Defendant failed to properly pay minimum and overtime wages, provide compliant meal and rest breaks and associated premiums, timely pay wages during employment and upon termination and associated waiting-time penalties, provide compliant wage statements, maintain complete and accurate payroll records, and reimburse business expenses, and thereby engaged in unfair business practices in violation of the California Business and Professions Code section 17200, *et seq.*, and conduct that gives rise to penalties under PAGA. Plaintiff seeks, among other things, recovery of unpaid wages and meal and rest period premiums, unreimbursed business expenses, restitution, penalties, interest, and attorneys' fees and costs.

Defendant denies all of the allegations in the Action or that it violated any law.

The Parties participated in mediation with a respected class action mediator, and as a result, the Parties reached a settlement. The Parties have since entered into a Joint Stipulation of Class Action and PAGA Settlement (“Settlement” or “Settlement Agreement”).

On [Date of Preliminary Approval], the Court entered an order preliminarily approving the Settlement. The Court has appointed Apex Class Action LLC as the administrator of the Settlement (“Settlement Administrator”), Plaintiff Victor De La Cruz as representative of the Class (“Class Representative”), and the following Plaintiff’s attorneys as counsel for the Class (“Class Counsel”):

Jonathan M. Genish
Miriam L. Schimmel
Joana Fang
Alexandra Rose
Blackstone Law, APC
8383 Wilshire Boulevard, Suite 745
Beverly Hills, California 90211
Tel: (310) 622-4278 / Fax: (855) 786-6356

If you are a Class Member, you need not take any action to receive an Individual Settlement Payment, but you have the opportunity to request exclusion from the Class Settlement (in which case you will not receive an Individual Settlement Payment), object to the Class Settlement, and/or dispute the Workweeks and/or PAGA Workweeks credited to you, if you so choose, as explained more fully in Sections III and IV below. If you are a PAGA Employee, you do not need to take any action to receive an Individual PAGA Payment; you will not have the opportunity to object or seek exclusion from the PAGA Settlement and all PAGA Employees will be bound to the PAGA Settlement if the Court grants final approval of the Settlement.

The Settlement represents a compromise and settlement of highly disputed claims. Nothing in the Settlement is intended or will be construed as an admission by Defendant that the claims in the Action have merit or that Defendant has any liability to Plaintiff, Class Members, or PAGA Employees. Plaintiff and Defendant, and their respective counsel, have concluded and agree that, in light of the risks and uncertainties to each side of continued litigation, the Settlement is fair, reasonable, and adequate, and is in the best interests of the Class Members, the State of California, and PAGA Employees.

III. SUMMARY OF THE PROPOSED SETTLEMENT

A. Settlement Formula

The total gross settlement amount is Six Hundred and Fifty-One Thousand Dollars (\$651,000.00) (the “Gross Settlement Amount”). The portion of the Gross Settlement Amount that is available for payment to Class Members is referred to as the “Net Settlement Amount.” The Net Settlement Amount will be the Gross Settlement Amount less the following payments which are subject to approval by the Court: (1) attorneys’ fees, in an amount not to exceed 1/3 of the Gross Settlement Amount (i.e., \$217,000.00), and reimbursement of litigation costs and expenses, in an amount not to exceed Twenty-Five (\$25,000.00) to Class Counsel; (2) Enhancement Payment in an amount not to exceed Seven Thousand Five Hundred Dollars (\$7,500.00) to Plaintiff for his services in the Action; (3) the amount of Forty Thousand Dollars (40,000.00) allocated toward civil penalties under the Private Attorneys General Act (“PAGA Amount”), of which the LWDA will be paid 75% (30,000.00) (“LWDA Payment”) and the remaining 25% (10,000.00) will be distributed to PAGA Employees (“PAGA Employee Amount”); and (4) Settlement Administration Costs in an amount not to exceed Ten Thousand Dollars (\$10,000.00) to the Settlement Administrator.

Class Members are eligible to receive payment under the Class Settlement of their *pro rata* share of the Net Settlement Amount (“Individual Settlement Share”) based on the number of weeks each Class Member worked for Defendant as an hourly-paid and/or non-exempt employee in California during the Class Period (“Workweeks”). The Settlement Administrator has divided the Net Settlement Amount by the Workweeks of all Class Members to yield the “Estimated Workweek Value,” and multiplied each Class Member’s individual Workweeks by the Estimated Workweek Value to yield an estimated Individual Settlement Share that each Class Member may be entitled to receive under the Class Settlement

(which is listed in Section III.C below). Class Members who do not submit a timely and valid Request for Exclusion (“Settlement Class Members”) will be issued their final Individual Settlement Payment.

