

SETTLEMENT AGREEMENT

This confidential Settlement Agreement ("Settlement") is made and entered into between Plaintiff Michael Kotcherha ("Plaintiff"), acting in a private attorney general capacity, and Defendant Del's Flooring Contractors, Inc. ("Defendant") (collectively with Plaintiff, the "Parties").

I. DEFINITIONS

The following terms, when used in this Settlement, shall have the following meanings:

1. "Action" means the matter entitled *Michael Kotcherha v. Del's Flooring Contractors, Inc., et al.*, Riverside Superior Court Case No. CVRI2202654, and as set forth in Plaintiff's correspondence to the California Labor and Workforce Development Agency ("LWDA Letter") dated June 29, 2022.
2. "Allegedly Aggrieved Employees" consist of all current and former non-exempt piece-rate employees in California who worked for Defendant at any time from June 29, 2021 through September 16, 2024 (the "PAGA Period"). As of July 18, 2024, the number of Allegedly Aggrieved Employees, including Plaintiff, is estimated to be 89 individuals.
3. "Defendant" means Del's Flooring Contractors, Inc.
4. "Defense Counsel" shall mean the attorneys representing Defendant in the Action, David Mulé, Esq. and Jana FitzGerald, Esq. of FitzGerald & Mulé, LLP.
5. "Complaint" means the Representative Action Complaint entitled *Michael Kotcherha v. Del's Flooring Contractors, Inc., et al.*, Riverside Superior Court Case No. CVRI2202654, filed on June 29, 2022.
6. "Court" means the Superior Court of California for the County of Riverside.
7. "Effective Date" means the date on which the Court enters an Order approving the Settlement.
8. "Individual PAGA Payment" means the amount to be paid to each Allegedly Aggrieved Employee based on the formula described herein.
9. "Representative Enhancement Payment" means the amount to be awarded to Plaintiff for his service as the lead Plaintiff.
10. "LWDA" means the California Labor and Workforce Development Agency.
11. "Maximum Settlement Amount" is the non-reversionary sum of \$150,000.00, which represents the total amount payable under this Settlement by Defendant (subject to the Escalator Clause described below), including, without limitation, payments to all Allegedly Aggrieved Employees, payment to the LWDA, and payment of Plaintiff's attorneys' fees and costs.

12. "Net Settlement Amount" is the amount remaining to distribute to the LWDA and Allegedly Aggrieved Employees after the following amounts (if approved by the Court) are subtracted from the Maximum Settlement Amount: (a) Plaintiff's attorneys' fees up to one third of the Maximum Settlement Amount, currently estimated at \$50,000.00; (b) Plaintiff's costs up to \$10,000.00; (c) a Representative Enhancement Payment up to \$5,000.00 to Plaintiff; and (d) and the cost of a settlement administrator, estimated to be \$2,995.00.

13. "PAGA" means the California Labor Code Private Attorneys General Act, California Labor Code § 2698, *et seq.*

14. "PAGA Period" means the time period from June 29, 2021 through September 16, 2024 (60 days from mediation) or the date of PAGA settlement approval, whichever is earlier.

15. "Parties" mean Plaintiff and Defendant.

16. "Plaintiff" means Michael Kotcherha.

17. "Plaintiff's Counsel" means Paul K. Haines, Fletcher W. Schmidt and Andrew J. Rowbotham of Haines Law Group, APC.

18. "Settlement Administrator" means Phoenix Settlement Administrators.

II. RECITALS

1. Plaintiff alleges that Defendant: failed to pay overtime wages for overtime hours worked; failed to pay all minimum wages; failed to provide all meal periods; failed to authorize and permit all rest periods; failed to pay all final wages to employees upon separation of employment; issued inaccurate and facially-deficient wage statements; engaged in unfair competition; and is liable for civil penalties under PAGA.

2. On June 29, 2022, Plaintiff provided written notice to the LWDA and Defendant asserting claims for civil penalties pursuant to PAGA stemming from alleged violations of the California Labor Code described in Section II.1.

