

Exhibit 1

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

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

Plaintiff,

vs.

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

Defendants.

CASE NO. 21STCV45477

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

Dept: Dept. 9
Judge: Hon. Yvette Palazuelos

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

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

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

6 **1. DEFINITIONS**

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

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

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

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

21 1.4 “Class Claims” means all claims and causes of action alleged in the Complaint
22 except the claim under the Private Attorneys General Act (“PAGA”).

23 1.5 “Class Counsel” means Kevin R. Allen of Allen Attorney Group P.C., and Nicolas
24 Orihuela of Orihuela Law Firm, PC.

25 1.6 “Class Counsel Costs” means expenses and costs actually incurred by Class Counsel
26 according to proof and subject to Court approval for Class Counsel’s litigation and resolution of
27 this Action, not to exceed Eight Thousand, Five Hundred Dollars and No Cents (\$8,500). Class
28 Counsel Costs shall be paid from the Maximum Settlement Amount. Any portion of the requested

1 Class Counsel Costs that is not awarded to Class Counsel shall be a part of the Net Settlement
2 Amount and distributed to Settlement Class Members as provided in this Agreement.

3 1.7 "Class Information" means information regarding Class Members and PAGA
4 Members that Defendant will in good faith compile from its records and provide only to the
5 Settlement Administrator. Class Information shall be provided as a password-protected, Microsoft
6 Excel spreadsheet and shall include each Class and PAGA Member's: (a) full name; (b) last known
7 address; (c) last known telephone number; (d) Social Security number; (e) start date of employment
8 and/or assignment at Defendant; (f) end date of employment and/or assignment at Defendant; and
9 (g) Compensable Weeks (as defined below in Paragraph 1.14); and (h) Compensable Pay Periods
10 (as defined in Paragraph 1.13). Because Social Security numbers are included in the Class
11 Information, the Settlement Administrator shall maintain the Class Information in confidence, it
12 shall be transmitted in password-protected file(s), and access shall be limited to those with a need
13 to use the Class Information as part of the administration of the Settlement. The Class Information
14 shall not be provided to Class Counsel for any purpose but may be disclosed by the Settlement
15 Administrator to the extent necessary to resolve a dispute by a Class or PAGA Member regarding
16 their Compensable Weeks or Compensable Pay Periods.

17 1.8 "Class Counsel Award" means attorneys' fees for Class Counsel's litigation and
18 resolution of this Action not to exceed Thirty-Five Percent (35%) of the Maximum Settlement
19 Amount (i.e., One Hundred Eighty Thousand, Two Hundred Fifty Dollars And Zero Cents
20 (\$180,250)), subject to approval by the Court. The Court shall review the requested amount of the
21 Class Counsel Award, and the approved amount shall be paid from the Maximum Settlement
22 Amount. Any portion of the requested Class Counsel Award that is not awarded to Class Counsel
23 shall be a part of the Net Settlement Amount and distributed to Settlement Class Members as
24 provided in this Agreement.

25 1.9 "Class Period" means the period from December 14, 2017 through and including
26 June 26, 2022 (i.e., 60 days from the date the Parties accepted the mediator's proposal).

27 1.10 "Class Representative" means Plaintiff Marco Gutierrez.
28

1 1.11 "Class Representative Service Payment" means the payment to the Class
2 Representative for initiating the Action and providing services in support of the Action. Class
3 Counsel shall seek a Class Representative Service Payment for Plaintiff of up to Seven Thousand
4 Five Hundred Dollars (\$7,500.00). Defendant agrees not to oppose the motion by Plaintiff for said
5 Class Representative Service Payment, so long as the request does not exceed this amount. Any
6 portion of the requested Class Representative Service Payment that is not awarded shall be a part
7 of the Net Settlement Amount and distributed to Settlement Class Members as provided in this
8 Agreement.

9 1.12 "Class Settlement Payment" means the net amount paid by check to each Settlement
10 Class Member for their release of the Released Class Claims. The Class Settlement Payment
11 Amounts shall be calculated pursuant to Paragraph 3.12.2.

12 1.13 "Compensable Pay Periods" means all pay periods in which a PAGA Member
13 performed work for Defendant in California during the PAGA Period (as defined below in
14 Paragraph 1.26).

15 1.14 "Compensable Weeks" means all weeks in which a Class Member performed work
16 for Defendant in California during the Class Period.

17 1.15 "Complaint" means Plaintiff's Complaint on file in the Action, including any and
18 all amendments thereto.

19 1.16 "Court" shall mean the Superior Court of California for the County of Los Angeles.

20 1.17 "Defense Counsel" or "Counsel for Defendant" means Paul Hastings LLP, 515
21 South Flower Street, 25th Floor, Los Angeles, California 90071, c/o Leslie L. Abbott, Esq. and
22 Austin Schulz, Esq.

23 1.18 "Effective Date" means the date by when both of the following have occurred: (a)
24 the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the
25 Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no
26 Participating Class Member objects to the Settlement, the date the Court enters Judgment; (b) if
27 one or more Participating Class Members objects to the Settlement, the last date when a timely
28

1 notice of appeal from the Judgment may be filed; or (c) if a timely appeal from the Judgment is
2 filed, the date the appellate court affirms the Judgment and issues a remittitur (“Final”).

3 1.19 “Final Approval Hearing” means the hearing held on the motion for final approval
4 of the Settlement.

5 1.20 “Final Approval Order and Judgment” means the Court’s entry of an order granting
6 final approval of the Settlement and entering judgment in this Action based thereon, in conformity
7 with California Rules of Court rule 3.769(h).

8 1.21 “LWDA Payment” means 75% of the PAGA Payment, which will be paid to the
9 California Labor Workforce Development Agency (“LWDA”) per California Labor Code
10 section 2699(i).

11 1.22 “Maximum Settlement Amount” means Five Hundred Fifteen Thousand Dollars and
12 No Cents (\$515,000.00). Defendant’s obligation to fund the Maximum Settlement Amount is
13 limited to \$515,000.00 plus the employer’s share of payroll taxes. No portion of the Maximum
14 Settlement Amount will revert to Defendant.

15 1.23 “Net Settlement Amount” means the amount of monies available for distribution to
16 Settlement Class Members, which shall be the Maximum Settlement Amount less the Class Counsel
17 Award, Class Counsel Costs, Class Representative Service Payment, Settlement Administration
18 Costs, and PAGA Payment.

19 1.24 “Notice of Class Action Settlement” or “Class Notice” means the Notice of Class
20 Action Settlement a copy of which is attached hereto as Exhibit B.

21 1.25 “PAGA Members” means all current and former individuals who have been
22 employed by Del West Engineering, Inc. as a non-exempt employee in one or more of the job titles
23 listed in Exhibit A herein within the State of California at any time during the PAGA Period.

24 1.26 “PAGA Payment” means the allocation of Thirty Thousand Dollars (\$30,000.00),
25 payable from the Maximum Settlement Amount, subject to approval by the Court, for penalties
26 under PAGA. 75% of the PAGA Payment is the LWDA Payment and will be paid to the LWDA.
27 The remaining 25% of the PAGA Payment is the PAGA Settlement Payment and will be paid to
28 PAGA Members as described in Paragraph 3.12.4.

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1 1.27 “PAGA Period” means the period from December 14, 2020 through and including
2 June 26, 2022 (i.e., 60 days from the date the Parties accepted the mediator’s proposal).

3 1.28 “PAGA Settlement Payment” means the amount payable to each PAGA Member
4 for the release of his or her Released PAGA Claims, regardless of whether the PAGA Member
5 objects, opts out, or otherwise excludes himself or herself from the release of Released Class
6 Claims. The amount of the PAGA Settlement Payment distributed to each PAGA Member shall
7 be calculated pursuant to Paragraph 3.12.4 herein.

8 1.29 “Plaintiff” means Marco Gutierrez, the named plaintiff in the Action.

9 1.30 “Preliminary Approval” or “Preliminary Approval Date” means the date the Court
10 enters an Order preliminarily approving the Settlement.

11 1.31 “Preliminary Approval Order” means the Order granting preliminary approval of
12 the Settlement.

13 1.32 “Released Class Claims” means any and all wage-and-hour individual and class
14 claims, rights, demands, liabilities, and/or causes of action of every nature and description, arising
15 from or related to any and all claims during the Class Period that were asserted or could have been
16 asserted based on the facts alleged in the Complaint, including, without limitation, statutory,
17 constitutional, contractual, and/or common law claims for wages, damages, unpaid costs, penalties,
18 liquidated damages, punitive damages, interest, attorneys’ fees, litigation costs, restitution, or
19 equitable relief.

20 1.33 “Released PAGA Claims” means any and all individual and representative PAGA
21 claims for civil penalties, attorneys’ fees, and costs during the PAGA Period under California Labor
22 Code section 2698, *et seq.* and any applicable IWC Wage Order that were or could have been
23 asserted based on the facts alleged in the Complaint and Plaintiff’s notice to the LWDA.

24 1.34 “Released Parties” means Del West Engineering, Inc., and all of its current and
25 former parents, subsidiaries, predecessors and successors, and affiliated entities, and each of their
26 respective officers, directors, owners, employees, partners, shareholders, agents, attorneys,
27 insurers, and assigns, and each of them.

1 1.35 “Request for Exclusion” means a Class Member’s request to be excluded from the
2 Class Settlement Payment that is made in conformity with this Agreement, the instructions in the
3 Class Notice, and the Court’s orders, and that results in the Class Member not being bound by the
4 Released Class Claims. A Request for Exclusion shall not apply to eligible Class Members’ (i.e.,
5 PAGA Members) receipt of a PAGA Settlement Payment and such Class Members shall remain
6 bound by the Released PAGA Claims regardless of their Request for Exclusion from the Class
7 Settlement Payment.

8 1.36 “Response Deadline” means the date that is sixty (60) calendar days after the
9 Settlement Administrator mails the Class Notice to Class Members and the last date on which Class
10 Members eligible for Class Settlement Payments only may: (a) postmark or fax a Request for
11 Exclusion to the Administrator (as set forth in Paragraph 3.6); (b) postmark or fax a Notice of
12 Objection (as set forth in Paragraph 3.7) to the Settlement to the Administrator; or (c) postmark or
13 fax a Dispute (as set forth in Paragraph 3.5) to the Settlement to the Administrator.

14 1.37 “Settlement Account” means the account established by the Administrator pursuant
15 to the terms of this Stipulation into which all monies funded by Defendant under the terms of the
16 Settlement shall be deposited and from which all monies payable under the terms of this Settlement
17 shall be paid, as set forth herein.

18 1.38 “Settlement Administration Costs” means the amount to be paid to the Settlement
19 Administrator from the Maximum Settlement Amount for the administration of the Settlement. The
20 Settlement Administration Costs amount is presently estimated not to exceed Nine Thousand Five
21 Hundred Dollars (\$9,500.00). If the Settlement Administration Costs are awarded in an amount
22 less than Nine Thousand Five Hundred Dollars (\$9,500.00), the unawarded portion shall be a part
23 of the Net Settlement Amount and distributed to Settlement Class Members as provided in this
24 Agreement.

25 1.39 “Settlement Class Members” or “Settlement Class” means all Class Members who
26 do not submit a valid and timely Request for Exclusion.

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) unpaid
4 meal period and rest period compensation, (iii) failure to pay all wages on a timely basis and at
5 termination, (iv) failure to provide accurate itemized wage statements, and (viii) violation of the
6 California Business and Professions Code. The Parties engaged in informal, confidential discovery
7 for the purpose of settlement discussions. On April 21, 2022, the Parties attended a mediation with
8 Dennis F. Moss, Esq. in an attempt to resolve the Action. Following the mediation, the parties
9 accepted a mediator's proposal that resolved the Action, which included that Plaintiff would file an
10 amended Complaint to add a PAGA claim prior to seeking preliminary approval of the Settlement.
11 Pursuant to stipulation, Plaintiff thereafter filed its First Amended Class Action Complaint on
12 August 18, 2022. On October 4, 2022 Plaintiff filed a Motion for Preliminary Approval of Class
13 Action Settlement which was thereafter set for hearing on November 29, 2022 before being
14 continued on the Court's own motion to January 23, 2023. On or about December 23, 2022, the
15 Parties executed a First Amended Class Action Settlement Agreement so as to reflect a new name
16 for one of the Class Counsel law firms and correct several typos in the agreement. On January 20,
17 2023 the Court issued an Order, captioned "Rulings/Orders Re: Motion for Preliminary Approval
18 of Class Action Settlement; Addendum," which continued the preliminary approval hearing to June
19 7, 2023 and requested additional information about, and several modifications to, the proposed
20 class settlement and/or notice. The Parties thereafter revised the settlement as reflected in this
21 Second Amended Class Action and PAGA Settlement Agreement and Release.

