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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SONOMA**

SETH SWAN; individually, and on behalf
of other members of the general public
similarly situated, and on behalf of other
aggrieved employees pursuant to the
California Private Attorneys General Act;

Plaintiff,

vs.

PACE SUPPLY CORP., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: SCV258764

Honorable René Auguste Chouteau
Courtroom 18

CLASS ACTION

**DECLARATION OF EDWIN AIWAZIAN
IN SUPPORT OF PLAINTIFF'S MOTION
FOR APPROVAL OF PAGA
SETTLEMENT AND FOR PRELIMINARY
APPROVAL OF CLASS SETTLEMENT**

[Notice of Motion and Motion for Approval of
PAGA Settlement and Preliminary Approval of
Class Settlement; Declaration of Proposed Class
Representative (Seth Swan); and [Proposed]
Order filed concurrently herewith]

Hearing Date: TBD
Hearing Time: TBD
Hearing Place: Courtroom 18

Complaint Filed: May 6, 2016
Jury Trial Date: August 17, 2018

DECLARATION OF EDWIN AIWAZIAN

I, Edwin Aiwarzian, hereby declare as follows:

1. I am an attorney licensed to practice law in the State of California. I am a member of Lawyers for Justice, PC, attorneys of record for Plaintiff Seth Swan ("Plaintiff"). The facts set forth in this declaration are within my personal knowledge or based on information and belief, and if called as a witness, I could and would competently testify thereto.

EDUCATION

2. In May of 2004, I graduated from *Pepperdine University School of Law* with a Juris Doctor degree. I have extensive formal training in dispute resolution and negotiation from the Straus Institute for Dispute Resolution as part of its Masters in Dispute Resolution degree program. In addition, I have previously served as a *pro bono* mediator for the Los Angeles Superior Court. In October of 2000, I obtained a Litigation Paralegal Certificate from the *UCLA Extension Program*. During the summer of 2000, I studied Legal Writing at *Harvard University*. In April of 1999, I obtained a Bachelor of Arts degree in Communication with a concentration in Natural Sciences from *Pepperdine University*.

JUDICIAL EXTERNSHIPS

3. From approximately September 2002 to approximately December 2002, I served as a Judicial Extern to the Honorable Kim McLane Wardlaw of the *United States Court of Appeals for the Ninth Circuit*. From approximately June 2002 to approximately August 2002, I served as a Judicial Extern to the Honorable Earl Johnson, Jr. of the *California Court of Appeal for the Second Appellate District*.

LITIGATION AND CLASS ACTION EXPERIENCE

4. In December of 2004, I obtained a license to practice law from the California State Bar. From approximately December 2004 to approximately August 2008, I was employed by the law firm of *Girardi & Keese*.

5. At *Girardi & Keese*, my practice focused on class actions and other complex cases involving toxic torts and products liability. In addition, I gained substantial experience on cases involving insurance bad faith, premises liability, and medical negligence. While employed

1 by *Girardi & Keese*, I argued approximately 100 motions, took or defended approximately 150
2 depositions, and prepared dozens of expert witnesses for deposition or trial.

3 6. Since its inception, in or around October of 2008, *Lawyers for Justice, PC* has
4 almost exclusively focused on the prosecution of consumer and employment class actions,
5 involving wage-and-hour claims, race discrimination, unfair business practices or consumer
6 fraud. Currently, we are the attorneys of record in over a dozen employment-related putative
7 class actions in both state and federal courts in the State of California. Our firm has successfully
8 litigated cases involving the executive, administrative, and other overtime exemptions to the
9 State of California and federal overtime compensation requirements. During this relatively short
10 time, in association with other law firms, we have recovered millions of dollars on behalf of
11 thousands of individuals in California.

12 **EXAMPLES OF CLASS ACTION RESULTS**

13 7. What follows are just a few examples of the type of results *Lawyers for Justice,*
14 *PC* has achieved on behalf of our clients:

15 a) Our firm, in association with co-counsel, represented the plaintiffs in a
16 wage-and-hour class action against a major property management company involving allegations
17 of misclassification of various "manager" positions. On September 20, 2010, the court granted
18 final approval of the class and representative action settlement. The Los Angeles County
19 Superior Court Case Number is BC400414.

20 b) Our firm, in association with co-counsel, represented the plaintiffs in a
21 wage-and-hour class action against a national retailer involving allegations of misclassification
22 of the "Assistant Store Manager" position. On October 28, 2010, the court granted final
23 approval of the class action settlement. The Los Angeles County Superior Court Case Number is
24 BC413498.

25 c) Our firm, in association with co-counsel, represented the plaintiffs in a
26 wage-and-hour class action against a national property management company involving
27 allegations of misclassification of the "Property Manager" position. On May 23, 2012, the court
28 granted final approval of the class and representative action settlement. The Los Angeles County

1 Superior Court Case Number is BC430918.

2 d) Our firm, in association with co-counsel, represented the plaintiffs in a
3 wage-and-hour class action against a national retailer involving allegations of misclassification
4 of the "Store Manager" position. On June 10, 2011, the court granted Plaintiff's motion for class
5 certification. On August 26, 2013, the court granted final approval of the class action settlement.
6 The Los Angeles County Superior Court Case Number is BC424012.

7 e) Our firm, in association with co-counsel, represented the plaintiffs in a
8 wage-and-hour class action against a bank, involving allegations of misclassification of the
9 "Assistant Branch Manager" position. On August 27, 2013, the court granted final approval of
10 the class and representative action settlement. The Kern County Superior Court Case Number is
11 S-1500-CV-273194-LHB.

12 f) Our firm, in association with co-counsel, represented the plaintiffs in a
13 wage-and-hour class action against a national wholesale distributor of plumbing and builder
14 supplies, involving allegations of misclassification of multiple salaried "manager" positions. On
15 May 22, 2014, the court granted final approval of the class and representative action settlement.
16 The Sacramento County Superior Court Case Number is 34-2012-00136285.

