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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

MICHAEL KOTCHERHA, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

DEL'S FLOORING CONTRACTORS, INC.,
a California corporation; and DOES 1 through
100, inclusive

Defendants.

Case No. CVRI2202654

*[Case Assigned for all purposes to the Hon.
Harold W. Hopp, Dept. 1]*

**DECLARATION OF ANDREW J.
ROWBOTHAM IN SUPPORT OF
PLAINTIFF'S MOTION FOR PAGA
SETTLEMENT APPROVAL**

Action Filed: June 19, 2022

Trial Date: None Set

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I, Andrew J. Rowbotham, declare as follows:

1. I am a Partner at the Haines Law Group, APC, and counsel for named Plaintiff
El Kotcherha (“Plaintiff”) in the above-captioned matter. I am a member in good standing
bar of the State of California and am admitted to practice in this Court. I have personal
knowledge of the facts stated in this declaration and could testify competently to them if called
to do so.

2. I am a 2014 graduate of Pepperdine University School of Law and was admitted to the California State Bar in December 2014. Since that time, I have practiced exclusively in the area of plaintiff's employment litigation. From October 2014 to May 2015, I worked as an attorney at the Mesriani Law Group, an employment law firm in Santa Monica, California. The majority of my work focused on representing employees in wage and hour and wrongful termination actions. Although non-exhaustive, the type of work I performed included: conducting legal research; performing pre-filing research and analysis; drafting complaints and letters to the U.S. Department of Labor & Workforce Development Agency; attending court hearings; corresponding with opposing counsel; drafting and responding to written discovery; analyzing payroll and timekeeping records and employee handbooks; drafting complaints and mediation briefs; conducting mediations; and drafting long-form settlement agreements.

3. Since April 2016, I have worked at my current firm, Haines Law Group, APC. I am currently involved with approximately fifty (50) active wage and hour class actions, including a number of “hybrid” actions asserting nationwide wage and hour claims under the Fair Labor Standards Act, as well as California-specific claims under Rule 23 of the Federal Rules of Civil Procedure.

4. The following is a non-exhaustive list of wage and hour class actions (which have not yet been granted final approval) in which I have been named as Class Counsel:

- *Rodriguez v. Spartan, Inc.*, Case No. BCV-15-100007-DRL, California Superior Court, County of Kern, Honorable David R. Lampe, presiding;

- *Tapper v. Squad Security CA, Inc.*, Case No. BC607241, California Superior Court, County of Los Angeles, Honorable John Shepard Wiley Jr., presiding;
- *Nieves v. Ta Chen International, Inc.*, Case No. BC609005, California Superior Court, County of Los Angeles, Honorable Kenneth R. Freeman, presiding;
- *Mansilla v. Haeco Americas Line Services, LLC*, Case No. BC615310, California Superior Court, County of Los Angeles, Honorable Elihu M. Berle, presiding;
- *Rodriguez v. Mersen USA Oxnard-CA Inc.*, Case No. 56-2015-00471031-CU-OE-VTA, California Superior Court County of Ventura, Honorable Kent M. Kellegrew, presiding;
- *Khosravi v. Enterprise Rent-A-Car Company of Los Angeles, LLC*, Case No. 30-2016-00829923-CU-OE-CXC, Superior Court of California, County of Orange, Honorable Thierry Patrick Colaw presiding;
- *De Loera v. Pharmaceutic Litho & Label Company, Inc.*, Case No. 56-2016-00479931-CU-OE-VTA, Superior Court of California, County of Ventura, Honorable Kent M. Kellegrew presiding;
- *Ortiz v. Endologix, Inc.* Case No. 30-2016-00873893-CU-OE-CXC, Superior Court of California, County of Orange, Honorable William D. Claster presiding;
- *Delgado v. Pacific Coast Cabling, Inc.*, Case No. BC600419, Superior Court of California, County of Los Angeles, Honorable Carolyn B. Kuhl presiding;
- *Valsabel v. Vintage Tile & Stone, Inc.*, Case No. 30-2016-00848602-CU-OE-CXC, Superior Court of California, County of Orange, Honorable Randall J. Sherman presiding;
- *Ramos v. Da/Pro Rubber, Inc.*, Case No. BC621297, Superior Court of California, County of Los Angeles, Honorable William F. Highberger presiding;
- *Lopez v. Bornt & Sons, Inc.*, Case No. ECU09820, Superior Court of California, County of Imperial, Honorable Jeffrey B. Jones presiding;

- *Ruvalcaba Quiroz v. Circle M Contractors, Inc.*, Case No. 30-2016-00885065-CU-OE-CXC, Superior Court of California, County of Orange, Honorable William D. Claster presiding;
- *Armenta, et al., v. California Friends Homes d/b/a Quaker Gardens*, Case No. 30-2016-00883282-CU-OE-CXC, Superior Court of California, County of Orange, Honorable Randall J. Sherman presiding;
- *Ayala, et al., v. Dearden's*, Case No. BC679750, Superior Court of California, County of Los Angeles, Honorable Elihu M. Berle presiding;
- *Becerra v. All Valley Washer Service, Inc.*, Case No. BC663448, Superior Court of California, County of Los Angeles, Honorable Amy D. Hogue presiding;
- *Song, et al. v. Blendtec, Inc.*, Case No. STK-CV-VOE-2016-6272, Superior Court of California, County of San Joaquin, Honorable Roger Ross presiding;
- *Zinnerman v. Tumbleweed Educational Enterprises, Inc.*, Case No. BC673708, Superior Court of California, County of Los Angeles, Honorable Maren E. Nelson presiding;
- *Chairez v. B.E. McCarty, Inc.*, Case No. 56-2017-00503353-CU-OE-VTA, Superior Court of California, County of Ventura, Honorable Vincent O'Neill presiding;
- *Garcia, et al. v. Simplified Labor Staffing Solutions, Inc.*, Case No. BC696898, Los Angeles County Superior Court, Honorable Elihu M. Berle, presiding (approving an hourly rate of \$400 for work performed in 2018 and 2019);
- *Delgado v. Spears Manufacturing Co.*, Case No. BC709665, Los Angeles County Superior Court, Honorable Maren E. Nelson, presiding (approving an hourly rate of \$425 for work performed in 2018, 2019, and 2020);
- *Soto v. L I Metal Systems*, Case No. 37-2017-00009607-CU-OE-CTL, San Diego County Superior Court, Honorable Timothy Taylor, presiding (approving an hourly rate of \$425 for work performed from 2017-2020);