3. On June 29, 2022, Plaintiff filed a Complaint entitled *Michael Kotcherha v. Del's Flooring Contractors, Inc., et al.*, Riverside Superior Court Case No. CVRI2202654.

4. Defendant denies and continues to deny all of Plaintiff's material allegations. Specifically, Defendant contends it provided all meal-and-rest periods according to law; it did not fail to pay the minimum wage; it did not require or permit off-the-clock work; it made good-faith efforts to provided accurate itemized wage statements; it did not fail to timely pay wages due and owing upon separation. Further, Defendant contends it is not liable for damages, including unpaid wages, liquidated damages, statutory penalties, civil penalties, attorneys' fees, or costs of litigation.

5. In response to Plaintiff's Counsel's informal discovery requests, Defendant provided Plaintiff's Counsel with information and documents pertaining to Plaintiff and other Allegedly Aggrieved Employees in order for Plaintiff's Counsel to investigate Plaintiff's allegations and value the PAGA claim.

6. On July 18, 2024, the Parties participated in a full-day mediation with the Honorable David M. Chapman (Ret.). With the assistance of the Honorable David M. Chapman (Ret.), the Parties agreed to fully and finally resolve the PAGA Released Claims as to Plaintiff and Allegedly Aggrieved Employees.

III. OPERATIVE TERMS OF SETTLEMENT AGREEMENT

The Parties agree as follows:

1. **Non-Admission.** Nothing in this Settlement shall be construed to be an admission by Plaintiff that his claims do not have merit or by Defendant of any liability or wrongdoing as to Plaintiff, Allegedly Aggrieved Employees or any other person, and Defendant specifically disclaims any such liability or wrongdoing. The Parties have entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses and risks. This Settlement and any related court documents or orders are not and may not be cited or admitted as evidence of liability.

2. **Maximum Settlement Amount.** Defendant shall pay \$150,000.00 as the non-reversionary Maximum Settlement Amount. Defendant will not pay more than the Maximum Settlement Amount (subject to the Escalator Clause below). The Maximum Settlement Amount will be paid by Defendant in three equal payments of \$50,000.00 each, with the first payment due 30 days after the Court approves the PAGA settlement, the second payment due 45 days thereafter, and the third and final payment due 45 days thereafter.

3. **Escalator Clause.** As stated above, Defendant represents that the number of Allegedly Aggrieved Employees is 89 and the number of relevant pay periods is 2,489 as of the date of Parties' mediation (July 18, 2024). Should the actual number of pay periods worked by the PAGA Allegedly Aggrieved Employees in the PAGA Period exceed this figure by more than 20% (i.e., if there are 2,987 or more pay periods worked in the PAGA Period), Defendant will increase the Maximum Settlement Amount on a proportional basis (i.e., if there was a 22% increase in the number of pay periods, Defendant shall increase the Maximum Settlement Amount by 22%).

4. **Net Settlement Amount.** The Parties agree that the following amounts should be subtracted from the Maximum Settlement Amount, if approved by the Court, resulting in a Net Settlement Amount to distribute to the LWDA and Allegedly Aggrieved Employees:

a. **Plaintiff's Attorneys' Fees and Costs, and the Representative Enhancement Payment.** Defendant will not oppose Plaintiff's request for attorneys' fees in the amount up to one third of the Maximum Settlement Amount (\$50,000.00), costs incurred in prosecuting this Action, up to \$10,000.00, and a Representative Enhancement Payment to Plaintiff in the amount of \$5,000.00. In the event the Court approves a payment of less than these amounts, the difference will be added to the Net Settlement Amount (although Plaintiff may appeal an order granting less than the full amount sought for attorneys' fees and costs). The Settlement Administrator will report these payments on IRS Form 1099 issued to Plaintiff's Counsel.

b. **Administration Costs.** Defendant will not oppose the Settlement Administrator's costs in the amount up to \$2,995.00 for administering the Settlement. In the event the Court approves a payment of less than this amount, the difference will be added to the Net

Settlement Amount. The Settlement Administrator will report this payment on IRS Form 1099 issued to the Settlement Administrator.