17 g) Our firm, in association with co-counsel, represented the plaintiff in a
18 wage-and-hour class action involving allegations of misclassification of the "Operations
19 Manager" position. On September 16, 2014, the Los Angeles Superior Court granted plaintiff's
20 motion for class certification. The Los Angeles County Superior Court Case Number is
21 BC478769.

22 h) Our firm, in association with co-counsel, represented the plaintiff in a
23 wage-and-hour class action against a national retailer of household items, on behalf of hourly-
24 paid or non-exempt employees. On May 27, 2015, the court granted final approval of a class and
25 representative action settlement. The San Francisco County Superior Court Case Number is
26 CGC-13-532344.

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1 i) Our firm, in association with co-counsel, represented the plaintiff in a
2 wage-and-hour class action involving allegations of misclassification of the salaried residential
3 "Property Manager" position. On September 17, 2015, the court granted the plaintiff's motion
4 for class certification. The Los Angeles County Superior Court Case Number is BC474784.

5 j) Our firm, in association with co-counsel, represented the plaintiffs in a
6 wage-and-hour class action against a national retailer of upscale hardware and home furnishings,
7 on behalf of non-exempt employees. On April 28, 2016, the court granted final approval of the
8 class and representative action settlement. The Los Angeles County Superior Court Case
9 Number is JCCP4794.

10 k) Our firm, in association with co-counsel, represented the plaintiffs in a
11 wage-and-hour class and representative action against a national retailer of apparel and fashion
12 accessories, on behalf of non-exempt employees. On August 5, 2016, the court granted final
13 approval of the class and representative action settlement. The Los Angeles County Superior
14 Court Case Number is BC488069.

15 l) Our firm, in association with co-counsel, represented the plaintiffs in a
16 wage-and-hour class action against a national retailer of apparel, accessories, and home products,
17 involving allegations of misclassification of the "Department Manager" position. On August 12,
18 2016, the court granted the Plaintiff's motion for class certification. The Alameda County
19 Superior Court Case Number is RG13680477.

20 m) Our firm, in association with co-counsel, represented the plaintiffs in a
21 wage-and-hour class action against a full-service bank, on behalf of non-exempt employees. On
22 November 18, 2016, the court granted final approval of the class action settlement. The San
23 Francisco County Superior Court Case Number is CJC-13-004839.

24 n) Our firm represented the plaintiffs in a wage-and-hour class action against
25 a foodservice distributor, on behalf of non-exempt employees. On January 26, 2017, the court
26 granted final approval of the class and representative action settlement. The San Bernardino
27 County Superior Court Case Number is CIVDS1507260.

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1 o) Our firm, in association with co-counsel, represented the plaintiffs in a
2 wage-and-hour class action and representative action against a manufacturer of food service
3 industry supplies on behalf of non-exempt employees. On April 14, 2017, the court granted final
4 approval of the class and representative action settlement. The Orange County Superior Court
5 Case Number is 30-2015-00810013-CU-OE-CXC.

6 p) Our firm represented the plaintiff in a wage-and-hour class action and
7 representative action against a food company on behalf of non-exempt employees. On June 30,
8 2017, the court granted final approval of the class action and representative action settlement.
9 The Sacramento County Superior Court Case Number is 34-2015-00175871.

10 q) Our firm represented the plaintiffs in a wage-and-hour class action and
11 representative action against a chocolate company on behalf of non-exempt employees. On July
12 19, 2017, the court granted final approval of the class action and representative action settlement.
13 The Alameda County Superior Court Case Number is RG15764300.

14 r) Our firm represented the plaintiff in a representative action under the
15 Private Attorneys General Act, against a real estate and property management company, on
16 behalf of non-exempt employees. On November 4, 2016, the Court granted approval of the
17 settlement. The Orange County Superior Court Case Number is 30-2015-00775439-CU-OE-
18 CXC.

19 s) Our firm represented the plaintiffs in a wage-and-hour class action and
20 representative action against a manufacturer of plastic containers on behalf of non-exempt
21 employees. On October 31, 2017, the court granted final approval of the class action and
22 representative action settlement. The Los Angeles County Superior Court Case Number is
23 BC577233.

24 t) Our firm, in association with co-counsel, represented the plaintiffs in a
25 wage-and-hour class action and representative action against a property management company
26 on behalf of hourly-paid and non-exempt employees. On January 4, 2018, the court granted final
27 approval of the class and representative action settlement. The Los Angeles County Superior
28 Court Case Number is JCCP4819.

PRELIMINARY APPROVAL

8. Marked and attached hereto as “**EXHIBIT 1**” is the Class Action and PAGA Settlement Agreement (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiff Seth Swan, individually and on behalf of the proposed Class, on the one hand, and Defendant PACE Supply Corp. (“Defendant”), on the other hand (collectively, the “Parties”). The Parties and their counsel have approved the proposed Notice of Class Action Settlement (“Class Notice”) which is attached to the Settlement Agreement as “Exhibit A.”

9. Based on information provided by Defendant, as of April 2017, the proposed Class is estimated to consist of approximately nine hundred fifty-two (952) individuals.

10. The effectiveness of Lawyers for Justice PC (“Class Counsel”) in prosecuting this case has translated into tangible monetary benefits for the Class Members in the following respects: (a) Class Member recoveries over a reasonably short period of time as opposed to waiting additional years for the same, or possibly worse, result; (b) a guaranteed result that compares favorably with other similar class action settlements of this type given the strengths and weaknesses of the case; and (c) significant savings in Class Counsel’s fees and/or costs that would have only increased significantly had the case progressed through certification, trial, and/or appeals.