22 2.2 Certification of the Settlement Class. The Parties stipulate and agree to the
23 certification of this Action for purposes of this Settlement only. Should the Settlement not become
24 final and effective as herein provided, class certification shall immediately be set aside (subject to
25 further proceedings on motion of any party to certify or deny certification thereafter). The Parties'
26 willingness to stipulate to class certification as part of the Settlement shall have no bearing on, and
27 shall not be admissible in or considered in connection with, the issue of whether a class should be
28 certified in a non-settlement context in this Action and shall have no bearing on, and shall not be

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1 admissible or considered in connection with, the issue of whether a class should be certified in any
2 other lawsuit.

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

17 2.4 Defendant's Reasons for Settlement. Defendant has concluded that any further
18 defense of this litigation would be protracted and expensive for all Parties. Substantial amounts of
19 time, energy, and resources of Defendant have been and, unless this Settlement is made, will
20 continue to be, devoted to the defense of the claims asserted by Plaintiff. Defendant has also taken
21 into account the risks of further litigation in reaching its decision to enter into this Settlement.
22 Despite continuing to contend that it is not liable for any of the claims set forth by Plaintiff in the
23 Action, Defendant has, nonetheless, agreed to settle in the manner and upon the terms set forth in
24 this Agreement to put to rest the claims alleged in the Action.

25 2.5 Class Members' Claims. Plaintiff, on behalf of Class Members and PAGA
26 Members, has claimed and continues to claim that the Released Class Claims and Released PAGA
27 Claims have merit and give rise to liability on the part of Defendant. This Agreement constitutes
28 Plaintiff's good faith compromise of disputed claims. Nothing contained in this Agreement (and
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1 exhibits/attachments hereto), no documents referred to herein, and no action taken to carry out this
2 Agreement may be construed or used as an admission by or against the Class Members, PAGA
3 Members or Class Counsel as to the merits or lack thereof of the claims asserted.

4 2.6 Defendant's Defenses. Defendant has claimed and continues to claim that the
5 Released Class Claims and Released PAGA Claims have no merit and do not give rise to liability.
6 Moreover, Defendant contends that a substantial number of Defendant's employees entered into
7 enforceable arbitration agreements which require them to individually arbitrate all of their claims
8 in the Action. This Agreement constitutes Defendant's good faith compromise of disputed claims.
9 Nothing contained in this Agreement, no documents referred to herein, and no action taken to carry
10 out this Agreement may be construed or used as an admission by or against Defendant as to the
11 merits or lack thereof of the claims asserted.

12 2.7 Maximum Amount Payable by Defendant. Under the terms of this Settlement, the
13 maximum amount payable by Defendant shall not exceed the Maximum Settlement Amount.
14 However, notwithstanding the foregoing, in addition to the Maximum Settlement Amount,
15 Defendant shall also pay the employer share of payroll taxes due and payable on Class Settlement
16 Payments as a result of this Settlement.

17 **3. TERMS OF AGREEMENT**

18 The Parties agree as follows:

19 3.1 Releases Given by Plaintiff and the Settlement Class.

20 3.1.1 As To All Settlement Class Members and PAGA Members. As of the date
21 Defendant funds the Settlement (as set forth in Paragraph 3.10) all Settlement Class Members,
22 including Plaintiff, release the Released Parties from the Released Class Claims, and all PAGA
23 Members, including Plaintiff, release the Released PAGA Claims.

24 3.1.2 General Release of Class Representative's Claims. Plaintiff releases and
25 discharges all Released Parties from any and all claims relating to or arising from his employment
26 with Defendant including but not limited to: any and all wage-and-hour claims arising under the
27 laws of the State of California, including, without limitation, statutory, constitutional, contractual,
28 and/or common law claims for wages, damages, restitution, unreimbursed expenses, equitable

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1 relief, penalties, liquidated damages, and/or punitive damages (including, without limitation, claims
2 under any applicable Industrial Welfare Commission Wage Order, the California Private Attorneys
3 General Act, or any other provision of the California Labor Code); 42 U.S.C. § 1981; the Americans
4 With Disabilities Act; the Family and Medical Leave Act; the Fair Labor Standards Act; the
5 Employee Retirement Income Security Act; the Occupational Safety and Health Act; the Worker
6 Adjustment and Retraining Notification Act, as amended; the California Unfair Competition Law
7 (Cal. Bus. & Prof. Code § 17200, *et seq.*); any state, civil, or statutory laws, including any and all
8 human rights laws and laws against discrimination; any other federal, state, or local statutes, codes,
9 or ordinances; any common law, contract law, or tort law cause of action; and any claims for
10 interest, attorneys' fees, and/or costs. Plaintiff expressly waives the protections of California Civil
11 Code section 1542, which reads as follows:

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

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

21 3.2 Tax Liability. The Parties make no representations as to the tax treatment or legal
22 effect of the payments called for hereunder, and Class Members and PAGA Members are not
23 relying on any statement or representation by the Parties in this regard. Class Members and PAGA
24 Members understand and agree that they will be responsible for the payment of any taxes and
25 penalties assessed on the payments described herein and will hold the Parties free and harmless
26 from and against any claims resulting from treatment of such payments as non-taxable damages,
27 including the treatment of such payments as not subject to withholding or deduction for payroll and
28 employment taxes.

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1 3.3 Settlement Approval and Implementation Procedures. As part of this Settlement,
2 the Parties agree to the following procedures for obtaining the Court's preliminary approval of the
3 Settlement, certifying a Class for settlement purposes only, notifying Class Members and PAGA
4 Members of the Settlement, obtaining the Court's final approval of the Settlement, and processing
5 the Class Settlement Payments and PAGA Settlement Payments.

6 3.3.1 Preliminary Approval and Certification. The Parties will jointly submit this
7 Stipulation to the Court for its preliminary approval. Such submission will include this Agreement,
8 the proposed Class Notice, and any motions, memoranda, and evidence as may be necessary for
9 the Court to determine that this Agreement is fair, adequate, and reasonable. The Parties agree to
10 request the Court to enter an order approving the certification of the Class after the preliminary
11 approval hearing in accordance with California Rules of Court rule 3.769(c).

12 3.3.2 Class Information. No more than fourteen (14) days after the entry of the
13 Preliminary Approval Order, Defendant shall provide the Administrator with the Class Information
14 for purposes of administering the Settlement.

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

27 3.3.4 Notice By First Class U.S. Mail. No more than fourteen (14) calendar days
28 after receiving the Class Information from Defendant as provided herein, the Administrator shall

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1 mail copies of the Class Notice to all Class Members and PAGA Members by First-Class U.S.
2 Mail. Prior to mailing the Class Notices, the Administrator will use the United States Postal Service
3 National Change of Address Database to locate updated addresses to ensure that the Class Notice
4 is sent to all Class Members and PAGA Members at the addresses most likely to result in receipt
5 of the Class Notice. It will be conclusively presumed that, if an envelope so mailed has not been
6 returned by the Response Deadline, the Class Member and/or PAGA Member received the Class
7 Notice.

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

27 3.3.6 Compliance with the procedures specified in Paragraphs 3.3.2 through 3.3.5
28 herein shall constitute due and sufficient notice to Class Members of this Settlement and shall
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1 satisfy the requirement of due process. Nothing else shall be required of, or done by, the Parties,
2 Class Counsel, and Defense Counsel to provide notice of the proposed Settlement.

3 3.4 Translation of Class Notice. A Spanish and English version of the Class Notice will
4 be mailed to each Class Member. The Administrator shall be responsible for translating the Class
5 Notice from English to Spanish. Costs of translation are included in the Settlement Administration
6 Costs.

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

20 3.6 Requests for Exclusion (Opt Outs). The Class Notice shall state that Class Members
21 who wish to exclude themselves from the Class Settlement Payment and Released Class Claims
22 must submit a written statement to the Administrator ("Request for Exclusion"). The Request for
23 Exclusion must: (1) contain the name, address, telephone number, last four digits of the Social
24 Security number, and signature of the Class Member; (2) contain the case name and number of the
25 Action; (3) clearly indicate that the Class Member seeks to exclude him or herself from the Class
26 Settlement Payment and Released Class Claims; and (4) be postmarked or fax-stamped on or before
27 the Response Deadline and returned to the Administrator at the specified address or fax telephone
28 number. Any Class Member who requests to be excluded from the Class Settlement Payment will

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1 not be entitled to any recovery for the Class Claims under the Settlement and will not be bound by
2 the terms of the Settlement with respect to the Class Claims or have any right to object, appeal, or
3 comment thereon. Class Members who receive a Class Notice but fail to submit a valid and timely
4 Request for Exclusion shall be bound by all terms of the Settlement and any Final Approval Order
5 and Judgment entered in this Action if the Settlement is approved by the Court. No later than
6 fourteen (14) calendar days after the Response Deadline, the Administrator shall provide Defense
7 Counsel with a complete list of all members of the Class who have timely submitted Requests for
8 Exclusion. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage
9 members of the Class to submit Requests for Exclusion from the Settlement. Any Class Member
10 who submits a valid and timely Request for Exclusion shall forfeit his or her right to receive a Class
11 Settlement Payment under this Agreement, the amount of which will be part of the Net Settlement
12 Amount to be distributed to Settlement Class Members as provided in this Agreement, but will still
13 release the Released PAGA Claims and receive a PAGA Settlement Payment (if eligible).

14 3.7 Objections. The Class Notice shall state that Settlement Class Members (*i.e.*,
15 Class Members who have not excluded themselves from the Settlement) who wish to object to the
16 Class Claims Settlement should submit a written statement of objection (“Notice of Objection”)
17 on or before the Response Deadline to the Administrator. The Notice of Objection should:
18 (1) contain the name, address, telephone number, last four digits of the Social Security number,
19 and signature of the Class Member; (2) contain the case name and number of the Action;
20 (3) clearly indicate that the Class Member seeks to object to the Class Claims Settlement; (4) state
21 the legal and factual basis for the objection; (5) state whether the Settlement Class Member
22 intends to appear at the Final Approval Hearing; and (6) be postmarked or fax-stamped on or
23 before the Response Deadline and returned to the Administrator at the specified address or fax
24 telephone number. The Notice also informs the Class Members that the Court has agreed to hear
25 from any class member who attends the final approval hearing and asks to speak regarding his or
26 her objection, and regardless of whether or not the class member submitted a written objection or
27 notice to appear beforehand. The Administrator shall within five (5) calendar days of receiving a
28 Notice of Objection provide the Parties with copies of the Notices of Objection. The

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1 Administrator will lodge all Notices of Objection that it receives with the Court by attaching them
2 to its declaration to be filed with the Court in support of the motion for final approval of the
3 Settlement.

4 3.8 No Solicitation of Objections or Requests for Exclusion. The Parties agree to use
5 their best efforts to carry out the terms of this Settlement. At no time shall any of the Parties or
6 their counsel seek to solicit or otherwise encourage Class Members to submit Requests for
7 Exclusion or Notices of Objection or to appeal from the Court's Final Approval Order and
8 Judgment.

9 3.9 Uncashed Checks. If a Settlement check is returned to the Administrator as
10 undeliverable within thirty (30) calendar days of mailing to a Settlement Class Member, the
11 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace
12 search and, if another address is identified, shall re-mail the check to the newly identified address.
13 No portion of the Maximum Settlement Amount will revert to Defendant. If a Settlement check is
14 not cashed or deposited within one hundred eighty (180) calendar days after the date it is mailed to
15 a Settlement Class Member, it will be voided. The funds associated with such voided checks will
16 be transmitted to the Unclaimed Property Fund maintained by the State Controller's Office in the
17 names of the Settlement Class Members.

18 3.10 Funding of Settlement. Defendant is required to fully fund and pay Five Hundred
19 Fifteen Thousand Dollars (\$515,000.00) of the Maximum Settlement Amount on the earlier of July
20 1, 2023 or seven (7) days after the Effective Date of the Settlement. Defendant shall provide the
21 funds for the Settlement to the Administrator by wire transfer. The Administrator shall deposit the
22 funds in the Settlement Account.

23 3.11 Settlement Distributions. The Administrator will retain the funds from Defendant
24 in its trust account and shall distribute it the latter of fourteen (14) days after the Effective Date of
25 the Settlement or the date of the funding. The foregoing timing of the distribution, as approved by
26 the Court, shall apply to: (1) the Class Settlement Payment to Settlement Class Members; (2) the
27 Class Representative Service Payment; (3) the Class Counsel Award and Class Counsel Costs; (4)
28

the Settlement Administration Costs; and (5) the PAGA Payment to the LWDA and eligible PAGA Members. No portion of the Maximum Settlement Amount will revert to Defendant.