- *Fishback v. Paragon Framing, Inc.*, Case No. CIVDS1906610, San Bernardino County Superior Court, Honorable David Cohn, presiding (approving an hourly rate of \$425 for work performed in 2019 and 2020);
- *Fishback v. J.D. Miller Construction Inc.*, Case No. CIVDS1906611, San Bernardino County Superior Court, Honorable David Cohn, presiding (approving an hourly rate of \$425 for work performed from 2019-2021);
- *Teeba v. Brill, Inc.*, Case No. CIVDS1923242, San Bernardino County Superior Court, Honorable David Cohn, presiding (approving an hourly rate of \$425 for work performed from 2019-2021);
- *Gonzalez v. Precision Hospitality & Development, LLC*, Case No. 30-2020-01127597-CU-OE-CXC, Orange County Superior Court, Honorable Randall J. Sherman, presiding (approving an hourly rate of \$450 for work performed in 2020 and 2021);
- *Vides v. Celoseal Roofing, Inc.*, Case No. 30-2020-01162478-CU-OE-CXC, Orange County Superior Court, Honorable Randall J. Sherman, presiding (approving an hourly rate of \$475 for work performed from 2020-2022);
- *Qawas v. Socal Framing, Inc.*, Case No. RIC1902588, Riverside County Superior Court, Honorable Sunshine S. Sykes, presiding (approving an hourly rate of \$475 for work performed from 2019-2022);
- *Nelson v. Santini Foods, Inc.*, Case No. RG21090890, Alameda County Superior Court, Honorable Evelio Grillo, presiding (approving an hourly rate of \$475 for work performed in 2021 and 2022);
- *Zuniga v. Sonar Inc.*, Case No. 30-2019-01117310-CU-OE-CXC, Orange County Superior Court, Honorable Peter Wilson, presiding (approving an hourly rate of \$575 for work performed from 2019-2023); and
- *Gonzalez v. Guardian Industries LLC*, Case No. 19CECG02134, Fresno County Superior Court, Honorable Jonathan M. Skiles, presiding (approving an hourly rate of \$575 for work performed from 2019-2023).

1 • *Sanchez v. Dutton Home Services, LLC*, Case No. 22STCV01834, Los Angeles
2 County Superior Court, Honorable Maren E. Nelson, presiding (approving an hourly
3 rate of \$575 for work performed from 2022-2023).

4 • *Ramirez v. Wyndham Vacation Ownership, Inc.*, Case No. 20CV01715, Santa Barbara
5 County Superior Court, Honorable James F. Rigali, presiding (approving an hourly
6 rate of \$650 for work performed from 2020-2024).

7 5. I have also been named as Class Counsel for the certified class following a
8 contested class certification motion in the following case:

9 • *Staublein v. Wells Fargo Bank, National Association*, Case No. CIVDS1712267, San
10 Bernardino Superior Court, Honorable David Cohn presiding (certifying a wage
11 statement class).

12 6. In March 2023, I served as trial counsel for the plaintiff and the aggrieved
13 employees in the matter of *Abraham Taduran v. James R. Glidewell, Dental Ceramics, Inc. dba*
14 *Glidewell Laboratories*, Case No. 30-2017-00934037-CU-OE-CXC, Orange County Superior
15 Court, Honorable William Claster presiding, which was a case brought under the Private
16 Attorneys General Act, Labor Code §§ 2698 *et seq.*, that resulted in a six-figure verdict in favor
17 of the aggrieved employees.

18 7. In addition to the above cases, I also play a significant role in many of my firm's
19 current wage and hour class actions. The scope of my involvement includes but is not limited to:
20 corresponding with opposing counsel; attending court hearings; drafting and responding to
21 written discovery; preparing for and defending depositions; negotiating and drafting long-form
22 settlement agreements; attending mediations; and drafting motions for preliminary and final
23 approval.

24 8. Between 2020 and 2025, Thomson Reuters recognized me as a Top Young
25 Attorney in Southern California in the annual Rising Stars Edition of Super Lawyer. This is an
26 honor awarded to no more than two-and-a-half percent of attorneys under the age of forty in
27 Southern California each year.

1 **SETTLEMENT AGREEMENT DOCUMENTATION – CMO D.1.A**

2 9. As counsel for Plaintiff, I have been closely involved in all aspects of this litigation
3 since its inception. I played an integral part in the negotiation and resolution of the PAGA claims
4 at issue in this lawsuit. I believe this Settlement is a reasonable compromise of said claims and
5 now apply for approval of the Settlement with this Court. The Settlement Agreement is attached
6 hereto as **Exhibit 1**. The Notice of PAGA Settlement and Release of Claims (“Notice”) is attached
7 as **Exhibit A** to the Settlement Agreement

8 **LWDA NOTIFICATION - CMO D.1.C**

9 10. On December 18, 2024, my office submitted this filing along with the Settlement
10 Agreement to the LWDA. A true and correct copy of the settlement submission is attached hereto
11 as **Exhibit 4**.

12 11. Defendant Del’s Flooring Contractors, Inc., (“Defendant”) provides project
13 management services for commercial and residential flooring and tile needs. Declaration of
14 Defendant is located in Palm Desert, California and serves the Coachella Valley. Plaintiff worked
15 for Defendant as a non-exempt piece-rate employee between June 2021 and December 2021. As
16 a flooring installer, Plaintiff’s primary job duties included traveling to various work locations,
17 removing and disposing of old flooring, and installing new flooring. As a piece-rate employee,
18 Defendant paid Plaintiff solely based on the square footage of the projects he completed, not
19 based on the number of hours he worked. Plaintiff, like all other aggrieved employees, worked
20 for Defendant in California and was subjected to Defendant’s wage and hour practices and
21 policies during the PAGA Period (June 29, 2021 through September 16, 2024).

22 12. On June 29, 2022, Plaintiff provided written notice of his intent to file a claim for
23 civil penalties under the PAGA to the LWDA and Defendant. Plaintiff’s LWDA letter is attached
24 hereto as **Exhibit 2**.

25 13. On the same day, Plaintiff filed this action seeking unpaid wages and penalties as
26 a result of Defendant’s alleged failure to pay overtime wages for overtime hours worked, failure
27 to pay all minimum wages, failure to provide all meal periods, failure to authorize and permit all
28 rest periods, failure to pay all final wages to employees upon separation of employment, failure

1 to issue accurate, itemized wage statements, and violation of California unfair competition laws.
2 On September 6, 2022, Plaintiff amended his complaint to add a cause of action for civil penalties
3 under PAGA. Following meet-and-confer discussions between counsel, Defendant provided a
4 copy of Plaintiff's signed arbitration agreement with a class-action waiver. After reviewing the
5 agreement, I determined that, should a motion to compel arbitration be filed, Plaintiff would likely
6 be forced to dismiss his class claims and pursue his individual claims in arbitration. On February
7 1, 2023, this Court granted the Parties' stipulation to dismiss Plaintiff's individual and class
8 claims and stay Plaintiff's representative PAGA claim pending the California Supreme Court's
9 decision in *Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104, 1121 (holding that
10 "aggrieved employee" continues to have standing to pursue non-individual PAGA claims in court
11 even if compelled to arbitrate his individual PAGA claims).