Each Individual Settlement Share will be allocated as twenty percent (20%) as wages, which will be reported on an IRS Form W-2, and eighty percent (80%) as penalties, interest, and non-wage damages, which will be reported on an IRS Form 1099 (if applicable). Each Individual Settlement Share will be subject to reduction for the employee’s share of payroll taxes and withholdings with respect to the wages portion of the Individual Settlement Shares resulting in a net payment to the Settlement Class Member (“Individual Settlement Payment”). The employer’s share of taxes and contributions in connection with the wages portion of Individual Settlement Shares (“Employer Taxes”) will be paid by Defendant separately and in addition to the Gross Settlement Amount.

PAGA Employees are eligible to receive payment under the PAGA Settlement of their *pro rata* share of the PAGA Employee Amount (“Individual PAGA Payment”) based on the number of weeks each PAGA Employee worked for Defendant as an hourly-paid and/or non-exempt employee in California during the PAGA Period (“PAGA Workweeks”). The Settlement Administrator has divided the PAGA Employee Amount, i.e., 25% of the PAGA Amount, by the PAGA Workweeks of all PAGA Employees to yield the “PAGA Workweek Value,” and multiplied each PAGA Employee’s individual PAGA Workweeks by the PAGA Workweek Value to yield each PAGA Employee’s Individual PAGA Payment.

Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties, will not be subject to taxes or withholdings, and will be reported on IRS Form 1099 (if applicable).

If the Court grants final approval of the Settlement, Individual Settlement Payments will be mailed to Settlement Class Members and Individual PAGA Payments will be mailed to PAGA Employees at the address that is on file with the Settlement Administrator. **If the address to which this Class Notice was mailed is not correct, or if you move after you receive this Class Notice, you must provide your correct mailing address to the Settlement Administrator as soon as possible to ensure you receive any payment that you may be entitled to under the Settlement.**

B. Your Workweeks and PAGA Workweeks (if applicable) Based on Defendant’s Records

According to Defendant’s records:

- **From May 25, 2018 through July 17, 2023 (i.e., the Class Period), you are credited as having worked [REDACTED] Workweeks.**
- **From May 25, 2021 through July 17, 2023 (i.e., the PAGA Period), you are credited as having worked [REDACTED] PAGA Workweeks.**

If you wish to dispute the Workweeks and/or PAGA Workweeks credited to you, you must submit your dispute in writing to the Settlement Administrator (“Workweeks Dispute”). The Workweeks Dispute must: (a) contain the case name and number of the Action (*Victor De La Cruz v. Northwest Pipe Company*, Case No. CIVSB2211140); (b) contain your full name, signature, address, telephone number, and the last four (4) digits of your Social Security number; (c) clearly state that you dispute the number of Workweeks and/or PAGA Workweeks credited to you and what you contend is the correct number; and (d) be returned by mail to the Settlement Administrator at the specified address listed in Section IV.B below, postmarked **on or before [Response Deadline]**.

C. Your Estimated Individual Settlement Share and Individual PAGA Payment (if applicable)

As explained above, your estimated Individual Settlement Share and Individual PAGA Payment (if applicable) is based on the number of Workweeks and PAGA Workweeks (if applicable) credited to you.

Under the terms of the Settlement, your Individual Settlement Share is estimated to be \$ [REDACTED]. The Individual Settlement Share is subject to reduction for the employee’s share of taxes and withholdings with respect to the wages portion of the Individual Settlement Share and will only be distributed if the Court approves the Settlement and after the Settlement goes into effect.

Under the terms of the Settlement, your Individual PAGA Payment is estimated to be \$ [REDACTED] and will only be distributed if the Court approves the Settlement and after the Settlement goes into effect.

The settlement approval process may take multiple months. Your Individual Settlement Share and Individual PAGA Payment (if applicable) reflected in this Class Notice is only an estimate. Your actual Individual Settlement Payment and Individual PAGA Payment (if applicable) may be higher or lower.