3.12 Class Settlement Payments and PAGA Settlement Payments.

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

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

- Total Workweeks = (1 x all Covered Employee Weeks)
- Workweek Value = Net Settlement Amount ÷ Total Workweeks
- Individual Class Settlement Payment = [(1 x individual Covered Employee Weeks) x Workweek Value]

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

3.12.4 The PAGA Settlement Payments payable to each PAGA Member shall be determined as follows:

- Pay Period Value = PAGA Settlement Amount ÷ total Compensable Pay Periods
- Individual PAGA Settlement Payment = individual Compensable Pay Periods x 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

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1 (if required). The Administrator shall issue the appropriate tax documents associated with the
2 PAGA Settlement Payments.

3 3.12.5 No benefit, including, but not limited to, pension benefits and/or 401(k),
4 shall increase or accrue as a result of any payment made as a result of the Settlement. Except for
5 the Class Representative's Enhancement Award, Class Members and PAGA Members are not
6 eligible to receive any compensation other than Class Settlement Payments and, if eligible, PAGA
7 Settlement Payments, as a result of this Settlement.

8 3.13 Class Representative Service Payment. Defendant agrees not to oppose or object to
9 any application or motion by Plaintiff to be appointed Class Representative and for a Class
10 Representative Service Payment of up to Seven Thousand Five Hundred Dollars (\$7,500.00). Any
11 portion of the requested Class Representative Service Payment that is not awarded shall be a part
12 of the Net Settlement Amount to be distributed to Settlement Class Members as provided in this
13 Agreement. The Class Representative Service Payment is intended to be in recognition of the Class
14 Representative's efforts and time as Class Representative. The Administrator shall issue an IRS
15 Form 1099-MISC to Plaintiff for his Class Representative Service Payment. Plaintiff shall be
16 solely and legally responsible to pay any and all applicable taxes on his Class Representative
17 Service Payment and shall hold harmless Defendant from any claim or liability for taxes, penalties,
18 or interest arising as a result of the Class Representative Service Payment. The Class
19 Representative Service Payment shall be in addition to Plaintiff's Class Settlement Payment and
20 PAGA Settlement Payment for which he is eligible. In the event the Court reduces or does not
21 approve the requested Class Representative Service Payment, Plaintiff shall not have the right to
22 revoke his agreement to the Settlement, which shall remain legally binding and enforceable on the
23 Parties.

24 3.14 Class Counsel Award and Class Counsel Costs. Defendant agrees not to oppose or
25 object to any application or motion by Class Counsel for attorneys' fees not to exceed thirty-five
26 percent (35%) (i.e., One Hundred Eighty Thousand Two Hundred Fifty Dollars And Zero Cents
27 (\$180,250) of the Maximum Settlement Amount and Class Counsel Costs not to exceed Eight
28 Thousand five Hundred Dollars and No Cents (\$8,500.00), as supported by declarations from Class

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1 Counsel, from the Maximum Settlement Amount. Class Counsel shall be solely and legally
2 responsible to pay all applicable taxes on the payment made pursuant to this Paragraph. The
3 Administrator shall issue an IRS Form 1099-MISC to Class Counsel for the payments made
4 pursuant to this Paragraph. In the event the Court reduces or does not approve the requested Class
5 Counsel Award and/or Class Counsel Costs, the Settlement shall remain legally binding and
6 enforceable on the Parties. Any amount requested by Class Counsel for the Class Counsel Award
7 and/or Class Counsel Costs and not granted by the Court shall be included in the Net Settlement
8 Amount before it is distributed as provided in this Agreement.

9 3.15 PAGA Payment. Subject to approval by the Court, the Parties shall allocate a total
10 of Thirty Thousand Dollars (\$30,000.00) for payment of penalties pursuant to PAGA per California
11 Labor Code section 2699(i) (*i.e.*, the PAGA Payment). 75% of the PAGA Payment (*i.e.*,
12 \$22,500.00) will be paid to California's Labor Workforce Development Agency ("LWDA") from
13 the Maximum Settlement Amount (*i.e.*, the LWDA Payment) by the Settlement Administrator. The
14 remaining 25% of the PAGA Payment (\$7,500.00) shall be distributed to PAGA Members as
15 described in Paragraph 3.12.4 (*i.e.*, the PAGA Settlement Payment). It is intended by the Parties
16 that the LWDA Payment shall satisfy the distribution requirements of Cal. Lab. Code § 2698, *et*
17 *seq.* If the Court awards a lesser amount for the PAGA Payment, then the LWDA Payment shall
18 be adjusted to 75% of the Court-approved amount, and the PAGA Settlement Payment shall be
19 adjusted to 25% of the Court-approved amount.

20 3.16 Plaintiff's Option to Terminate Settlement. Defendant represented that there were
21 18,515 Compensable Weeks during the Class Period through March 22, 2022. If the total number
22 of Compensable Weeks during the entirety of the Class Period exceeds this figure by fifteen (15%)
23 (*i.e.*, 21,292 Compensable Weeks), then the Parties will meet and confer in good faith regarding a
24 potential proportional increase in the Maximum Settlement Amount based on the Compensable
25 Weeks in excess of 18,515. If the Parties do not agree, then Plaintiff, in his sole discretion, may
26 nullify this Settlement in its entirety by giving notice to Defendant, in conformity with Paragraph
27 3.37 herein.

1 3.17 Defendant's Option to Terminate Settlement. If ten percent (10%) or more of the
2 Class Members, or a number of Class Members whose Class Settlement Payments represent ten
3 percent (10%) or more of the total of all Class Settlement Payments, validly elect not to participate
4 in the Settlement, Defendant will have the right to rescind the Settlement, and the Settlement and
5 all actions taken in its furtherance will be null and void. Defendant must exercise this right within
6 fifteen (15) days after the Administrator notifies the Parties of the number of opt-outs, which the
7 Administrator will do within ten (10) days after the deadline for submission of opt-outs. If
8 Defendant exercises the right to rescind, it will be responsible for the costs of administration of the
9 Settlement incurred through that time. If the option to terminate this Settlement is exercised by
10 Defendant, Defendant shall exercise it by providing written notice to Class Counsel, in conformity
11 with Paragraph 3.37 herein.

12 3.18 Settlement Administration Costs. The Administrator shall be paid for the costs of
13 administration of the Settlement from the Maximum Settlement Amount. Such costs of
14 administration are estimated not to exceed Nine Thousand Five Hundred Dollars (\$9,500.00). No
15 fewer than twenty-one (21) calendar days prior to the Final Approval Hearing, the Administrator
16 shall provide the Parties with a statement detailing the costs of administration. The Administrator,
17 on Defendant's behalf, shall have the authority and obligation to make payments, credits, and
18 disbursements, including payments and credits in the manner set forth herein, to Settlement Class
19 Members and PAGA Members calculated in accordance with the methodology set out in this
20 Agreement and orders of the Court. The Parties agree to cooperate in the Settlement administration
21 process and to make all reasonable efforts to control and minimize the cost and expenses incurred
22 in administration of the Settlement. The Parties each represent they do not have any financial
23 interest in the Administrator or otherwise have a relationship with the Administrator that could
24 create a conflict of interest. The Administrator shall be responsible for: processing and mailing
25 payments to Plaintiff, Class Counsel, Class Members, PAGA Members, and the LWDA; printing
26 and mailing the Class Notice to the Class Members as directed by the Court; receiving and reporting
27 the Requests for Exclusion, Disputes, or Notices of Objection submitted by Class Members
28 (including providing weekly status reports); providing declaration(s) as necessary in support of

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1 preliminary and/or final approval of this Settlement; payment of all applicable payroll taxes and
2 withholding and reporting of such payments; and other tasks as the Parties mutually agree or the
3 Court orders the Administrator to perform. The Administrator shall keep the Parties timely
4 apprised of the performance of all Administrator responsibilities. Any legally-mandated tax
5 reports, tax forms, tax filings, or other tax documents required by administration of this Agreement
6 shall be prepared by the Administrator. Any expenses incurred in connection with such preparation
7 shall be a cost of administration of the Settlement.

8 3.19 Final Approval Hearing. At a reasonable time following the Response Deadline,
9 the Court shall hold the Final Approval Hearing, where objections, if any, may be heard, and the
10 Court shall determine amounts properly payable for (i) the Class Counsel Award and Class Counsel
11 Costs, (ii) the Class Representative Service Payment, (iii) the PAGA Payment, and (iv) the
12 Settlement Administration Costs. The Court will hear from any Class Member who attends the
13 Final Approval Hearing and asks to speak regardless of whether the Class Member complied with
14 the Objection procedures in section 3.7.

15 3.20 Entry of Judgment. If the Court approves this Settlement at the Final Approval
16 Hearing, the Parties shall request that the Court enter judgment, with the Court retaining jurisdiction
17 over the Parties to enforce the terms of the judgment, pursuant to California Rules of Court rule
18 3.769. To provide notice of judgment to the Class, the Administrator will post the Court's Final
19 Approval Order and Judgment on its website for sixty (60) calendar days after the date of entry of
20 the Final Approval Order and Judgment, and no individualized notice will be required.

21 3.21 Nullification of Settlement Agreement. In the event: (i) the Court does not enter the
22 Preliminary Approval Order as provided herein; (ii) the Court does not grant final approval of the
23 Settlement as provided herein; (iii) the Court does not enter a Final Approval Order and Judgment
24 as provided herein; or (iv) the Settlement does not become final for any other reason, this Settlement
25 Agreement shall be null and void and any order or judgment entered by the Court in furtherance of
26 this Settlement shall be treated as void from the beginning. However, notwithstanding the
27 foregoing, the Parties will cooperate to obtain a Preliminary Approval Order and Final Approval
28 Order from the Court. In such a case, the Parties and any funds to be awarded under this Settlement

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1 shall be returned to their respective statuses as of the date and time immediately prior to the
2 execution of this Agreement, and the Parties shall proceed in all respects as if this Agreement had
3 not been executed, except that any fees already incurred by the Settlement Administrator shall be
4 paid by the Parties in equal shares. In the event an appeal is filed from the Court's Final Approval
5 Order and Judgment, or any other appellate review in this action is sought, administration of the
6 Settlement shall be stayed pending final resolution of the appeal or other appellate review.

7 3.22 No Admission by Defendant. Defendant denies any and all claims alleged in this
8 Action and denies all wrongdoing whatsoever. This Agreement is not a concession or admission
9 and shall not be used against Defendant as an admission or indication with respect to any claim of
10 any fault, concession, or omission by Defendant.

11 3.23 Dispute Resolution. Except as otherwise set forth herein, all disputes concerning
12 the interpretation, calculation of payment of settlement claims, or other disputes regarding
13 compliance with this Agreement shall be resolved as follows:

14 3.23.1 If Plaintiff or Class Counsel, on behalf of Plaintiff or any Settlement Class
15 Members and/or PAGA Member, or Defendant, at any time believe that the other Party has
16 breached or acted contrary to the Agreement, that Party shall notify the other Party in writing of
17 the alleged violation.

18 3.23.2 Upon receiving notice of the alleged violation or dispute, the responding
19 party shall have ten (10) business days to correct the alleged violation and/or respond to the
20 initiating party with the reasons why the Party disputes all or part of the allegation.

21 3.23.3 If the response does not address the alleged violation to the initiating party's
22 satisfaction, the Parties shall negotiate in good faith for up to ten (10) business days to resolve their
23 differences.

24 3.23.4 If thereafter the Parties still cannot resolve the dispute, the parties shall
25 utilize the services of Dennis F. Moss, Esq., in a good-faith attempt to mediate and resolve the
26 dispute, with the expense of the mediator to be shared equally by the Parties. If Mr. Moss is not
27 available to mediate the dispute, and the Parties do not agree to a different mediator, or either Party
28

1 desires to forego mediation of the dispute, the dispute may be submitted directly to the Court as set
2 forth in Paragraph 3.23.5.

3 3.23.5 If the Parties are thereafter still unable to resolve their differences after
4 twenty (20) business days, either Party may file a motion with the Court, including and not limited
5 to, pursuant to California Rules of Court rule 3.769 and/or California Civil Procedure Code section
6 664.6.

7 3.24 Exhibits and Headings. The terms of this Agreement include the terms set forth in
8 the attached Exhibits, which are incorporated by this reference as though fully set forth herein. The
9 Exhibits to this Agreement is an integral part of the Settlement. The descriptive headings of any
10 paragraphs or sections of this Agreement are inserted for convenience of reference only and do not
11 constitute a part of this Agreement.

12 3.25 Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action,
13 subject to necessary compliance with the Court's orders, except such proceedings necessary to
14 implement and complete the Settlement, in abeyance pending the Final Approval Hearing to be
15 conducted by the Court.

16 3.26 Amendment or Modification. This Agreement may be amended or modified only
17 by a written instrument signed by counsel for all Parties or their successors-in-interest and approved
18 by the Court.

19 3.27 Entire Agreement. This Agreement and attached Exhibits A and B constitute the
20 entire Agreement among the Parties, and no oral or written representations, warranties, or
21 inducements have been made to any Party concerning this Agreement or Exhibits A or B other than
22 the representations, warranties, and covenants contained and memorialized in the Agreement and
23 Exhibits A and B.