5. **Allocation of Net Settlement Amount.** The Net Settlement Amount shall be distributed 75% to the LWDA and 25% to Allegedly Aggrieved Employees, pursuant to Lab. Code § 2699(i). The 25% portion to be paid to Allegedly Aggrieved Employees shall be paid to all Allegedly Aggrieved Employees on a proportional basis, based on the number of pay periods worked by each Allegedly Aggrieved Employee during the PAGA Period in which their pay was based solely on piece rate production.

6. **Representative PAGA Release.** All PAGA Allegedly Aggrieved Employees will release and discharge Defendant, its past and present officers, directors, shareholders, managers, exempt employees, agents, principals, spouses, heirs, representatives, accountants, auditors, consultants, and its respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys (collectively, the “Released Parties”) from all PAGA claims that are based on the Labor Code violations pled in the operative complaint in the Action or Plaintiff’s letter to the LWDA dated June 29, 2022, or which could have been pled in the operative complaint in the Action based on the factual allegations therein, that arose during the PAGA Period. This PAGA release runs concurrently with the PAGA Period. PAGA Allegedly Aggrieved Employees will not be releasing any underlying wage and hour claims through this settlement, only PAGA claims. PAGA Allegedly Aggrieved Employees will not be provided with the opportunity to opt out of this PAGA Release

7. **PAGA Released Claims.** Plaintiff agrees that upon entry of an Order approving the Settlement, Plaintiff will release any and all claims for statutory penalties that could have been sought by the Labor Commissioner for the violations identified in Plaintiff’s June 29, 2022 pre-filing PAGA letter to the Labor & Workforce Development Agency (“LWDA”) (“PAGA Released Claims”). Plaintiff does not release any Aggrieved Employee’s claim for wages or damages.

8. **Covenants and Representations by Plaintiff and Plaintiff’s Counsel.**

a. Plaintiff represents and warrants that he has not assigned or transferred or purported to assign or transfer to any person or entity, any claim or portion thereof, or interest therein, which is or may be subject to this Settlement.

b. Plaintiff acknowledges that he has read this Settlement, that he fully understands his rights, privileges and duties under the Settlement, and enters into this Settlement freely and voluntarily. Plaintiff further acknowledges that he had the opportunity to consult with his attorneys to explain the terms of this Settlement and the consequences of signing this Settlement.

9. **Termination of Settlement.** If the Court does not approve the Settlement, if the Court does not enter judgment, as provided for in this Settlement, or if appellate review is sought and, on such review, the Court’s decision is materially modified or reversed, or if one or more of the terms of the Settlement is not approved or is materially modified or reversed or found to be invalid, then either of the Parties shall have the right within ten (10) calendar days of written notice thereof to elect to terminate the Settlement, in which case the Settlement shall have no force or

effect, and the Parties shall be deemed to have reverted to their respective status as of the date and time immediately prior to the execution of this Settlement.

10. **Judgment.** As part of the Motion to approve the Settlement, Plaintiff shall submit a proposed order and judgment which enters judgment in the Action in accordance with the terms of the Settlement and retains jurisdiction over the Action for the purpose of enforcing the terms of the Settlement following approval of the Settlement. This Settlement is expressly conditioned upon the Court entering judgment as set forth herein. The judgment will not release or bar any claims other than the PAGA Released Claims as to Plaintiff and Allegedly Aggrieved Employees.

IV. ADMINISTRATION OF SETTLEMENT

1. **Settlement Administrator.** The Parties agree to use Phoenix Settlement Administrators to handle the administration of this Settlement.

2. **Provision of Information for Allegedly Aggrieved Employees.** Within twenty-one (21) calendar days after the Effective Date, Defendant shall provide the Settlement Administrator with information for Allegedly Aggrieved Employees. Defendant will in good faith compile from its records a list of Allegedly Aggrieved Employees that will be in a computer-readable format, and shall include each Aggrieved Employee's full name, last known mailing address, last known telephone number, start date(s) of employment, end date(s) of employment, total pay periods worked, and Social Security numbers. The list shall also include the sum total of all pay periods worked by Allegedly Aggrieved Employees during the PAGA Period. Because Social Security numbers are included in the list, the Settlement Administrator will maintain the list in confidence, and access shall be limited to those with a need to use the list as part of the administration of the Settlement.