12 **PLAINTIFF'S INDIVIDUAL SETTLEMENT – CMO D.4**

13 14. As explained in my declaration submitted to the Court on January 24, 2023 (in
14 connection with Plaintiff's request for dismissal of individual and class claims and stay of the
15 representative PAGA claim), Plaintiff and Defendant previously agreed to a total individual
16 settlement of \$18,000.00, which includes a general release of Plaintiff's individual claims and
17 also my firm's attorney's fees and costs associated with those claims. A true and correct copy of
18 Plaintiff's individual settlement agreement is attached hereto as **Exhibit 5**.

19 15. In negotiating Plaintiff's individual settlement, I reviewed all of Plaintiff's
20 timekeeping and payroll records along with other relevant documents in his personnel file. I
21 determined that, should Plaintiff proceed to arbitrate his individual claims, there was a possibility
22 that he could receive less than the settlement amount, including a possibility that he could receive
23 nothing. The breakdown of Plaintiff's potential individual recovery for each claim should he
24 proceed to litigate his claims in arbitration is as follows:

25 **Unpaid Overtime:** Nominal (Plaintiff's timekeeping records reflect that he rarely worked over
26 8.0 hours in a day or 40.0 hours in a week)

27 **Unpaid Minimum Wages:** \$5,360 (5 hours of estimated non-productive time per week x \$28.21
28 average hourly rate x 19 weeks x 2 for liquidated damages per Labor Code § 1194.2(a))

1 **Meal Period Violations:** Nominal (Plaintiff's timekeeping records reflect that he regularly
2 clocked out for 30-minute meal periods before the end of the fifth hour of work. The records do
3 not reflect Plaintiff working a shift in excess of 10.0 hours)

4 **Rest Period Violations:** Nominal (Plaintiff's timekeeping records reflect that Defendant tracked
5 and paid separate rest period compensation at his average hourly rate as required by Labor Code
6 § 226.2)

7 **Waiting Time Penalties:** \$6,770 (\$28.21 average hourly rate x 8 hours per day x 30 days)

8 **Wage Statement Violations:** \$1,850 (\$50 initial violation + 18 subsequent violations x \$100)

9 **Total Potential Recovery:** \$13,980 not including potential attorney's fees and costs

10 16. Soon thereafter, the Parties agreed to an informal exchange of documents and
11 information in conjunction with private mediation to resolve the PAGA claim. Specifically,
12 Defendant produced timekeeping and payroll records for all non-exempt employees who worked
13 during the PAGA Period. Additionally, Defendant produced sample wage statements and work
14 orders to aid Plaintiff in evaluating the representative exposure.

15 **USE OF NEUTRAL PARTY – CMO D.1.B**

16 17. After extensive legal research and analysis, the Parties attended a full-day
17 mediation session with the Hon. David M. Chapman (Ret.) on July 18, 2018. At mediation, the
18 Parties vigorously debated the legal and factual bases for Plaintiff's allegations and Defendant's
19 defenses, and the Parties' data analyses and conclusions based on the data. With the help of Judge
20 Chapman, the Parties were able to successfully negotiate a resolution of the lawsuit at this
21 mediation and, in the following months, the Parties formalized the Settlement Agreement now
22 before the Court.

23 **PAGA PENALTIES ANALYSIS - CMO D.2.A-H**

24 18. Plaintiff alleges that Defendant did not accurately compensate its piece-rate
25 employees for all hours worked. Specifically, Plaintiff alleges that Defendant failed to separately
26 compensate piece-rate employees for "non-productive time," or rather, for time spent working
27 but not performing piece-rate activities such as attending mandatory meetings and trainings,
28 waiting for materials before they could begin their installations, and loading and unloading their
trucks with flooring materials each workday. Plaintiff estimates that collectively, these
nonproductive tasks took an average of 30 minutes each workday. Given that this violation
accrued each pay period for piece-rate employees, Plaintiff assumed he would be able to prove at

1 least one violation each pay period during the PAGA Period. Plaintiff therefore calculated
2 Defendant's maximum PAGA exposure for this claim at \$248,900 (2,489 pay periods x \$100 per
3 violation). Defendant contends that all work performed by piece-rate employees was "directly
4 related" to the activities that were being compensated on a piece-rate basis, and therefore did not
5 need to be separately compensated.

6 19. Plaintiff further alleges that Defendant issued facially deficient wage statements
7 to its piece-rate employees which do not include the number of piece-rate units earned and the
8 applicable piece rate, in violation of Labor Code § 226(a). Defendant maintains that the required
9 information is readily available on other documents that accompany the wage statement (such as
10 the paycheck itself or a separate document). Defendant also maintains that even if the Court did
11 award PAGA penalties for any of these Labor Code violations, the Court would substantially
12 reduce the penalties awarded based on the discretionary factors contained in Labor Code
13 § 2699(e)(2). Additionally, Defendant argues Plaintiff could only seek PAGA penalties at the
14 \$100 "initial" violation rate, as opposed to the \$200 "subsequent" violation rate, since before
15 Plaintiff initiated this action, Defendant had never been put on notice by a court or the Labor
16 Commissioner that its practices violated the Labor Code. Plaintiff assumed he would be able to
17 prove at least one violation each pay period during the PAGA Period. Plaintiff therefore
18 calculated Defendant's maximum PAGA exposure for this claim at \$248,900 (2,489 pay periods
19 x \$100 per violation).

20 20. In light of Defendant's arguments and defenses described above, Plaintiff
21 discounted that maximum exposure of \$497,800 by 33% for a risk of losing on the merits and/or
22 not recovering a PAGA penalty for each claim in every pay period, and by an additional 50% for
23 risk of the Court reducing penalties, to arrive at a realistic exposure of approximately \$166,763.
24 In the face of Defendant's defenses on the merits and the Court's discretion to reduce PAGA
25 penalties, Plaintiff felt that the negotiated settlement of \$150,000, which represents 90% of
26 Plaintiff's expected potential value for these claims, was clearly in the best interests of the LWDA
27 and the aggrieved employees and was well within the range of reasonableness.
28

21. Plaintiff's complaint also included allegations regarding violations for unpaid overtime, failure to provide meal periods, failure to authorize and permit rest periods, and failure to separately compensate rest periods. However, after a comprehensive review of Defendant's records provided prior to mediation, it became abundantly clear that these claims provided only nominal settlement value. Specifically, Defendant regularly compensated piece-rate employees for overtime, separate rest periods, and the records reflected facially compliant meal periods taken before the end of the fifth hour of work.