D. Release of Claims

Upon the full funding of the Gross Settlement Amount, Plaintiff and all Settlement Class Members will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released Class Claims. Settlement Class Members further covenant not to sue concerning the Released Class Claims. It is the intent of the Parties that the Final Approval Order and Judgment when entered by the Court shall have full res judicata effect and be final and binding upon Settlement Class Members regarding the Released Class Claims.

Upon the full funding of the Gross Settlement Amount, Plaintiff, the State of California with respect to all PAGA Employees, and all PAGA Employees will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released PAGA Claims.

“Released Class Claims” means any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys’ fees, damages, or causes of action which were alleged or which could have been alleged based on the factual allegations in the Operative Complaint, arising during the Class Period, under any federal, state, or local law, and shall specifically include claims for Defendant’s alleged failure to pay overtime and minimum wages, provide compliant meal and rest periods and associated premium payments, timely pay wages upon termination, provide accurate wage statements, and reimburse necessary business-related expenses in violation of California Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512(a), 1194, 1197, 1197.1, 1198, 2800, and 2802, and Industrial Welfare Commission Wage Orders, and all claims for attorneys’ fees and costs and statutory interest in connection therewith, California Business and Professions Code sections 17200, *et seq.*, and any other claims, including claims for statutory penalties, pertaining to the Class Members.

“Released PAGA Claims” means any and all claims arising from any of the factual allegations in the Operative Complaint and PAGA Letter, arising during the PAGA Period, for civil penalties under the Private Attorneys General Act of 2004, California Labor Code sections 2698 *et seq.*, including all claims for attorneys’ fees and costs related thereto, for Defendant’s alleged failure to pay overtime and minimum wages, provide compliant meal and rest periods and associated premium payments, timely pay wages during employment and upon termination, provide complaint wage statements, maintain complete and accurate payroll records, and reimburse necessary business-related expenses in violation of California Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and Industrial Welfare Commission Wage Orders, including *inter alia*, Wage Order 16-2001.

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

E. Attorneys’ Fees and Costs to Class Counsel

Class Counsel will seek attorneys’ fees in an amount not to exceed one-third (1/3) of the Gross Settlement Amount (i.e., \$217,000.00) and reimbursement of litigation costs and expenses in an amount not to exceed Twenty-Five Thousand Dollars (\$25,000.00) (collectively, “Attorneys’ Fees and Costs”), subject to approval by the Court. The Attorneys’ Fees and Costs granted by the Court will be paid from the Gross Settlement Amount. Class Counsel has been prosecuting the Action on behalf of Plaintiff, Class Members, and PAGA Employees on a contingency fee basis (that is, without being paid any money to date) and has been paying all litigation costs and expenses.

F. Enhancement Payment to Plaintiff

Plaintiff will seek the amount of Seven Thousand Five Hundred Dollars (\$7,500.00) (“Enhancement Payment”), in recognition of his services in connection with the Action. The Enhancement Payment will be paid from the Gross Settlement Amount, subject to approval by the Court, and if awarded, it will be paid to Plaintiff in addition to his Individual Settlement Payment and Individual PAGA Payment that he is entitled to under the Settlement.

G. Settlement Administration Costs to Settlement Administrator

Payment to the Settlement Administrator is estimated not to exceed Ten Thousand Dollars (\$10,000.00) (“Settlement Administration Costs”) for the costs of the notice and settlement administration process, including and not limited to, the expense of notifying the Class Members of the Settlement, processing Requests for Exclusion, Notices of Objection, and Workweeks Disputes, calculating Individual Settlement Shares, Individual Settlement Payments, and Individual PAGA Payments, and distributing payments and tax forms under the Settlement, and shall be paid from the Gross Settlement Amount, subject to approval by the Court.

IV. WHAT ARE YOUR RIGHTS AND OPTIONS AS A CLASS MEMBER?

A. Participate in the Settlement

If you want to participate in the Class Settlement and receive money from the Class Settlement, you do not have to do anything. You will automatically be included in the Class Settlement and issued your Individual Settlement Payment unless you decide to exclude yourself from the Class Settlement.

Unless you elect to exclude yourself from the Class Settlement, you will be bound by the terms of the Class Settlement and any judgment that may be entered by the Court based thereon, and you will release the Released Class Claims against the Released Parties as described in Section III.D above.

