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15 Attorneys for Representative Plaintiff
16 and the Putative Class

17
18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
19
20 **COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**
21
22
23 **(UNLIMITED JURISDICTION)**

24 MARCO GUTIERREZ, on behalf of himself
25 and all others similarly situated;

26 Plaintiff,

27 v.

28 DEL WEST ENGINEERING, INC., a
California corporation, and DOES 1 through
50, inclusive;

Defendants.

Case No. 21STCV45477

CLASS ACTION

**DECLARATION OF KEVIN R. ALLEN
IN SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: November 29, 2022

Time: 10:00 a.m.

Judge: Hon. Yvette M. Palazuelos

Dept.: 9

1 I, KEVIN R. ALLEN, declare as follows:

2 1. I am the Owner and Principal of Allen Attorney Group PC, an attorney-at-law
3 licensed and admitted to practice before the courts of the State of California, and am an attorney-
4 of-record in this action for Plaintiff Marco Gutierrez and the class he seeks to represent in her
5 lawsuit against defendants Del West Engineering, Inc. (collectively “Defendant”).

6 2. I have personal knowledge of the facts in this Declaration and, if called as a witness,
7 I could and would testify competently thereto. I make this Declaration in support of Plaintiff’s
8 Motion for Preliminary Approval of Class Action Settlement.

9 3. The Parties to the above-referenced class action have reached a proposed class
0 action settlement. Attached hereto as **Exhibit “1”** is a true and correct copy of Class Action and
1 PAGA Settlement Agreement and Release (“Settlement Agreement” or “Settlement”).

2 4. Defendant Del West Engineering, Inc. (“Defendant” or “Del West”) is “a multi-
3 national manufacturing corporation specializing in the production of high-end components for
4 racing, aerospace, watches and other industries.”¹ Its website represents that it employs more than
5 “150 people at factories in Valencia, California and Roche, Switzerland.”

6 5. Defendant is represented by Leslie Abbott of Paul Hastings LLP.

7 6. Plaintiff Marco Gutierrez was employed by Defendant as a nonexempt laborer at its
8 Valencia, California facility from 1992 to September 2019.

9 7. Kevin R. Allen of Allen Attorney Group, PC and Nicolas Orihuela of Orihuela Law
0 Firm, P.C. represent Plaintiff and the putative class.

1 8. On December 14 2021, Plaintiff Marco Gutierrez filed his class action complaint in
2 the Los Angeles County Superior Court alleging the following causes of action: (1) Failure to Pay
3 All Wages Owed (Violation of California Wage Orders and Labor Code §§ 510, 1194, 1197); (2)
4 Failure to Provide Meal Periods and Rest Breaks or Pay Meal and Rest Break Premiums
5 (California Labor Code §§ 226.7 and 512); (3) Failure to Pay Wages on Separation of Employment
6 (California Labor Code §§ 203, 2926, 2927); (4) Failure to Provide Accurate Itemized Wage
7 Statements (California Labor Code § 226); and (5) Unfair Business Practices (California Business
8

¹ See <https://delwestengineering.com/contactus.html> [last visited September 30, 2022].

1 & Professions Code §§ 17200-17208). A PAGA claim was added later. Plaintiff served a PAGA
2 notice on the LWDA on May 3, 2022. On August 18, 2022 Plaintiff filed a First Amended
3 Complaint to officially add the PAGA claim to the pleading.

4 9. On January 13, 2022, the Court deemed the case as complex and stayed the case
5 including formal discovery and Defendant's deadline to respond to the complaint. Prior to the
6 Initial Status Conference, the Parties met and conferred to discuss, amongst other topics, whether
7 or not the case was appropriate for early class mediation and the scope of the informal data
8 exchange that would need to precede the session.

9 10. The Parties ultimately agreed on the scope of a robust pre-mediation data exchange
0 and scheduled mediation with mediator Dennis Moss. As part of the pre-mediation data exchange
1 Plaintiff and his counsel received class metrics and employment records including Plaintiff's
2 personnel file, punch data and payroll data; Documents relating to the adoption of Defendant's
3 Alternate Workweek Schedule including copies of the notices and documents filed with the DLSE;
4 Punch detail report for a sampling of one-third of the putative class for the period of December 14,
5 2017 through March 5, 2022; and, a Payroll summary report for a sampling of one-third of the
6 putative class for the period of December 14, 2017 through March 5, 2022.

7 11. The Parties attended the full day mediation session with Dennis Moss on April 21,
8 2022. They were unable to resolve the matter at the session but Mr. Moss continued to work with
9 the Parties' counsel after the session. The Parties were ultimately able, with the help of a
0 mediator's proposal and several weeks of additional discussions, to execute the Class Action and
1 PAGA Settlement Agreement and Release that is being submitted to the Court for approval herein.
2 *See Exhibit "1."*

3 12. Plaintiff Marco Gutierrez was employed by Defendant as a nonexempt laborer at its
4 Valencia, California facility from 1992 to September 2019. During the Class Period of December
5 17, 2017 through the present, Defendant employed over 172 nonexempt employees (including the
6 named Plaintiff) at its Valencia factories in California. These factory employees held one (or more)
7 of the eighteen job titles listed in **Exhibit "A"** to the Settlement.

8 13. Plaintiff contends that Defendant did not provide lawful meal periods to the factory

1 employees. Most of the meal periods were clocked out late.

2 14. Plaintiff contends that Defendant rounded time punches to the nearest quarter or
3 half hour. Most factory employees purported to work a 4/10 alternate workweek schedule
4 (“AWS”). According to the Alternate Workweek Elections Database, maintained by the California
5 Department of Industrial Relations (“DIR”), Del West purports to have conducted an election on
6 April 3, 2009 in which a “4/10 Work Week” was adopted for “All hourly employees” at two
7 locations in California.

8 15. In this lawsuit Plaintiff alleged that the AWS was invalid either because of defects
9 in its adoption or because employees deviated from the adopted shifts so frequently that the AWS
10 could not be deemed a “regular and reoccurring” shift.

1 16. Plaintiff contended with the provision of lawful meal and rest breaks to the Class
2 Members. There was a particular issue with *late* meal periods and the provision of additional
3 breaks for employees who worked ten hours or more.

4 17. The AWS exasperated the meal and rest break issues. To the extent AWS
5 employees worked even a few minutes beyond their ten-hour shift, it would give rise to Class
6 Members’ entitlement to a third rest break and second meal period.

7 **SUMMARY OF SETTLEMENT TERMS**

8 18. It is my opinion that the proposed Settlement is within the range of reasonableness
9 and in the best interest of the class members in light of all facts and circumstances, including the
10 risk of significant delay and Defendant’ substantive and procedural defenses.

1 19. The Settlement proposes conditional certification of a class of all current and former
2 individuals who have been employed by Del West Engineering, Inc. as a non-exempt employee in
3 one of eighteen job titles (listed in Exhibit A to the Settlement) within the State of California at any
4 time during the Class Period.

5 20. The Class Period is defined as the period from December 14, 2017 through and
6 including June 26, 2022. Settlement, ¶ 1.9. The class definition excludes “employees who
7 Defendant laid off in September 2019 as part of Defendant’s reduction in force and who received
8 separation pay in exchange for a general release of claims” except to the extent “they were rehired

1 after the severance and performed work during the Class Period that was not otherwise released by
2 the severance agreement.” Settlement, ¶ 1.3.

3 21. There were 172 Class Members reflected in the data through March 5, 2022. The
4 Class Period goes four months later (i.e., June 26, 2022) so the actual class size will be somewhat
5 higher. Defendant represented that there were 18,515 Compensable Weeks during the Class Period
6 through March 22, 2022. Settlement ¶ 3.16. If the total number of Compensable Weeks exceeds
7 this figure by fifteen (15%) (i.e., 21,292 Compensable Weeks) then the Plaintiff may void the
8 Agreement unless Defendant agrees to a proportional increase in the Maximum Settlement
9 Amount.

0 22. Defendant is required to fully fund and pay a non-reversionary \$515,000.00 –
1 referred to as the “Maximum Settlement Amount” - in two equal installments as follows: (1)
2 Defendant will fund the first installment on the earlier of December 31, 2022 or seven (7) days
3 after the Effective Date of the Settlement; and (2) Defendant will fund the second installment on
4 the earlier of July 1, 2023 or six (6) months after the date the first installment was funded
5 (“Installment Funding Schedule”). Settlement, ¶ 3.10. We did not just take Defendant’s word
6 regarding its financial condition. We were provided evidence that would support the reasonable
7 need for a modest six month installment schedule. Additionally, the release in the Settlement is not
8 valid until such time as Defendant fully funds the Maximum Settlement Amount. Settlement 3.1.1
9 [Release valid “[a]s of the date Defendant fully funds the Settlement...].

0 23. The settlement fund will be used to pay a modest incentive award to the named
1 Plaintiff for his service to the Class (up to \$7,500). It is my opinion that this amount is justified the
2 risks taken on by the named Plaintiff, monetary and reputational, and the results obtained for the
3 class. We will provide evidence to support the application at final approval.

4 24. The settlement fund will also Plaintiff’ attorneys’ fees (up to 35% of the Maximum
5 Settlement Amount, i.e., \$180,250) and actual litigation costs (up to \$8,500); a PAGA payment to
6 the California Labor and Workforce Development Agency (75% of \$30,000, i.e., \$20,000); and
7 actual administration expenses to Phoenix Class Action Administration Solutions (\$9,500 flat fee).
8 Settlement, ¶¶ 1.34-1.35. The amount remaining from the Maximum Settlement Amount after

1 paying for these items, referred to as the Net Settlement Amount, will be distributed in its entirety
2 to participating Class Members. *Id.*, ¶¶ 1.6, 1.8, 1.11, 1.21, 1.23, 1.26 *et seq.*

3 25. Each Class Member's individual Settlement Payment amount will be calculated *pro*
4 *rata* based upon each Class Members' individual number of workweeks worked during the Class
5 Period relative to the workweeks worked by all participating Class Members. Settlement, ¶ 3.12.2.
6 We negotiated this method as it appeared to be a fair and rational manner by which to distribute the
7 proceeds. I believe the distribution method will result in Class Members receiving an amount
8 proportional to the harm they suffered in the case and/or damages to which they could have
9 recovered.

0 26. For tax purposes, one-third (33 1/3%) of each Class Member's Settlement Payment
1 shall be treated as wages (and reported on a W-2 Form) and two-thirds (66 2/3 %) shall be treated
2 as interest/penalties/non-wage damages (reported on a 1099-MISC Form). Settlement, ¶ 3.12.3.
3 This is as fair and reasonable manner by which to apportion the settlement payments for tax
4 purposes.

5 27. Once the Settlement is approved and fully funded, Defendant will receive a limited
6 and narrow release of claims. Settlement, ¶¶ 3.1.1, 3.10.2. Class Members who do not opt out will
7 release Defendant Del West from "any and all wage-and-hour individual and class claims, rights,
8 demands, liabilities, and/or causes of action of every nature and description, arising from or related
9 to any and all claims during the Class Period that were asserted or could have been asserted based
0 on the facts alleged in the Complaint, including, without limitation, statutory, constitutional,
1 contractual, and/or common law claims for wages, damages, unpaid costs, penalties, liquidated
2 damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, or equitable
3 relief." Settlement, ¶¶ 1.32. All PAGA Members shall, even if they opt out, release Defendant from
4 "any and all individual and representative PAGA claims for civil penalties, attorneys' fees, and
5 costs during the PAGA Period under California Labor Code section 2698, *et seq.* and any
6 applicable IWC Wage Order that were or could have been asserted based on the facts alleged in the
7 Complaint and Plaintiff's notice to the LWDA." Settlement, ¶ 1.33. I believe that this is an
8 appropriately narrow release which is tethered to the claims alleged in the lawsuit. The named

1 Plaintiff is also providing a broader General Release of all known and unknown claims with an
2 express waiver Civil Code Section 1542. Settlement, ¶ 3.1.2.

3 28. The named Plaintiff also had an individual complaint for wrongful termination and
4 discrimination which was pending in the Los Angeles County Superior Court under case number
5 21STCV18645. I was not involved in any way with that lawsuit but have been informed that it
6 resolved on individual/confidential basis in March 2022. I can attest that Plaintiff's other lawsuit
7 did not impact the negotiations of the Settlement in this lawsuit, which settled over a month later.

8 **EVALUATION OF CLAIMS FOR SETTLEMENT PURPOSES**

9 29. I have assessed all of the risks and inherent delays should the case continue with
0 litigation. In my professional opinion, the proposed Settlement is well within the range of
1 reasonableness and in the best interest of the class members in light of all facts and circumstances,
2 including the risk of significant delay and Defendant's substantive and procedural defenses

3 30. According to the data provided by Defendants prior to mediation there are
4 approximately 172 Class Members who worked upwards of 18,515 workweeks between December
5 14, 2017 and March 5, 2022. The average hourly rate of pay across the class was \$18.92 per hour.

6 31. Although Plaintiff and his counsel believe strongly in the merits and class-wide
7 nature of Plaintiff's claims, they recognize the risk of continuing this litigation. The employer's
8 alternate workweek schedule could be deemed valid thereby eliminating a large chunk of the
9 exposure from the case. Even if we had been able to prevail on the merits there was a significant
0 risk that any sizable judgment would be uncollectable or would force Defendant into bankruptcy.
1 The class size was on the small side meaning that it could have been fairly easy for Defendant to
2 "pick-off" class members, especially current employees, via individual settlements. We might not
3 have prevailed on the merits of several claims at trial. Moreover, litigating each of the Class
4 Member's claim through trial would have involved substantial additional documentary discovery,
5 and deposition discovery, including but not limited to depositions of the Plaintiff, Defendant's
6 person most knowledgeable, and other class member declarants who offered testimony during the
7 pendency of the case. Whatever the outcome of class certification and trial, the losing side would
8 have likely appealed; even if we had won an appeal this could easily have held up the case for

1 another 9-12 months. In the meantime, the statutory or appellate case law could have changed such
2 that certain claims were not as valuable as they are now. This Settlement avoids the substantial
3 uncertainty of continued litigation and ensures Class Members receive substantial consideration
4 now, instead of speculative payments in the future. Plaintiff's counsel believes the Settlement here
5 is a fair and reasonable sum, particularly in light of the risks of further litigation, and in the best
6 interests of the Class.

7 32. In my opinion the reasonable range of outcomes, if we had prevailed, was
8 approximately \$2.4 to \$4.5 million. The lower end of the range assumes a 50% meal/rest break
9 violation rate and two hours of overtime per shift. The higher end of the range assumes an almost
10 100% meal period violation rate, a 50% rest break violation rate, two hours of unpaid overtime per
1 shift, waiting time penalties and PAGA. Of course, there was a possibility that we would fail to get
2 the class certified or fail to prevail on claims at trial, in which case the recovery would have been
3 diminished significantly or even eliminated.