24 3.28 Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant
25 and represent they are expressly authorized by the Parties whom they represent to negotiate this
26 Agreement and to take all appropriate actions required or permitted to be taken by such Parties
27 pursuant to this Agreement to effectuate its terms and to execute any other documents required to
28 effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other

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1 and use their best efforts to effect the implementation of the Settlement. In the event the Parties
2 are unable to reach agreement on the form or content of any document needed to implement the
3 Settlement, or on any supplemental provisions that may become necessary to effectuate the terms
4 of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.
5 The persons signing this Agreement on behalf of Defendant represent and warrant that they are
6 authorized to sign this Agreement on behalf of Defendant. Plaintiff represents and warrants that he
7 is authorized to sign this Agreement and that he has not assigned any claim, or part of a claim,
8 covered by this Settlement to a third party.

9 3.29 Binding Nature of Agreement. This Agreement shall be binding upon, and inure to
10 the benefit of, the successors, heirs, assigns, and third-party beneficiaries of the Parties hereto, as
11 previously defined. To the extent permitted by law, the PAGA Members and Settlement Class
12 Members shall also be bound by this Agreement and any judgment relating thereto.

13 3.30 California Law Governs. All terms of this Agreement shall be governed by and
14 interpreted according to the laws of the State of California.

15 3.31 This Settlement is Fair, Adequate, and Reasonable. The Parties believe and stipulate
16 that this Settlement is a fair, adequate, and reasonable settlement of this Action and have arrived at
17 this Settlement after extensive, arm's-length, non-collusive negotiations, taking into account all
18 relevant factors, present and potential.

19 3.32 Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction
20 with respect to the interpretation, implementation, and enforcement of the terms of this Agreement
21 and all orders and judgments entered in connection therewith, and the Parties and their counsel
22 hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and
23 enforcing the Settlement embodied in this Agreement and all orders and judgments entered in
24 connection therewith.

25 3.33 Invalidity of Any Provision. Before declaring any provision of this Agreement
26 invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible
27 consistent with applicable precedents so as to define all provisions of this Agreement valid and
28 enforceable.

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1 3.34 No Right to Terminate Based on Reduction of Class Counsel Award or Class
2 Counsel Costs. The Parties agree that any reduction in the Class Counsel Award and Class Counsel
3 Costs shall not constitute grounds to terminate or void the Settlement or otherwise increase the
4 maximum amount payable by Defendant under this Agreement, which shall not exceed the
5 Maximum Settlement Amount defined herein.

6 3.35 Cooperation. The Parties agree to cooperate fully with one another to accomplish
7 and implement the terms of this Settlement. Such cooperation shall include, but not be limited to,
8 execution of such other documents and taking of such other actions as may be reasonably necessary
9 to timely fulfill the terms and approval by the Court of this Settlement. The Parties to this
10 Settlement shall use their best efforts, including all efforts contemplated by this Settlement and any
11 other efforts that may become necessary by Court order or otherwise, to effectuate this Settlement
12 and the terms set forth herein.

13 3.36 Publicity. Plaintiff and Class Counsel agree that they will not issue (before the date
14 of the filing of the motion for preliminary approval of this Settlement) any press releases, initiate
15 any contact with the press, respond to any press inquiry, post any new material on any internet
16 websites, or have any communication with the press about the Action, and/or the fact, amount, or
17 terms of the Settlement. Before the date of the filing of the motion for preliminary approval of the
18 Settlement, Plaintiff and Class Counsel will not initiate any contact with the Class Members, the
19 PAGA Members, or anyone else about the Settlement, except that: (a) Class Counsel, if contacted
20 by a Class Member or a PAGA Member, may respond that a settlement has been reached and that
21 the details will be communicated in a forthcoming Court-approved notice; and (b) Plaintiff, if
22 contacted by a Class Member or a PAGA Member, may respond only that the Class Member or
23 PAGA Member should contact Class Counsel. Nothing in this paragraph shall prevent Class
24 Counsel and Plaintiff from undertaking all required submissions to the LWDA as required by the
25 PAGA statute in connection with this Settlement. Class Counsel and Plaintiff will also provide
26 Defendant's Counsel with a copy of the papers submitted to the LWDA, either prior to or on the
27 same day as the submission to the LWDA.

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

5 To Plaintiff:

6 Kevin R. Allen, Esq.
7 Allen Attorney Group PC
8 2121 N. California Blvd.
9 Suite 290
10 Walnut Creek, CA 94596
11 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
 LeslieAbbott@paulhastings.com

12 3.38 Execution by Class Members. It is agreed that it is impossible or impractical to have
13 each Class Member and PAGA Member execute this Settlement Agreement. The Notice of
14 Settlement will advise all Class Members and PAGA Members of the binding nature of the
15 Released Class Claims as to Settlement Class Members and Released PAGA Claims as to Class
16 Members and PAGA Members, and such shall have the same force and effect as if each Class
17 Member and PAGA Member executed this Agreement.

18 3.39 Execution by Plaintiff. Plaintiff, by signing this Stipulation, is bound by the terms
19 herein.

20 3.40 Drafting of the Agreement. The Parties hereto agree that the terms and conditions
21 of this Stipulation of Settlement are the result of lengthy, intensive, arm's-length, non-collusive
22 negotiations and a neutrally-facilitated mediation between the Parties, and that this Agreement shall
23 not be construed in favor of or against any of the Parties by reason of their participation in the
24 drafting of this Agreement.

25 3.41 Counterparts. This Agreement shall become effective upon its execution by all of
26 the undersigned, and each consents to electronic signatures. Plaintiff, Class Counsel, Defendant,
27 and Defense Counsel may execute this Stipulation in counterparts, and execution of counterparts
28 shall have the same force and effect as if each had signed the same instrument. Copies of the
executed Agreement, including scans or PDF versions, shall be effective for all purposes as though
the signatures contained therein were original signatures.

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1 **STIPULATED, AGREED, AND ACCEPTED.**

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4 Date: _____ **PLAINTIFF MARCO GUTIERREZ**

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Signature: _____

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9 **DEFENDANT DEL WEST ENGINEERING, INC.**

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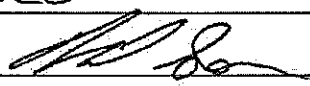
11 Date: 5/17/2023

Print Name: Mark Sommer

12

Title: CEO

13

Signature: 

14

15 **APPROVED.**

16

17 **ALLEN ATTORNEY GROUP P.C.**
18 **KEVIN R. ALLEN**
19 **Attorneys for Representative Plaintiff**
20 **and the Plaintiff Class**

21

22 Date: _____ Print Name: _____

23

Signature: _____

24

25

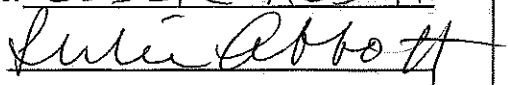
26 **PAUL HASTINGS LLP**
27 **Counsel for Defendant**

28

29 Date: 5/17/2023

Print Name: LESLIE ABBOTT

30

Signature: 

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1 **STIPULATED, AGREED, AND ACCEPTED.**

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Date: 5/15/2023 **PLAINTIFF MARCO GUTIERREZ**

Signature: M Gutierrez

DEFENDANT DEL WEST ENGINEERING, INC.

Date: _____ Print Name: _____
Title: _____
Signature: _____

APPROVED.

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

Date: _____ Print Name: _____
Signature: _____

PAUL HASTINGS LLP
Counsel for Defendant

Date: _____ Print Name: _____
Signature: _____

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 a 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 no 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 (*see* Section X *infra*) 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 •
7 **IMPORTANT NOTE: If the Court approves the Settlement at the Final**
8 **Approval Hearing on XXXXX, then your payment will be issued in approx. X,**
9 **2023. IT IS VERY IMPORTANT THAT YOU INFORM THE SETTLEMENT**
10 **ADMINISTRATOR (identified in Sections 10 and 15) IF THIS NOTICE WAS**
11 **SENT TO THE WRONG ADDRESS OR YOU MOVE BEFORE RECEIVING**
12 **YOUR CHECK!!**

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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 the Maximum Settlement Amount
25 on the earlier of July 1, 2023 or seven (7) days after the Effective Date of the Settlement. *See*
26 Section 9 of this Notice for the definition of “Effective Date.” Defendant shall provide the funds
27 for the Settlement to the Administrator by wire transfer.

28 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
 \$XXXXX). The remainder, referred to as the Net Settlement Amount, will be distributed in full
 to Settlement Class Members who do not request to be excluded from the Settlement and to
 PAGA Members regardless of whether they opt out or not.

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

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Individual Class Settlement Payment

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

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

PAGA Settlement Payment

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

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

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

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

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

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Tax Treatment of Your Payments

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

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

7. What am I giving up?

Released Class Claims

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

Released PAGA Claims

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

HOW TO GET A SETTLEMENT PAYMENT

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 **IMPORTANT REMINDER: If this was sent to the wrong address, or you move before**
6 **receiving your settlement checks and tax return documents, then it is very important that**
7 **you 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.

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

9 If approved then Defendants will be required to fund the \$515,000.00 Maximum Settlement
10 Amount in on the earlier of July 1, 2023 or seven (7) days after the Effective Date of the
Settlement.

11 “Effective Date” means the date by when both of the following have occurred: (a) the Court
12 enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment
is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating
13 Class Member objects to the Settlement, the date the Court enters Judgment; (b) if one or more
Participating Class Members objects to the Settlement, the last date when a timely notice of
14 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”).

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

16 If approved by the Court then all payments required by the Settlement will be paid out the latter
17 of fourteen (14) days after the Effective Date of the Settlement or the date of the funding.

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

22 **EXCLUDING YOURSELF FROM THE SETTLEMENT**

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

24 If you do not want to participate in the Settlement (“opt-out”), you must submit a timely written
25 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
26 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
27 Payment even if they file a timely request for exclusion, to the extent they worked during the
PAGA Period.

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

3 **INSERT SETTLEMENT ADMINISTRATOR INFO**

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

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

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

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

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

17 **THE LAWYERS REPRESENTING YOU**

18 **13. Do I have a lawyer in this case?**

19 The Court has appointed Kevin R. Allen of Allen Attorney Group, PC and Nicolas Orihuela of
20 Orihuela Law Firm PC as class counsel. They represent the named Plaintiff and the Settlement
21 Class Members and PAGA Members in this lawsuit. Their contact information is listed in
22 Paragraph 21 ("Getting More Information").

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

24 Subject to Court approval, the Maximum Settlement Amount will be used to pay Class Counsel
25 their actual litigation costs and up to \$180,250.00 in attorneys' fees (i.e., 35% of the Maximum
26 Settlement Amount). It will also be used to pay Plaintiff up to \$7,500.00 as a "Class
27 Representative Enhancement Award" for his participation in this lawsuit and for taking on the
28 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
\$XXXXX.

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

OBJECTING TO THE SETTLEMENT

15. How do I object to the Settlement?

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

5
6 Settlement Administrator
[insert info]
7

8 A written objection should: (1) contain the name, address, telephone number, last four digits of
the Social Security number, and signature of the Class Member; (2) contain the case name and
9 number of the Action; (3) clearly indicate that the Class Member seeks to object to the Class
Claims Settlement; (4) state the legal and factual basis for the objection; (5) state whether the
10 Settlement Class Member intends to appear at the Final Approval Hearing; and (6) be postmarked
or fax-stamped on or before the Response Deadline and returned to the Administrator at the
11 specified address or fax telephone number.

12 **You do not need to file a written objection. Any Class Member, or person purporting to
13 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
14 delivered to the Parties.**

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

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

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

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

21 The Court will hold a hearing to decide whether to approve the settlement. You may appear in
22 person or via phone using a third-party service provider called CourtCall (*see* Section 15) and you
may ask to speak, but you don’t have to.

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

24 The Court will hold a Final Approval Hearing on **[insert time/date]** in Department 9 at the
25 Superior Court of California for the County of Los Angeles, located at ADDRESS, **Los Angeles,
California**. The hearing may be moved to a different date and/or time without additional notice.
26 At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate.
27 If there are objections, the Court will consider them. The Court will only listen to people who
ask to speak at the hearing. The Court will also decide how much to pay Class Counsel in fees
28 and costs. After the hearing, the Court will decide whether to approve the Settlement. We do

1 not know how long these decisions will take.

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

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

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

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

11 **IF YOU DO NOTHING**

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

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

15 **GETTING MORE INFORMATION**

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

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

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

24 KEVIN R. ALLEN (SBN 237994)
ALLEN ATTORNEY GROUP PC
2121 N. California Blvd., Suite 290
Walnut Creek, CA 94596
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Fax (925) 334-7470
kevin@allenattorneygroup.com

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Fax: (323) 965-2146
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Exhibit 2

1 ALLEN ATTORNEY GROUP P.C.
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15 Attorneys for Representative Plaintiff
16 and the Plaintiff Class

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25 Facsimile: (213) 627-0705

26 Attorneys for Defendant

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

Plaintiff,

vs.