11. Class Counsel has actively litigated this case since it was commenced on May 6, 2016. After conducting significant investigation of the facts and law during the prosecution of the action, counsel for the Parties engaged in extensive discussions about the strengths and weaknesses of the claims and defenses to try to resolve this lawsuit. These efforts included participating in a formal, full-day mediation conducted by mediator Mark S. Rudy, Esq., a well-respected mediator experienced in mediating complex labor and employment matters. Prior to and during the mediation and settlement discussions, the Parties exchanged class information and engaged in an intensive discussion regarding their evaluations of the case and various aspects of the case, including but not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and/or representative adjudication, the law relating to off-the-clock theory, meal and rest periods, wage-and-hour enforcement, and PAGA

1 representative claims, as well as the evidence produced and analyzed, and the possibility of
2 appeals, among other things. During all settlement discussions, the Parties conducted their
3 negotiations at arm's length in an adversarial position. Arriving at a settlement that was
4 acceptable to both Parties was not easy. Defendant and its counsel felt strongly about their
5 ability to prevail on the merits and at certification, and Plaintiff and Class Counsel believed that
6 they would be able to obtain class certification and prevail at trial. After conducting formal and
7 informal discovery and investigations, extensive settlement negotiations, and with the aid of the
8 mediator's evaluations both during and after the mediation, the Parties have agreed that this case
9 is well-suited for settlement given the legal issues relating to Plaintiff's principal claims, as well
10 as the costs and risks to both sides that would attend further litigation.

11 12. Both sides used the pre-mediation time period to investigate the veracity, strength,
12 and scope of the claims, and Class Counsel was preparing the case for class certification and
13 trial. Prior to engaging in the mediation, the Parties conducted significant formal and informal
14 discovery and investigation into the facts of the case, including and not limited to, the formal
15 exchange, review, and analysis of thousands of pages of documents and data produced by both
16 Parties. The volume of data and documents that Class Counsel reviewed and analyzed included
17 and were not limited to: Plaintiff's and other Class Members' employment records, a detailed
18 sampling of Class Members' time and pay data, Defendant's Employee Handbook, agreements
19 (including but not limited to Defendant's Meal Break Waiver Agreement and Arbitration
20 Agreement), and internal memoranda, and Defendant's operations and employment policies
21 (including but not limited to Defendant's Personnel Guide and Human Resources Policies &
22 Procedures Manual), practices, forms, acknowledgments, and procedures, among other
23 information and documents. Class Counsel interviewed Plaintiff and other Class Members to
24 gather facts and to identify potential witnesses. Class Counsel prepared for, attended, and spent
25 two full days deposing Defendant's Person Most Knowledgeable designee and prepared for and
26 defended a full-day deposition of Plaintiff. Counsel for the Parties also met and conferred on
27 numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, and the
28 production of documents and data prior to the mediation.

1 13. Counsel for the Parties have also invested time researching and investigating the
2 applicable law, which is constantly evolving as it relates to certification, representative PAGA
3 claims, off-the-clock theory, meal and rest periods, wage-and-hour enforcement, Plaintiff's
4 claims and damages, and Defendant's defenses, as well as facts discovered. Based on our
5 analysis, I submit that the result achieved in this litigation is fair, adequate, and reasonable.

6 14. The Settlement provides for a Gross Settlement Fund of five million dollars
7 (\$5,000,000). The Net Settlement Fund refers to the funds available to be distributed to Class
8 Members who do not request exclusion, after subtracting the Court-approved amounts for
9 attorneys' fees and litigation costs and expenses to Class Counsel, Service Award to Plaintiff,
10 PAGA Payment, and Settlement Administration Expenses to the Settlement Administrator.
11 Assuming that the amounts allocated toward these payments are awarded by the Court, the Net
12 Settlement Fund is currently estimated to be approximately two million eight hundred ninety-
13 eight thousand dollars (\$2,898,000). Each Settlement Class Member's Individual Settlement
14 Share is subject to reduction for employee's share of payroll taxes and withholdings with respect
15 to the wage portion. Under the Settlement Agreement, Defendant will pay the employer's share
16 of taxes separately and in addition to the Gross Settlement Fund. Furthermore, the entire Net
17 Settlement Fund will be allocated to Settlement Class Members.

18 15. The Settlement allocates an amount of two hundred and fifty thousand dollars
19 (\$250,000) to the settlement of Released Claims which arise under California Labor Code
20 section 2698, *et seq.* ("PAGA Payment"). Pursuant to Labor Code Section 2699(i) the PAGA
21 Payment will be distributed as follows, 75% to the California Labor and Workforce
22 Development Agency ("LWDA") and 25% to the Class Members who worked for Defendant
23 during the time period from February 25, 2015 to August 9, 2017 ("PAGA Group Members"), on
24 a *pro rata* basis, based upon their workweeks ("PAGA Settlement Shares"). PAGA Settlement
25 Shares will be considered 100% penalties and will be subject to reduction for any employees'
26 share of taxes or withholdings.

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1 16. The Parties have agreed to retain Simpluris, Inc. ("Simpluris" or "Settlement
2 Administrator") to handle the notice and settlement administration process. After Defendant
3 provides the Class Data to Simpluris, as outlined in the Agreement, Simpluris will mail the Class
4 Notice to each Class Member. Simpluris will calculate each Class Member's Workweeks and
5 determine his or her estimated gross Individual Settlement Share, which will be stated on his or
6 her Class Notice. Simpluris will also determine if Class Members are PAGA Group Members
7 and if so, the PAGA Settlement Share they will receive. Simpluris will also receive and process
8 Requests for Exclusion, as well as disputes of the number of Workweeks credited to Class
9 Members; provide necessary reports and declarations; calculate, subtract, and transmit necessary
10 taxes and withholdings; prepare and submit informational and other tax filings and documents;
11 issue and transmit all payments provided by the Settlement, including and not limited to, mailing
12 Individual Settlement Share checks to the Settlement Class Members; mailing PAGA Settlement
13 Share checks to PAGA Group Members; and perform any other usual and customary duties for
14 administering a class action settlement. Settlement Administration Expenses are currently
15 estimated to be sixteen thousand dollars (\$16,000) and will be paid out of the Gross Settlement
16 Fund subject to approval by the Court.