4 33. Based on my estimate, the Maximum Settlement Amount could reasonably
5 constitute between about 11% and 21.4% percent of the damages and penalties potentially
6 recoverable by the Class. This is a significant recovery in light of the risks of litigation.

7 34. Based on my experience litigating similar claims I believe that the settlement
8 amount, which provides \$515,000.00 to resolve just over 172 Class Member's claims is fair and
9 reasonable under the factual/legal circumstances of this case.

10 35. In evaluating settlement value vs. the range of likely outcomes, I was cognizant of
1 the risks inherent in litigating a wage and hour class action such as this one as well as the specific
2 risks associated with these particular claims against these particular Defendants. Defendant may
3 have avoided some of the damages through showing the PAGA notice was insufficient. Defendants
4 may have been able to successfully defend against rest break claims as well as the Labor Code
5 penalties on the merits. Plaintiff could have failed to satisfy his burden of proof on class wide
6 damages. Even if Plaintiff had prevailed on the merits at trial, and proven damages sufficiently, an
7 appeal could be expected which could have delayed recovery for several years. In the meantime,
8 the state's wage and hour laws could be interpreted differently by an appellate court, or revised by

1 statute, in such a way that would have made prevailing on the merits or collecting on a judgment
2 even more difficult.

3 36. There was also a risk with collecting a judgment in full from Defendant. As part of
4 the negotiations, I was provided with evidence that supported the reasonableness of giving
5 Defendant six months to fully fund the Settlement. This is a fairly short installment schedule and I
6 believe it is justified given Defendant's financials. While I cannot discuss specifics, I can represent
7 that the company's finances were such that they could not have paid the entire Maximum
8 Settlement Amount of \$515,000 in one lump sum at final approval. Because of the claims of
9 financial hardship, I also negotiated a provision whereby the release would not become valid until
0 such time as Defendant fully funded the Settlement.

1 37. All in all, I believe the Settlement is a good result for the class. The \$515,000
2 Maximum Settlement Fund equates to approximately \$27.81 per workweek which is a decent
3 recovery, especially in a pre-certification wage and hour case with the types of claims and defenses
4 presented here. I have no reason to believe that many of the absentee class members would have
5 pursued individual claims. Additionally, as to those class members who wish to file individual
6 claims, they are free to opt out of the settlement and pursue those claims as they see fit. Further,
7 none of the \$515,000 settlement fund will be returned to Defendant, even if Class Members do not
8 cash their checks before the void date. Subject to Court approval, funds from uncashed checks will
9 be turned over to the California State Controllers Unclaimed Property Fund to be held for the
0 impacted Class Members in their name.

1 **NOTICE AND SETTLEMENT ADMINISTRATOR'S QUALIFICATIONS**

2 38. The proposed Notice (which is attached to the Settlement as Exhibit "B") provides
3 information on the meaning and nature of the Settlement, the key terms and provisions of the
4 Settlement, the manner in which payments to class members will be calculated, Plaintiff's
5 counsel's application for reimbursement of costs and attorneys' fees, the Representative Plaintiff's
6 incentive awards, the date, time and place of the final approval/fairness hearing, the procedures and
7 deadlines for requesting exclusion from and/or objecting to the Settlement, and counsel's contact
8 information. It will be sent in both Spanish and English. From our investigation a vast majority, if

1 not almost all, of the Class Members speak one of these languages.

2 39. The Parties propose Phoenix Settlement Administrators (“Phoenix”) to administer
3 the settlement which includes sending notice out, collecting responses, receiving the settlement
4 payment from Defendant, and making two sets of distributions/payments as well as the tax
5 reporting required by the Settlement. I obtained multiple bids to ensure their price was competitive.

6 40. I have personally used Phoenix to administer multiple wage and hour class actions
7 in the last several years. I have found them to be thorough, honest, and well-priced for the services
8 they provide.

9 41. Attached as **Exhibit “2”** is a true and correct copy of the Declaration of Jodey
0 Lawrence (“Phoenix Decl.”) who is the Vice President of Business Development for Phoenix
1 Settlement Administrators. I have reviewed the bid they provided to administer the Settlement
2 which appears as an exhibit to her declaration. I believe they have included all acts and duties
3 which are required of them by the Settlement.

4 **CLASS COUNSEL QUALIFICATIONS**

5 42. I was admitted to the California State Bar in 2005 and have never been subject to
6 any sort of disciplinary proceeding. I am also admitted to practice in the United States District
7 Court in the Northern, Central, and Southern Districts of California, as well as the Ninth Circuit
8 Court of Appeal.

9 43. I believe I have a fairly significant amount of experience litigating wage and hour
0 class actions in California. I started my law firm – Allen Attorney Group - in August 2013.² From
1 August 2013 to December 2018, I was also special counsel to Velton Zegelman PC.³ Since August
2 2013, I have prosecuted several dozen wage and hour class actions and PAGA representative
3 claims on behalf of employees and even defended several small employers in such cases. From
4 January 2011 through August 13, 2013, I was an Associate with Minami Tamaki LLP (“MT”) in
5 San Francisco where I headed up the firm’s wage and hour class action litigation practice. Prior to
6 working at Minami Tamaki LLP, I worked at Scott Cole & Associates, APC (“SCA”) in Oakland,

7
8
2 ² It was incorporated in summer of 2021.

3 ³ Velton Zegelman, PC ceased operations at the end of 2018.

1 California. During my time there SCA's practice consisted entirely of wage and hour class actions.
2 During my career, I estimate that I have directed the day-to-day litigation efforts in over a hundred
3 class action and/or PAGA representative actions involving wage and hour issues including but not
4 limited to claims for unpaid wages, overtime misclassification, meal period and rest break
5 violations, wage statement penalties, and failure to reimburse employees for business expenses.

6 44. I have been integral in the resolution of many large wage and hour cases since
7 starting my present firm including, but not limited to, a \$1.0 million dollar meal and rest break
8 class action against a popular California ski resort for its on-mountain restaurant workers, a \$2.425
9 million dollar settlement in a piece rate case against an upscale fitness gym in California on behalf
0 of its massage therapists and fitness instructors, a \$2.2 million dollar settlement in a piece rate case
1 against the owners of multiple car dealerships in California on behalf of service technicians, a \$1.5
2 million dollar settlement against owners of dozens of pizza restaurants in California on behalf of
3 their delivery drivers and other non-exempt employees for expense reimbursement and breaks
4 claims, a \$5.6 million dollar settlement involving over 2,000 non-exempt laborers installing solar
5 panels and roofs, and a \$1.5 million PAGA settlement on behalf of 2,000 gas station attendants.
6 This is just a partial list.

7 45. I believe my experience litigating wage and hour claims, both individually and as
8 class actions, allowed me to litigate this case efficiently and to accurately assess the value of the
9 class claims alleged herein.

0 46. As a result of my experience, I am aware of the responsibilities I owe as counsel to
1 Plaintiff and members of the proposed Plaintiff Class in this case. I accept those responsibilities
2 and am prepared to continue to vigorously pursue the rights of Plaintiff and the proposed Plaintiff
3 Class going forward, as I have done from this case's inception.

4 47. I am unaware of any conflict of interest between myself, the named plaintiff, or any
5 member of the proposed Plaintiff Class, that would interfere with my duties as co-counsel or
6 impede my representation of the proposed Plaintiff Class. I have no relationship to the named
7 plaintiff other than my representation in this case.

8 48. My participation in this case included extensive preparation, data analysis,

exhaustive knowledge of legal issues and liability, and full immersion and preparation of the exposure analysis for Defendant's alleged violations. I have thoroughly investigated the claims asserted in this case and was prepared to commit the resources, both in terms of my time and financial resources, necessary to represent the Plaintiff Class and vigorously pursue its claims.

49. In my judgment, the settlement is a fair, adequate, and reasonable resolution of the claims made by the plaintiff and the proposed Class against Defendant.

SCHEDULE OF EVENTS

50. The following schedule reflects deadlines and the sequence of events should the Settlement receive preliminary approval from the Court:

a.	Defendants to Provide Class Information to Settlement Administrator.	Within 14 calendar days of entry of Preliminary Approval. [Settlement, ¶ 3.3.2]
b.	Deadline for Settlement Administrator to Mail Notice to Class Members	Within 14 calendar days after receipt of Class List. [Settlement, ¶ 3.3.4]
b.	Response Deadline for Class Members to Postmark Requests for Exclusions, Objections or to Dispute employer's records	Deadline is 60 calendar days after mailing of the Notice to Class Members. [Settlement, ¶¶ 1.36, 3.5, 3.6]
c.	Deadline for Class Counsel to file Motion for Final Approval of Settlement	At least 16 court days before Final Approval Hearing.
d.		

	Final Fairness Hearing and Final Approval	_____
f.	Deadline for Defendant to deposit First Half of Maximum Settlement Amount with Settlement Administrator.	On the earlier of December 31, 2022 or seven (7) days after the Effective Date of the Settlement ⁴ [Settlement, ¶ 3.10]
g.	Deadline for Settlement Administrator to Distribute <i>First Half</i> of Settlement Payments	Within fourteen (14) days of receipt by Settlement Administrator of first installment payment from Defendants. [Settlement, ¶ 3.11]
h.	Deadline for Class Members to cash or deposit Individual Settlement Shares and PAGA Payments from first disbursement or else checks will be cancelled. ⁵	180 days after mailing date of issuance. [Settlement, ¶ 3.11]
f.	Deadline for Defendant to deposit <i>Second Half</i> of	On the earlier of July 1, 2023 or six (6) months after the date the first installment

⁴ The “Effective Date” is defined in the Settlement as means the date that the Court grants Final Approval unless there are objector/objections to the Settlement in which case the Effective Date shall be the date after the appeal period runs (if no appeal is filed) or the date all appeals are denied or otherwise finally resolved or decided in favor of the Settlement.” See Settlement ¶ 1.18

⁵ The funds from voided checks in the first distribution shall be reissued and sent to the same Settlement Class Member alongside or in addition to their second check (i.e., after the second installment payment). Settlement, ¶ 3.9.

	Maximum Settlement Amount with Settlement Administrator.	was funded [Settlement, ¶ 3.10]
g.	Deadline for Settlement Administrator to Distribute <i>Second Half</i> of Settlement Payments	Within fourteen (14) days of receipt by Settlement Administrator of second installment payment from Defendants. [Settlement, ¶ 3.11]
i.	Deadline for Settlement Administrator to cancel uncashed checks from second disbursement so they can be turned over to California State Controllers Unclaimed Property Fund to be held in the name of Class Member for whom the funds were designated.	180 days after mailing date of issuance. [Settlement, ¶ 3.9]

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

Executed on this 3rd day of October, 2022 in Lake Oswego, Oregon.


KEVIN R. ALLEN

Exhibit 1

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18 Attorneys for Defendant

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA

21 COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

22 MARCO GUTIERREZ, on behalf of himself and
23 all others similarly situated;

24 Plaintiff,

25 vs.

26 DEL WEST ENGINEERING, INC., a California
27 corporation, and DOES 1 through 50, inclusive;

28 Defendants.

CASE NO. 21STCV45477

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

Dept: Dept. 9
Judge: Hon. Yvette Palazuelos

Complaint Filed: December 14, 2021
Trial Date: None Set

LEGAL_US_W # 112176595.1

1 **CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND RELEASE**

2 This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and
3 between Plaintiff Marco Gutierrez (“Plaintiff”) and Defendant Del West Engineering, Inc.
4 (“Defendant”) (collectively, “Parties”).

5 **1. DEFINITIONS**

6 Unless otherwise defined herein, initial capitalized terms used in this Agreement shall
7 have the meanings set forth below:

8 1.1 “Action” means Plaintiff’s lawsuit alleging wage and hour violations against
9 Defendant captioned *Marco Gutierrez, on behalf of himself and all others similarly situated v.*
10 *Del West Engineering, Inc., et al.*, No. 21STCV45477, initiated on December 14, 2021 and
11 pending in the Superior Court of the State of California, County of Los Angeles.

12 1.2 “Administrator” means Phoenix Class Action Administration Solutions
13 (“Phoenix”), the neutral entity the Parties have agreed to appoint to administer the Settlement.

14 1.3 “Class” or “Class Members” means all current and former individuals who have
15 been employed by Del West Engineering, Inc. as a non-exempt employee in one or more of the
16 job titles listed in Exhibit A herein within the State of California at any time during the Class
17 Period; however, former employees who Defendant laid off in September 2019 as part of
18 Defendant’s reduction in force and who received separation pay in exchange for a general release
19 of claims are excluded from the Class and are not entitled to any additional payments provided in
20 this Settlement except to the extent they were rehired after the severance and performed work
21 during the Class Period that was not otherwise released by the severance agreement.

22 1.4 “Class Claims” means all claims and causes of action alleged in the Complaint
23 except the claim under the Private Attorneys General Act (“PAGA”).

24 1.5 “Class Counsel” means Kevin R. Allen of Allen Attorney Group P.C., and Nicolas
25 Orihuela of Hurwitz, Orihuela & Hayes LLP.

26 1.6 “Class Counsel Costs” means expenses and costs actually incurred by Class
27 Counsel according to proof and subject to Court approval for Class Counsel’s litigation and
28 resolution of this Action, not to exceed Eight Thousand, Five Hundred Dollars and No Cents
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1 (\$8,500). Class Counsel Costs shall be paid from the Maximum Settlement Amount. Any portion
2 of the requested Class Counsel Costs that is not awarded to Class Counsel shall be a part of the
3 Net Settlement Amount and distributed to Settlement Class Members as provided in this
4 Agreement.

5 1.7 "Class Information" means information regarding Class Members and PAGA
6 Members that Defendant will in good faith compile from its records and provide only to the
7 Settlement Administrator. Class Information shall be provided as a password-protected,
8 Microsoft Excel spreadsheet and shall include each Class and PAGA Member's: (a) full name;
9 (b) last known address; (c) last known telephone number; (d) Social Security number; (e) start
10 date of employment and/or assignment at Defendant; (f) end date of employment and/or
11 assignment at Defendant; and (g) Compensable Weeks (as defined below in Paragraph 1.14); and
12 (h) Compensable Pay Periods (as defined in Paragraph 1.13). Because Social Security numbers
13 are included in the Class Information, the Settlement Administrator shall maintain the Class
14 Information in confidence, it shall be transmitted in password-protected file(s), and access shall
15 be limited to those with a need to use the Class Information as part of the administration of the
16 Settlement. The Class Information shall not be provided to Class Counsel for any purpose but
17 may be disclosed by the Settlement Administrator to the extent necessary to resolve a dispute by a
18 Class or PAGA Member regarding their Compensable Weeks or Compensable Pay Periods.