Within ten (10) business days of receiving the Allegedly Aggrieved Employees' information from Defendant, the Settlement Administrator will circulate to counsel for both Parties an anonymized spreadsheet containing the Individual PAGA Payments to each Allegedly Aggrieved Employee and the data used to calculate said payments. The Settlement Administrator shall also determine whether the Escalator Clause has been triggered. The Settlement Administrator shall obtain approval from all counsel for the Parties of the calculations before mailing Individual PAGA Payments

3. **Explanatory Letter and Individual PAGA Payments.** Upon receipt of the information for Allegedly Aggrieved Employees, the Settlement Administrator will perform a search on the National Change of Address database to update the Allegedly Aggrieved Employees' addresses.

Within five (5) business days after obtaining approval from all counsel to proceed with the mailing, the Settlement Administrator shall mail copies of the explanatory letter, which has been mutually approved by the Parties and is attached hereto as **Exhibit A**, in English and Spanish, along with the Individual PAGA Payments to all Allegedly Aggrieved Employees via regular First-Class U.S. Mail.

Each Individual PAGA Payment shall be deemed penalties and reported using IRS Form 1099. Checks will remain negotiable for one hundred eighty (180) days from the date they are mailed by the Settlement Administrator. Any check that is not negotiated within one hundred

eighty (180) days of mailing to an Allegedly Aggrieved Employee shall be transferred to the State Controller's Office Unclaimed Property Division in the name of the Aggrieved Employee.

4. **Undeliverable Notices.** Any Explanatory Letters returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a "skip trace," to obtain an updated mailing address within five (5) business days of receiving the returned Explanatory Letter. If an updated mailing address is identified, the Settlement Administrator shall resend the Explanatory Letter to the Allegedly Aggrieved Employee immediately, and in any event within five (5) business days of obtaining the updated address. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Aggrieved Employee. Allegedly Aggrieved Employees to whom Explanatory Letters are re-mailed after having been returned as undeliverable to the Settlement Administrator shall have an additional fourteen (14) calendar days after the Response Deadline to opt-out, object, or dispute their Individual PAGA Payment. Explanatory Letters that are re-mailed shall inform the recipient of this adjusted deadline.

Defendant fully discharges its obligations to those Allegedly Aggrieved Employees to whom it will pay an Individual PAGA Payment through the Settlement Administrator's initial mailing of a check, regardless of whether such checks are actually received and/or negotiated by Allegedly Aggrieved Employees.

5. **Payment of Remainder.** Within five (5) business days after obtaining approval from all counsel to proceed with the mailing, the Settlement Administrator will mail the following additional payments: (1) the 75% share of the Net Settlement Fund to the LWDA; (2) Court-approved attorneys' fees and costs to Plaintiff's Counsel; (3) Court-approved Representative Enhancement Payment to Plaintiff; and (4) Court-approved administration costs to the Settlement Administrator

6. **Accounting.** The Settlement Administrator will provide an accounting under oath to the Parties of the amounts paid from the Settlement as soon as practicable after the check cashing deadline described in Section IV.3

7. **Tax Consequences.** Individual PAGA Payments made under this Settlement will be attributed 100% as penalties and interest and paid via IRS Form 1099 to each Aggrieved Employee. Neither Plaintiff nor Defendant, nor counsel for either of the Parties, makes any representations or warranties with respect to tax consequences of any payment under this Settlement.

V. MISCELLANEOUS PROVISIONS

1. **Non-Publicity.** The Parties agree that no Party will issue any press release nor other public representation regarding the settlement other than as necessary to obtain Court approval and effectuate the terms of the Settlement. The Parties and their counsel agree that they will not initiate or have any contact with the press, respond to any press inquiry, or have any communication with the press about this case.