If you are a PAGA Employee, you will automatically be included in the PAGA Settlement and issued your Individual PAGA Payment. This means you will be bound by the terms of the PAGA Settlement and any judgment that may be entered by the Court based thereon, and you will release the Released PAGA Claims against the Released Parties as described in Section III.D above.

As a Class Member and PAGA Employee (if applicable), you will not be separately responsible for the payment of attorney’s fees or litigation costs and expenses, unless you retain your own counsel, in which event you will be responsible for your own attorney’s fees and expenses.

B. Request Exclusion from the Class Settlement

Class Members may request to be excluded from the Class Settlement by submitting a letter (“Request for Exclusion”) to the Settlement Administrator, at the following address:

[Settlement Administrator]
[Mailing Address]

A Request for Exclusion must: (a) contain the case name and number of the Action (*Victor De La Cruz v. Northwest Pipe Company*, Case No. CIVSB2211140); (b) contain your full name, signature, address, telephone number, and last four (4) digits of your Social Security number; (c) clearly state that you do not wish to be included in the Class Settlement; and (d) be returned by mail to the Settlement Administrator at the specified address above, postmarked **on or before [Response Deadline]**.

If the Court grants final approval of the Settlement, any Class Member who submits a timely and valid Request for Exclusion will not be issued an Individual Settlement Payment, will not be bound by the Class Settlement (and the release of Released Class Claims described in Section III.D above), and will not have any right to object to, appeal, or comment on the Class Settlement. Class Members who do not submit a timely and valid Request for Exclusion will be deemed Settlement Class Members and will be bound by all terms of the Class Settlement, including those pertaining to the release of claims described in Section III.D above, as well as any judgment that may be entered by the Court based thereon. PAGA Employees will be bound to the PAGA Settlement (and the release of Released PAGA Claims described in Section III.D above) and will still be issued an Individual PAGA Payment, irrespective of whether they submit a Request for Exclusion.

C. Object to the Class Settlement

You can object to the Class Settlement as long as you have not submitted a Request for Exclusion by submitting a written objection (“Notice of Objection”) to the Settlement Administrator.

A Notice of Objection must: (a) contain the case name and number of the Action (*Victor De La Cruz v. Northwest Pipe*

Company, Case No. CIVSB2211140); (b) contain your full name, signature, address, telephone number, and the last four (4) digits of your Social Security number; (c) contain a written statement of all grounds for the objection accompanied by any legal support for such objection; (d) contain copies of any papers, briefs, or other documents upon which the objection is based; and (e) be returned by mail to the Settlement Administrator at the specified address listed in Section IV.B above, postmarked **on or before [Response Deadline]**.

You may also appear at the Final Approval Hearing and present your objection orally, regardless of whether you have submitted a Notice of Objection.

V. FINAL APPROVAL HEARING

The Court will hold a Final Approval Hearing in Department S17 of the San Bernardino County Superior Court, located at 247 West 3rd Street, San Bernardino, California 92415, on **[date]**, at **[time]**, to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court also will be asked to approve and grant the Attorneys' Fees and Costs to Class Counsel, Enhancement Payment to Plaintiff, and Settlement Administration Costs to the Settlement Administrator.

The Final Approval Hearing may be continued without further notice to the Class Members and PAGA Employees. It is not necessary for you to appear at the Final Approval Hearing, although you may appear if you wish to.

VI. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement Agreement, you should review the detailed Settlement Agreement and other papers, which are on file with the Court.

You may view the Settlement Agreement and other documents filed in the Action by for a fee by visiting the civil clerk's office, located at 247 West Third Street, San Bernardino, California 92415, during business hours, or by online by visiting the following website: <https://cap.sb-court.org/>, clicking "Search" at the top of the screen, clicking "CASE INFORMATION" from the drop down, and typing in the Case Number (CIVSB2211140).

You may also visit the Settlement Administrator's website at **[redacted]** for key documents in the Action.

PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT.

IF YOU HAVE ANY QUESTIONS, YOU MAY CALL THE SETTLEMENT ADMINISTRATOR AT THE FOLLOWING TOLL-FREE NUMBER: **[INSERT], OR YOU MAY ALSO CONTACT CLASS COUNSEL.**