17 17. Based on investigation and information discovered, Class Counsel believes that
18 there is sufficient evidence to support the allegations made in this lawsuit, including the
19 allegations that Defendant, with respect to Plaintiff and the Class Members, *inter alia*, failed to
20 properly pay for all hours worked, failed to provide compliant meal and rest periods and to pay
21 associated premium pay, failed to timely pay wages upon termination and during employment,
22 failed to provide complaint wage statements, failed to maintain compliant payroll records, failed
23 to reimburse necessary business expenses, engaged in unfair business practices, and violated
24 California Labor Code sections 2698, *et seq.*, Private Attorneys General Act of 2004. Plaintiff
25 asserted that Class Members were expected to perform similar job duties and were subject to the
26 same or similar operations and employment policies, practices, and procedures. Additionally,
27 Plaintiff asserted that Defendant's recordkeeping practices with respect to Plaintiff and the Class
28 Members were substantially the same during the settlement period. As a result, Plaintiff claims

1 that the Class Members, including Plaintiff, were uniformly not paid all of the compensation that
2 was owed to them by Defendant during the time period at issue. Thus, it is clear that the
3 outcome of this litigation would be determined by Defendant's uniform operations and
4 employment practices, policies, and procedures that applied across its non-exempt employees in
5 California during the time period at issue.

6 18. Class Counsel is aware of the defenses and position of Defendant but believes that
7 Plaintiff could potentially certify this action despite many obstacles. Plaintiff has also taken into
8 account the uncertainty and risk of the outcome of further litigation, and the difficulties and
9 delays inherent in such litigation, including those involved in class certification and/or
10 representative adjudication. Plaintiff further recognizes the burdens of proof necessary to
11 establish liability for the claims asserted in the lawsuit, Defendant's defenses, and the difficulties
12 in establishing entitlement to monetary recovery. Plaintiff has also considered the Parties'
13 settlement discussions, as well as the evaluations and proposal of the mediator, who is
14 experienced and well-regarded in complex labor and employment matters.

15 19. Defendant, on the other hand, denied and continues to deny any liability and
16 wrongdoing of any kind associated with the claims alleged in this lawsuit. Defendant denies that
17 the lawsuit is appropriate for class treatment or representative adjudication for any purpose other
18 than this Settlement. Defendant believes that it would ultimately succeed in the action. Both
19 sides have also had the opportunity to interview witnesses and review documents and
20 information relating to Plaintiff's and the Class Members' employment with Defendant, and
21 Defendant's operations and employment policies, practices, and procedures. The Parties also
22 reviewed and analyzed thousands of pages of documents and data, including but not limited to a
23 detailed sampling of Class Members' time and pay information, to determine the potential value
24 and strength of the claims. The available information enabled Class Counsel to estimate the
25 potential claim of each Class Member and prepare damages/valuation models. Accordingly, the
26 Parties have conducted adequate investigation and discovery to be sufficiently informed of the
27 nature and extent of the Class Members' claims, and to enable both sides to fully evaluate the
28 Settlement for its fairness, adequacy, and reasonableness. The Parties have agreed that the case

1 is well-suited for settlement given the legal issues relating to Plaintiff's principal claims, as well
2 as the costs and risks to both sides that would attend further litigation. The Settlement takes into
3 account the strengths and weaknesses of each side's position and the uncertainty of how the case
4 might have concluded at certification, trial, and/or appeals.

5 20. The Settlement Agreement provides for Class Counsel to apply for an award of
6 attorneys' fees in an amount of up to thirty-five percent (35%) of the Gross Settlement Fund or
7 one million seven hundred fifty thousand dollars (\$1,750,000) and reimbursement of litigation
8 costs and expenses in an amount not to exceed eighty thousand dollars (\$80,000), which will be
9 paid out of the Gross Settlement Fund subject to approval by the Court. It should be noted that
10 Class Counsel has borne all of the risks and costs of litigation and will not receive any
11 compensation until recovery is obtained.

12 21. The Settlement Agreement provides for a Service Award to Plaintiff of up to six
13 thousand dollars (\$6,000), to be paid out of the Gross Settlement Fund subject to approval by the
14 Court. Plaintiff Seth Swan spent considerable time and effort to produce relevant documents and
15 past employment records and to provide the facts and evidence necessary to attempt to prove the
16 allegations. For example, Plaintiff provided responses to multiple formal written discovery
17 requests propounded by Defendant. Plaintiff also prepared for and attended a full day of
18 deposition and reviewed his deposition transcript. Plaintiff was available whenever Class
19 Counsel needed him and actively tried to obtain information that would benefit the Class.

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


Edwin Arwazian

EXHIBIT 1

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

This Class Action and PAGA Settlement Agreement (“Settlement Agreement,” “Settlement,” or “Agreement”) is entered into by and between Plaintiff Seth Swan (“Class Representative” and/or “Plaintiff”) on behalf of himself individually, and on behalf of all Settlement Class Members and PAGA Group Members, hereinafter defined, and Defendant Pace Supply Corp. (“Defendant” or “Pace Supply”), (collectively, “Parties”) subject to final approval of the Court. This Agreement accurately sets forth the Parties’ settlement in the amount of Five Million Dollars (\$5,000,000) to resolve and release the claims that are the subject of this Agreement, as defined in Paragraphs 52-55, as detailed below.

DEFINITIONS

1. “Action” refers to the case entitled Seth Swan v. Pace Supply Corp., Sonoma County Superior Court Case No. SCV258764.
2. “Class Counsel” is Edwin Aiwarzian, Esq., Arby Aiwarzian, Esq., and Joanna Ghosh, Esq. of Lawyers *for* Justice, PC.
3. “Class” or “Class Members” refers to the class, which the Parties agree will be certified for settlement purposes only, as follows: All current and former hourly-paid or non-exempt employees who directly worked for Defendant within the State of California at any time during the period from May 6, 2012 continuing up to and including August 9, 2017. The Class expressly does not include individuals who worked for Defendant in California through any staffing agencies at any time during the Settlement Period.
4. “Class Representative” and “Plaintiff” refer to Plaintiff Seth Swan.
5. “Complaint” refers to the Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq.* filed on May 6, 2016, and any amendments thereto, filed in the Action.
6. “Court” refers to the Superior Court of California for the County of Sonoma.
7. “Defendant’s Counsel” is Michael D. Bruno, Sara Church Reese, and Nicholas A. Deming of GORDON, REES, SCULLY, MANSUKHANI LLP.