AGGRIEVED EMPLOYEES AND PAGA PERIOD – CMO D.2.B.

22. Aggrieved employees are defined as, "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. Plaintiff's mediation data analysis determined that there were approximately 2,489 aggregate pay periods worked by the 89 aggrieved employees during the PAGA Period.

ATTORNEY'S FEES AND COSTS - CMO D.3

23. My firm requests one-third of the MSA (currently estimated at \$50,000.00) in attorneys' fees, and \$2,835.60 in reimbursement for litigation costs. As explained below, this request is reasonable when compared against my firm's lodestar table as it results in a negative multiplier compared to the hours actually spent working on this matter since June 2022. This fee request of one-third of the MSA is consistent with my firm's experience in similar wage-and-hour class and PAGA matters. A true and correct copy of my firm's expense summary is attached hereto as **Exhibit 3**.

24. My firm has worked on this case on a pure contingency basis. To date my firm has expended over 90 hours on this matter. A non-exhaustive list of tasks performed to reach this Settlement include: drafting the initial complaint, LWDA letter, amended complaint, status reports, request for dismissal documentation and supporting declarations, mediation requests, mediation brief, the settlement agreement and notice, and this PAGA approval motion and all supporting documents. My firm has also expended significant time reviewing the mediation production and conducting an analysis of the civil penalties at issue in order to have a productive mediation. Beyond that, myself and Aden Khachadoorian (a 3rd year associate at my firm)

attended a full day mediation session that ultimately led to a resolution via mediator's proposal. A table of the hours spent on this matter along with associated billing rates for each of the attorneys and staff at my firm is provided below:

Name	Rate	Hours	Pre-Multiplier Lodestar
Paul K. Haines (19th Year Attorney)	\$850	5.8	\$4,930.00
Fletcher W. Schmidt (13th Year Attorney)	\$750	25.1	\$18,825.00
Andrew J. Rowbotham (11th Year Attorney)	\$650	42.3	\$27,495.00
Aden M. Khachadoorian (3rd Year Attorney)	\$450	10.5	\$4,725.00
Firm Paralegals	\$175	6.6	\$1,155.00
Total Lodestar			\$57,130.00

25. My firm has entered into a written agreement with Michael Burgis & Associates, P.C. and has agreed to split fees in this matter as follows: 77.5% to Haines Law Group, APC and 22.5% to Michael Burgis & Associates, P.C. Plaintiff has been advised of this fee split and has consented to it in writing per California Rules of Professional Conduct 1.5.1.

SETTLEMENT ADMINISTRATOR COSTS – CMO D.8.A

26. The parties agree to engage Phoenix Settlement Administrators ("Phoenix") as the third-party settlement administrator. Phoenix shall be responsible for calculating and mailing the settlement checks and Notice to the aggrieved employees, among other duties. Phoenix estimates incurring \$2,995.00 in costs in connection with the administration of this settlement. My office sought bids from Phoenix (\$2,995.00), Apex (\$5,990.00), and CPT Group (\$6,500.00).

SETTLEMENT ADMINISTRATOR DECLARATION – CMO D.8.B

27. As detailed in the Settlement Agreement and declaration of Jodey Lawrence, submitted concurrently with this Motion, Phoenix will perform duties in connection with this Settlement that are integral in effectuating the Settlement and the Notice process. Among other things, Phoenix will calculate each aggrieved employee's individual PAGA payment, update addresses contained in the employee data supplied by Defendant, format the Notice Packets for mailing and translate them into Spanish, mail Notice Packets to all aggrieved employees, and

1 otherwise administer the Settlement. Phoenix was selected to administer this Settlement because
2 it is an experienced and well-respected settlement administrator and returned a bid at a
3 competitive rate.

4 **PLAINTIFF'S ENHANCEMENT PAYMENT – CMO 5**

5 28. Plaintiff requests an enhancement payment in the amount of \$5,000.00 in
6 recognition of his efforts to initiate this case, his contributions to the prosecution of this case, and
7 his dedication in bringing this case to a successful resolution. Among other things, Plaintiff
8 searched for and gathered relevant documents for use in the lawsuit and provided factual
9 information to my office, had regular discussions with me both in person and over the phone
10 regarding the claims in the lawsuit, the facts and legal theories at issue in the case, and
11 Defendant's timekeeping as well as piece-rate practices, Plaintiff discussed the status of the case
12 and general case strategy with me and other attorneys at my office on many occasions, helped my
13 office prepare for mediation, and made himself available for the entire day of mediation. Plaintiff
14 spent at least 25 hours on activities that ultimately lead to the Settlement. Plaintiff is not a PAGA
15 plaintiff in any other matter, pending or closed.

16 29. From the NSA, 75% (\$66,877.05) will be distributed to the LWDA, and 25%
17 (\$22,292.35) will be distributed to the aggrieved employees. 100% of the individual payments to
18 the aggrieved employees will be reported using IRS Form-1099s, since all funds received under
19 Section 2699 are civil penalties that do not trigger payroll taxes or withholdings. Individual
20 Settlement Payments shall be apportioned based on the proportionate number of pay periods
21 worked during the PAGA Period, by multiplying the Net Settlement Amount by a fraction, the
22 numerator of which is the aggrieved employees' total pay periods worked during the PAGA
23 Period, and the denominator of which is the total number of pay periods worked by all aggrieved
24 employees during the PAGA Period. The average recovery per aggrieved employee is expected
25 to be \$250.48.

26 30. Defendant will fund the entire Maximum Settlement Amount in three equal
27 payments of \$50,000.00 each, with the first payment due 30 days after the Court approves the
28 Settlement, the second payment due 45 days thereafter, and the third and final payment due 45

1 days thereafter. Within 21 days of the Court approving the Settlement (the “Effective
2 Date”) Defendant will provide Phoenix with a list of the aggrieved employees’ full name, last
3 known mailing address, last known telephone number, start date(s) of employment, end date(s) of
4 employment, total pay periods worked, and Social Security numbers. The list shall also include
5 the sum total of all pay periods worked by Allegedly Aggrieved Employees during the PAGA
6 Period. After receiving this information, Phoenix will circulate to counsel for both parties an
7 anonymized spreadsheet containing the Individual PAGA payments and the data used to calculate
8 said payments. Phoenix will then perform a search on the National Change of Address database
9 to update the aggrieved employees’ addresses. After the Settlement is fully funded and Phoenix
10 receives both Plaintiff’s and Defendant’s counsel approval of the information contained in the
11 anonymized spreadsheet, Phoenix will mail the Individual PAGA payments to the aggrieved
12 employees with the Notice, in English and Spanish, via First-Class U.S. Mail. Individual PAGA
13 payments that are mailed to aggrieved employees will expire after one hundred eighty
14 (180) calendar days from the date that they are mailed.