19 1.8 "Class Counsel Award" means attorneys' fees for Class Counsel's litigation and
20 resolution of this Action not to exceed Thirty-Five Percent (35%) of the Maximum Settlement
21 Amount (i.e., One Hundred Eighty Thousand, Two Hundred Fifty Dollars And Zero Cents
22 (\$180,250)), subject to approval by the Court. The Court shall review the requested amount of
23 the Class Counsel Award, and the approved amount shall be paid from the Maximum Settlement
24 Amount. Any portion of the requested Class Counsel Award that is not awarded to Class Counsel
25 shall be a part of the Net Settlement Amount and distributed to Settlement Class Members as
26 provided in this Agreement.

27 1.9 "Class Period" means the period from December 14, 2017 through and including
28 June 26, 2022 (i.e., 60 days from the date the Parties accepted the mediator's proposal).

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1 1.10 "Class Representative" means Plaintiff Marco Gutierrez.

2 1.11 "Class Representative Service Payment" means the payment to the Class
3 Representative for initiating the Action and providing services in support of the Action. Class
4 Counsel shall seek a Class Representative Service Payment for Plaintiff of up to Seven Thousand
5 Five Hundred Dollars (\$7,500.00). Defendant agrees not to oppose the motion by Plaintiff for
6 said Class Representative Service Payment, so long as the request does not exceed this amount.
7 Any portion of the requested Class Representative Service Payment that is not awarded shall be a
8 part of the Net Settlement Amount and distributed to Settlement Class Members as provided in
9 this Agreement.

10 1.12 "Class Settlement Payment" means the net amount paid by check to each
11 Settlement Class Member for their release of the Released Class Claims. The Class Settlement
12 Payment Amounts shall be calculated pursuant to Paragraph 3.12.2.

13 1.13 "Compensable Pay Periods" means all pay periods in which a PAGA Member
14 performed work for Defendant in California during the PAGA Period (as defined below in
15 Paragraph 1.26).

16 1.14 "Compensable Weeks" means all weeks in which a Class Member performed work
17 for Defendant in California during the Class Period.

18 1.15 "Complaint" means Plaintiff's Complaint on file in the Action, including any and
19 all amendments thereto.

20 1.16 "Court" shall mean the Superior Court of California for the County of Los
21 Angeles.

22 1.17 "Defense Counsel" or "Counsel for Defendant" means Paul Hastings LLP, 515
23 South Flower Street, 25th Floor, Los Angeles, California 90071, c/o Leslie L. Abbott, Esq. and
24 Austin Schulz, Esq.

25 1.18 "Effective Date" means the date by when both of the following have occurred: (a)
26 the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the
27 Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no
28 Participating Class Member objects to the Settlement, the date the Court enters Judgment; (b) if
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1 one or more Participating Class Members objects to the Settlement, the last date when a timely
2 notice of appeal from the Judgment may be filed; or (c) if a timely appeal from the Judgment is
3 filed, the date the appellate court affirms the Judgment and issues a remittitur ("Final").

4 1.19 "Final Approval Hearing" means the hearing held on the motion for final approval
5 of the Settlement.

6 1.20 "Final Approval Order and Judgment" means the Court's entry of an order
7 granting final approval of the Settlement and entering judgment in this Action based thereon, in
8 conformity with California Rules of Court rule 3.769(h).

9 1.21 "LWDA Payment" means 75% of the PAGA Payment, which will be paid to the
10 California Labor Workforce Development Agency ("LWDA") per California Labor Code
11 section 2699(i).

12 1.22 "Maximum Settlement Amount" means Five Hundred Fifteen Thousand Dollars
13 and No Cents (\$515,000.00). Defendant's obligation to fund the Maximum Settlement Amount is
14 limited to \$515,000.00 plus the employer's share of payroll taxes. No portion of the Maximum
15 Settlement Amount will revert to Defendant.

16 1.23 "Net Settlement Amount" means the amount of monies available for distribution to
17 Settlement Class Members, which shall be the Maximum Settlement Amount less the Class
18 Counsel Award, Class Counsel Costs, Class Representative Service Payment, Settlement
19 Administration Costs, and PAGA Payment.

20 1.24 "Notice of Class Action Settlement" or "Class Notice" means the Notice of Class
21 Action Settlement, the form of which the Parties shall jointly prepare and submit to the Court for
22 approval. See Exhibit "B."

23 1.25 "PAGA Members" means all current and former individuals who have been
24 employed by Del West Engineering, Inc. as a non-exempt employee in one or more of the job
25 titles listed in Exhibit A herein within the State of California at any time during the PAGA
26 Period.

27 1.26 "PAGA Payment" means the allocation of Thirty Thousand Dollars (\$30,000.00),
28 payable from the Maximum Settlement Amount, subject to approval by the Court, for penalties

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1 under PAGA. 75% of the PAGA Payment is the LWDA Payment and will be paid to the LWDA.
2 The remaining 25% of the PAGA Payment is the PAGA Settlement Payment and will be paid to
3 PAGA Members as described in Paragraph 3.12.4.

4 1.27 "PAGA Period" means the period from December 14, 2020 through and including
5 June 26, 2022 (i.e., 60 days from the date the Parties accepted the mediator's proposal).

6 1.28 "PAGA Settlement Payment" means the amount payable to each PAGA Member
7 for the release of his or her Released PAGA Claims, regardless of whether the PAGA Member
8 objects, opts out, or otherwise excludes himself or herself from the release of Released Class
9 Claims. The amount of the PAGA Settlement Payment distributed to each PAGA Member shall
10 be calculated pursuant to Paragraph 3.12.4 herein.

11 1.29 "Plaintiff" means Marco Gutierrez, the named plaintiff in the Action.

12 1.30 "Preliminary Approval" or "Preliminary Approval Date" means the date the Court
13 enters an Order preliminarily approving the Settlement.

14 1.31 "Preliminary Approval Order" means the Order granting preliminary approval of
15 the Settlement.

16 1.32 "Released Class Claims" means any and all wage-and-hour individual and class
17 claims, rights, demands, liabilities, and/or causes of action of every nature and description, arising
18 from or related to any and all claims during the Class Period that were asserted or could have
19 been asserted based on the facts alleged in the Complaint, including, without limitation, statutory,
20 constitutional, contractual, and/or common law claims for wages, damages, unpaid costs,
21 penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs,
22 restitution, or equitable relief.

23 1.33 "Released PAGA Claims" means any and all individual and representative PAGA
24 claims for civil penalties, attorneys' fees, and costs during the PAGA Period under California
25 Labor Code section 2698, *et seq.* and any applicable IWC Wage Order that were or could have
26 been asserted based on the facts alleged in the Complaint and Plaintiff's notice to the LWDA.

27 1.34 "Released Parties" means Del West Engineering, Inc., and all of its current and
28 former parents, subsidiaries, predecessors and successors, and affiliated entities, and each of their
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1 respective officers, directors, owners, employees, partners, shareholders, agents, attorneys,
2 insurers, and assigns, and each of them.

3 1.35 "Request for Exclusion" means a Class Member's request to be excluded from the
4 Class Settlement Payment that is made in conformity with this Agreement, the instructions in the
5 Class Notice, and the Court's orders, and that results in the Class Member not being bound by the
6 Released Class Claims. A Request for Exclusion shall not apply to eligible Class Members' (i.e.,
7 PAGA Members) receipt of a PAGA Settlement Payment and such Class Members shall remain
8 bound by the Released PAGA Claims regardless of their Request for Exclusion from the Class
9 Settlement Payment.

10 1.36 "Response Deadline" means the date that is ^{sixty}~~thirty~~ (60) calendar days after the
11 Settlement Administrator mails the Class Notice to Class Members and the last date on which
12 Class Members eligible for Class Settlement Payments only may: (a) postmark or fax a Request
13 for Exclusion to the Administrator (as set forth in Paragraph 3.6); (b) postmark or fax a Notice of
14 Objection (as set forth in Paragraph 3.7) to the Settlement to the Administrator; or (c) postmark or
15 fax a Dispute (as set forth in Paragraph 3.5) to the Settlement to the Administrator.

16 1.37 "Settlement Account" means the account established by the Administrator
17 pursuant to the terms of this Stipulation into which all monies funded by Defendant under the
18 terms of the Settlement shall be deposited and from which all monies payable under the terms of
19 this Settlement shall be paid, as set forth herein.

20 1.38 "Settlement Administration Costs" means the amount to be paid to the Settlement
21 Administrator from the Maximum Settlement Amount for the administration of the Settlement.
22 The Settlement Administration Costs amount is presently estimated not to exceed Nine Thousand
23 Five Hundred Dollars (\$9,500.00). If the Settlement Administration Costs are awarded in an
24 amount less than Nine Thousand Five Hundred Dollars (\$9,500.00), the unawarded portion shall
25 be a part of the Net Settlement Amount and distributed to Settlement Class Members as provided
26 in this Agreement.

27 1.39 "Settlement Class Members" or "Settlement Class" means all Class Members who
28 do not submit a valid and timely Request for Exclusion.

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1 **2. RECITALS**

2 2.1 Description and Procedural Posture of the Litigation. On December 14, 2021,
3 Plaintiff filed the Action, alleging claims for: (i) unpaid minimum and overtime wages, (ii)
4 unpaid meal period and rest period compensation, (iii) failure to pay all wages on a timely basis
5 and at termination, (iv) failure to provide accurate itemized wage statements, and (viii) violation
6 of the California Business and Professions Code. The Parties engaged in informal, confidential
7 discovery for the purpose of settlement discussions. On April 21, 2022, the Parties attended a
8 mediation with Dennis F. Moss, Esq. in an attempt to resolve the Action. Following the
9 mediation, the parties accepted a mediator's proposal that resolved the Action, which included
10 that Plaintiff would file an amended Complaint to add a PAGA claim prior to seeking preliminary
11 approval of this Settlement, and that is now documented in this Class Action and PAGA
12 Settlement Agreement and Release.

13 2.2 Certification of the Settlement Class. The Parties stipulate and agree to the
14 certification of this Action for purposes of this Settlement only. Should the Settlement not
15 become final and effective as herein provided, class certification shall immediately be set aside
16 (subject to further proceedings on motion of any party to certify or deny certification thereafter).
17 The Parties' willingness to stipulate to class certification as part of the Settlement shall have no
18 bearing on, and shall not be admissible in or considered in connection with, the issue of whether a
19 class should be certified in a non-settlement context in this Action and shall have no bearing on,
20 and shall not be admissible or considered in connection with, the issue of whether a class should
21 be certified in any other lawsuit.

22 2.3 Benefits of Settlement to Class Members and PAGA Members. Plaintiff and Class
23 Counsel recognize the expense and length of continued proceedings necessary to litigate their
24 disputes through trial and through any possible appeals. Plaintiff and Class Counsel have also
25 taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties
26 and delays inherent in such litigation. Plaintiff and Class Counsel are also aware of the burdens
27 of proof necessary to establish liability for the claims asserted in the Action, both generally and in
28 response to Defendant's defenses thereto (many of which have been shared during the course of
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1 the Parties' extensive settlement negotiations), and potential difficulties in establishing damages
2 and entitlement to monetary recovery including civil penalties for the PAGA Members. Plaintiff
3 and Class Counsel have also taken into account Defendant's agreement to enter into a settlement
4 that confers substantial relief upon Class Members and PAGA Members based on the terms set
5 forth herein. Based on the foregoing, Plaintiff and Class Counsel have determined that the
6 Settlement set forth in this Agreement is a fair, adequate, and reasonable settlement and is in the
7 best interests of the Class Members and PAGA Members.

8 2.4 Defendant's Reasons for Settlement. Defendant has concluded that any further
9 defense of this litigation would be protracted and expensive for all Parties. Substantial amounts
10 of time, energy, and resources of Defendant have been and, unless this Settlement is made, will
11 continue to be, devoted to the defense of the claims asserted by Plaintiff. Defendant has also
12 taken into account the risks of further litigation in reaching its decision to enter into this
13 Settlement. Despite continuing to contend that it is not liable for any of the claims set forth by
14 Plaintiff in the Action, Defendant has, nonetheless, agreed to settle in the manner and upon the
15 terms set forth in this Agreement to put to rest the claims alleged in the Action.

16 2.5 Class Members' Claims. Plaintiff, on behalf of Class Members and PAGA
17 Members, has claimed and continues to claim that the Released Class Claims and Released
18 PAGA Claims have merit and give rise to liability on the part of Defendant. This Agreement
19 constitutes Plaintiff's good faith compromise of disputed claims. Nothing contained in this
20 Agreement (and exhibits/attachments hereto), no documents referred to herein, and no action
21 taken to carry out this Agreement may be construed or used as an admission by or against the
22 Class Members, PAGA Members or Class Counsel as to the merits or lack thereof of the claims
23 asserted.

24 2.6 Defendant's Defenses. Defendant has claimed and continues to claim that the
25 Released Class Claims and Released PAGA Claims have no merit and do not give rise to liability.
26 Moreover, Defendant contends that a substantial number of Defendant's employees entered into
27 enforceable arbitration agreements which require them to individually arbitrate all of their claims
28 in the Action. This Agreement constitutes Defendant's good faith compromise of disputed
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1 claims. Nothing contained in this Agreement, no documents referred to herein, and no action
2 taken to carry out this Agreement may be construed or used as an admission by or against
3 Defendant as to the merits or lack thereof of the claims asserted.

4 2.7 Maximum Amount Payable by Defendant. Under the terms of this Settlement, the
5 maximum amount payable by Defendant shall not exceed the Maximum Settlement Amount.
6 However, notwithstanding the foregoing, in addition to the Maximum Settlement Amount,
7 Defendant shall also pay the employer share of payroll taxes due and payable on Class Settlement
8 Payments as a result of this Settlement.

9 **3. TERMS OF AGREEMENT**

10 The Parties agree as follows:

11 3.1 Releases Given by Plaintiff and the Settlement Class.

12 3.1.1 As To All Settlement Class Members and PAGA Members. As of the date
13 Defendant funds the Settlement (as set forth in Paragraph 3.10) all Settlement Class Members,
14 including Plaintiff, release the Released Parties from the Released Class Claims, and all PAGA
15 Members, including Plaintiff, release the Released PAGA Claims.