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8. "Effective Date" refers to, if there are no timely objections by members of the Settlement Class and/or any such objections have been withdrawn prior to the final approval hearing, the date the Court signs an order granting final approval of the Settlement Agreement. If timely objections are submitted by one or more members of the Settlement Class which are not thereafter withdrawn prior to the final approval hearing, the Effective Date will be the later of the following events:

- a. when the period for filing any appeal, writ or other appellate proceeding has lapsed;
- b. when any appeal, writ, or other appellate proceeding opposing the Settlement has been dismissed finally and conclusively with no right to pursue further remedies or relief; or
- c. when any appeal, writ, or other appellate proceeding has upheld the Court's final approval order and judgment with no right to pursue further remedies or relief. It is the intention of the Parties that the Settlement will not become effective until the Court's final approval order and entered judgment is completely final, and there is no further recourse by any appellant or objector who seeks to contest the Settlement.

9. "Employer Taxes" refer to the employer's share of the payroll taxes and contributions owed with respect to the wage portions of the Individual Settlement Shares made to the Settlement Class Members, under local, state, and federal laws, *inter alia*, the Federal Insurance Contributions Act, the Federal Unemployment Tax Act, and for unemployment insurance.

10. "Gross Settlement Fund" refers to the maximum amount of Five Million Dollars (\$5,000,000) that Defendant shall pay, in its entirety and without reversion to Defendant, pursuant to this Settlement Agreement.

11. "Individual Settlement Shares" means the portion of the Net Settlement Fund distributable to each Settlement Class Member. Individual Settlement Shares will be distributed to Settlement Class Members on a *pro rata* basis, based upon the number of weeks that each Settlement Class Member worked during the period from May 6, 2012 continuing up to and including August 9,

2017 (“workweeks”), divided by the total number of workweeks worked by all Settlement Class Members. The Settlement Administrator will distribute the Individual Settlement Shares to Settlement Class Members.

12. “Net Settlement Fund” refers to the amount to be calculated by deducting the following Court-approved amounts from the Gross Settlement Fund: (a) Class Counsel’s attorneys’ fees and litigation costs and expenses; (b) the PAGA Payment; (c) the Service Award to Plaintiff; and (d) Settlement Administration Expenses

13. “Notice” means the Notice of Class Action Settlement, in a form substantially similar to the attached “**EXHIBIT A**,” subject to Court approval, and incorporated by reference into this Settlement Agreement.

14. “Parties” refers to the Class Representative and Defendant, collectively.

15. “PAGA Payment” refers to the amount of Two Hundred and Fifty Thousand Dollars (\$250,000) and, pursuant to Labor Code Section 2699(i), it will be distributed as follows: 75% to the California Labor and Workforce Development Agency (“LWDA”) and 25% to the Class Members who worked for Defendant within one year prior to February 25, 2016 (“PAGA Group Members”), on a *pro rata* basis, based upon their workweeks.

16. “Released Parties” refers to Defendant Pace Supply Corp. and its present and former parent companies, subsidiaries, as well as their shareholders, officers, directors, employees, successors, and assigns.

17. “Settlement Period” is the period of May 6, 2012 continuing up to and including August 9, 2017.

18. “Service Award” refers to the amount to be paid to Plaintiff to compensate him for his role in bringing this suit.

19. “Settlement Class” or “Settlement Class Members” means all members of the Class who do not timely submit a valid Request for Exclusion from the Settlement Class, consistent with the procedures described herein.

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20. “Settlement Administrator” refers to Simpluris, Inc., the third-party company responsible for administering the Settlement. Having obtained bids from qualified companies for the administration of this Settlement, the Parties agree to the Court’s appointment of Simpluris, Inc. as the Settlement Administrator.

21. “Settlement Administration Expenses” are those expenses incurred by the Settlement Administrator in effectuating the Settlement, including the cost of distributing Notice to the Class, settlement administration, and any fees and costs incurred or charged by the Settlement Administrator in connection with the execution of its duties under this Settlement Agreement, which are estimated not to exceed Sixteen Thousand dollars (\$16,000).

BACKGROUND

22. Plaintiff alleges, by way of the Complaint, that Defendant, *inter alia*, failed to properly pay overtime wages, failed to pay minimum wages, failed to provide compliant meal and rest periods and associated premiums, failed to timely pay wages during employment, failed to timely pay wages upon termination, failed to provide compliant wage statements, failed to keep requisite payroll records, failed to reimburse business expenses, engaged in unfair business practices, and owes unpaid wages, civil and non-civil penalties, restitution, injunctive and other equitable relief, and reasonable attorneys’ fees and costs, under, *inter alia*, California Labor Code §§ 510, 1198, 226.7, 512(a), 1194, 1197, 1197.1, 201, 202, 203, 204, 226(a), 1174(d), 2800, and 2802, Business & Professions Code §§ 17200 *et seq.*, and the Private Attorneys General Act, California Labor Code § 2698 *et seq.* (“PAGA”).

23. Defendant has denied and continues to deny each of the claims and contentions alleged by Plaintiff. Defendant also contends, among other things, that it has complied with the California Labor Code, the applicable Industrial Welfare Commission Wage Order, and the Business and Professions Code at all times. Nonetheless, Defendant has concluded that further defense of the Action would be protracted, expensive, a distraction to management, and a drain on Defendant’s resources, and that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in this Agreement. Defendant has also taken into account the uncertainty and risks inherent in any litigation, especially in complex cases like the Action. Defendant has, therefore,

determined that it is desirable and beneficial to it that the Action be settled in the manner and upon the terms and conditions set forth in this Agreement.