15 **UNCASHED CHECKS – CMO 10**

16 31. The amount of any unclaimed funds resulting from checks not being redeemed
17 will be turned over to the Controller of the State of California per California’s Unclaimed Property
18 Law to be held in the name of the aggrieved employees to whom the checks were issued.

19 **PAGA RELEASE – CMO 7**

20 32. Through this Settlement Plaintiff will release any and all claims for statutory
21 penalties that could have been sought by the Labor Commissioner for the violations identified in
22 Plaintiffs June 29, 2022 prefiling PAGA letter to the Labor & Workforce Development Agency
23 Plaintiff does not release any Aggrieved Employee's claim for wages or damages. See Settlement
24 III. 7. This release applies only to the Defendant entity named in the complaint along with its past
25 and present officers, directors, shareholders, managers, exempt employees, agents, principals,
26 spouses, heirs, representatives, accountants, auditors, consultants, and its respective successors
27 and predecessors in interest, subsidiaries, affiliates, parents and attorneys. *Id.*, III. 6.
28

33. I confirm that I am not affiliated with the proposed settlement administrator, Phoenix Settlement Administrators. I am also not aware of any class, representative or other collective action pending in any other court that asserts claims similar to those asserted in this action.

34. I declare under penalty of perjury under the laws of California and the United States that the foregoing is true and correct. Executed on December 18, 2024, at El Segundo, California.


Andrew J. Rowbotham

EXHIBIT 1

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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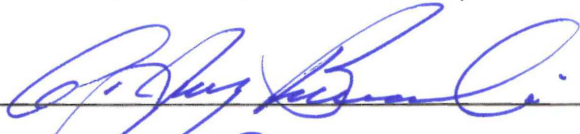
Dated: Dec 11, 2024, 2024

PLAINTIFF

By: Michael Kotcherha
Michael Kotcherha

DEL'S FLOORING CONTRACTORS, INC.

Dated: 12/16/24, 2024

By: 
Its: C.F.O.

APPROVED AS TO FORM:

Dated: Dec 11, 2024

HAINES LAW GROUP, APC

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

Dated: 12/12, 2024

FITZGERALD & MULE LLP

By: 
David B. Malé
Jana B. FitzGerald
Attorneys for Defendant

EXHIBIT 2

HAINES LAW GROUP
EMPLOYMENT ATTORNEYS

June 29, 2022

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Michael Kotcherha v. Del's Flooring Contractors, Inc.*

To Whom It May Concern:

Please be advised that this law firm represents Michael Kotcherha (“Mr. Kotcherha”) in claims arising from his employment with Del's Flooring Contractors, Inc.; and Does 1 through 100 (collectively “Defendants”). Mr. Kotcherha is an “aggrieved employee” as defined by Labor Code § 2698 *et seq.*, due to Defendants’ numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code § 2699.3, which requires aggrieved employees to notify their employer and the Labor & Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, “aggrieved employees” includes all of Defendants’ non-exempt employees who worked for Defendants in California at any time between 1 years prior to the date of this letter and the present.

Defendants are in the carpeting, flooring, and tiling business and provide installation services throughout the Coachella Valley. Mr. Kotcherha worked for Defendants as a non-exempt “flooring installer” from June 7, 2021, to approximately October 8, 2021. Unless otherwise specified, all allegations contained herein occurred during Mr. Kotcherha’s employment with Defendants.

Mr. Kotcherha was regularly paid on a piece-rate basis, whereby he was paid a predetermined amount per unit of flooring he installed. Although Defendants track the total number of hours Mr. Kotcherha and other aggrieved employees worked each week, Defendants have failed to accurately record and compensate Mr. Kotcherha and other aggrieved employees for so-called “non-productive” time (i.e. hours employees were working but were not actually performing piece-rate work). For example, Mr. Kotcherha and other aggrieved employees are regularly required to wait for materials before they can begin their installations. Additionally, Mr. Kotcherha and other aggrieved employees are required to spend additional time loading and unloading their trucks with flooring materials each workday. Under Defendants’ piece-rate compensation system, Mr. Kotcherha and other aggrieved employees are not compensated for this nonproductive time. As a result of Defendants’ failure to compensate for nonproductive time, Defendants have not paid Mr. Kotcherha and other aggrieved employees for all hours worked at the

minimum wage. *See Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 48-49 (holding that a piece-rate compensation structure that does not separately compensate employees for non-productive time violates California minimum wage laws).

When being paid on a piece-rate basis, Mr. Kotcherha and other aggrieved employees regularly worked in excess of 8 hours per day and/or 40 hours per week. However, Defendants fail to pay Mr. Kotcherha and other aggrieved employees overtime compensation, and instead pay employees solely based on their piece-rate earnings. As a result of Defendants' timekeeping policies/practices, Mr. Kotcherha and other aggrieved employees were deprived of earned overtime compensation.

Defendants failed to provide Mr. Kotcherha and other aggrieved employees with all legally compliant meal periods. Specifically, Defendants regularly failed to provide Mr. Kotcherha and other aggrieved employees with a full 30-minute uninterrupted, meal period when working a shift in excess of 5.0 hours. Because Mr. Kotcherha and other aggrieved employees were paid solely based on number of units they completed each week, Defendants encouraged Mr. Kotcherha and other aggrieved employees to spend less than 30 minutes on their meal period or forgo their meal period altogether. When Mr. Kotcherha worked shifts in excess of 10.0 hours, Mr. Kotcherha was not provided a second meal period due to Defendants' meal period policies/practices which do not provide a second meal period for shifts in excess of 10.0 hours. As a result of this practice, Defendants failed to provide Mr. Kotcherha and other aggrieved employees with all lawful meal periods to which they were entitled. Despite Defendants' failure to provide Mr. Kotcherha and other aggrieved employees with all lawful meal periods, Defendants failed to provide Mr. Kotcherha and other aggrieved employees with an additional hour of premium pay for each workday in which a meal period violation occurred, as required by Labor Code § 226.7.

During at least a portion of the relevant time period, Defendants failed to separately compensate Mr. Kotcherha or similarly aggrieved employees paid on a piece-rate basis for rest periods, as required by *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal.App.4th 864, 872 ("under the rule of *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 323, rest periods must be separately compensated in a piece-rate system."); *see also* Labor Code § 226.2 (requiring employees who are compensated on a piece-rate basis to be separately compensated for rest periods at the higher of the minimum wage or the average hourly rate of pay during the workweek). Like above, Defendants also encouraged Mr. Kotcherha and other aggrieved employees to shorten or skip any rest periods throughout the workday in order to increase piece-rate production. Defendants also failed to authorize and permit Mr. Kotcherha and other aggrieved employees to take all third, duty-free 10-minute rest period when working a shift in excess of 10.0 hours. As of result of Defendants' unlawful rest period policies/practices, Defendants are liable for rest period penalties for their failure to authorize and permit Mr. Kotcherha and other aggrieved employees paid on a piece-rate basis to take paid rest periods.