2. **Successors.** This Settlement will be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators and successors.

3. **Governing Law.** This Settlement will be construed under and governed by the laws of the State of California, without regard to choice of law principles. All questions of validity, interpretation or performance of any of its terms or of any rights or obligations of the Parties to this Settlement will be governed by California law. If any legal or equitable action is necessary to enforce the terms of this Settlement, it will be brought in the State of California, Riverside County.

4. **Complete Agreement.** The Parties each acknowledge and represent that no promise or representation not contained in this Settlement has been made to them and acknowledge and represent that this Settlement contains the entire understanding between them and contains all terms and conditions pertaining to the compromise and settlement of the PAGA claim in the Action. This Settlement cannot be amended or modified except by a writing signed by the Parties hereto.

5. **Nullification of Settlement.** In the event that: (i) the Court does not approve the Settlement as provided herein; or (ii) the Settlement does not become final for any other reason, then this Settlement and any documents generated to bring it into effect, will be null and void, and the Parties will be returned to their original respective positions.

6. **Judgment and Continued Jurisdiction.** After approval of this Settlement, the Court will have continuing jurisdiction per California Code of Civil Procedure § 664.6 solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement; (ii) settlement administration matters; and (iii) such post-judgment matters as may be appropriate under court rules or as set forth in this Settlement.

7. **Amendment or Modification.** This Settlement may be amended or modified only by a written instrument, signed by the Parties or their successors-in-interest or counsel for the Parties.

8. **Authorization to Enter into Settlement.** Counsel for the Parties warrant and represent that they are expressly authorized by the Parties whom they represent to negotiate this Settlement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Settlement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. If they are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

9. **Execution and Counterparts.** This Settlement is subject only to the execution of the Parties. However, the Settlement may be executed in one or more counterparts. All executed counterparts, and each of them, including facsimile and scanned copies of the signature page, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange among themselves original signed counterparts.

10. **Severability.** If any term or provision of this Settlement is held to be invalid or unenforceable, the remaining portions of this Settlement will continue to be valid and will be

performed, construed and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the Parties, as determined from the face of the Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

11. **Waiver**. No waiver of any condition or covenant contained in this Settlement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such Party of the same or any other condition, covenant, right or remedy.

12. **Enforcement Action**. In the event that one more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this agreement or to declare rights and/or obligations under this agreement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

13. **Mutual Preparation**. The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement. Accordingly, this Settlement will not be construed more strictly against one Party merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement.

14. **Representation by Counsel**. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement, and this Settlement has been executed with the consent and advice of counsel and reviewed in full.

15. **Cooperation and Execution of Necessary Documents**. The Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement. The Parties agree to work cooperatively, diligently and in good faith to ensure that all documents necessary to seek the Court's approval of this Agreement are timely filed.

16. **Binding Agreement**. The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement will be fully enforceable and binding on all Parties and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

IN WITNESS THEREOF, the Parties to this Settlement each acknowledge that they have read the foregoing Settlement, accept and agree to the provisions contained in this Settlement and hereby execute it voluntarily and with full understanding of its consequences.

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[SIGNATURES BEGIN ON FOLLOWING PAGE]

Dated: Dec 11, 2024, 2024

PLAINTIFF

By: Michael Kotcherha
Michael Kotcherha (Dec 11, 2024 15:11 PST)
Michael Kotcherha

DEL'S FLOORING CONTRACTORS, INC.

Dated: 12/16/24, 2024

By: [Signature]
Anthony Bernardi
Its: C.F.O.

APPROVED AS TO FORM:

Dated: Dec 11, 2024

HAINES LAW GROUP, APC

By: [Signature]
Fletcher W. Schmidt
Andrew J. Rowbotham
Attorneys for Plaintiff

Dated: 12/12, 2024

FITZGERALD & MULÉ LLP

By: [Signature]
David B. Mulé
Jana B. FitzGerald
Attorneys for Defendant