24. Nothing contained herein, nor the consummation of this Settlement Agreement, is to be construed or deemed an admission of the existence or non-existence of liability, culpability, negligence, or wrongdoing by Defendant or Plaintiff.

25. Class Counsel has conducted a sufficiently thorough investigation into the claims of the Class against Defendant. Based on Class Counsel's own independent investigation and evaluation, and all known facts and circumstances, including the risk of significant defenses asserted by Defendant, Class Counsel is of the opinion that the Settlement is fair, reasonable, and adequate and is in the best interest of the Class.

26. The Parties agree to cooperate and take all steps necessary and appropriate to obtain preliminary and final approval of this Settlement and to effectuate all aspects of this Settlement Agreement.

CERTIFICATION OF THE CLASS FOR SETTLEMENT PURPOSES ONLY

27. For settlement purposes only, the Parties agree that the Class will be certified. This Settlement Agreement is contingent upon the approval and certification by the Court of the Class for settlement purposes only. Defendant does not waive, and instead expressly reserves, its rights to challenge the propriety of class certification for any purpose should the Court not approve the Settlement. In connection with the proposed certification of the Class, the Parties shall cooperate and present to the Court for its consideration competent evidence, as may be requested by the Court, under the applicable due process requirements and standards for class certification.

SETTLEMENT APPROVAL PROCEDURE

28. This Settlement Agreement will become final and effective upon occurrence of all of the events described in Subparagraphs (a) through (e) below, inclusive.

- a. Execution of this Settlement Agreement by the Parties and their respective counsel of record.

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- b. Entry of an Order by the Court
 - i. granting preliminary approval of the Settlement as it relates to the settlement and release of the Released Claims which do not arise under California Labor Code section 2698, *et seq.* (“Class Settlement”), including conditional certification of the Class for settlement purposes only;
 - ii. approving the proposed Notice;
 - iii. scheduling a hearing date for final approval of the Class Settlement (“Final Approval Hearing”); and
 - iv. approving the Settlement as it relates to the settlement and release of Released Claims which arise under California Labor Code section 2698, *et seq.* (“PAGA Settlement”) and approving the PAGA Payment.
- c. Filing by Class Counsel, on or before the date of the Final Approval Hearing, the Settlement Administrator’s verification, in writing, that the Notice to the Class has been disseminated in accordance with the Court’s preliminary approval order.
- d. Entry of an order by the Court granting final approval of the Settlement Agreement.
- e. Occurrence of the Effective Date.

SETTLEMENT PAYMENT AND CALCULATION OF CLAIMS

29. In consideration of the mutual covenants and promises set forth herein, the Parties agree, subject to the Court’s approval, as follows:

- a. Settlement Amount: In exchange for the releases set forth in this Agreement, Defendant agrees to pay a Gross Settlement Fund of Five Million Dollars (\$5,000,000), which is the total and all-inclusive maximum amount Defendant shall be obligated to pay under the Settlement, on a non-reversionary basis, and Defendant will not retain any portion of the Gross Settlement Fund. Defendant shall fully fund the Gross Settlement Fund to the Settlement Administrator within thirty (30) calendar days of the Effective Date. Under no circumstances will Defendant be required to pay more than Five Million

Dollars (\$5,000,000) as the Gross Settlement Fund. However, the Gross Settlement Fund does not include the Employer Taxes, which will be paid by Defendant separately. The Gross Settlement Fund includes:

- i. the Net Settlement Fund from which Individual Settlement Shares will be distributed to Settlement Class Members, as described in this Settlement Agreement;
 - ii. the Service Award to the Class Representative (\$6,000);
 - iii. the Settlement Administration Expenses (currently estimated not to exceed \$16,000);
 - iv. the PAGA Payment in a total amount of \$250,000;
 - v. the attorneys' fees to Class Counsel in an amount of up to thirty-five percent (35%) of the Gross Settlement Fund (i.e. up to \$1,750,000); and
 - vi. reimbursement of Class Counsel's actual litigation costs and expenses in an amount not to exceed \$80,000.
- b. Attorneys' Fees and Costs and Expenses: In conjunction with final approval of this Settlement Agreement, Class Counsel will apply to the Court for an award of attorneys' fees in an amount totaling up to thirty-five percent (35%) of the Gross Settlement Fund (i.e., \$1,750,000), plus actual litigation costs and expenses in an amount not to exceed \$80,000. Defendant will not oppose such application. To the extent that the Court does not approve an award of Class Counsel's request for attorneys' fees and reimbursement of litigation costs and expenses, the amounts not approved will be a part of the Net Settlement Fund to be distributed to the Settlement Class, according to the formula set forth below. These fees and costs are included in, and come from, the Gross Settlement Fund and will be paid directly to Class Counsel by the Settlement Administrator within ten (10) calendar days after Defendant funds the Gross Settlement Fund. Class Counsel will be issued an IRS Form 1099 for their award of attorneys' fees.

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- c. Service Award: Subject to Court approval, in addition to any payment that Plaintiff receives in his capacity as a Settlement Class Member, Plaintiff will individually receive a Service Award of \$6,000 from the Gross Settlement Fund for his service as the Class Representative. Defendant will not oppose such application. The Class Representative's Service Award will be distributed by the Settlement Administrator within ten (10) calendar days after Defendant funds the Gross Settlement Fund and the Settlement Administrator will issue an IRS Form 1099 to Plaintiff in connection with this payment.
- d. Payments to Class Members: Two types of payments will be made:
- i. Individual Settlement Shares: Each Settlement Class Member will be entitled to receive a *pro rata* portion of the Net Settlement Fund ("Individual Settlement Share"), calculated based upon the number of workweeks that each Settlement Class Member worked, divided by the total number of workweeks worked by all Settlement Class Members. The Settlement Administrator shall calculate the number of workweeks worked by Settlement Class Members, the amount to be paid per workweek, and the Individual Settlement Share of each Settlement Class Member. The Individual Settlement Share will be reduced by the employees' share of any required legal deductions or withholdings, with respect to the wage-portion of the Individual Settlement Share, for each Settlement Class Member, and the Settlement Administrator shall make payment of the Individual Settlement Shares ("Individual Settlement Payments") within ten (10) calendar days after Defendant funds the Gross Settlement Fund.
 - ii. PAGA Settlement Shares: Each PAGA Group Member will be entitled to receive a *pro rata* portion of twenty five percent (25%) of the PAGA Payment, based upon his or her workweeks, divided by the total number of workweeks worked by all PAGA Group Members. The PAGA Settlement Shares will be considered to be one hundred percent (100%) penalties and will

not be subject to reduction for any employees' share of taxes or withholdings or Employer Taxes.