As a result of Defendants' failure to pay all minimum wages, overtime wages, and

meal and rest period premium wages, Defendants maintained inaccurate payroll records, issued inaccurate wage statements and failed to pay all final wages to Mr. Kotcherha and other aggrieved employees upon their separation of employment. Additionally, Defendants' wage statements are facially deficient because they do not include the number of piece-rate units earned as well as any applicable piece rate, they lack the address of the legal entity that is the employer, and they fail to include the applicable hourly rate in effect when Mr. Kotcherha was paid on an hourly basis, all in violation of Labor Code § 226(a).

As described above, Defendants committed the following violations of the Labor Code, and Industrial Welfare Commission Wage Order 16 ("Wage Order 16"):

Overtime Wage Violations

Defendants was required to pay Mr. Kotcherha and other aggrieved employees overtime wages for all hours worked in excess of eight hours per workday and/or forty hours per workweek. *See* Labor Code §§ 1194(a) and 1198; Wage Order 16, § 3. According to Labor Code § 510(a), "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee." As alleged above, Defendants regularly and systematically, as a policy and practice, did not pay Mr. Kotcherha and other aggrieved employees for all overtime hours worked as a result of Defendants' timekeeping policies/practices. As a result of these policies/practices, Mr. Kotcherha and other aggrieved employees were not compensated for all overtime wages.

Minimum Wage Violations

Defendants was required to pay Mr. Kotcherha and other aggrieved employees an hourly rate at least equal to the minimum wage for each hour actually worked. *See* Labor Code §§ 1182.12, 1194; 1194.2, 1197; Wage Order 16, § 4. As alleged above, Defendants failed to conform its pay practices to the requirements of the law. This unlawful conduct included but was not limited to Defendants' uniform and unlawful timekeeping policies/practices, which resulted in these individuals not being paid for nonproductive time and other hours actually worked. As a result, Mr. Kotcherha and other aggrieved employees were deprived of all required minimum wages.

Meal Period Violations

As alleged above, Defendants failed to provide Mr. Kotcherha and other aggrieved employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 16, § 10. As a result, Mr. Kotcherha and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional

hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”)

Rest Period Violations

As alleged above, Defendants failed to separately compensate Mr. Kotcherha and other aggrieved employees for all rest periods when they were paid on a piece-rate basis. Additionally, Defendants failed to authorize and permit Mr. Kotcherha and other aggrieved employees to take all required rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 16, § 11. As a result, Mr. Kotcherha and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 (“If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.”)

Waiting Time Penalties

Labor Code §§ 201-203 require an employer to pay all wages earned immediately at the time of separation of employment in the event the employer discharges the employee, or if the employee provides at least 72 hours of notice of his/her intent to quit. In the event the employee provides less than 72 hours of his/her intent to quit, said employee's wages become due and payable no later than 72 hours upon said employee's last date of employment. Defendants failed to timely pay Mr. Kotcherha and other aggrieved employees all final wages due to them at the time of their separation, which includes, among other things, overtime and minimum wages as well as meal and rest period premium wages. Further, as a matter of uniform policy and practice, Defendants continue to fail to pay aggrieved employees all earned wages at the end of employment in a timely manner pursuant to Labor Code §§ 201-203. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203. Defendants' willful failure to timely pay Mr. Kotcherha and other aggrieved employees their earned wages upon separation from employment, results in a continued payment of wages up to thirty (30) days from the time the wages were due.

Wage Statement Violations

Defendants was required to furnish Mr. Kotcherha and other aggrieved employees with complete and accurate itemized wage statements that showed, among other things, all minimum and overtime wages owed, all meal and rest period premium wages earned, as well as the number of piece-rate units earned and any applicable piece rate. *See* Labor Code §§ 226(a) and 1174(d); Wage Order 16, § 6. As a result of Defendants' failure to pay all minimum and overtime wages, as well as meal and rest period premium wages, Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Kotcherha and other aggrieved employees in violation of Labor Code § 226. Defendants'

failure to comply with its wage statement obligations was knowing and intentional, and Mr. Kotcherha and other aggrieved employees have suffered injury as a result.

As an “aggrieved employee,” Mr. Kotcherha will initiate a civil action on behalf of himself and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Kotcherha’s own investigation, and on information and belief, Defendants committed and continues to commit the following Labor Code violations:

- a. Defendants violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Kotcherha and other aggrieved employees all overtime compensation earned;
- b. Defendants violated Labor Code §§ 1182.12, 1194, 1194.2, and 1197 by failing to pay Mr. Kotcherha and other aggrieved employees the statutory minimum wage for all hours worked;
- c. Defendants violated Labor Code §§ 226.7, 512, and 558 by failing to provide meal periods as required by law and failing to pay meal period premiums to Mr. Kotcherha and other aggrieved employees at these employees’ respective regular rates of compensation for meal period violations;
- d. Defendants violated Labor Code §§ 226.7, 516, and 558 by failing to authorize and permit Mr. Kotcherha and other aggrieved employees all required rest periods and failing to pay rest period premiums to Mr. Kotcherha and other aggrieved employees at these employees’ respective regular rates of compensation for rest period violations
- e. Defendants violated Labor Code §§ 201-203 by failing to timely pay all final wages due to Mr. Kotcherha and other aggrieved employees
- f. Defendants violated Labor Code § 226 by failing to furnish Mr. Kotcherha and other aggrieved employees with accurate and compliant itemized wage statements;
- g. Defendants violated Labor Code § 204 by failing to pay Mr. Kotcherha and other aggrieved employees all wages earned at least twice during each calendar month; and
- h. Defendants violated Labor Code §§ 558 and 1174 by failing to maintain accurate records on behalf of Mr. Kotcherha and other aggrieved employees.

LWDA
June 29, 2022
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Pursuant to Labor Code § 2699.3(a)(2)(A), please notify us and Defendants if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
HAINES LAW GROUP, APC

A handwritten signature in blue ink, appearing to read 'F. W. Schmidt', is positioned above the printed name.