16 3.1.2 General Release of Class Representative's Claims. Plaintiff releases and
17 discharges all Released Parties from any and all claims relating to or arising from his employment
18 with Defendant including but not limited to: any and all wage-and-hour claims arising under the
19 laws of the State of California, including, without limitation, statutory, constitutional, contractual,
20 and/or common law claims for wages, damages, restitution, unreimbursed expenses, equitable
21 relief, penalties, liquidated damages, and/or punitive damages (including, without limitation,
22 claims under any applicable Industrial Welfare Commission Wage Order, the California Private
23 Attorneys General Act, or any other provision of the California Labor Code); 42 U.S.C. § 1981;
24 the Americans With Disabilities Act; the Family and Medical Leave Act; the Fair Labor
25 Standards Act; the Employee Retirement Income Security Act; the Occupational Safety and
26 Health Act; the Worker Adjustment and Retraining Notification Act, as amended; the California
27 Unfair Competition Law (Cal. Bus. & Prof. Code § 17200, *et seq.*); any state, civil, or statutory
28 laws, including any and all human rights laws and laws against discrimination; any other federal,
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1 state, or local statutes, codes, or ordinances; any common law, contract law, or tort law cause of
2 action; and any claims for interest, attorneys' fees, and/or costs. Plaintiff expressly waives the
3 protections of California Civil Code section 1542, which reads as follows:

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

8 The foregoing General Release provided by Plaintiff does not release, or in no way impacts, (i)
9 any workers compensation claim(s) Plaintiff has or may have against Defendant, or (ii) Plaintiff's
10 individual employment claims in the separate complaint captioned *Marco Gutierrez v. Del West*
11 *Engineering, Inc.* (Los Angeles Superior Court No. 21STCV18645) and/or the Parties'
12 confidential settlement agreement that was reached therein.

13 3.2 Tax Liability. The Parties make no representations as to the tax treatment or legal
14 effect of the payments called for hereunder, and Class Members and PAGA Members are not
15 relying on any statement or representation by the Parties in this regard. Class Members and
16 PAGA Members understand and agree that they will be responsible for the payment of any taxes
17 and penalties assessed on the payments described herein and will hold the Parties free and
18 harmless from and against any claims resulting from treatment of such payments as non-taxable
19 damages, including the treatment of such payments as not subject to withholding or deduction for
20 payroll and employment taxes.

21 3.3 Settlement Approval and Implementation Procedures. As part of this Settlement,
22 the Parties agree to the following procedures for obtaining the Court's preliminary approval of the
23 Settlement, certifying a Class for settlement purposes only, notifying Class Members and PAGA
24 Members of the Settlement, obtaining the Court's final approval of the Settlement, and processing
25 the Class Settlement Payments and PAGA Settlement Payments.

26 3.3.1 Preliminary Approval and Certification. The Parties will jointly submit
27 this Stipulation to the Court for its preliminary approval. Such submission will include this
28 Agreement, the proposed Class Notice, and any motions, memoranda, and evidence as may be
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1 necessary for the Court to determine that this Agreement is fair, adequate, and reasonable. The
2 Parties agree to request the Court to enter an order approving the certification of the Class after
3 the preliminary approval hearing in accordance with California Rules of Court rule 3.769(c).

4 3.3.2 Class Information. No more than fourteen (14) days after the entry of the
5 Preliminary Approval Order, Defendant shall provide the Administrator with the Class
6 Information for purposes of administering the Settlement.

7 3.3.3 Efforts to Locate Class Members and PAGA Members. The Parties agree
8 that locating and contacting Class Members and PAGA Members is an important and material
9 aspect of the Settlement. In this regard, the Administrator shall undertake diligent efforts to
10 locate Class Members and PAGA Members and utilize the best practicable means available for
11 purposes of verifying and/or updating the current address and telephone numbers for all Class
12 Members (including skip tracing). After updating against the National Change of Address
13 Database, the address(es) identified by the Administrator as the current mailing address shall be
14 presumed to be the best mailing address for each Class Member and PAGA Member. The cost of
15 diligently attempting to find the best contact information of the Class Members and PAGA
16 Members shall be included in the Settlement Administration Costs and Defendant shall not, under
17 any circumstances, be required to pay any additional funds for the investigatory duties to be
18 performed by the Administrator.

19 3.3.4 Notice By First Class U.S. Mail. No more than fourteen (14) calendar days
20 after receiving the Class Information from Defendant as provided herein, the Administrator shall
21 mail copies of the Class Notice to all Class Members and PAGA Members by First-Class U.S.
22 Mail. Prior to mailing the Class Notices, the Administrator will use the United States Postal
23 Service National Change of Address Database to locate updated addresses to ensure that the Class
24 Notice is sent to all Class Members and PAGA Members at the addresses most likely to result in
25 receipt of the Class Notice. It will be conclusively presumed that, if an envelope so mailed has
26 not been returned by the Response Deadline, the Class Member and/or PAGA Member received
27 the Class Notice.

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1 3.3.5 Undeliverable Notices. Any Class Notice that is returned to the
2 Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the
3 forwarding address affixed thereto, if any. If no forwarding address is provided, the Settlement
4 Administrator shall make any further reasonable efforts to obtain an updated mailing address
5 within two (2) business days of the date of the return of the Class Notice, including, without
6 limitation, conducting one skip trace search. If an updated mailing address is identified, the
7 Administrator shall re-send the Class Notice to the Class Member and/or PAGA Member. Class
8 Members to whom a Class Notice is re-sent after having been returned undeliverable to the
9 Administrator shall have fourteen (14) calendar days thereafter or until the Response Deadline
10 has expired, whichever is later, to mail or fax the Request for Exclusion, Notice of Objection, or
11 Dispute. A Class Notice that is re-sent shall inform the recipient of this adjusted deadline. The
12 date of the postmark of the submission, either based on the date on the return envelope or the date
13 of the fax stamp, shall be the exclusive means used to determine whether a Class Member has
14 timely returned his or her Request for Exclusion, Notice of Objection, or Dispute. Unless
15 otherwise agreed by the Parties, Requests for Exclusion, Notices of Objection, or Disputes shall
16 be deemed valid only if they are signed by the Class Member and postmarked or fax stamped on
17 or before the applicable deadline. If a Class Member's Class Notice is returned to the
18 Administrator more than once as non-deliverable, then the Administrator shall not be required to
19 undertake any additional re-mailing of the returned Class Notice.

20 3.3.6 Compliance with the procedures specified in Paragraphs 3.3.2 through
21 3.3.5 herein shall constitute due and sufficient notice to Class Members of this Settlement and
22 shall satisfy the requirement of due process. Nothing else shall be required of, or done by, the
23 Parties, Class Counsel, and Defense Counsel to provide notice of the proposed Settlement.

24 3.4 Translation of Class Notice. A Spanish and English version of the Class Notice
25 will be mailed to each Class Member. The Administrator shall be responsible for translating the
26 Class Notice from English to Spanish. Costs of translation are included in the Settlement
27 Administration Costs.

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1 3.5 Disputes. Class Members and PAGA Members will have the opportunity, should
2 they disagree with Defendant's records regarding their Compensable Weeks for their Class
3 Settlement Payment as stated on their Class Notice, to dispute this information by submitting a
4 written letter ("Dispute") to the Administrator that: (1) contains the name, address, telephone
5 number, last four digits of the Social Security number, and signature of the Class Member; (2)
6 contains the case name and number of the Action; (3) clearly indicates that the Class Member
7 seeks to dispute his or her Compensable Weeks for their Class Settlement Payment; (4) provides
8 documentation and/or an explanation to show contrary Compensable Weeks; and (5) is
9 postmarked or fax-stamped by the Response Deadline and returned to the Settlement
10 Administrator at the specified address or fax telephone number. If there is a Dispute, the
11 Administrator will consult with the Parties to determine whether an adjustment is warranted.
12 Defendant's records will be presumed determinative, but the Administrator and Parties will
13 determine whether an adjustment is warranted.

14 3.6 Requests for Exclusion (Opt Outs). The Class Notice shall state that Class
15 Members who wish to exclude themselves from the Class Settlement Payment and Released Class
16 Claims must submit a written statement to the Administrator ("Request for Exclusion"). The
17 Request for Exclusion must: (1) contain the name, address, telephone number, last four digits of
18 the Social Security number, and signature of the Class Member; (2) contain the case name and
19 number of the Action; (3) clearly indicate that the Class Member seeks to exclude him or herself
20 from the Class Settlement Payment and Released Class Claims; and (4) be postmarked or fax-
21 stamped on or before the Response Deadline and returned to the Administrator at the specified
22 address or fax telephone number. Any Class Member who requests to be excluded from the Class
23 Settlement Payment will not be entitled to any recovery for the Class Claims under the Settlement
24 and will not be bound by the terms of the Settlement with respect to the Class Claims or have any
25 right to object, appeal, or comment thereon. Class Members who receive a Class Notice but fail
26 to submit a valid and timely Request for Exclusion shall be bound by all terms of the Settlement
27 and any Final Approval Order and Judgment entered in this Action if the Settlement is approved
28 by the Court. No later than fourteen (14) calendar days after the Response Deadline, the
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1 Administrator shall provide Defense Counsel with a complete list of all members of the Class
2 who have timely submitted Requests for Exclusion. At no time shall any of the Parties or their
3 counsel seek to solicit or otherwise encourage members of the Class to submit Requests for
4 Exclusion from the Settlement. Any Class Member who submits a valid and timely Request for
5 Exclusion shall forfeit his or her right to receive a Class Settlement Payment under this
6 Agreement, the amount of which will be part of the Net Settlement Amount to be distributed to
7 Settlement Class Members as provided in this Agreement, but will still release the Released
8 PAGA Claims and receive a PAGA Settlement Payment (if eligible).

9 3.7 Objections. The Class Notice shall state that Settlement Class Members (*i.e.*,
10 Class Members who have not excluded themselves from the Settlement) who wish to object to the
11 Class Claims Settlement must submit a written statement of objection ("Notice of Objection") on
12 or before the Response Deadline to the Administrator. The Notice of Objection must: (1) contain
13 the name, address, telephone number, last four digits of the Social Security number, and signature
14 of the Class Member; (2) contain the case name and number of the Action; (3) clearly indicate
15 that the Class Member seeks to object to the Class Claims Settlement; (4) state the legal and
16 factual basis for the objection; (5) state whether the Settlement Class Member intends to appear at
17 the Final Approval Hearing; and (6) be postmarked or fax-stamped on or before the Response
18 Deadline and returned to the Administrator at the specified address or fax telephone number. The
19 Administrator shall within five (5) calendar days of receiving a Notice of Objection provide the
20 Parties with copies of the Notices of Objection. The Administrator will lodge all Notices of
21 Objection that it receives with the Court by attaching them to its declaration to be filed with the
22 Court in support of the motion for final approval of the Settlement.

23 3.8 No Solicitation of Objections or Requests for Exclusion. The Parties agree to use
24 their best efforts to carry out the terms of this Settlement. At no time shall any of the Parties or
25 their counsel seek to solicit or otherwise encourage Class Members to submit Requests for
26 Exclusion or Notices of Objection or to appeal from the Court's Final Approval Order and
27 Judgment.

1 3.9 Uncashed Checks. If a Settlement check is returned to the Administrator as
2 undeliverable within thirty (30) calendar days of mailing to a Settlement Class Member, the
3 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace
4 search and, if another address is identified, shall re-mail the check to the newly identified address.
5 No portion of the Maximum Settlement Amount will revert to Defendant. If a Settlement check
6 is not cashed or deposited within one hundred eighty (180) calendar days after the date it is
7 mailed to a Settlement Class Member, it will be voided. The funds associated with such voided
8 checks will be transmitted to the Unclaimed Property Fund maintained by the State Controller's
9 Office in the names of the Settlement Class Members whose checks are voided after the second
10 distribution to Class Members is completed (as set forth in paragraph 3.11). Settlement checks in
11 the first distribution to Class Members (as set forth in paragraph 3.11) that are not
12 cashed/deposited shall not be sent to the Unclaimed Property Fund; instead, their first distribution
13 checks shall be voided by the Administrator prior to the second distribution, and the uncashed
14 funds from the first distribution shall be included in their respective second distribution settlement
15 checks.

16 3.10 Funding of Settlement. Defendant is required to fully fund and pay Five Hundred
17 Fifteen Thousand Dollars (\$515,000.00) of the Maximum Settlement Amount in two equal
18 installments as follows: (1) Defendant will fund the first installment on the earlier of December
19 31, 2022 or seven (7) days after the Effective Date of the Settlement; and (2) Defendant will fund
20 the second installment on the earlier of July 1, 2023 or six (6) months after the date the first
21 installment was funded ("Installment Funding Schedule"). Defendant shall provide the funds for
22 the Settlement to the Administrator by wire transfer. The Administrator shall deposit the funds in
23 the Settlement Account.

24 3.11 Settlement Distributions. The Administrator will retain the funds from Defendant
25 in its trust account and, after receiving each installment according to the Installment Funding
26 Schedule, shall make two equal distributions, as follows: (1) The first distribution will be made
27 the latter of fourteen (14) days after the Effective Date of the Settlement or the date the first
28 installment is funded; (2) the second distribution will be made within fourteen (14) days after
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1 receipt of the second installment ("Settlement Distribution Schedule"). The foregoing timing of
2 the two distributions, as approved by the Court, shall apply to: (1) the Class Settlement Payment
3 to Settlement Class Members; (2) the Class Representative Service Payment; (3) the Class
4 Counsel Award and Class Counsel Costs; (4) the Settlement Administration Costs; and (5) the
5 PAGA Payment to the LWDA and eligible PAGA Members. No portion of the Maximum
6 Settlement Amount will revert to Defendant.

7 3.12 Class Settlement Payments and PAGA Settlement Payments.

8 3.12.1 Class Settlement Payments and PAGA Settlement Payments shall be
9 mailed by regular First-Class U.S. Mail to Settlement Class Members' last known mailing
10 address.

11 3.12.2 Each Settlement Class Member's share of the Net Settlement Amount shall
12 be determined as follows:

- 13 • Total Workweeks = (1 x all Covered Employee Weeks)
- 14 • Workweek Value = Net Settlement Amount ÷ Total Workweeks
- 15 • Individual Class Settlement Payment = [(1 x individual Covered Employee
16 Weeks) x Workweek Value

17 3.12.3 Class Settlement Payments (as defined in Paragraph 3.12.2) will be
18 allocated for tax purposes as follows: thirty-three point three percent (33.3%) as wages and sixty-
19 six point seven percent (66.7%) as interest/penalties/non-wage damages. The wages portion of
20 each Class Settlement Payment will be reduced by any legally-mandated deductions for payroll
21 taxes or other required employee-side taxes and withholdings. Defendant's share of any
22 employer-related payroll taxes will be paid by Defendant separately and in addition to the
23 Maximum Settlement Amount. The Administrator shall issue the appropriate tax documents
24 associated with the Class Settlement Payments and PAGA Settlement Payments, including an
25 IRS Form W-2 for the amounts allocated as wages and an IRS Form 1099 for the amounts
26 allocated as interest/penalties/non-wage damages.

27 3.12.4 The PAGA Settlement Payments payable to each PAGA Member shall be
28 determined as follows:
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- Pay Period Value = $\text{PAGA Settlement Amount} \div \text{total Compensable Pay Periods}$
- Individual PAGA Settlement Payment = $\text{individual Compensable Pay Periods} \times \text{Pay Period Value}$

The PAGA Settlement Payments are considered to be entirely civil penalties and will be paid without reduction for any taxes or other withholdings and will be reported on an IRS Form 1099 (if required). The Administrator shall issue the appropriate tax documents associated with the PAGA Settlement Payments.