- e. Payment to the LWDA. The LWDA will be paid its seventy five percent (75%) portion of the PAGA Payment, from the Gross Settlement Fund. The Settlement Administrator will make the payment within ten (10) calendar days after Defendant funds the Gross Settlement Fund.
- f. Settlement Administration Expenses: The Settlement Administration Expenses will be paid from the Gross Settlement Fund within ten (10) business days after Defendant funds the Gross Settlement Fund. If Defendant opts to terminate the Settlement Agreement pursuant to the terms of this Agreement, then Defendant will bear the cost of any Settlement Administration Expenses incurred up to that date.

30. Right to Rescission: If more than ten percent (10%) of the Class Members opt out of the Settlement Class by submitting valid and timely Requests for Exclusion as set forth in Paragraph 42 of this Agreement, Defendant will have the right in its sole discretion to rescind and void this Settlement Agreement by providing written notice to Class Counsel in conformity with Paragraph 64, within seven (7) calendar days of the day on which the Settlement Administrator furnishes the parties with the number of valid and timely Requests for Exclusion as provided in Paragraph 34. If Defendant exercises this option, Defendant shall pay all Settlement Administration Expenses incurred up to that date.

ALLOCATION AND TAX TREATMENT

31. The Parties agree that all employees' share of taxes and other legally required withholdings with respect to the wage portion of each Individual Settlement Share will be withheld from the Individual Settlement Shares before they are distributed to Settlement Class Members. For withholding tax characterization purposes and payment of taxes, each Individual Settlement Share will be allocated as follows: 33.34% to wages, 33.33% to interest, and 33.33% to penalties.

32. The wage portion of each Settlement Class Member's Individual Settlement Share will be subject to employee's share of taxes and withholdings and will be reported on an IRS Form W-2. The non-wage portion will be reported as such to each Settlement Class Member on an IRS Form 1099.

Settlement Class Members will be issued payment of their Individual Settlement Share subject to reduction for the employee's share of taxes and withholdings with respect to the wage-portion of each share.

33. The employee's portion of all applicable income and payroll taxes, as well as the taxes on the penalties and interest damages payment, will be the responsibility of the Settlement Class Members, who agree to hold harmless the Released Parties, Class Counsel, and Defendant's Counsel for any tax liability, including penalties and interest, arising out of or relating to the Settlement Class Members' failure to pay taxes on any amounts paid pursuant to this Agreement. Each Individual Settlement Share is subject to the employee's share of taxes with respect to the wage-portion of Individual Settlement Share, which the Settlement Administrator is responsible for remitting and reporting to the tax authorities. All applicable Employer Taxes will be paid by Defendant separately from the Gross Settlement Fund. The Settlement Administrator shall be responsible for notifying Defendant of the Employer Taxes that are due, but will not be responsible for informational or other reporting, filing, or remission of them to the tax authorities on behalf of Defendant unless Defendant pays for these services separately.

APPOINTMENT AND DUTIES OF SETTLEMENT ADMINISTRATOR

34. The Settlement Administrator will perform the duties of distributing Notice, receiving, reviewing, and processing Requests for Exclusion, Objections, and disputes, and calculating, verifying, and distributing the Individual Settlement Shares and PAGA Settlement Shares, as described in this Settlement Agreement. The Settlement Administrator will report to the Parties, in summary or narrative form, the substance of its findings with respect to the number of timely disputes, Requests for Exclusion, and Objections that the Settlement Administrator received, within ten (10) calendar days of the Response Deadline, as defined in Paragraph 42. All disputes relating to the Settlement Administrator's ability and need to perform its duties will be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Settlement Agreement, until all payments and obligations contemplated by the Settlement Agreement have been fully carried out.

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NOTICE TO THE CLASS

35. Within ten (10) calendar days of the date on which the Court grants preliminary approval of the Settlement, Defendant will provide the Settlement Administrator the best information in its possession, custody, or control with respect to the names, last known addresses, social security numbers, and last known telephone numbers for each member of the Class, and the dates of employment and number of workweeks that each member of the Class worked for Defendant during the Settlement Period ("Class Data"). Defendant agrees to provide Class Data in a format reasonably acceptable to the Settlement Administrator. If Class Data does not exist in a format reasonably acceptable to the Settlement Administrator, then it may be converted into such format and the expenses will be charged as a part of the Settlement Administration Expenses that are to be drawn from the Gross Settlement Fund.

36. Subject to Court approval of the Notice, the Settlement Administrator shall send the Notice to the Class, by first class U.S. mail, within fourteen (14) business days of the date on which the Court grants preliminary approval of the Class Settlement. The Notice, subject to Court approval, will contain the estimated Individual Settlement Share and PAGA Settlement Share that each Class Member is eligible to receive, as well as his or her Employment Information, as defined in Paragraph 48. The Notice will advise all Class Members of the nature of the case, the terms of the Settlement, the binding nature of the release, the final approval hearing date for the Class Settlement, and Class Members' right to request exclusion from the Class Settlement, object to the Class Settlement, and/or dispute the Employment Information attributed to him or her.