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

Defendants.

CASE NO. 21STCV45477

SECOND AMENDED CLASS
ACTION AND PAGA
SETTLEMENT AGREEMENT AND
RELEASE

Dept: Dept. 9
Judge: Hon. Yvette Palazuelos

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

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SECOND AMENDED CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND RELEASE

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

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

6 **1. DEFINITIONS**

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

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

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

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

21 1.4 “Class Claims” means all claims and causes of action alleged in the Complaint
22 except the claim under the Private Attorneys General Act (“PAGA”).

23 1.5 “Class Counsel” means Kevin R. Allen of Allen Attorney Group P.C., and Nicolas
24 Orihuela of Orihuela Law Firm, PC.

25 1.6 “Class Counsel Costs” means expenses and costs actually incurred by Class Counsel
26 according to proof and subject to Court approval for Class Counsel’s litigation and resolution of
27 this Action, not to exceed Eight Thousand, Five Hundred Dollars and No Cents (\$8,500). Class
28 Counsel Costs shall be paid from the Maximum Settlement Amount. Any portion of the requested

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1 Class Counsel Costs that is not awarded to Class Counsel shall be a part of the Net Settlement
2 Amount and distributed to Settlement Class Members as provided in this Agreement.

3 1.7 "Class Information" means information regarding Class Members and PAGA
4 Members that Defendant will in good faith compile from its records and provide only to the
5 Settlement Administrator. Class Information shall be provided as a password-protected, Microsoft
6 Excel spreadsheet and shall include each Class and PAGA Member's: (a) full name; (b) last known
7 address; (c) last known telephone number; (d) Social Security number; (e) start date of employment
8 and/or assignment at Defendant; (f) end date of employment and/or assignment at Defendant; and
9 (g) Compensable Weeks (as defined below in Paragraph 1.14); and (h) Compensable Pay Periods
10 (as defined in Paragraph 1.13). Because Social Security numbers are included in the Class
11 Information, the Settlement Administrator shall maintain the Class Information in confidence, it
12 shall be transmitted in password-protected file(s), and access shall be limited to those with a need
13 to use the Class Information as part of the administration of the Settlement. The Class Information
14 shall not be provided to Class Counsel for any purpose but may be disclosed by the Settlement
15 Administrator to the extent necessary to resolve a dispute by a Class or PAGA Member regarding
16 their Compensable Weeks or Compensable Pay Periods.

17 1.8 "Class Counsel Award" means attorneys' fees for Class Counsel's litigation and
18 resolution of this Action not to exceed Thirty-Five Percent (35%) of the Maximum Settlement
19 Amount (i.e., One Hundred Eighty Thousand, Two Hundred Fifty Dollars And Zero Cents
20 (\$180,250)), subject to approval by the Court. The Court shall review the requested amount of the
21 Class Counsel Award, and the approved amount shall be paid from the Maximum Settlement
22 Amount. Any portion of the requested Class Counsel Award that is not awarded to Class Counsel
23 shall be a part of the Net Settlement Amount and distributed to Settlement Class Members as
24 provided in this Agreement.

25 1.9 "Class Period" means the period from December 14, 2017 through and including
26 June 26, 2022 (i.e., 60 days from the date the Parties accepted the mediator's proposal).

27 1.10 "Class Representative" means Plaintiff Marco Gutierrez.
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1.11 "Class Representative Service Payment" means the payment to the Class Representative for initiating the Action and providing services in support of the Action. Class Counsel shall seek a Class Representative Service Payment for Plaintiff of up to Seven Thousand Five Hundred Dollars (\$7,500.00). Defendant agrees not to oppose the motion by Plaintiff for said Class Representative Service Payment, so long as the request does not exceed this amount. Any portion of the requested Class Representative Service Payment that is not awarded shall be a part of the Net Settlement Amount and distributed to Settlement Class Members as provided in this Agreement.

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

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

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

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

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

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

1.18 "Effective Date" means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the date the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the last date when a timely

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1 notice of appeal from the Judgment may be filed; or (c) if a timely appeal from the Judgment is
2 filed, the date the appellate court affirms the Judgment and issues a remittitur ("Final").

3 1.19 "Final Approval Hearing" means the hearing held on the motion for final approval
4 of the Settlement.

5 1.20 "Final Approval Order and Judgment" means the Court's entry of an order granting
6 final approval of the Settlement and entering judgment in this Action based thereon, in conformity
7 with California Rules of Court rule 3.769(h).

8 1.21 "LWDA Payment" means 75% of the PAGA Payment, which will be paid to the
9 California Labor Workforce Development Agency ("LWDA") per California Labor Code
10 section 2699(i).

11 1.22 "Maximum Settlement Amount" means Five Hundred Fifteen Thousand Dollars and
12 No Cents (\$515,000.00). Defendant's obligation to fund the Maximum Settlement Amount is
13 limited to \$515,000.00 plus the employer's share of payroll taxes. No portion of the Maximum
14 Settlement Amount will revert to Defendant.

15 1.23 "Net Settlement Amount" means the amount of monies available for distribution to
16 Settlement Class Members, which shall be the Maximum Settlement Amount less the Class Counsel
17 Award, Class Counsel Costs, Class Representative Service Payment, Settlement Administration
18 Costs, and PAGA Payment.

19 1.24 "Notice of Class Action Settlement" or "Class Notice" means the Notice of Class
20 Action Settlement a copy of which is attached hereto as Exhibit B.

21 1.25 "PAGA Members" means all current and former individuals who have been
22 employed by Del West Engineering, Inc. as a non-exempt employee in one or more of the job titles
23 listed in Exhibit A herein within the State of California at any time during the PAGA Period.

24 1.26 "PAGA Payment" means the allocation of Thirty Thousand Dollars (\$30,000.00),
25 payable from the Maximum Settlement Amount, subject to approval by the Court, for penalties
26 under PAGA. 75% of the PAGA Payment is the LWDA Payment and will be paid to the LWDA.
27 The remaining 25% of the PAGA Payment is the PAGA Settlement Payment and will be paid to
28 PAGA Members as described in Paragraph 3.12.4.

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1 1.27 "PAGA Period" means the period from December 14, 2020 through and including
2 June 26, 2022 (i.e., 60 days from the date the Parties accepted the mediator's proposal).

3 1.28 "PAGA Settlement Payment" means the amount payable to each PAGA Member
4 for the release of his or her Released PAGA Claims, regardless of whether the PAGA Member
5 objects, opts out, or otherwise excludes himself or herself from the release of Released Class
6 Claims. The amount of the PAGA Settlement Payment distributed to each PAGA Member shall
7 be calculated pursuant to Paragraph 3.12.4 herein.

8 1.29 "Plaintiff" means Marco Gutierrez, the named plaintiff in the Action.

9 1.30 "Preliminary Approval" or "Preliminary Approval Date" means the date the Court
10 enters an Order preliminarily approving the Settlement.

11 1.31 "Preliminary Approval Order" means the Order granting preliminary approval of
12 the Settlement.

13 1.32 "Released Class Claims" means any and all wage-and-hour individual and class
14 claims, rights, demands, liabilities, and/or causes of action of every nature and description, arising
15 from or related to any and all claims during the Class Period that were asserted or could have been
16 asserted based on the facts alleged in the Complaint, including, without limitation, statutory,
17 constitutional, contractual, and/or common law claims for wages, damages, unpaid costs, penalties,
18 liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, or
19 equitable relief.

20 1.33 "Released PAGA Claims" means any and all individual and representative PAGA
21 claims for civil penalties, attorneys' fees, and costs during the PAGA Period under California Labor
22 Code section 2698, *et seq.* and any applicable IWC Wage Order that were or could have been
23 asserted based on the facts alleged in the Complaint and Plaintiff's notice to the LWDA.

24 1.34 "Released Parties" means Del West Engineering, Inc., and all of its current and
25 former parents, subsidiaries, predecessors and successors, and affiliated entities, and each of their
26 respective officers, directors, owners, employees, partners, shareholders, agents, attorneys,
27 insurers, and assigns, and each of them.

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1 1.35 "Request for Exclusion" means a Class Member's request to be excluded from the
2 Class Settlement Payment that is made in conformity with this Agreement, the instructions in the
3 Class Notice, and the Court's orders, and that results in the Class Member not being bound by the
4 Released Class Claims. A Request for Exclusion shall not apply to eligible Class Members' (i.e.,
5 PAGA Members) receipt of a PAGA Settlement Payment and such Class Members shall remain
6 bound by the Released PAGA Claims regardless of their Request for Exclusion from the Class
7 Settlement Payment.

8 1.36 "Response Deadline" means the date that is sixty (60) calendar days after the
9 Settlement Administrator mails the Class Notice to Class Members and the last date on which Class
10 Members eligible for Class Settlement Payments only may: (a) postmark or fax a Request for
11 Exclusion to the Administrator (as set forth in Paragraph 3.6); (b) postmark or fax a Notice of
12 Objection (as set forth in Paragraph 3.7) to the Settlement to the Administrator; or (c) postmark or
13 fax a Dispute (as set forth in Paragraph 3.5) to the Settlement to the Administrator.

14 1.37 "Settlement Account" means the account established by the Administrator pursuant
15 to the terms of this Stipulation into which all monies funded by Defendant under the terms of the
16 Settlement shall be deposited and from which all monies payable under the terms of this Settlement
17 shall be paid, as set forth herein.

18 1.38 "Settlement Administration Costs" means the amount to be paid to the Settlement
19 Administrator from the Maximum Settlement Amount for the administration of the Settlement. The
20 Settlement Administration Costs amount is presently estimated not to exceed Nine Thousand Five
21 Hundred Dollars (\$9,500.00). If the Settlement Administration Costs are awarded in an amount
22 less than Nine Thousand Five Hundred Dollars (\$9,500.00), the unawarded portion shall be a part
23 of the Net Settlement Amount and distributed to Settlement Class Members as provided in this
24 Agreement.

25 1.39 "Settlement Class Members" or "Settlement Class" means all Class Members who
26 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) unpaid
4 meal period and rest period compensation, (iii) failure to pay all wages on a timely basis and at
5 termination, (iv) failure to provide accurate itemized wage statements, and (viii) violation of the
6 California Business and Professions Code. The Parties engaged in informal, confidential discovery
7 for the purpose of settlement discussions. On April 21, 2022, the Parties attended a mediation with
8 Dennis F. Moss, Esq. in an attempt to resolve the Action. Following the mediation, the parties
9 accepted a mediator's proposal that resolved the Action, which included that Plaintiff would file an
10 amended Complaint to add a PAGA claim prior to seeking preliminary approval of the Settlement.

11 Pursuant to stipulation, Plaintiff thereafter filed its First Amended Class Action Complaint on
12 August 18, 2022. On October 4, 2022 Plaintiff filed a Motion for Preliminary Approval of Class
13 Action Settlement which was thereafter set for hearing on November 29, 2022 before being
14 continued on the Court's own motion to January 23, 2023. On or about December 23, 2022, the
15 Parties executed a First Amended Class Action Settlement Agreement so as to reflect a new name
16 for one of the Class Counsel law firms and correct several typos in the agreement. On January 20,
17 2023 the Court issued an Order, captioned "Rulings/Orders Re: Motion for Preliminary Approval
18 of Class Action Settlement; Addendum," which continued the preliminary approval hearing to June
19 7, 2023 and requested additional information about, and several modifications to, the proposed
20 class settlement and/or notice. The Parties thereafter revised the settlement as reflected in this
21 Second Amended Class Action and PAGA Settlement Agreement and Release.

22 2.2 Certification of the Settlement Class. The Parties stipulate and agree to the
23 certification of this Action for purposes of this Settlement only. Should the Settlement not become
24 final and effective as herein provided, class certification shall immediately be set aside (subject to
25 further proceedings on motion of any party to certify or deny certification thereafter). The Parties'
26 willingness to stipulate to class certification as part of the Settlement shall have no bearing on, and
27 shall not be admissible in or considered in connection with, the issue of whether a class should be
28 certified in a non-settlement context in this Action and shall have no bearing on, and shall not be

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admissible or considered in connection with, the issue of whether a class should be certified in any other lawsuit.

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

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

2.5 Class Members' Claims. Plaintiff, on behalf of Class Members and PAGA Members, has claimed and continues to claim that the Released Class Claims and Released PAGA Claims have merit and give rise to liability on the part of Defendant. This Agreement constitutes Plaintiff's good faith compromise of disputed claims. Nothing contained in this Agreement (and

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exhibits/attachments hereto), no documents referred to herein, and no action taken to carry out this Agreement may be construed or used as an admission by or against the Class Members, PAGA Members or Class Counsel as to the merits or lack thereof of the claims asserted.