3.12.5 No benefit, including, but not limited to, pension benefits and/or 401(k), shall increase or accrue as a result of any payment made as a result of the Settlement. Except for the Class Representative's Enhancement Award, Class Members and PAGA Members are not eligible to receive any compensation other than Class Settlement Payments and, if eligible, PAGA Settlement Payments, as a result of this Settlement.

3.13 Class Representative Service Payment. Defendant agrees not to oppose or object to any application or motion by Plaintiff to be appointed Class Representative and for a Class Representative Service Payment of up to Seven Thousand Five Hundred Dollars (\$7,500.00). Any portion of the requested Class Representative Service Payment that is not awarded shall be a part of the Net Settlement Amount to be distributed to Settlement Class Members as provided in this Agreement. The Class Representative Service Payment is intended to be in recognition of the Class Representative's efforts and time as Class Representative. The Administrator shall issue an IRS Form 1099-MISC to Plaintiff for his Class Representative Service Payment. Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on his Class Representative Service Payment and shall hold harmless Defendant from any claim or liability for taxes, penalties, or interest arising as a result of the Class Representative Service Payment. The Class Representative Service Payment shall be in addition to Plaintiff's Class Settlement Payment and PAGA Settlement Payment for which he is eligible. In the event the Court reduces or does not approve the requested Class Representative Service Payment, Plaintiff shall not have the right to

1 revoke his agreement to the Settlement, which shall remain legally binding and enforceable on the
2 Parties.

3 3.14 Class Counsel Award and Class Counsel Costs. Defendant agrees not to oppose or
4 object to any application or motion by Class Counsel for attorneys' fees not to exceed thirty-five
5 percent (35%) (i.e., One Hundred Eighty Thousand Two Hundred Fifty Dollars And Zero Cents
6 (\$180,250) of the Maximum Settlement Amount and Class Counsel Costs not to exceed Eight
7 Thousand five Hundred Dollars and No Cents (\$8,500.00), as supported by declarations from
8 Class Counsel, from the Maximum Settlement Amount. Class Counsel shall be solely and legally
9 responsible to pay all applicable taxes on the payment made pursuant to this Paragraph. The
10 Administrator shall issue an IRS Form 1099-MISC to Class Counsel for the payments made
11 pursuant to this Paragraph. In the event the Court reduces or does not approve the requested
12 Class Counsel Award and/or Class Counsel Costs, the Settlement shall remain legally binding and
13 enforceable on the Parties. Any amount requested by Class Counsel for the Class Counsel Award
14 and/or Class Counsel Costs and not granted by the Court shall be included in the Net Settlement
15 Amount before it is distributed as provided in this Agreement.

16 3.15 PAGA Payment. Subject to approval by the Court, the Parties shall allocate a total
17 of Thirty Thousand Dollars (\$30,000.00) for payment of penalties pursuant to PAGA per
18 California Labor Code section 2699(i) (i.e., the PAGA Payment). 75% of the PAGA Payment
19 (i.e., \$22,500.00) will be paid to California's Labor Workforce Development Agency ("LWDA")
20 from the Maximum Settlement Amount (i.e., the LWDA Payment) by the Settlement
21 Administrator. The remaining 25% of the PAGA Payment (\$7,500.00) shall be distributed to
22 PAGA Members as described in Paragraph 3.12.4 (i.e., the PAGA Settlement Payment). It is
23 intended by the Parties that the LWDA Payment shall satisfy the distribution requirements of Cal.
24 Lab. Code § 2698, *et seq.* If the Court awards a lesser amount for the PAGA Payment, then the
25 LWDA Payment shall be adjusted to 75% of the Court-approved amount, and the PAGA
26 Settlement Payment shall be adjusted to 25% of the Court-approved amount.

27 3.16 Plaintiff's Option to Terminate Settlement. Defendant represented that there were
28 18,515 Compensable Weeks during the Class Period through March 22, 2022. If the total number
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1 of Compensable Weeks exceeds this figure by fifteen (15%) (i.e., 21,292 Compensable Weeks) or
2 higher by the date sixty (60) days from the date the Parties accepted the mediator's proposal (i.e.,
3 June 26, 2022), then the Parties will meet and confer in good faith regarding a potential
4 proportional increase in the Maximum Settlement Amount based on the Compensable Weeks in
5 excess of 18,515. If the Parties do not agree, then Plaintiff, in his sole discretion, may nullify this
6 Settlement in its entirety by giving notice to Defendant, in conformity with Paragraph 3.37 herein.

7 3.17 Defendant's Option to Terminate Settlement. If ten percent (10%) or more of the
8 Class Members, or a number of Class Members whose Class Settlement Payments represent ten
9 percent (10%) or more of the total of all Class Settlement Payments, validly elect not to
10 participate in the Settlement, Defendant will have the right to rescind the Settlement, and the
11 Settlement and all actions taken in its furtherance will be null and void. Defendant must exercise
12 this right within fifteen (15) days after the Administrator notifies the Parties of the number of opt-
13 outs, which the Administrator will do within ten (10) days after the deadline for submission of
14 opt-outs. If Defendant exercises the right to rescind, it will be responsible for the costs of
15 administration of the Settlement incurred through that time. If the option to terminate this
16 Settlement is exercised by Defendant, Defendant shall exercise it by providing written notice to
17 Class Counsel, in conformity with Paragraph 3.37 herein.

18 3.18 Settlement Administration Costs. The Administrator shall be paid for the costs of
19 administration of the Settlement from the Maximum Settlement Amount. Such costs of
20 administration are estimated not to exceed Nine Thousand Five Hundred Dollars (\$9,500.00). No
21 fewer than twenty-one (21) calendar days prior to the Final Approval Hearing, the Administrator
22 shall provide the Parties with a statement detailing the costs of administration. The
23 Administrator, on Defendant's behalf, shall have the authority and obligation to make payments,
24 credits, and disbursements, including payments and credits in the manner set forth herein, to
25 Settlement Class Members and PAGA Members calculated in accordance with the methodology
26 set out in this Agreement and orders of the Court. The Parties agree to cooperate in the
27 Settlement administration process and to make all reasonable efforts to control and minimize the
28 cost and expenses incurred in administration of the Settlement. The Parties each represent they
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1 do not have any financial interest in the Administrator or otherwise have a relationship with the
2 Administrator that could create a conflict of interest. The Administrator shall be responsible for:
3 processing and mailing payments to Plaintiff, Class Counsel, Class Members, PAGA Members,
4 and the LWDA; printing and mailing the Class Notice to the Class Members as directed by the
5 Court; receiving and reporting the Requests for Exclusion, Disputes, or Notices of Objection
6 submitted by Class Members (including providing weekly status reports); providing
7 declaration(s) as necessary in support of preliminary and/or final approval of this Settlement;
8 payment of all applicable payroll taxes and withholding and reporting of such payments; and
9 other tasks as the Parties mutually agree or the Court orders the Administrator to perform. The
10 Administrator shall keep the Parties timely apprised of the performance of all Administrator
11 responsibilities. Any legally-mandated tax reports, tax forms, tax filings, or other tax documents
12 required by administration of this Agreement shall be prepared by the Administrator. Any
13 expenses incurred in connection with such preparation shall be a cost of administration of the
14 Settlement.

15 3.19 Final Approval Hearing. At a reasonable time following the Response Deadline,
16 the Court shall hold the Final Approval Hearing, where objections, if any, may be heard, and the
17 Court shall determine amounts properly payable for (i) the Class Counsel Award and Class
18 Counsel Costs, (ii) the Class Representative Service Payment, (iii) the PAGA Payment, and (iv)
19 the Settlement Administration Costs. The Court will hear from any Class Member who attends
20 the Final Approval Hearing and asks to speak regardless of whether the Class Member complied
21 with the Objection procedures in section 3.7.

22 3.20 Entry of Judgment. If the Court approves this Settlement at the Final Approval
23 Hearing, the Parties shall request that the Court enter judgment, with the Court retaining
24 jurisdiction over the Parties to enforce the terms of the judgment, pursuant to California Rules of
25 Court rule 3.769. To provide notice of judgment to the Class, the Administrator will post the
26 Court's Final Approval Order and Judgment on its website for sixty (60) calendar days after the
27 date of entry of the Final Approval Order and Judgment, and no individualized notice will be
28 required.

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1 3.21 Nullification of Settlement Agreement. In the event: (i) the Court does not enter
2 the Preliminary Approval Order as provided herein; (ii) the Court does not grant final approval of
3 the Settlement as provided herein; (iii) the Court does not enter a Final Approval Order and
4 Judgment as provided herein; or (iv) the Settlement does not become final for any other reason,
5 this Settlement Agreement shall be null and void and any order or judgment entered by the Court
6 in furtherance of this Settlement shall be treated as void from the beginning. However,
7 notwithstanding the foregoing, the Parties will cooperate to obtain a Preliminary Approval Order
8 and Final Approval Order from the Court. In such a case, the Parties and any funds to be awarded
9 under this Settlement shall be returned to their respective statuses as of the date and time
10 immediately prior to the execution of this Agreement, and the Parties shall proceed in all respects
11 as if this Agreement had not been executed, except that any fees already incurred by the
12 Settlement Administrator shall be paid by the Parties in equal shares. In the event an appeal is
13 filed from the Court's Final Approval Order and Judgment, or any other appellate review in this
14 action is sought, administration of the Settlement shall be stayed pending final resolution of the
15 appeal or other appellate review.

16 3.22 No Admission by Defendant. Defendant denies any and all claims alleged in this
17 Action and denies all wrongdoing whatsoever. This Agreement is not a concession or admission
18 and shall not be used against Defendant as an admission or indication with respect to any claim of
19 any fault, concession, or omission by Defendant.

20 3.23 Dispute Resolution. Except as otherwise set forth herein, all disputes concerning
21 the interpretation, calculation of payment of settlement claims, or other disputes regarding
22 compliance with this Agreement shall be resolved as follows:

23 3.23.1 If Plaintiff or Class Counsel, on behalf of Plaintiff or any Settlement Class
24 Members and/or PAGA Member, or Defendant, at any time believe that the other Party has
25 breached or acted contrary to the Agreement, that Party shall notify the other Party in writing of
26 the alleged violation.

1 3.23.2 Upon receiving notice of the alleged violation or dispute, the responding
2 party shall have ten (10) business days to correct the alleged violation and/or respond to the
3 initiating party with the reasons why the Party disputes all or part of the allegation.

4 3.23.3 If the response does not address the alleged violation to the initiating
5 party's satisfaction, the Parties shall negotiate in good faith for up to ten (10) business days to
6 resolve their differences.

7 3.23.4 If thereafter the Parties still cannot resolve the dispute, the parties shall
8 utilize the services of Dennis F. Moss, Esq., in a good-faith attempt to mediate and resolve the
9 dispute, with the expense of the mediator to be shared equally by the Parties. If Mr. Moss is not
10 available to mediate the dispute, and the Parties do not agree to a different mediator, or either
11 Party desires to forego mediation of the dispute, the dispute may be submitted directly to the
12 Court as set forth in Paragraph 3.23.5.

13 3.23.5 If the Parties are thereafter still unable to resolve their differences after
14 twenty (20) business days, either Party may file a motion with the Court, including and not
15 limited to, pursuant to California Rules of Court rule 3.769 and/or California Civil Procedure
16 Code section 664.6.

17 3.24 Exhibits and Headings. The terms of this Agreement include the terms set forth in
18 the attached Exhibit, which are incorporated by this reference as though fully set forth herein.
19 The Exhibit to this Agreement is an integral part of the Settlement. The descriptive headings of
20 any paragraphs or sections of this Agreement are inserted for convenience of reference only and
21 do not constitute a part of this Agreement.

22 3.25 Interim Stay of Proceedings. The Parties agree to stay all proceedings in the
23 Action, subject to necessary compliance with the Court's orders, except such proceedings
24 necessary to implement and complete the Settlement, in abeyance pending the Final Approval
25 Hearing to be conducted by the Court.

26 3.26 Amendment or Modification. This Agreement may be amended or modified only
27 by a written instrument signed by counsel for all Parties or their successors-in-interest and
28 approved by the Court.

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1 3.27 Entire Agreement. This Agreement and attached Exhibit A constitute the entire
2 Agreement among the Parties, and no oral or written representations, warranties, or inducements
3 have been made to any Party concerning this Agreement or Exhibit A other than the
4 representations, warranties, and covenants contained and memorialized in the Agreement and
5 Exhibit A.

6 3.28 Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant
7 and represent they are expressly authorized by the Parties whom they represent to negotiate this
8 Agreement and to take all appropriate actions required or permitted to be taken by such Parties
9 pursuant to this Agreement to effectuate its terms and to execute any other documents required to
10 effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each
11 other and use their best efforts to effect the implementation of the Settlement. In the event the
12 Parties are unable to reach agreement on the form or content of any document needed to
13 implement the Settlement, or on any supplemental provisions that may become necessary to
14 effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve
15 such disagreement. The persons signing this Agreement on behalf of Defendant represent and
16 warrant that they are authorized to sign this Agreement on behalf of Defendant. Plaintiff
17 represents and warrants that he is authorized to sign this Agreement and that he has not assigned
18 any claim, or part of a claim, covered by this Settlement to a third party.

19 3.29 Binding Nature of Agreement. This Agreement shall be binding upon, and inure
20 to the benefit of, the successors, heirs, assigns, and third-party beneficiaries of the Parties hereto,
21 as previously defined. To the extent permitted by law, the PAGA Members and Settlement Class
22 Members shall also be bound by this Agreement and any judgment relating thereto.

23 3.30 California Law Governs. All terms of this Agreement shall be governed by and
24 interpreted according to the laws of the State of California.

25 3.31 This Settlement is Fair, Adequate, and Reasonable. The Parties believe and
26 stipulate that this Settlement is a fair, adequate, and reasonable settlement of this Action and have
27 arrived at this Settlement after extensive, arm's-length, non-collusive negotiations, taking into
28 account all relevant factors, present and potential.

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1 3.32 Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction
2 with respect to the interpretation, implementation, and enforcement of the terms of this
3 Agreement and all orders and judgments entered in connection therewith, and the Parties and their
4 counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing,
5 and enforcing the Settlement embodied in this Agreement and all orders and judgments entered in
6 connection therewith.

7 3.33 Invalidity of Any Provision. Before declaring any provision of this Agreement
8 invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible
9 consistent with applicable precedents so as to define all provisions of this Agreement valid and
10 enforceable.

11 3.34 No Right to Terminate Based on Reduction of Class Counsel Award or Class
12 Counsel Costs. The Parties agree that any reduction in the Class Counsel Award and Class
13 Counsel Costs shall not constitute grounds to terminate or void the Settlement or otherwise
14 increase the maximum amount payable by Defendant under this Agreement, which shall not
15 exceed the Maximum Settlement Amount defined herein.