Fletcher W. Schmidt

cc: Del's Flooring Contractors, Inc. (via certified mail)

PROOF OF ACCEPTANCE (ELECTRONIC)

PRODUCED DATE: 06/30/2022

HAINES LAW GROUP:

The following is information for Certified Mail™/RRE item number:

9214 8901 9403 8381 0489 52

Our records indicate that this item was accepted by the USPS at:

SHIPMENT RECEIVED ACCEPTANCE PENDING EL SEGUNDO,CA 90245 06/29/2022

ORIGINAL INTENDED RECIPIENT:

DEL'S FLOORING CONTRACTORS INC

C/O: ADELBERT JAY BERNARDI

42120 STATE ST

PALM DESERT CA 92211-5148

JR

Mailer: Haines Law Group

Date Produced: 07/04/2022

ConnectSuite Inc.:

The following is the delivery information for Certified Mail™/RRE item number 9214 8901 9403 8381 0489 52. Our records indicate that this item was delivered on 07/01/2022 at 11:37 a.m. in PALM DESERT, CA 92211. The scanned image of the recipient information is provided below.

Signature of Recipient :

Address of Recipient :

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,
United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

This USPS proof of delivery is linked to the customers mail piece information on file as shown below:

DEL'S FLOORING CONTRACTORS INC
C/O: ADELBERT JAY BERNARDI
42120 STATE ST
PALM DESERT CA 92211-5148

Customer Reference Number: C3523851.20711286

Return Reference Number JR

EXHIBIT 3

Expense Summary
Michael Kotcherha v. Del's Flooring Contractors, Inc.

EXPENSE	AMOUNT
Document Purchasing Fees	\$2.00
FedEx	\$29.19
Filing Fees	\$313.73
Mediation	\$2,450.00
Photocopies	\$0.50
Postage	\$7.18
Service Fees	\$33.00
TOTAL:	\$2,835.60

EXHIBIT 4

EXHIBIT 5

SETTLEMENT AGREEMENT

This Settlement Agreement (this “Agreement” or “Settlement”) is made by and between Michael Kotcherha (“Plaintiff”) and Del’s Flooring Contractors, Inc. (“Defendants”) (together, the “Parties,” and each, individually, as a “Party”).

I. DEFINITIONS

In addition to other terms defined in this Settlement, the terms below have the following meaning in this Settlement:

- A. “Action” means the civil action, “*Michael Kotcherha, as an individual and on behalf of all others similarly situated vs. Del’s Flooring Contractors, Inc., et al.*,” filed in the Superior Court of Riverside County, Case No. CVRI2202654.
- B. “Settlement Amount” means the amount that is available to Plaintiff, as described herein.
- C. “Plaintiff’s Counsel” means Andrew Rowbotham, Fletcher Schmidt, and Edgar Morales of Haines Law Group.
- D. “Defendants’ Counsel” means David B. Mulé and Jana B. FitzGerald of FitzGerald & Mulé LLP.

II. RECITALS

- A. Plaintiff is a former employee who performed work for Defendants between June 2021 and December 2021 in Palm Desert, California.
- B. On or about June 29, 2022, Plaintiff filed a class-action complaint alleging seven causes of action against Defendants: (1) failure to pay all overtime wages; (2) minimum wage violations; (3) meal period violations; (4) rest period violations; and (5) waiting time penalties; (6) wage statement violations; and (7) unfair competition. On or about September 6, 2022, Plaintiff then filed a First Amended Complaint (“FAC”), adding a cause of action under the California Labor Code Private Attorneys General Act (“PAGA”), Cal. Lab. Code § 2698 *et seq.*, with respect to all current and former non-exempt employees who worked for Defendants between June 29, 2021 and the present. The FAC seeks civil penalties under PAGA.
- C. Defendants deny liability for the Action, as well as any and all claims arising out of Plaintiff’s employment with Defendants.
- D. Following meet-and-confer discussions between their counsel, Defendants provided to Plaintiff’s counsel a copy of an arbitration agreement with a class-action waiver signed by Plaintiff during his employment with Defendants. Plaintiff’s counsel concluded that Plaintiff would be unable to litigate his individual or class claims in the Action if those claims were compelled to arbitration.
- E. The Parties recognized the substantial risk of an adverse result in the Action, the significant costs of arbitration, and therefore agreed to settle Plaintiff’s individual claims, to dismiss the class claims without prejudice, and to stay the representative portion of the PAGA claim

pending the California Supreme Court decision in *Adolph v. Uber Technologies, Inc.*, Case No. S274671.

- F. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendants that Plaintiff's allegations in the Action have merit, or as an admission by Plaintiff that Defendants' defenses in the Action have merit.

Based on these recitals, the Parties agree as follows:

III. SETTLEMENT TERMS AND CONDITIONS

- A. **Settlement Amount.** In exchange for the promises contained in this Agreement, Defendants agree to pay Plaintiff the gross settlement amount of \$18,000.00 (the "Settlement Amount").
- B. **Payment Terms.** No later than seven (7) calendar days after the Effective Date of this Agreement, as set forth and defined in Section III.D, consideration will be mailed by Defendants or their counsel, via overnight mail, to Haines Law Group, APC, 2155 Campus Drive, Suite 180, El Segundo, CA 90245, in two (2) checks as follows:
- i. One (1) check made payable to "Michael Kotcherha" in the amount of \$8,500.00, for alleged penalties, interest, and other damages, which will be reported on an IRS Form 1099; and
 - ii. One (1) check made payable to "Haines Law Group, APC" in the amount of \$9,500.00, for attorneys' fees and costs, which will be reported on an IRS Form 1099.

Defendants will issue Plaintiff's Counsel a Form 1099. Plaintiff and Plaintiff's Counsel will provide Defendants' Counsel with a completed IRS Form W-9 at the time of execution of this Agreement for reporting purposes.

C. **Releases of Claims**

- i. Plaintiff waives and releases any and all known and unknown claims against Defendants, all of their current and former parent companies, subsidiaries and affiliated companies or entities, customers, officers, directors, employees, partners, shareholders, members, agents, successors, assigns, legal representatives, and all other related persons and entities (the "Released Parties"), including but not limited to those that were raised or could have been raised in the Action. These released claims include, but are not limited to, claims for unpaid wages, interest, penalties, attorneys' fees and costs arising under California Labor Code Sections 201, 202, 218.5, 226, 510, 1194, 1994.2, 1197, Civil Code § 1021.5; Government Code Sections 12940, 12945; California Business and Professions Code Section 17200 *et seq.*, all applicable IWC Wage Orders (including but not limited to Wage Orders 4-2001); and claims arising under any federal, state or local law governing employment, wages and hours. In granting the release of claims set forth above, Plaintiff hereby expressly waives California Civil Code Section 1542, which states:

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

Nothing in this Agreement will constitute a release of any rights or claims that cannot be waived as a matter of law (including but not limited to rights or claims arising from any claims arising under workers' compensation laws such as EAMS case # ADJ14998804). Nor will anything contained herein be construed to exclude the filing of an administrative charge or complaint with the Equal Employment Opportunity Commission or National Labor Relations Board, or participation in an administrative investigation or proceeding, although, to the maximum extent permitted by law, Employee waives any right to monetary relief related to such a charge or complaint.