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

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

3. TERMS OF AGREEMENT

The Parties agree as follows:

3.1 Releases Given by Plaintiff and the Settlement Class.

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

3.1.2 General Release of Class Representative's Claims. Plaintiff releases and discharges all Released Parties from any and all claims relating to or arising from his employment with Defendant including but not limited to: any and all wage-and-hour claims arising under the laws of the State of California, including, without limitation, statutory, constitutional, contractual, and/or common law claims for wages, damages, restitution, unreimbursed expenses, equitable

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1 relief, penalties, liquidated damages, and/or punitive damages (including, without limitation, claims
2 under any applicable Industrial Welfare Commission Wage Order, the California Private Attorneys
3 General Act, or any other provision of the California Labor Code); 42 U.S.C. § 1981; the Americans
4 With Disabilities Act; the Family and Medical Leave Act; the Fair Labor Standards Act; the
5 Employee Retirement Income Security Act; the Occupational Safety and Health Act; the Worker
6 Adjustment and Retraining Notification Act, as amended; the California Unfair Competition Law
7 (Cal. Bus. & Prof. Code § 17200, *et seq.*); any state, civil, or statutory laws, including any and all
8 human rights laws and laws against discrimination; any other federal, state, or local statutes, codes,
9 or ordinances; any common law, contract law, or tort law cause of action; and any claims for
10 interest, attorneys' fees, and/or costs. Plaintiff expressly waives the protections of California Civil
11 Code section 1542, which reads as follows:

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

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

21 3.2 Tax Liability. The Parties make no representations as to the tax treatment or legal
22 effect of the payments called for hereunder, and Class Members and PAGA Members are not
23 relying on any statement or representation by the Parties in this regard. Class Members and PAGA
24 Members understand and agree that they will be responsible for the payment of any taxes and
25 penalties assessed on the payments described herein and will hold the Parties free and harmless
26 from and against any claims resulting from treatment of such payments as non-taxable damages,
27 including the treatment of such payments as not subject to withholding or deduction for payroll and
28 employment taxes.

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1 3.3 Settlement Approval and Implementation Procedures. As part of this Settlement,
2 the Parties agree to the following procedures for obtaining the Court's preliminary approval of the
3 Settlement, certifying a Class for settlement purposes only, notifying Class Members and PAGA
4 Members of the Settlement, obtaining the Court's final approval of the Settlement, and processing
5 the Class Settlement Payments and PAGA Settlement Payments.

6 3.3.1 Preliminary Approval and Certification. The Parties will jointly submit this
7 Stipulation to the Court for its preliminary approval. Such submission will include this Agreement,
8 the proposed Class Notice, and any motions, memoranda, and evidence as may be necessary for
9 the Court to determine that this Agreement is fair, adequate, and reasonable. The Parties agree to
10 request the Court to enter an order approving the certification of the Class after the preliminary
11 approval hearing in accordance with California Rules of Court rule 3.769(c).

12 3.3.2 Class Information. No more than fourteen (14) days after the entry of the
13 Preliminary Approval Order, Defendant shall provide the Administrator with the Class Information
14 for purposes of administering the Settlement.

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

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

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

27 3.3.6 Compliance with the procedures specified in Paragraphs 3.3.2 through 3.3.5
28 herein shall constitute due and sufficient notice to Class Members of this Settlement and shall
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1 satisfy the requirement of due process. Nothing else shall be required of, or done by, the Parties,
2 Class Counsel, and Defense Counsel to provide notice of the proposed Settlement.

3 3.4 Translation of Class Notice. A Spanish and English version of the Class Notice will
4 be mailed to each Class Member. The Administrator shall be responsible for translating the Class
5 Notice from English to Spanish. Costs of translation are included in the Settlement Administration
6 Costs.

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

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

14 3.7 Objections. The Class Notice shall state that Settlement Class Members (*i.e.*,
15 Class Members who have not excluded themselves from the Settlement) who wish to object to the
16 Class Claims Settlement should submit a written statement of objection (“Notice of Objection”)
17 on or before the Response Deadline to the Administrator. The Notice of Objection should:
18 (1) contain the name, address, telephone number, last four digits of the Social Security number,
19 and signature of the Class Member; (2) contain the case name and number of the Action;
20 (3) clearly indicate that the Class Member seeks to object to the Class Claims Settlement; (4) state
21 the legal and factual basis for the objection; (5) state whether the Settlement Class Member
22 intends to appear at the Final Approval Hearing; and (6) be postmarked or fax-stamped on or
23 before the Response Deadline and returned to the Administrator at the specified address or fax
24 telephone number. The Notice also informs the Class Members that the Court has agreed to hear
25 from any class member who attends the final approval hearing and asks to speak regarding his or
26 her objection, and regardless of whether or not the class member submitted a written objection or
27 notice to appear beforehand. The Administrator shall within five (5) calendar days of receiving a
28 Notice of Objection provide the Parties with copies of the Notices of Objection. The
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1 Administrator will lodge all Notices of Objection that it receives with the Court by attaching them
2 to its declaration to be filed with the Court in support of the motion for final approval of the
3 Settlement.

4 3.8 No Solicitation of Objections or Requests for Exclusion. The Parties agree to use
5 their best efforts to carry out the terms of this Settlement. At no time shall any of the Parties or
6 their counsel seek to solicit or otherwise encourage Class Members to submit Requests for
7 Exclusion or Notices of Objection or to appeal from the Court's Final Approval Order and
8 Judgment.

9 3.9 Uncashed Checks. If a Settlement check is returned to the Administrator as
10 undeliverable within thirty (30) calendar days of mailing to a Settlement Class Member, the
11 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace
12 search and, if another address is identified, shall re-mail the check to the newly identified address.
13 No portion of the Maximum Settlement Amount will revert to Defendant. If a Settlement check is
14 not cashed or deposited within one hundred eighty (180) calendar days after the date it is mailed to
15 a Settlement Class Member, it will be voided. The funds associated with such voided checks will
16 be transmitted to the Unclaimed Property Fund maintained by the State Controller's Office in the
17 names of the Settlement Class Members.

18 3.10 Funding of Settlement. Defendant is required to fully fund and pay Five Hundred
19 Fifteen Thousand Dollars (\$515,000.00) of the Maximum Settlement Amount on the earlier of July
20 1, 2023 or seven (7) days after the Effective Date of the Settlement. Defendant shall provide the
21 funds for the Settlement to the Administrator by wire transfer. The Administrator shall deposit the
22 funds in the Settlement Account.

23 3.11 Settlement Distributions. The Administrator will retain the funds from Defendant
24 in its trust account and shall distribute it the latter of fourteen (14) days after the Effective Date of
25 the Settlement or the date of the funding. The foregoing timing of the distribution, as approved by
26 the Court, shall apply to: (1) the Class Settlement Payment to Settlement Class Members; (2) the
27 Class Representative Service Payment; (3) the Class Counsel Award and Class Counsel Costs; (4)

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Deleted: whose checks are voided after the second distribution to Class Members is completed (as set forth in paragraph 3.11). Settlement checks in the first distribution to Class Members (as set forth in paragraph 3.11) that are not cashed/deposited shall not be sent to the Unclaimed Property Fund; instead, their first distribution checks shall be voided by the Administrator prior to the second distribution, and the uncashed funds from the first distribution shall be included in their respective second distribution settlement checks

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1 the Settlement Administration Costs; and (5) the PAGA Payment to the LWDA and eligible PAGA
2 Members. No portion of the Maximum Settlement Amount will revert to Defendant.

3 3.12 Class Settlement Payments and PAGA Settlement Payments.

4 3.12.1 Class Settlement Payments and PAGA Settlement Payments shall be mailed
5 by regular First-Class U.S. Mail to Settlement Class Members' last known mailing address.

6 3.12.2 Each Settlement Class Member's share of the Net Settlement Amount shall
7 be determined as follows:

- 8 • Total Workweeks = $(1 \times \text{all Covered Employee Weeks})$
- 9 • Workweek Value = $\text{Net Settlement Amount} \div \text{Total Workweeks}$
- 10 • Individual Class Settlement Payment = $[(1 \times \text{individual Covered Employee Weeks}) \times \text{Workweek Value}]$

11
12 3.12.3 Class Settlement Payments (as defined in Paragraph 3.12.2) will be allocated
13 for tax purposes as follows: thirty-three point three percent (33.3%) as wages and sixty-six point
14 seven percent (66.7%) as interest/penalties/non-wage damages. The wages portion of each Class
15 Settlement Payment will be reduced by any legally-mandated deductions for payroll taxes or other
16 required employee-side taxes and withholdings. Defendant's share of any employer-related payroll
17 taxes will be paid by Defendant separately and in addition to the Maximum Settlement Amount.
18 The Administrator shall issue the appropriate tax documents associated with the Class Settlement
19 Payments and PAGA Settlement Payments, including an IRS Form W-2 for the amounts allocated
20 as wages and an IRS Form 1099 for the amounts allocated as interest/penalties/non-wage damages.

21 3.12.4 The PAGA Settlement Payments payable to each PAGA Member shall be
22 determined as follows:

- 23 • Pay Period Value = $\text{PAGA Settlement Amount} \div \text{total Compensable Pay Periods}$
- 24 • Individual PAGA Settlement Payment = $\text{individual Compensable Pay Periods} \times \text{Pay Period Value}$

25 The PAGA Settlement Payments are considered to be entirely civil penalties and will be paid
26 without reduction for any taxes or other withholdings and will be reported on an IRS Form 1099
27
28

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1 (if required). The Administrator shall issue the appropriate tax documents associated with the
2 PAGA Settlement Payments.

3 3.12.5 No benefit, including, but not limited to, pension benefits and/or 401(k),
4 shall increase or accrue as a result of any payment made as a result of the Settlement. Except for
5 the Class Representative's Enhancement Award, Class Members and PAGA Members are not
6 eligible to receive any compensation other than Class Settlement Payments and, if eligible, PAGA
7 Settlement Payments, as a result of this Settlement.

8 3.13 Class Representative Service Payment. Defendant agrees not to oppose or object to
9 any application or motion by Plaintiff to be appointed Class Representative and for a Class
10 Representative Service Payment of up to Seven Thousand Five Hundred Dollars (\$7,500.00). Any
11 portion of the requested Class Representative Service Payment that is not awarded shall be a part
12 of the Net Settlement Amount to be distributed to Settlement Class Members as provided in this
13 Agreement. The Class Representative Service Payment is intended to be in recognition of the Class
14 Representative's efforts and time as Class Representative. The Administrator shall issue an IRS
15 Form 1099-MISC to Plaintiff for his Class Representative Service Payment. Plaintiff shall be
16 solely and legally responsible to pay any and all applicable taxes on his Class Representative
17 Service Payment and shall hold harmless Defendant from any claim or liability for taxes, penalties,
18 or interest arising as a result of the Class Representative Service Payment. The Class
19 Representative Service Payment shall be in addition to Plaintiff's Class Settlement Payment and
20 PAGA Settlement Payment for which he is eligible. In the event the Court reduces or does not
21 approve the requested Class Representative Service Payment, Plaintiff shall not have the right to
22 revoke his agreement to the Settlement, which shall remain legally binding and enforceable on the
23 Parties.

24 3.14 Class Counsel Award and Class Counsel Costs. Defendant agrees not to oppose or
25 object to any application or motion by Class Counsel for attorneys' fees not to exceed thirty-five
26 percent (35%) (i.e., One Hundred Eighty Thousand Two Hundred Fifty Dollars And Zero Cents
27 (\$180,250) of the Maximum Settlement Amount and Class Counsel Costs not to exceed Eight
28 Thousand five Hundred Dollars and No Cents (\$8,500.00), as supported by declarations from Class
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1 Counsel, from the Maximum Settlement Amount. Class Counsel shall be solely and legally
2 responsible to pay all applicable taxes on the payment made pursuant to this Paragraph. The
3 Administrator shall issue an IRS Form 1099-MISC to Class Counsel for the payments made
4 pursuant to this Paragraph. In the event the Court reduces or does not approve the requested Class
5 Counsel Award and/or Class Counsel Costs, the Settlement shall remain legally binding and
6 enforceable on the Parties. Any amount requested by Class Counsel for the Class Counsel Award
7 and/or Class Counsel Costs and not granted by the Court shall be included in the Net Settlement
8 Amount before it is distributed as provided in this Agreement.