16 3.35 Cooperation. The Parties agree to cooperate fully with one another to accomplish
17 and implement the terms of this Settlement. Such cooperation shall include, but not be limited to,
18 execution of such other documents and taking of such other actions as may be reasonably
19 necessary to timely fulfill the terms and approval by the Court of this Settlement. The Parties to
20 this Settlement shall use their best efforts, including all efforts contemplated by this Settlement
21 and any other efforts that may become necessary by Court order or otherwise, to effectuate this
22 Settlement and the terms set forth herein.

23 3.36 Publicity. Plaintiff and Class Counsel agree that they will not issue (before the
24 date of the filing of the motion for preliminary approval of this Settlement) any press releases,
25 initiate any contact with the press, respond to any press inquiry, post any new material on any
26 internet websites, or have any communication with the press about the Action, and/or the fact,
27 amount, or terms of the Settlement. Before the date of the filing of the motion for preliminary
28 approval of the Settlement, Plaintiff and Class Counsel will not initiate any contact with the Class
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1 Members, the PAGA Members, or anyone else about the Settlement, except that: (a) Class
2 Counsel, if contacted by a Class Member or a PAGA Member, may respond that a settlement has
3 been reached and that the details will be communicated in a forthcoming Court-approved notice;
4 and (b) Plaintiff, if contacted by a Class Member or a PAGA Member, may respond only that the
5 Class Member or PAGA Member should contact Class Counsel. Nothing in this paragraph shall
6 prevent Class Counsel and Plaintiff from undertaking all required submissions to the LWDA as
7 required by the PAGA statute in connection with this Settlement. Class Counsel and Plaintiff will
8 also provide Defendant's Counsel with a copy of the papers submitted to the LWDA, either prior
9 to or on the same day as the submission to the LWDA.

10 3.37 Notices. Unless otherwise specifically provided, all notices, demands, or other
11 communications in connection with this Agreement shall be: (1) in writing; (2) deemed given on
12 the third business day after mailing; (3) sent via email on the date of mailing, and (4) sent via
13 United States registered or certified mail, return receipt requested, addressed as follows:

14 To Plaintiff:

15 Kevin R. Allen, Esq.
16 Allen Attorney Group PC
2121 N. California Blvd.
Suite 290
Walnut Creek, CA 94596
17 kevin@allenattorneygroup.com

To Defendant:

Leslie L. Abbott, Esq.
Austin Schulz, Esq.
Paul Hastings LLP
515 South Flower Street, Twenty-Fifth Floor
Los Angeles, California 90071-2228
18 LeslieAbbott@paulhastings.com

19 3.38 Execution by Class Members. It is agreed that it is impossible or impractical to
20 have each Class Member and PAGA Member execute this Settlement Agreement. The Notice of
21 Settlement will advise all Class Members and PAGA Members of the binding nature of the
22 Released Class Claims as to Settlement Class Members and Released PAGA Claims as to Class
23 Members and PAGA Members, and such shall have the same force and effect as if each Class
24 Member and PAGA Member executed this Agreement.

25 3.39 Execution by Plaintiff. Plaintiff, by signing this Stipulation, is bound by the terms
26 herein.

27 3.40 Drafting of the Agreement. The Parties hereto agree that the terms and conditions
28 of this Stipulation of Settlement are the result of lengthy, intensive, arm's-length, non-collusive
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1 negotiations and a neutrally-facilitated mediation between the Parties, and that this Agreement
2 shall not be construed in favor of or against any of the Parties by reason of their participation in
3 the drafting of this Agreement.

4 Counterparts. This Agreement shall become effective upon its execution by all of the
5 undersigned. Plaintiff, Class Counsel, Defendant, and Defense Counsel may execute this
6 Stipulation in counterparts, and execution of counterparts shall have the same force and effect as
7 if each had signed the same instrument. Copies of the executed Agreement, including scans or
8 PDF versions, shall be effective for all purposes as though the signatures contained therein were
9 original signatures.

10 **STIPULATED, AGREED, AND ACCEPTED.**

11
12 Date: 5/19/22 **PLAINTIFF MARCO GUTIERREZ**

13
14 Signature: 

15
16
17 **DEFENDANT DEL WEST ENGINEERING, INC.**

18
19 Date: 5/19/22 Print Name: Mark Sommer

20 Title: CEO

21 Signature: 

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23 ///

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1 **APPROVED.**

2 ALLEN ATTORNEY GROUP P.C.
3 KEVIN R. ALLEN
4 Attorneys for Representative Plaintiff
and the Plaintiff Class

5 Date: May 19, 2022

Print Name: Kevin R. Allen

6 Signature: 

8
9 **PAUL HASTINGS LLP**
10 Counsel for Defendant

11 Date: May 20, 2022

Print Name: Leslie L. Abbott

12 Signature: 

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Exhibit A

JOB TITLES

1. Final Inspector
2. Forge Operator
3. Inspector
4. Machine Operator
5. Machinist
6. Maintenance Mechanic
7. Maintenance Technician
8. Polisher
9. Preventive Maintenance Technician
10. Prototype Machinist
11. PVD Operator
12. Quality Assurance Technician
13. Receiving Clerk
14. Robotic Polish Operator
15. Sodium Fill Operator
16. Janitor - AWS
17. Shipping Clerk - AWS
18. Team Leader – AWS

Exhibit B

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EXHIBIT “B”
NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES
MARCO GUTIERREZ V. DEL WEST ENGINEERING, INC., CASE NO. 21STCV45477

**ATTENTION: IF YOU WERE EMPLOYED AS A PRODUCTION
EMPLOYEE BY DEL WEST ENGINEERING, INC. IN
CALIFORNIA BETWEEN DECEMBER 14, 2017 AND JUNE 26,
2022, YOU COULD GET A PAYMENT FROM THIS
SETTLEMENT.**

A court authorized this notice. This is not a solicitation from a lawyer.

- If approved by the Court the Settlement will provide \$515,000.00 to resolve claims of approximately 172 individuals who were employed by defendant Del West Engineering, Inc. (“Del West” or “Defendant”) as a production employee in California between December 14, 2017 and June 22, 2026.
- The Settlement involves a lawsuit over whether Defendant paid Plaintiff Marco Gutierrez and other production employees all wages owed and provided timely meal periods and rest breaks. The two sides disagree over how much money, if any, could have been won at trial.
- Your legal rights are affected whether or not you act. **READ THIS NOTICE CAREFULLY!**

OVERVIEW OF YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT

DO NOTHING	Get <u>a</u> payment. Give up rights.
UPDATE YOUR CONTACT INFORMATION	Update your contact information with CPT Group, Inc. so that future notices and settlement check(s) are sent to the correct address.
GO TO FINAL FAIRNESS HEARING	Attend the final approval hearing which will be held at _____ on _____ in department XXX of the Los Angeles County Superior Court, located at _____.
EXCLUDE YOURSELF	Get <u>no</u> Individual Settlement Payment. You may opt out of the settlement by submitting a Request for Exclusion. However, if you are a PAGA Employee and the Court grants final approval of the settlement, you will still receive a share of the portion of the Net Settlement Amount allocated to the PAGA Employees and will be bound by the PAGA release provisions of the settlement, whether or not you submit a Request for Exclusion.
OBJECT	Tell the Court about why you don’t like the Settlement.
DISPUTE “WORKWEEKS”	Settlement amounts will be based on the number of weeks you worked in a covered position during the Class Period. If you think Defendant’s records (<i>see</i> Section X <i>infra</i>) are incorrect then you may submit a dispute with the Settlement Administrator XXXXXX.

- These rights and options – and the deadlines to exercise them- are explained in this

1 notice. Additional information and settlement documents are available by contacting
2 Class Counsel.

- 3 • The Court handling this case still has to decide whether to approve the Settlement.
4 Settlement payments will only be issued if the Court approves the Settlement and all
5 appeals are resolved. Please be patient.

6 **IMPORTANT NOTE: If the Court approves the Settlement at the Final**
7 **Approval Hearing on XXXXX, then your payment will be issued in two checks**
8 **in approx. X, 2023 and Y, 2023. IT IS VERY IMPORTANT THAT YOU**
9 **INFORM THE SETTLEMENT ADMINISTRATOR (identified in Sections 10**
10 **and 15) IF THIS NOTICE WAS SENT TO THE WRONG ADDRESS OR YOU**
11 **MOVE BEFORE RECEIVING *BOTH* CHECKS!!**

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BASIC INFORMATION

1. Why did I get this notice?

Defendant Del West Engineering, Inc.'s records show that you were employed as a non-exempt production employee at one of defendant's factories in Valencia, California between December 14, 2017 and June 26, 2022, inclusive. This is referred to as the "Class Period." This notice explains the lawsuit, the Settlement, and your legal rights.

The term "**production employee**" includes the following job titles: Final Inspector; Forge Operator; Inspector; Machine Operator; Machinist; Maintenance Mechanic; Maintenance Technician; Polisher; Preventive Maintenance Technician; Prototype Machinist; PVD Operator; Quality Assurance Technician; Receiving Clerk; Robotic Polish Operator; Sodium Fill Operator; Janitor - AWS; Shipping Clerk - AWS; and Team Leader – AWS.

The lawsuit is known as *Marco Gutierrez v. Del West Engineering, Inc.*, and is pending in the Superior Court of California for the County of Los Angeles, Case No. 21STCV45477 (the "Action"). Marco Gutierrez is called the Plaintiff or Class Representative, and the company he sued is called the Defendant (i.e., Del West Engineering, Inc.).

2. What is this lawsuit about?

The lawsuit involves claims under California's wage and hour laws. Plaintiff worked as a production employee at one of Defendant's factories in Valencia, California within the Class Period. He alleges that Defendant failed to pay him and other Class Members all wages owed due to time rounding and the alternative workweek schedule. Plaintiff also alleges that Defendants failed to provide timely and lawful meal periods and rest breaks. As a result, Plaintiff alleges that he, and the members of the Class (defined in response to Question 3 below), are entitled to recover unpaid wages, interest, and statutory and civil penalties.

Defendant denies engaging in any wrongful conduct or that it violated the law in any way, and believes that Plaintiff and the Class Members were properly compensated, including final wages, and they were provided lawful meal and rest periods.

Both Plaintiff and Defendant believe that the Settlement is fair, adequate, and reasonable, and that it is in the best interest of the members of the Class.

3. What is a class action lawsuit?

In a class action, one or more people called the "Plaintiff" or "Representative Plaintiff" (in this case, Marco Gutierrez) sue an employer on behalf of people who have similar alleged claims. All of these similar people are referred to as the "Class" or "Class Members." On XXXXX, the Court issued an order certifying a class for purposes of settlement only.

4. What is the Difference Between "Class," "Settlement Class" and "PAGA Members"?

Under the Settlement the term "Class" means all current and former individuals who have been

1 employed by Del West Engineering, Inc. as a non-exempt production employee within the State
2 of California at any time during the Class Period. The “Class Period” is defined as the period
3 from December 14, 2017 through and including June 26, 2022.

4 The term “Settlement Class Members” or “Settlement Class” means all Class Members who do
5 not request to be excluded from the Settlement in response to this Notice.

6 “PAGA Members” means all current and former individuals who have been employed by Del
7 West Engineering, Inc. as a non-exempt production employee¹ within the State of California at
8 any time during the PAGA Period. The “PAGA Period” is defined as December 14, 2020 through
9 and including June 26, 2022. Due to the nature of PAGA claims, PAGA Members cannot opt out
10 of the Settlement.

11 NOTE: Former employees who Defendant laid off in September 2019 as part of Defendant’s
12 reduction in force and who received separation pay in exchange for a general release of claims
13 are excluded from the Class and are not entitled to any additional payments provided in this
14 Settlement except to the extent they were rehired after the severance and performed work during
15 the Class Period that was not otherwise released by the severance agreement.

16 **5. Why is there a settlement?**

17 After conducting substantial investigation, including review of policies, payroll and time records
18 and personnel files, both sides agreed to the Settlement to avoid the cost and risk of further
19 litigation. The Settlement does not mean that any law was broken. Defendant denies all of the
20 claims asserted in the Action and denies that it has violated any laws. Plaintiff and his lawyers
21 think the Settlement is in the best interests of all Class and PAGA Members.

22 **THE SETTLEMENT BENEFITS**

23 **6. What do I get?**

24 Under the terms of the Settlement, Defendant agreed to pay a total of \$515,000.00 which is
25 referred to as the Maximum Settlement Amount. This will be paid in two equal installments as
26 follows: (1) Defendant will fund the first installment on the earlier of December 31, 2022 or
27 seven (7) days after the Effective Date² of the Settlement; and (2) Defendant will fund the second
28 installment on the earlier of July 1, 2023 or six (6) months after the date the first installment was
funded (“Installment Funding Schedule”). Defendant shall provide the funds for the Settlement
to the Administrator by wire transfer.

This Maximum Settlement Amount will be used to pay Plaintiff’s attorneys’ fees (not to exceed
35% of the Maximum Settlement Amount, i.e., \$180,250.00), Plaintiff’s attorneys’ actual
litigation costs (up to \$8,500), a Class Representative Enhancement Award to the Plaintiff (not
to exceed \$7,500.00), a payment of \$22,500.00 to the State of California Labor and Workforce
Development Agency (“LWDA”) for alleged penalties under the Private Attorney General Act
(“PAGA”), and the fees and expenses of the Settlement Administrator (estimated to cost

¹ The job titles included in “production employee” are listed in section 1 above.

² “Effective Date” is defined in Section 9 herein.

1 \$XXXXX). The remainder, referred to as the Net Settlement Amount, will be distributed in full
2 to Settlement Class Members who do not request to be excluded from the Settlement and to
3 PAGA Members regardless of whether they opt out or not.

4 **Individual Class Settlement Payment**

5 The Net Settlement Amount will be distributed to Settlement Class Members based on the
6 number of **Workweeks** worked for Defendant in covered position during the Class Period
7 relative to the total number of Workweeks worked by all Settlement Class Members during the
8 Class Period.

9 According to Defendants' records, your dates of employment in a covered position for Del West
10 during the Class Period were _____ to _____. **Based on these dates, your
11 Individual Settlement Award is estimated to be at least \$ _____.** Your actual
12 Individual Settlement Award may be for more than this amount depending on the number of
13 Settlement Class Members who participate and/or request to opt out of the Settlement.

14 **PAGA Settlement Payment**

15 The employees shall first share \$7,500.00 (i.e., 25% of the \$30,000 total amount allocated
16 to the PAGA claim) which shall be split amongst all Class Members that worked for Del West
17 between December 14, 2020 through and including June 26, 2022, inclusive (the "PAGA
18 Period"). This payment will be distributed to Class Members based on the number of **Pay Periods**
19 worked for Defendant in a class position during the PAGA Period relative to the total number of
20 Pay Periods worked by all Class Members during the PAGA Period.