- ii. Defendants waive and release any and all known and unknown claims against Plaintiff. In granting the release of claims set forth above, Defendants hereby expressly waive California Civil Code Section 1542, which states:

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

- D. **Dismissal of Individual and Class Action Claims.** Plaintiff hereby agrees, in connection with this Agreement, to file a request for dismissal of (1) his individual claims (with prejudice) and (2) his class action claims (without prejudice as to putative class members claims). With respect to Plaintiff's representative PAGA claims, the Parties agree to request that the Court stay those claims pending the California Supreme Court decision in *Adolph v. Uber Technologies, Inc.*, Case No. S274671. The Parties shall submit a joint request to the Court to (1) dismiss Plaintiff's individual claims with prejudice; (2) dismiss the class claims without prejudice, and (3) stay the representative portion of Plaintiff's PAGA claims.

The date upon which the Court enters an Order regarding the Parties' joint stipulation to dismiss individual claims with prejudice, dismiss class claims without prejudice, and stay the representative PAGA claim will be considered the "Effective Date."

- E. **Acknowledgment by Plaintiff's Counsel.** Plaintiff's Counsel acknowledges and agrees that the expenses provided for in this Agreement will present complete satisfaction of any entitlement to attorneys' fees, costs and expenses he has or could assert in connection with the claims resolved by this Agreement, except as otherwise provided by this Agreement.
- F. **Tax Indemnification.** Plaintiff agrees that they are solely responsible for all tax obligations of Plaintiff, including, but not limited to, all payment obligations, which may arise as a consequence of payments under this Settlement, that they will indemnify and hold Defendants harmless from and against any and all tax liability and/or associated penalties arising out of any dispute over the non-withholding or other tax treatment of any

of the proceeds paid to Plaintiff as a result of this Settlement, and that they will not make any claim against Defendants for any cost or expense if any adverse determination is made by a tax agency in connection with the non-withholding or other tax treatment. As set forth in Section III.B.ii, Defendants will report the Settlement Amount by issuing a Form 1099 to Plaintiff and Plaintiff's Counsel.

- G. **Confidentiality.** The Parties will not issue any press or other media releases or have any communication with the press or media or anyone other than family members, clients, financial advisors, experts, and vendors related to the terms and conditions of this Settlement. The Parties agree, without compulsion of legal process, not to disclose to any third party any of the terms of this Agreement, including the grounds for same, either by specific dollar amounts or otherwise, except that they may disclose such information to their attorneys, accountants, or other professional advisors to whom disclosure is necessary to effect the purposes of consulting such professional advisor(s). The Parties agree that any such professional advisors that they consult will be advised as to the confidential nature of this Agreement and ensure that they agree to keep the existence of the Agreement and its terms strictly confidential.
- H. **Mutual Non-Disparagement.** The Parties will not at any time, directly or indirectly, make, publish or communicate to any person or entity or in any public forum any defamatory or disparaging remarks, comments, or statements concerning the Parties. This does not, in any way, restrict or impede any Party from exercising protected rights to the extent that such rights cannot be waived by agreement or from complying with any applicable law or regulation or a valid order of a court of competent jurisdiction or an authorized government agency, provided that such compliance does not exceed that required by the law, regulation, or order.

Defendants agree that if contacted by future prospective employers of Plaintiff, Defendants will only verify and/or provide Plaintiff's final job title and dates of employment.
- I. **Fair, Adequate, and Reasonable Settlement.** The Parties agree that the Settlement is fair and reasonable.
- J. **Admissibility of Agreement.** Notwithstanding any privilege applicable to settlement or mediation proceedings, this Agreement may be introduced into evidence to prove the fact and terms of the Settlement.
- K. **No Admission of Liability.** Neither this Agreement nor any other documents prepared in connection with this Settlement are in any way an admission of liability by Defendants or any other Party. In particular, this Agreement may not be used in any future proceeding as an admission by any Party of any liability or any fact used to establish liability.
- L. **Remedy for Claim of Material Breach of Agreement.** In the event that either Party claims a material breach of any provisions of the Agreement, any and all disputes related to an alleged breach will be resolved solely through arbitration. To initiate the arbitration process, the Party bringing the claim of alleged breach must demand arbitration in writing and deliver the written demand by hand or first-class mail to the other party. Defendants shall be responsible for paying the costs of the arbitration. Once the arbitration process has been initiated, the Parties shall mutually select an arbitrator, who will be an attorney licensed to practice in the location where the arbitration proceeding will be conducted or a retired federal or state judicial officer who presided in the jurisdiction where the arbitration

will be conducted. Upon selection of the arbitrator, the Parties will work with the arbitrator in selecting an arbitration location mutually agreeable to the Parties. The remedy for a material breach of the Agreement will be specific performance of the Agreement along with reasonable attorneys' fees and costs to the prevailing party for purposes of enforcing the Agreement. In the event either Party claims a material breach of the Agreement, Sections III.F, III.G, and III.H of the Agreement will remain enforceable.

- M. **Complete Agreement.** This Agreement and its exhibits constitute the entire agreement between the Parties related to the Settlement and supersedes all prior or contemporaneous agreements, representations, warranties, covenants, or inducements regarding its subject matter.
- N. **Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their successors-in-interest.
- O. **Severability.** If any of the provisions herein are found null, void, or inoperative for any reason, the remaining provisions that can be separated from it or appropriately limited in scope will remain in full force and effect.
- P. **Governing Law.** This Agreement and the rights and obligations hereunder will be governed by, and construed and interpreted in all respects, in accordance with the laws of the State of California.
- Q. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- R. **Headings.** The descriptive heading of any Section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- S. **Execution in Counterpart.** This Agreement may be executed in one or more counterparts. An executed counterpart and each of them will be deemed to be one and the same instrument. Facsimile and electronic signatures (e.g., DocuSign) will be accepted. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

[SIGNATURES BEGIN ON FOLLOWING PAGE]

Execution by the Parties and Counsel

Dated: January 04, 2023

PLAINTIFF



By: Michael Kotcherha

Dated: January 5, 2023

DEFENDANTS

Jay Bernardi

By: Jay Bernardi

Dated: January 4, 2023

PLAINTIFF'S COUNSEL



By: Andrew Rowbotham
HAINES LAW GROUP, APC

Dated: January 4, 2023

DEFENDANTS' COUNSEL



By: Jana B. FitzGerald
FITZGERALD & MULÉ LLP