9 3.15 PAGA Payment. Subject to approval by the Court, the Parties shall allocate a total
10 of Thirty Thousand Dollars (\$30,000.00) for payment of penalties pursuant to PAGA per California
11 Labor Code section 2699(i) (*i.e.*, the PAGA Payment). 75% of the PAGA Payment (*i.e.*,
12 \$22,500.00) will be paid to California's Labor Workforce Development Agency ("LWDA") from
13 the Maximum Settlement Amount (*i.e.*, the LWDA Payment) by the Settlement Administrator. The
14 remaining 25% of the PAGA Payment (\$7,500.00) shall be distributed to PAGA Members as
15 described in Paragraph 3.12.4 (*i.e.*, the PAGA Settlement Payment). It is intended by the Parties
16 that the LWDA Payment shall satisfy the distribution requirements of Cal. Lab. Code § 2698, *et*
17 *seq.* If the Court awards a lesser amount for the PAGA Payment, then the LWDA Payment shall
18 be adjusted to 75% of the Court-approved amount, and the PAGA Settlement Payment shall be
19 adjusted to 25% of the Court-approved amount.

20 3.16 Plaintiff's Option to Terminate Settlement. Defendant represented that there were
21 18,515 Compensable Weeks during the Class Period through March 22, 2022. If the total number
22 of Compensable Weeks during the entirety of the Class Period exceeds this figure by fifteen (15%)
23 (*i.e.*, 21,292 Compensable Weeks), then the Parties will meet and confer in good faith regarding a
24 potential proportional increase in the Maximum Settlement Amount based on the Compensable
25 Weeks in excess of 18,515. If the Parties do not agree, then Plaintiff, in his sole discretion, may
26 nullify this Settlement in its entirety by giving notice to Defendant, in conformity with Paragraph
27 3.37 herein.

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Deleted: or higher by the date sixty (60) days from the date the Parties accepted the mediator's proposal (*i.e.*, June 26, 2022),

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1 3.17 Defendant's Option to Terminate Settlement. If ten percent (10%) or more of the
2 Class Members, or a number of Class Members whose Class Settlement Payments represent ten
3 percent (10%) or more of the total of all Class Settlement Payments, validly elect not to participate
4 in the Settlement, Defendant will have the right to rescind the Settlement, and the Settlement and
5 all actions taken in its furtherance will be null and void. Defendant must exercise this right within
6 fifteen (15) days after the Administrator notifies the Parties of the number of opt-outs, which the
7 Administrator will do within ten (10) days after the deadline for submission of opt-outs. If
8 Defendant exercises the right to rescind, it will be responsible for the costs of administration of the
9 Settlement incurred through that time. If the option to terminate this Settlement is exercised by
10 Defendant, Defendant shall exercise it by providing written notice to Class Counsel, in conformity
11 with Paragraph 3.37 herein.

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

8 3.19 Final Approval Hearing. At a reasonable time following the Response Deadline,
9 the Court shall hold the Final Approval Hearing, where objections, if any, may be heard, and the
10 Court shall determine amounts properly payable for (i) the Class Counsel Award and Class Counsel
11 Costs, (ii) the Class Representative Service Payment, (iii) the PAGA Payment, and (iv) the
12 Settlement Administration Costs. The Court will hear from any Class Member who attends the
13 Final Approval Hearing and asks to speak regardless of whether the Class Member complied with
14 the Objection procedures in section 3.7.

15 3.20 Entry of Judgment. If the Court approves this Settlement at the Final Approval
16 Hearing, the Parties shall request that the Court enter judgment, with the Court retaining jurisdiction
17 over the Parties to enforce the terms of the judgment, pursuant to California Rules of Court rule
18 3.769. To provide notice of judgment to the Class, the Administrator will post the Court's Final
19 Approval Order and Judgment on its website for sixty (60) calendar days after the date of entry of
20 the Final Approval Order and Judgment, and no individualized notice will be required.

21 3.21 Nullification of Settlement Agreement. In the event: (i) the Court does not enter the
22 Preliminary Approval Order as provided herein; (ii) the Court does not grant final approval of the
23 Settlement as provided herein; (iii) the Court does not enter a Final Approval Order and Judgment
24 as provided herein; or (iv) the Settlement does not become final for any other reason, this Settlement
25 Agreement shall be null and void and any order or judgment entered by the Court in furtherance of
26 this Settlement shall be treated as void from the beginning. However, notwithstanding the
27 foregoing, the Parties will cooperate to obtain a Preliminary Approval Order and Final Approval
28 Order from the Court. In such a case, the Parties and any funds to be awarded under this Settlement
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1 shall be returned to their respective statuses as of the date and time immediately prior to the
2 execution of this Agreement, and the Parties shall proceed in all respects as if this Agreement had
3 not been executed, except that any fees already incurred by the Settlement Administrator shall be
4 paid by the Parties in equal shares. In the event an appeal is filed from the Court's Final Approval
5 Order and Judgment, or any other appellate review in this action is sought, administration of the
6 Settlement shall be stayed pending final resolution of the appeal or other appellate review.

7 3.22 No Admission by Defendant. Defendant denies any and all claims alleged in this
8 Action and denies all wrongdoing whatsoever. This Agreement is not a concession or admission
9 and shall not be used against Defendant as an admission or indication with respect to any claim of
10 any fault, concession, or omission by Defendant.

11 3.23 Dispute Resolution. Except as otherwise set forth herein, all disputes concerning
12 the interpretation, calculation of payment of settlement claims, or other disputes regarding
13 compliance with this Agreement shall be resolved as follows:

14 3.23.1 If Plaintiff or Class Counsel, on behalf of Plaintiff or any Settlement Class
15 Members and/or PAGA Member, or Defendant, at any time believe that the other Party has
16 breached or acted contrary to the Agreement, that Party shall notify the other Party in writing of
17 the alleged violation.

18 3.23.2 Upon receiving notice of the alleged violation or dispute, the responding
19 party shall have ten (10) business days to correct the alleged violation and/or respond to the
20 initiating party with the reasons why the Party disputes all or part of the allegation.

21 3.23.3 If the response does not address the alleged violation to the initiating party's
22 satisfaction, the Parties shall negotiate in good faith for up to ten (10) business days to resolve their
23 differences.

24 3.23.4 If thereafter the Parties still cannot resolve the dispute, the parties shall
25 utilize the services of Dennis F. Moss, Esq., in a good-faith attempt to mediate and resolve the
26 dispute, with the expense of the mediator to be shared equally by the Parties. If Mr. Moss is not
27 available to mediate the dispute, and the Parties do not agree to a different mediator, or either Party
28

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1 desires to forego mediation of the dispute, the dispute may be submitted directly to the Court as set
2 forth in Paragraph 3.23.5.

3 3.23.5 If the Parties are thereafter still unable to resolve their differences after
4 twenty (20) business days, either Party may file a motion with the Court, including and not limited
5 to, pursuant to California Rules of Court rule 3.769 and/or California Civil Procedure Code section
6 664.6.

7 3.24 Exhibits and Headings. The terms of this Agreement include the terms set forth in
8 the attached Exhibits, which are incorporated by this reference as though fully set forth herein. The
9 Exhibits to this Agreement is an integral part of the Settlement. The descriptive headings of any
10 paragraphs or sections of this Agreement are inserted for convenience of reference only and do not
11 constitute a part of this Agreement.

12 3.25 Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action,
13 subject to necessary compliance with the Court's orders, except such proceedings necessary to
14 implement and complete the Settlement, in abeyance pending the Final Approval Hearing to be
15 conducted by the Court.

16 3.26 Amendment or Modification. This Agreement may be amended or modified only
17 by a written instrument signed by counsel for all Parties or their successors-in-interest and approved
18 by the Court.

19 3.27 Entire Agreement. This Agreement and attached Exhibits A and B constitute the
20 entire Agreement among the Parties, and no oral or written representations, warranties, or
21 inducements have been made to any Party concerning this Agreement or Exhibits A or B other than
22 the representations, warranties, and covenants contained and memorialized in the Agreement and
23 Exhibits A and B.

24 3.28 Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant
25 and represent they are expressly authorized by the Parties whom they represent to negotiate this
26 Agreement and to take all appropriate actions required or permitted to be taken by such Parties
27 pursuant to this Agreement to effectuate its terms and to execute any other documents required to
28 effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other
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1 and use their best efforts to effect the implementation of the Settlement. In the event the Parties
2 are unable to reach agreement on the form or content of any document needed to implement the
3 Settlement, or on any supplemental provisions that may become necessary to effectuate the terms
4 of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.
5 The persons signing this Agreement on behalf of Defendant represent and warrant that they are
6 authorized to sign this Agreement on behalf of Defendant. Plaintiff represents and warrants that he
7 is authorized to sign this Agreement and that he has not assigned any claim, or part of a claim,
8 covered by this Settlement to a third party.

9 3.29 Binding Nature of Agreement. This Agreement shall be binding upon, and inure to
10 the benefit of, the successors, heirs, assigns, and third-party beneficiaries of the Parties hereto, as
11 previously defined. To the extent permitted by law, the PAGA Members and Settlement Class
12 Members shall also be bound by this Agreement and any judgment relating thereto.

13 3.30 California Law Governs. All terms of this Agreement shall be governed by and
14 interpreted according to the laws of the State of California.

15 3.31 This Settlement is Fair, Adequate, and Reasonable. The Parties believe and stipulate
16 that this Settlement is a fair, adequate, and reasonable settlement of this Action and have arrived at
17 this Settlement after extensive, arm's-length, non-collusive negotiations, taking into account all
18 relevant factors, present and potential.

19 3.32 Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction
20 with respect to the interpretation, implementation, and enforcement of the terms of this Agreement
21 and all orders and judgments entered in connection therewith, and the Parties and their counsel
22 hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and
23 enforcing the Settlement embodied in this Agreement and all orders and judgments entered in
24 connection therewith.

25 3.33 Invalidity of Any Provision. Before declaring any provision of this Agreement
26 invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible
27 consistent with applicable precedents so as to define all provisions of this Agreement valid and
28 enforceable.

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1 3.34 No Right to Terminate Based on Reduction of Class Counsel Award or Class
2 Counsel Costs. The Parties agree that any reduction in the Class Counsel Award and Class Counsel
3 Costs shall not constitute grounds to terminate or void the Settlement or otherwise increase the
4 maximum amount payable by Defendant under this Agreement, which shall not exceed the
5 Maximum Settlement Amount defined herein.

6 3.35 Cooperation. The Parties agree to cooperate fully with one another to accomplish
7 and implement the terms of this Settlement. Such cooperation shall include, but not be limited to,
8 execution of such other documents and taking of such other actions as may be reasonably necessary
9 to timely fulfill the terms and approval by the Court of this Settlement. The Parties to this
10 Settlement shall use their best efforts, including all efforts contemplated by this Settlement and any
11 other efforts that may become necessary by Court order or otherwise, to effectuate this Settlement
12 and the terms set forth herein.

13 3.36 Publicity. Plaintiff and Class Counsel agree that they will not issue (before the date
14 of the filing of the motion for preliminary approval of this Settlement) any press releases, initiate
15 any contact with the press, respond to any press inquiry, post any new material on any internet
16 websites, or have any communication with the press about the Action, and/or the fact, amount, or
17 terms of the Settlement. Before the date of the filing of the motion for preliminary approval of the
18 Settlement, Plaintiff and Class Counsel will not initiate any contact with the Class Members, the
19 PAGA Members, or anyone else about the Settlement, except that: (a) Class Counsel, if contacted
20 by a Class Member or a PAGA Member, may respond that a settlement has been reached and that
21 the details will be communicated in a forthcoming Court-approved notice; and (b) Plaintiff, if
22 contacted by a Class Member or a PAGA Member, may respond only that the Class Member or
23 PAGA Member should contact Class Counsel. Nothing in this paragraph shall prevent Class
24 Counsel and Plaintiff from undertaking all required submissions to the LWDA as required by the
25 PAGA statute in connection with this Settlement. Class Counsel and Plaintiff will also provide
26 Defendant's Counsel with a copy of the papers submitted to the LWDA, either prior to or on the
27 same day as the submission to the LWDA.

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

5 To Plaintiff:

6 Kevin R. Allen, Esq.
7 Allen Attorney Group PC
8 2121 N. California Blvd.
9 Suite 290
10 Walnut Creek, CA 94596
11 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
 LeslieAbbott@paulhastings.com

12 3.38 Execution by Class Members. It is agreed that it is impossible or impractical to have
13 each Class Member and PAGA Member execute this Settlement Agreement. The Notice of
14 Settlement will advise all Class Members and PAGA Members of the binding nature of the
15 Released Class Claims as to Settlement Class Members and Released PAGA Claims as to Class
16 Members and PAGA Members, and such shall have the same force and effect as if each Class
17 Member and PAGA Member executed this Agreement.

18 3.39 Execution by Plaintiff. Plaintiff, by signing this Stipulation, is bound by the terms
19 herein.

20 3.40 Drafting of the Agreement. The Parties hereto agree that the terms and conditions
21 of this Stipulation of Settlement are the result of lengthy, intensive, arm's-length, non-collusive
22 negotiations and a neutrally-facilitated mediation between the Parties, and that this Agreement shall
23 not be construed in favor of or against any of the Parties by reason of their participation in the
24 drafting of this Agreement.