21 According to Defendant's records, you worked for ____ Pay Periods in a covered position
22 during the PAGA Period. **Based on these dates, your portion of the PAGA settlement
23 payment is estimated to be at least \$ _____.**

24 Class Members who are eligible for a PAGA settlement payment will receive it regardless of
25 whether they request exclusion or object to the Settlement. This payment shall be reported as
26 penalties and reported by IRS Form 1099.

27 **Defendant's Records Will Be Presumed Correct But May Be Disputed**

28 Defendant's records shall be presumed correct, unless evidence to the contrary is timely
submitted to the Settlement Administrator. Class Members who disagree with Defendant's
records of their Workweeks or Pay Period, as presented above, must notify the Settlement
Administrator of the dispute and submit documentation to support their claimed dates of
employment (such as, without limitation, payroll or time keeping records, paycheck stubs). The
dispute must be received by [RESPONSE DEADLINE 60 days] or else it will be disregarded
and you will be paid according to the dates listed in Defendant's records.

NOTE: A Class Member can only dispute his/her dates of employment if he/she does not exclude
himself/herself from the Settlement. If there is a dispute, the Settlement Administrator will
consult with the Parties to determine whether an adjustment is warranted. The Parties shall
engage in a good faith effort to reach an agreement as to whether a workweek adjustment for the

1 Class Member is warranted and, if the Parties are unable to reach an agreement, the determination
2 of the Settlement Administrator shall be deemed final.

3 **Tax Treatment of Your Payments**

4 Individual Class Settlement Payments will be allocated for tax reporting purposes as thirty-three
5 point three percent (33.3%) wages and sixty-six point seven percent (66.7%) as
6 interest/penalties/non-wage damages. The wages portion of each Class Settlement Payment will
7 be reduced by any legally-mandated deductions for payroll taxes or other required employee-side
8 taxes and withholdings. **Defendant's share of any employer-related payroll taxes will be paid
9 by Defendant separately and in addition to the Maximum Settlement Amount.**

10 The Administrator shall issue the appropriate tax documents associated with the Class Settlement
11 Payments and PAGA Settlement Payments, including an IRS Form W-2 for the amounts
12 allocated as wages and an IRS Form 1099 for the amounts allocated as interest/penalties/non-
13 wage damages.

14 **7. What am I giving up?**

15 **Released Class Claims**

16 If the Settlement is approved then Plaintiff and each member of the Class who does not submit a
17 Request for Exclusion (defined in response to Question 10 below), referred to as a Settlement
18 Class Member, will release Defendant Del West Engineering, Inc., and all of its current and
19 former parents, subsidiaries, predecessors and successors, and affiliated entities, and each of their
20 respective officers, directors, owners, employees, partners, shareholders, agents, attorneys,
21 insurers, and assigns, and each of them (collectively, the "Released Parties") from any and all
22 wage-and-hour individual and class claims, rights, demands, liabilities, and/or causes of action
23 of every nature and description, arising from or related to any and all claims during the Class
24 Period that were asserted or could have been asserted based on the facts alleged in the Complaint,
25 including, without limitation, statutory, constitutional, contractual, and/or common law claims
26 for wages, damages, unpaid costs, penalties, liquidated damages, punitive damages, interest,
27 attorneys' fees, litigation costs, restitution, or equitable relief ("Released Claims").

28 **Released PAGA Claims**

1 If the Settlement is approved then Plaintiff and each member of the PAGA Class, regardless of
2 whether they submit a valid Request for Exclusion, will release Defendant Del West
3 Engineering, Inc., and all of its current and former parents, subsidiaries, predecessors and
4 successors, and affiliated entities, and each of their respective officers, directors, owners,
5 employees, partners, shareholders, agents, attorneys, insurers, and assigns, and each of them
6 (collectively, the "Released Parties") any and all individual and representative PAGA claims
7 for civil penalties, attorneys' fees, and costs during the PAGA Period under California Labor
8 Code section 2698, *et seq.* and any applicable IWC Wage Order that were or could have been
9 asserted based on the facts alleged in the Complaint and Plaintiff's notice to the LWDA.

10 **HOW TO GET A SETTLEMENT PAYMENT**

11 **8. How do I get a settlement payment?**

1 You need not do anything in order to receive an Individual Settlement Award or PAGA Payment
2 from this Settlement. Provided the Settlement is approved by the Court, you will be sent
3 settlement payment(s) at the address where this Notice was mailed. If you request to be excluded
4 then you will not receive the Individual Settlement Award but will still receive your portion of
the PAGA Payment if you are eligible.

5 Settlement checks will be mailed out in two tranches approximately twelve months apart.

6 **IMPORTANT REMINDER: If this was sent to the wrong address, or you move before**
7 **receiving all settlement checks and tax return documents, then it is very important that you**
8 **provide a forwarding address to the Settlement Administrator!** Otherwise your settlement
check(s) and/or your tax return documentation could be sent to the wrong address.

9 **9. When will I get my check?**

10 If approved then Defendants will be required to fund the \$515,000.00 Maximum Settlement
11 Amount in two equal installment payments as follows: (1) Defendant will fund the first
12 installment of \$257,500 on the earlier of December 31, 2022 or seven (7) days after the Effective
13 Date of the Settlement; and (2) Defendant will fund the second installment of \$257,500 on the
earlier of July 1, 2023 or six (6) months after the date the first installment was funded
("Installment Funding Schedule").

14 "Effective Date" means the date by when both of the following have occurred: (a) the Court
15 enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment
16 is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating
17 Class Member objects to the Settlement, the date the Court enters Judgment; (b) if one or more
18 Participating Class Members objects to the Settlement, the last date when a timely notice of
appeal from the Judgment may be filed; or (c) if a timely appeal from the Judgment is filed, the
date the appellate court affirms the Judgment and issues a remittitur ("Final").

19 If there are any appeals, resolving them could take some time, so please be patient.

20 If approved by the Court then all payments required by the Settlement will be paid out in two
21 tranches, with the first half being paid within fourteen (14) days of the Settlement Administrator
22 receiving the first installment payment and the second half issued within fourteen days of the
Settlement Administrator's receipt of the second installment payment (meaning Defendants have
paid the entire Maximum Settlement Amount).

23 Please be advised that you will only have 180 days from the date that the check is issued to cash
24 it. If a Settlement check is not cashed or deposited within one hundred eighty (180) calendar days
25 after the date it is mailed to a Settlement Class Member, it will be voided. The funds associated
26 with such voided checks will be transmitted to the Unclaimed Property Fund maintained by the
State Controller's Office in the names of the Settlement Class Members whose checks are voided.

27 **EXCLUDING YOURSELF FROM THE SETTLEMENT**

28 **10. How do I ask the Court to exclude me from the Settlement Class?**

If you do not want to participate in the Settlement (“opt-out”), you must submit a timely written statement requesting exclusion (“Request for Exclusion”). Class Members who timely request exclusion will no longer be eligible to receive an individual Settlement Award but will also not be bound by the release of Class claims in the Settlement. Class Members cannot, however, seek exclusion from the PAGA component of the Settlement and will receive a PAGA Settlement Payment even if they file a timely request for exclusion, to the extent they worked during the PAGA Period.

In order to be valid, your Request for Exclusion must be signed, dated and mailed by First Class U.S. Mail, or the equivalent, postmarked no later than **[+60 days from date of mailing]** to:

INSERT SETTLEMENT ADMINISTRATOR INFO

Requests for Exclusion that do not include all required information and/or that are not timely submitted will be deemed null, void, and ineffective. Class Members who fail to submit a valid and timely Request for Exclusion on or before the above-specified deadline shall be bound by all terms of the Settlement and any Final Judgment entered in the Action if the Settlement is approved by the Court.

11. If I exclude myself, can I get anything from the settlement?

You will not get a class settlement payment if you exclude yourself from the Settlement. However, you will still receive a PAGA Settlement Payment if you are eligible.

12. If I don’t exclude myself, can I sue later?

Yes, but not as to PAGA claims that are released by the Settlement. If you exclude yourself now you will still get a pro rata share of the PAGA Settlement Payment if you are eligible for one. You will not get an Individual Settlement Payment and you will not be bound by the non-PAGA component of the Settlement.

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in this case?

The Court has appointed Kevin R. Allen of Allen Attorney Group, PC and Nicolas Orihuela of Hurwitz, Orihuela & Hayes LLP as class counsel. They represent the named Plaintiff and the Settlement Class Members and PAGA Members in this lawsuit. Their contact information is listed in Paragraph 21 (“Getting More Information”).

14. How will the costs of the lawsuit and the settlement be paid?

Subject to Court approval, the Maximum Settlement Amount will be used to pay Class Counsel their actual litigation costs and up to \$180,250.00 in attorneys’ fees (i.e., 35% of the Maximum Settlement Amount). It will also be used to pay Plaintiff up to \$7,500.00 as a “Class Representative Enhancement Award” for his participation in this lawsuit and for taking on the risk of litigation. The Maximum Settlement Amount will also be used to pay the Settlement Administrator’s costs and fees associated with administering the Settlement, estimated at

1 \$XXXXX.

2 The Court may award *less* than these amounts. If lesser amounts are awarded, the difference will
3 be distributed to Settlement Class Members as part of the Net Settlement Amount.

4 **OBJECTING TO THE SETTLEMENT**

5 **15. How do I object to the Settlement?**

6 If you do not think the Settlement is fair then you can tell the court why. This is referred to as an
7 “objection.” In order to ensure the Court reviews your Objection, all written objections, and
8 supporting papers, should be submitted no later than **[+60 days from mailing]**. You can submit
9 your written objection via mail to the Settlement Administrator at the following address. In order
10 to be timely it must have a U.S. Mail postmark no later than **[+60 days from date of mailing]**:

11
12 Settlement Administrator
13 [insert info]
14

15 A written objection must: (1) contain the name, address, telephone number, last four digits of the
16 Social Security number, and signature of the Class Member; (2) contain the case name and
17 number of the Action; (3) clearly indicate that the Class Member seeks to object to the Class
18 Claims Settlement; (4) state the legal and factual basis for the objection; (5) state whether the
19 Settlement Class Member intends to appear at the Final Approval Hearing; and (6) be postmarked
20 or fax-stamped on or before the Response Deadline and returned to the Administrator at the
21 specified address or fax telephone number. Late or incomplete objections may not be considered
22 and may be deemed invalid by the Court.

23 **You do not need to file a written objection. Any Class Member, or person purporting to
24 object on behalf of any Class Member, may be received or considered by the Court at the
25 Final Approval Hearing, regardless of whether a written notice of objection is filed or
26 delivered to the Parties.**

27 Any Settlement Class Member who files an objection remains eligible to get paid from the
28 Settlement unless he or she submits a valid Request for Exclusion.

22 **16. What’s the difference between objecting and asking to be excluded?**

23 Objecting is simply telling the Court you do not like something about the Settlement. Excluding
24 yourself is telling the Court that you do not want to be part of the Settlement.

25 **THE COURT’S FINAL APPROVAL HEARING**

26 The Court will hold a hearing to decide whether to approve the settlement. If you have filed an
27 objection on time you may appear in person or via phone using a third party service provider called
28 CourtCall (*see* Section 15) and you may ask to speak, but you don’t have to.

28 **17. When and where will the Court decide whether to approve the settlement?**

1 The Court will hold a Final Approval Hearing on [insert time/date] in Department 9 at the
2 Superior Court of California for the County of Los Angeles, located at ADDRESS, **Los Angeles,**
3 **California.** The hearing may be moved to a different date and/or time without additional notice.
4 At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate.
5 If there are objections, the Court will consider them. The Court will only listen to people who
6 have asked to speak at the hearing. The Court will also decide how much to pay Class Counsel
in fees and costs. After the hearing, the Court will decide whether to approve the Settlement.
We do not know how long these decisions will take.

7 **18. Do I have to appear at the hearing?**

8 No. Class Counsel will answer any questions the judge may have. But, you are welcome to
9 come at your own expense. If you send a written objection, you don't have to come to Court to
10 talk about it. As long as you mailed your written objection to the Settlement Administrator on
11 time, the Court will consider it. You may also pay (at your own expense) another lawyer to
attend, but it is not required.

12 **19. May I speak at the hearing?**

13 You do not need to submit a written objection in order to appear at the hearing. Any Class
14 Member, or person purporting to object on behalf of any Class Member, may be received or
considered by the Court at the Final Approval Hearing, regardless of whether a written notice of
objection is filed or delivered to the Parties.

15 **IF YOU DO NOTHING**

16 **20. What happens if I do nothing at all?**

17 If you do nothing, you will bound by the releases described in this notice and will receive an
18 Individual Class Settlement Award and PAGA Award if you are eligible.

19 **GETTING MORE INFORMATION**

20 **21. How do I get more information?**

21 The above is a summary of the basic terms of the Settlement. For the precise terms and conditions
22 of the Settlement, you may review the detailed "Class Action and PAGA Settlement Agreement
23 and Release" which is on file with the Clerk of Court. The pleadings and other records in the
24 Action, including the proposed Settlement, may be examined at any time during regular business
25 hours at the Office of the Clerk of Court for the Superior Court of California, County of Los
26 Angeles, ADDRESS, California, ZIP. You may also review most of the filings, including the
27 initial complaint, the Motion for Preliminary Approval of the proposed Settlement, and the
28 Settlement itself on the Court's website.

If you want additional information about the Action and its proceedings, or copies of settlement
paperwork, then you may contact Class Counsel:

1 KEVIN R. ALLEN (SBN 237994)
2 **ALLEN ATTORNEY GROUP PC**
3 2121 N. California Blvd., Suite 290
4 Walnut Creek, CA 94596
5 Tel. (925) 695-4913
6 Fax (925) 334-7470
7 kevin@allenattorneygroup.com

NICOLAS ORIHUELA (SBN # 221898)
HURWITZ, ORIHUELA & HAYES LLP
5757 Wilshire Blvd, Suite 503
Los Angeles, CA 90036
Tel.(323) 965-2103
Fax (323) 965-2146
no@hohlattorneys.com

Exhibit 2

1 ALLEN ATTORNEY GROUP P.C.
2 KEVIN R. ALLEN (SBN# 237994)
3 kevin@allenattorneygroup.com
4 2121 N. California Blvd.
5 Suite 290
6 Walnut Creek, CA 94596
7 Tel. (925) 695-4913
8 Fax (925) 334-7477

6 HURWITZ, ORIHUELA & HAYES LLP
7 NICOLAS ORIHUELA (SBN # 221898)
8 no@hohlattorneys.com
9 5757 Wilshire Blvd, Suite 503
10 Los Angeles, CA 90036
11 Tel. (323) 965-2103
12 Fax (323) 965-2146

11 Attorneys for Representative Plaintiff
12 and the Plaintiff Class

13
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

16 MARCO GUTIERREZ, on behalf of himself and
17 all others similarly situated;

17 Plaintiff,

18 vs.