25 3.41 Counterparts. This Agreement shall become effective upon its execution by all of
26 the undersigned, and each consents to electronic signatures. Plaintiff, Class Counsel, Defendant,
27 and Defense Counsel may execute this Stipulation in counterparts, and execution of counterparts
28 shall have the same force and effect as if each had signed the same instrument. Copies of the
executed Agreement, including scans or PDF versions, shall be effective for all purposes as though
the signatures contained therein were original signatures.

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1 **STIPULATED, AGREED, AND ACCEPTED.**

2
3 Date: _____ **PLAINTIFF MARCO GUTIERREZ**

4
5 Signature: _____

6
7
8 **DEFENDANT DEL WEST ENGINEERING, INC.**

9
10 Date: _____ Print Name: _____

11 Title: _____

12 Signature: _____

13
14 **APPROVED.**

15 ALLEN ATTORNEY GROUP P.C.
16 KEVIN R. ALLEN
17 Attorneys for Representative Plaintiff
and the Plaintiff Class

18 Date: _____ Print Name: _____

19 Signature: _____

20
21 **PAUL HASTINGS LLP**
22 Counsel for Defendant

23 Date: _____ Print Name: _____

24 Signature: _____

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SECOND AMENDED CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND RELEASE

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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 a 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

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

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

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

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1 **BASIC INFORMATION**

2 **1. Why did I get this notice?**

3 Defendant Del West Engineering, Inc.'s records show that you were employed as a non-exempt
4 production employee at one of defendant's factories in Valencia, California between December
5 14, 2017 and June 26, 2022, inclusive. This is referred to as the "Class Period." This notice
6 explains the lawsuit, the Settlement, and your legal rights.

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

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

16 **2. What is this lawsuit about?**

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

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

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

29 **3. What is a class action lawsuit?**

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

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

36 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 the Maximum Settlement Amount
25 on the earlier of July 1, 2023 or seven (7) days after the Effective Date of the Settlement. *See*
26 Section 9 of this Notice for the definition of “Effective Date.” Defendant shall provide the funds
27 for the Settlement to the Administrator by wire transfer.

28 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
 \$XXXXX). The remainder, referred to as the Net Settlement Amount, will be distributed in full
 to Settlement Class Members who do not request to be excluded from the Settlement and to
 PAGA Members regardless of whether they opt out or not.

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

1
2 **Individual Class Settlement Payment**

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

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

12 **PAGA Settlement Payment**

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

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

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

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

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

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

1
2 **Tax Treatment of Your Payments**

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

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

13
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**

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

HOW TO GET A SETTLEMENT PAYMENT

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 **IMPORTANT REMINDER: If this was sent to the wrong address, or you move before**
6 **receiving your settlement checks and tax return documents, then it is very important that**
7 **you 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.

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

9 If approved then Defendants will be required to fund the \$515,000.00 Maximum Settlement
10 Amount in on the earlier of July 1, 2023 or seven (7) days after the Effective Date of the
Settlement.

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

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

19 If approved by the Court then all payments required by the Settlement will be paid out the latter
20 of fourteen (14) days after the Effective Date of the Settlement or the date of the funding.

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

26 **EXCLUDING YOURSELF FROM THE SETTLEMENT**

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

28 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.

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

3 **INSERT SETTLEMENT ADMINISTRATOR INFO**

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

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

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

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

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

17 **THE LAWYERS REPRESENTING YOU**

18 **13. Do I have a lawyer in this case?**

19 The Court has appointed Kevin R. Allen of Allen Attorney Group, PC and Nicolas Orihuela of
20 Orihuela Law Firm PC as class counsel. They represent the named Plaintiff and the Settlement
21 Class Members and PAGA Members in this lawsuit. Their contact information is listed in
22 Paragraph 21 ("Getting More Information").

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

24 Subject to Court approval, the Maximum Settlement Amount will be used to pay Class Counsel
25 their actual litigation costs and up to \$180,250.00 in attorneys' fees (i.e., 35% of the Maximum
26 Settlement Amount). It will also be used to pay Plaintiff up to \$7,500.00 as a "Class
27 Representative Enhancement Award" for his participation in this lawsuit and for taking on the
28 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
\$XXXXXX.

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

OBJECTING TO THE SETTLEMENT

15. How do I object to the Settlement?

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

Settlement Administrator
[insert info]

A written objection **should**: (1) contain the name, address, telephone number, last four digits of the Social Security number, and signature of the Class Member; (2) contain the case name and number of the Action; (3) clearly indicate that the Class Member seeks to object to the Class Claims Settlement; (4) state the legal and factual basis for the objection; (5) state whether the Settlement Class Member intends to appear at the Final Approval Hearing; and (6) be postmarked or fax-stamped on or before the Response Deadline and returned to the Administrator at the specified address or fax telephone number.

You do not need to file a written objection. Any Class 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.

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

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

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

THE COURT’S FINAL APPROVAL HEARING

The Court will hold a hearing to decide whether to approve the settlement. **You may appear in person or via phone using a third-party service provider called CourtCall (see Section 15) and you may ask to speak, but you don’t have to.**

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

The Court will hold a Final Approval Hearing on **[insert time/date]** in Department 9 at the Superior Court of California for the County of Los Angeles, located at **ADDRESS, Los Angeles, California**. The hearing may be moved to a different date and/or time without additional notice. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will only listen to people who **ask 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

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not know how long these decisions will take.

18. Do I have to appear at the hearing?

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

19. May I speak at the hearing?

You do not need to submit a written objection in order to appear at the hearing. Any Class 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.

IF YOU DO NOTHING

20. What happens if I do nothing at all?

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

GETTING MORE INFORMATION

21. How do I get more information?

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

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

NICOLAS ORIHUELA (SBN # 221898)
ORIHUELA LAW FIRM, P.C.
8221 3rd St, Suite 403
Downey, California 90241
Tel: (323) 965-2103
Fax: (323) 965-2146
no@orihuelalaw.com

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Exhibit 3

1 KEVIN R. ALLEN, SBN 237994
2 **ALLEN ATTORNEY GROUP, PC**
3 2121 North California Avenue, Suite 290
4 Walnut Creek, California 94596
5 Tel. (925) 695-4913
6 Fax (925) 334-7477
7 kevin@allenattorneygroup.com

8 NICOLAS ORIHUELA (SBN # 221898)
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10 8221 3rd St., Suite 403
11 Downey, CA 90241
12 Tel.(323) 965-2103
13 Fax (323) 965-2146
14 no@orihuelalaw.com

15 Attorneys for Representative Plaintiff
16 and the Putative Class

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

20 MARCO GUTIERREZ, on behalf of himself
21 and all others similarly situated;

22 Plaintiff,

23 v.

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

27 Defendants.

Case No. 21STCV45477

CLASS ACTION

**DECLARATION OF MARCO
GUTIERREZ IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: June 7, 2023

Time: 10:00 a.m.

**Judge: Hon. Yvette M. Palazuelos
Dept.: 9**

1 I, Marco Gutierrez, declare as follows:

2
3 1. I am the named Plaintiff in this action. I have personal knowledge of the facts set
4 forth herein, which are known to me to be true and correct, and if called as a witness, I could and
5 would testify competently thereto. I submit this declaration in support of Plaintiff's Motion for
6 Preliminary Approval of Class Action Settlement.

7 2. I was employed with Defendant Del West Engineering, Inc. as a nonexempt laborer
8 at its Valencia, California facility from 1992 to September 2019.

9 3. On December 14, 2021, I caused my attorneys to file a class action complaint in the
10 Los Angeles County Superior Court against Defendant Del West Engineering, Inc. The complaint
11 included claims for: (1) Failure to Pay All Wages Owed (Violation of California Wage Orders and
12 Labor Code §§ 510, 1194, 1197); (2) Failure to Provide Meal Periods and Rest Breaks or Pay Meal
13 and Rest Break Premiums (California Labor Code §§ 226.7 and 512); (3) Failure to Pay Wages on
14 Separation of Employment (California Labor Code §§ 203, 2926, 2927); (4) Failure to Provide
15 Accurate Itemized Wage Statements (California Labor Code § 226); (5) and Unfair Business
16 Practices (California Business & Professions Code §§ 17200-17208). We later amended the
17 Complaint to add a claim under the Private Attorney Generals Act (PAGA) and filed the First
18 Amended Complaint on or about August 18, 2022.

19 4. On April 21, 2022 my attorneys and I participated in a mediation session with
20 mediator Dennis Moss. The matter did not resolve at the session but, with the help of a mediator's
21 proposal, my attorneys and I were able to negotiate a proposed class action settlement with the
22 Defendant. I signed the Second Amended Class Action and PAGA Settlement Agreement and
23 Release ("Settlement" or "Settlement Agreement") which I understand is being submitted to the
24 Court alongside this declaration.

25 5. As reflected in the Settlement, I have agreed to serve as a class representative for a
26 proposed settlement Class consisting of all current and former individuals who have been
27 employed by Del West Engineering, Inc. as a non-exempt employee in one or more of the job titles
28

1 listed in Exhibit A to the Settlement within the State of California at any time during the Class
2 Period. *See* Settlement at § 1.3. The settlement Class does not include former employees who
3 Defendant laid off in September 2019 as part of Defendant's reduction in force and who received
4 separation pay in exchange for a general release of claims. *Id.*

5 6. When I retained my attorneys, I understood that I was hiring them to file a class
6 action complaint so that we could try to address the wage and hour claims on behalf of the class as
7 a whole. I understood that this required me to perform duties and undertake obligations above and
8 beyond what an individual plaintiff might need to do. As a class representative I owe a fiduciary
9 obligation to act at all times in the best interests of the members of the classes. I believe that I have
10 satisfied this obligation in my conduct and decisions to date. I have not and will not place my
11 personal interests above those of the class as a whole. I will prosecute this case to its conclusion no
12 matter how long that may take. I understood that it was possible that I could be responsible for
13 litigation costs of the defendant if we did not prevail. I have kept in contact with my attorneys and
14 will remain available should they have any questions for me or need my assistance in any way
15 including through providing evidence or testimony in support of class certification and the claims
16 raised in this lawsuit. If the proposed Settlement is not approved then I will be ready, willing and
17 able to perform my duties as a class representative to the absolute best of my ability for as long as
18 it takes.

19 7. To my knowledge, there are no conflicts which exist between my interests in this
20 action and the interests of the other members of the classes which would impair my ability to serve
21 as the representative of the members of the class in this action. I know of no such conflicts that
22 would impact my attorneys' ability to act as class counsel in this matter.

23 8. I did have an individual complaint for wrongful termination and discrimination
24 which was pending in the Los Angeles County Superior Court under case number 21STCV18645.
25 That case resolved on an individual/confidential basis in March 2022 which was prior to the
26 negotiations in this lawsuit. Again, this does not pose any conflicts between my interests in this
27 action and the interests of the other members of the classes which would impair my ability to serve
28

1 as the representative of the members of the class in this action and also does not pose any conflicts
2 that would impact my attorneys' ability to act as class counsel in this matter.

3 9. I was informed that the two law firms representing me and the class in this case
4 have agreed to split attorneys' fees, with each firm receiving one third of the fees and the
5 remaining one third being split by the firms according to their respective "lodestar" (i.e.,
6 reasonable hours worked multiplied by the attorneys' reasonable hourly rate). I understood that
7 they each agreed to be responsible to pay/advance half of the litigation costs incurred in
8 prosecuting the matter. I was presented with a split fee disclosure document and consent
9 agreement outlining the fee split. I gave written approval to the terms set forth in the fee splitting
10 agreement after reviewing the terms and having an opportunity to ask questions about it.

11 10. Also, I was informed that Nicolas Orihuela and his new firm, Orihuela Law Firm,
12 P.C. have agreed to split their share of attorneys' fees earned from this case with Nicolas
13 Orihuela's two former partners at Hurwitz, Orihuela & Hayes, LLP relating to the end of their
14 partnership. When Nicolas Orihuela first became my attorney for this case, he was a partner and
15 working at Hurwitz, Orihuela & Hayes, LLP. Nicolas Orihuela is to split one third of the fees with
16 Douglas Hayes and one third of the fees with Cory Hurwitz, and the remaining one third is for
17 Nicolas Orihuela. I was presented with a split fee disclosure document and consent agreement
18 outlining the fee split. I gave written approval to the terms set forth in the fee splitting agreement
19 after reviewing the terms and having an opportunity to ask questions about it.

20 11. I respectfully ask that the Court preliminarily approve the proposed Settlement
21 Agreement so that notice be sent to the class members informing them of the settlement terms and
22 allowing them to respond including objecting, opting out, and/or disputing the data being used to
23 calculate their settlement shares.

12. This Declaration was translated to me by Nicolas Orihuela from English to Spanish, and I understood the translation. I also understand and read basic English.

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

Dated: 5/15/2023

mlt

Marco Gutierrez