19 DEL WEST ENGINEERING, INC., a California
20 corporation, and DOES 1 through 50, inclusive;

21 Defendants.

CASE NO. 21STCV45477

**DECLARATION OF JODEY
LAWRENCE OF PHOENIX CLASS
ACTION ADMINISTRATION
SOLUTIONS IN SUPPORT OF
CLASS ACTION SETTLEMENT**

Dept: Dept. 9

Judge: Hon. Yvette Palazuelos

Complaint Filed: December 14, 2021
Trial Date: None Set

DECLARATION OF JODEY LAWRENCE

I, JODEY LAWRENCE, declare as follows:

1. I have personal knowledge of the facts set forth herein and if called upon to testify, I could and would do so competently under oath.

2. I am employed by Phoenix Settlement Administrators (“PSA”), as President of Business Development.

3. I personally have over twelve years of experience in claims management and administration of class and collective action matters.

4. PSA has never had any financial interests in nor affiliation with the parties or counsel in the Marco Gutierrez v. Del West Engineering, Inc., matter.

5. PSA has extensive experience administering class action matters. PSA has administered complex wage and hour, labor and employment, consumer/ product liability, TCPA, FLSA, FACTA, ERISA and PAGA class action matters, thru final approval and distribution. PSA has developed a system of quality assurance measures, to ensure the highest quality service is provided in our cases and to class members.

6. PSA’s Claims Management Group has extensive experiences in all aspects of Notification and Identification of Class Members, Claims Processing, Formulation and Calculation Methodologies, Award Distribution and Taxation, Accounting and Reconciliation.

7. PSA has extensive experience in and are experts at all aspects of administering complex class action matters including; (i) preparing, printing, mailing and tracking privacy notices; (ii) operation of a 24/7/365 multi-lingual call center; (iii) establishing settlement websites; (iv) claims management; (v) USPS processes and systems, third party tracing, including the use of reverse telephone directory services; (vi) database management, programming and security protocols; (vii) calculating and issuing settlement payments; (viii) tax management, filings, and account reconciliation; and (ix) final approval.

8. As part of Settlement Notice procedures, PSA will run the names of all Settlement Class Members through the National Change of Address (“NCOA”) database to determine any updated addresses for Settlement Class Members. If a Class Notice Packet from

1 the initial notice mailing is returned as undeliverable, the Settlement Administrator will attempt
2 to obtain a current address for the Settlement Class Member to whom the returned Class Notice
3 Packet had been mailed by undertaking skip tracing. If the Settlement Administrator is
4 successful in obtaining a new address, it will promptly re-mail the Class Notice Packet to the
5 Settlement Class Member. Further, any Class Notice Packets that are returned to the Settlement
6 Administrator with a forwarding address before the Response Deadline shall be promptly re-
7 mailed to the forwarding address affixed thereto.

8 9. PSA has been appointed as a Settlement Administrator in both State and Federal
9 Courts.

10 10. A true and correct copy of PSA's Curriculum Vitae is attached hereto as Exhibit
11 A.

12 11. Phoenix Settlement Administrators has adequate procedure in place to safeguard
13 the data and funds to be entrusted to it. PSA's Technology and Banking groups are directly
14 involved with Management on all issues of Information Security and Settlement Fund transfer,
15 as it pertains to the continuance of business processes, and all risk, vulnerability, security and
16 assessments as it pertains to information. The group, along with internal systems in place,
17 monitor and communicate with Management on a Preventative and comprehensive level, in
18 order to prevent potential Strategic or Compliance Risks. All processing of confidential and
19 personal information is handled and maintained within the organization and therefore all data
20 received is kept within a strict chain of custody internally. All informational assets are classified
21 and assigned based on initial case assessment, client and procedural requirements. The
22 Technology Group handles all higher-level ownership of information and physical peripherals,
23 as well as ownership of direct / indirect assets associated with technology and the continuance
24 of business, Specific Users, Groups or Entities are assigned Shared Ownership or Management
25 Capability based on procedural needs, and security level granted.

26 12. In addition to high levels of Data Center Policies/Procedures and
27 Facility/Maintenance Security Protocols, PSA's conducts semiannual training to maintain
28 additional safeguards such as:

- 1 a. Phoenix Settlement Administration Business Continuity Policy
- 2 b. Phoenix Settlement Administration Disaster Recovery Plan
- 3 c. Phoenix Settlement Administration Incident Response Plan
- 4 d. Phoenix Settlement Administration Personal Computer Security Policy
- 5 e. Phoenix Settlement Administration Phoenix Data Archiving and Retention
- 6 Policy
- 7 f. Phoenix Settlement Administration Phoenix Personnel Security Policy
- 8 g. Phoenix Settlement Administration Risk Assessment
- 9 h. Phoenix Settlement Administration Service Provider Risk Assessment
- 10 i. Phoenix Settlement Administrator Classification and Access Rights Policy
- 11 j. Phoenix Settlement Administrator Password Policy
- 12 k. Phoenix Settlement Administrators Certification of Destruction
- 13 l. Phoenix Settlement Administrators Security Awareness Training Program.

14 13. PSA currently maintains an errors and omissions insurance policy, in addition to, a
15 separate data breach insurance policy.

16 14. PSA costs are reasonable and competitive when compared to the industry.

17 15. PSA only employs a certified and/or qualified translator to translate Court-
18 approved Notices for postings on PSA's website for dissemination to the Class.

19 16. To complete the Settlement Administration for the Marco Gutierrez v. Del
20 West Engineering, Inc., case, the Settlement Administration will include hard cost and hourly
21 costs detailed below:

- 22 • Hard Cost: Postage, Printing Supplies, Toll Free Setup, QSF Bank
- 23 Setup, NCOA, Skip Tracing, Re-Mail and Translation costs.
- 24 • Hourly Cost: The hourly rates include Programming Database & Setup,
- 25 Project Management, Notice Packet Formatting, Programming
- 26 Undeliverable, Programming Claims Database, Programming
- 27 Calculations, Disbursement Review, Printing of Notice & Checks,
- 28

1 Reconcile Uncashed Checks, Conclusion Reports, Potential Tax Filing
2 and Case Management/Maintenance.

3 17. Having factored in the hard and hourly cost, the settlement administration for
4 this project has a Will Not Exceed Fee of \$9,500.00. A detailed breakdown of PSA's cost is
5 attached hereto as Exhibit B.

6 I declare under penalty of perjury under the laws of the United States and state of
7 California that the foregoing is true and correct.

8 Executed on June 30, 2022 at Orange, California.

9
10 
11 Jodey Lawrence

EXHIBIT A



CLASS ACTION SETTLEMENT SOLUTIONS

1411 N. Batavia Orange Ca. 92867

800.523.5773

www.phoenixclassaction.com

CURRICULUM VITAE

Phoenix Settlement Administrators, PSA Overview

Phoenix Settlement Administrators, PSA, is an emerging, National, Class Action Notification and Claims Administration firm, located in San Diego and Newport Beach California. PSA's core competencies ensure delivery of the highest quality and accuracy to its Clients and Class members. With a combined 28 years of expert experience, PSA's Managing Partners, Case Supervisors, Managers and Associates, Data Programming, and Certified Secure Strategic Partners, possess all the qualities that our Clients expect throughout the Noticing and Administration process, to Final Approval. It is our Value Pricing, Efficiency, Experience, Consultative Expertise and Delivery, that has perpetuated PSA, as an emerging leader in Class Action Settlement Administration. Expert PSA staff members are currently managing, Consumer and Product Liability, TCPA, Complex Labor & Employment, FLSA, ERISA and PAGA cases.

PSA has over 100 Attorney & Law Firm Clients, which have entrusted us with the management of their claims administration, because of the "Boutique" attention every case receives. PSA is value driven on all size cases. large or small, cases receive expert management, secure data custody, neutral communication and a dedicated team. This seamless process maintains superior case continuity to ensure our clients receive timely final approval and conclusion to their actions. Phoenix Settlement Administrators implements its successful C.A.S.E. solutions on all our class action matters.

With 10 of Millions of dollars in award distributions currently under management since our inception, PSA has the ability and strengths to manage all levels of Complex Cases. PSA's Staff "Synergy" is our greatest attribute. It allows our people to work closely together and solve our client's case issues. PSA prides itself as a true "Third Party Administrator" and holds Neutrality as a mantra. Because of this approach, both Defense and Plaintiff Clients, experience fairness, trust and confidence in us, and allows for continued business from both parties. PSA has been appointed Third Party Administrator in State and Federal Courts.

We look forward to working with you on your next Class Action Noticing Campaign or Claims Administration. Let us design a C.A.S.E. solution, which will allow us to showcase the difference you'll experience. Superior Service, Class Savings Value Pricing and Timely Outcomes is why our clients come back to PSA.



PHOENIX
SETTLEMENT ADMINISTRATORS

CLASS ACTION SETTLEMENT SOLUTIONS

Expert Core Services

Initial Planning and Consultative Service on Class Action Cases and Noticing Plans.

State/Nationwide Noticing Expertise: Privacy, Media, Publication, Internet & Email Campaigns.

Attorney General(s) CAFA Notification

Claims Programming, Administration, Processing and Reporting.

24/7/365 Multi-Lingual Call Center Support and Claims Processing

Secure Data Management Environment, Individual Firewalls, Encrypted Data and Storage

Settlement Fund Calculations, Solutions, Award Distribution, Award Reconciliation

Tax Filings: State, Federal, EDD, ETT, FUTA, PAGA Payments

Partial PSA Client List, Defense and Plaintiff

Fisher & Phillips
Gordon & Rees
Paul Plevin Sullivan & Connaughton
Call & Jensen
Drinker Biddle
McKenna Long & Aldridge
Greenberg Traurig
Manning & Kass
Littler Mendelson
Kring & Chung
Orrick Herrington & Sutcliffe
Ogletree Deakins Nash Smoak & Stewart
Perkins Coie
Ross Wersching & Wolcott
Winston & Strawn
Sheppard Mullins
Lewis Brisbois Bisgaard & Smith
Morgan Lewis & Bockius
Paul Hastings
Park & Zheng
Sidley Austin
Higgs Fletcher & Mack
Jackson Lewis
Norton Rose Fulbright

Law Offices of Jonathan Ricasa
Dente Law Firm
Mahoney Law Group
Law Office of Thomas Rutledge
Law Office of Briana Kim
Dychter Law Firm
Garay Law Firm
Olsen Law Offices
Gould & Associates
Cohelan, Khoury & Singer
Ridout, Lyon & Ottoson
Carter Law Firm
Law Office of Justian Jusef
The Phelps Law Group
The Emilio Law Group
Zeldes, Haeggquist & Eck
Markham Law Firm
Arias Ozzello & Gignac
David Yeremian & Associates
Ageis Law Firm
Rukin Hyland Doria & Tindall
Malk Law Firm
Spiro Law Corp
Levine Law Group, APC

EXHIBIT B



CASE ASSUMPTIONS

Class Members	172
Opt Out Rate	1%
Opt Outs Received	2
Total Class Claimants	170
Subtotal Admin Only	\$9,500.00

WILL NOT EXCEED \$9,500.00

For 172 Class Members

Price good for scope of quote

May 10, 2022

Case: Gutierrez v. Del West Engineering, Inc., Opt-Out Administration wLanguage x 2 Dist

Phoenix Contact: Jodey Lawrence

Contact Number: 949.566.1455

Email: Jodey@phoenixclassaction.com

Requesting Attorney: Kevin R. Allen, Esq.

Firm: ALLEN ATTORNEY GROUP

Contact Number: 925.695.4913

Email: kevin@allenattorneygroup.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PSA will need to adjust this Estimate accordingly.

Estimate is based on 172 Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of \$150 per hour will be charged for any additional analysis or programming.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)/Translation / Website				
Administrative Tasks:	Rate	Hours/Units	Line Item Estimate	
Programming Manager	\$125.00	2	\$250.00	
Programming Database & Setup	\$125.00	2	\$250.00	
Toll Free Setup*	\$145.76	1	\$145.76	
Call Center & Long Distance	\$2.00	17	\$34.40	
NCOA (USPS)	\$20.00	1	\$20.00	
Static Website	\$200.00	1	\$200.00	
Spanish Translation	\$1,000.00	1	\$1,000.00	
Total			\$1,900.16	

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage /			
Project Action	Rate	Hours/Units	Line Item Estimate
Notice Packet Formatting	\$125.00	2	\$250.00
Data Merge & Duplication Scrub	\$0.15	172	\$25.80
Notice Packet & Opt-Out Form	\$2.00	172	\$344.00
Estimated Postage (up to 2 oz.)*	\$0.71	172	\$122.12
Total			\$741.92

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



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CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item Estimate
Case Associate	\$55.00	2	\$110.00
Skip Tracing Undeliverables	\$1.50	34	\$51.60
Remail Notice Packets	\$2.00	34	\$68.80
Estimated Postage	\$0.71	34	\$24.42
Programming Undeliverables	\$55.00	1	\$55.00
Total			\$309.82

Database Programming / Processing Opt-Outs, Deficiencies or Disputes

Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Claims Database	\$175.00	3	\$525.00
Non Opt-Out Processing	\$175.00	1	\$175.00
Case Associate	\$55.00	2	\$110.00
Opt-Outs/Deficiency/Dispute Letters	\$5.00	4	\$21.50
Case Manager	\$85.00	3	\$255.00
Total			\$1,086.50

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Calculations	\$125.00	3	\$375.00
Disbursement Review	\$125.00	3	\$375.00
Programming Manager	\$125.00	3	\$375.00
QSF Fees, Bank Account & EIN	\$50.00	2	\$100.00
Check Run Setup & Printing	\$125.00	2	\$250.00
Mail Class Checks, W2 and 1099 *	\$1.50	170	\$255.42
Estimated Postage Checks, W2 and 1099	\$0.58	170	\$98.76
Check Run Setup & Printing	\$125.00	2	\$250.00
Mail Class Checks, W2 and 1099 *	\$1.65	170	\$280.50
Estimated Postage Checks, W2 and 1099	\$0.58	170	\$98.60
Total			\$2,458.28

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



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CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations			
Project Action:	Rate	Hours/Units	Line Item Estimate
Case Supervisor	\$125.00	3	\$375.00
Remail Undeliverable Checks (Postage Included)	\$1.50	17	\$25.54
Case Associate	\$55.00	3	\$165.00
Reconcile Uncashed Checks	\$125.00	2	\$250.00
Conclusion Reports	\$125.00	2	\$250.00
Case Manager Conclusion	\$125.00	1	\$125.00
Final Reporting & Declarations	\$100.00	1	\$100.00
Uncashed Check Notice Postcard (Postage Included)	\$1.00	13	\$12.77
IRS & QSF Annual Tax Reporting * (State Tax Reporting Included)	\$850.00	2	\$1,700.00
Total			\$3,003.31

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$9,500.00



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CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.