37. Prior to mailing the Notices, the Settlement Administrator shall use the United States Postal Service National Change of Address ("NCOA") List to locate updated addresses to ensure that the Notice is sent to all Class Members at the addresses most likely to result in immediate receipt of the Notice. If a Notice so mailed has not been returned within thirty (30) calendar days of the mailing, it will be conclusively presumed that the Class Member received the Notice. With respect to any returned, undeliverable Notice, the Settlement Administrator will perform a robust skip-trace procedure to obtain a current address and, if an updated address is located, the Settlement Administrator shall undertake one

(1) re-mailing of the Notice to such address within five (5) calendar days of the receipt of the returned Notice. Class Members to whom Notices are re-sent after having been returned undeliverable to the Settlement Administrator will have ten (10) calendar days from the date of re-mailing to submit an Objection, Request for Exclusion, or dispute regarding his or her Employment Information, as set forth in the Notice ("Extended Response Deadline"). Notices that are re-mailed will be accompanied by a short cover letter from the Settlement Administrator informing the recipient of this adjusted deadline.

38. Upon completion of the steps, outlined in Paragraphs 34-37, by the Settlement Administrator, Defendant and the Settlement Administrator will be deemed to have satisfied their obligations to provide notice to the affected Class Member, and, regardless of whether the affected Class Member actually receives the Notice or cashes his or her Individual Settlement Share check, the affected Class Member will remain a member of the Settlement Class and will be bound by all the terms of the Settlement and the Court's final approval order and judgment. Regardless of whether a PAGA Group Member cashes his or her PAGA Settlement Share check, the PAGA Group Member will be bound by all the terms of the Settlement and the Court's final approval order and judgment.

39. Class Counsel shall provide the Court, at least seven (7) calendar days prior to the Final Approval Hearing, a declaration by the Settlement Administrator of due diligence and proof of mailing with regard to the Notice.

CALCULATION OF PAYMENTS

40. The Settlement Administrator will calculate the Individual Settlement Share and PAGA Settlement Share payments to be made and distribute said payments in accordance with this Agreement within ten (10) calendar days after the Defendant funds the Gross Settlement Fund. Checks for payment of Individual Settlement Shares and PAGA Settlement Shares will remain valid and negotiable for one hundred eighty (180) calendar days from the date of their issuance and, if not cashed within that time, will be cancelled. Settlement Class Members and PAGA Group Members whose checks are cancelled will remain subject to the provisions of this Settlement. All checks distributed to Settlement Class Members and PAGA Group Members will prominently state the expiration date or contain a statement

as to when the checks will expire, or alternatively, such a statement may be made in a letter accompanying the checks. Sixty (60) calendar days before the expiration of the checks, the Settlement Administrator will send one (1) reminder postcard to Settlement Class Members and PAGA Group Members to whom settlement checks are mailed yet remain uncashed, reminding them of their deadline to cash the checks. The funds associated with cancelled checks plus any accrued interest that has not otherwise been distributed, will be transmitted by the Settlement Administrator as follows:

- a. Funds associated with cancelled PAGA Settlement Share checks will be transmitted to the California Department of Industrial Relations Unpaid Wage Fund, in the name of the PAGA Group Member whose check is cancelled, within ten (10) calendar days of the expiration of the one hundred eighty (180) calendar days period.
- b. Funds associated with cancelled Individual Settlement Share checks will be transmitted 25% to the State Treasury for deposit in the Trial Court Improvement and Modernization Fund; and 75% to the State Treasury for deposit into the Equal Access Fund of the Judicial Branch. The Settlement Administrator shall prepare a report regarding the distribution plan pursuant to California Code Civil Procedure § 384, including and not limited to the uncashed/unused funds as set forth in this paragraph, and the report will be presented to the Court as ordered by the Court.

41. Upon completion of its calculation of Individual Settlement Shares and PAGA Settlement Shares, the Settlement Administrator shall provide Class Counsel and Defendant's Counsel with a report listing the amount of such payments to be made. Proof of payment to the Settlement Class Members and PAGA Group Members will be provided to Class Counsel and Defendant's Counsel at the earliest practicable date. The Settlement Administrator's report will not include the personal identifying information such as name, address, telephone number, email address, or social security number of the Settlement Class Members or PAGA Group Members.

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EXCLUSION PROCESS

42. Class Members may opt out of the Settlement Class by submitting a written request to be excluded from the Settlement Class, and thereby, from the settlement and release of Released Claims other than those arising under PAGA ("Request for Exclusion"). Requests for Exclusion must be submitted to the Settlement Administrator in conformity with the instructions in the Notice. Any such Request for Exclusion must be mailed to the Settlement Administrator, postmarked no later than thirty (30) calendar days after the date the Notice is initially mailed to the Class Members by the Settlement Administrator (the "Response Deadline") or, in the case of a re-mailed Notice, not more than ten (10) calendar days after the date the Notice is re-mailed (the "Extended Response Deadline"). A Request for Exclusion must state the Class Member's name, current address, telephone number, last four digits of his or her social security number, and contain a clear statement that the Class Member wishes to opt out of the Settlement Class. The Request for Exclusion must also state the name and number of the case. Requests for Exclusion that do not include all required information, as stated in the Notice, or that are not submitted on a timely basis, will be deemed invalid and ineffective. Persons who are eligible to and do submit valid and timely Requests for Exclusion will not be bound by the terms of the Settlement as it pertains to the settlement and release of Released Claims other than those arising under PAGA, if it is approved, or the Court's final judgment. The Parties agree to meet and confer on late and ambiguous Requests for Exclusion, and may mutually agree to accept defective Requests for Exclusion for good cause shown. Notwithstanding the foregoing, all PAGA Group Members who submit Requests for Exclusion from settlement and release of Released Claims other than those arising under PAGA, will still be deemed to have released the Released Claims which arise under California Labor Code sections 2698, *et seq.*, as set forth in Paragraph 53 herein, and will still receive their *pro rata* portion of the PAGA Payment.

43. By signing this Agreement, the Class Representative waives his right to opt out from the Settlement Class and any such request for an exclusion will be void and of no force and effect.

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OBJECTION PROCESS

44. Class Members who do not opt out of the Settlement Class (i.e. Settlement Class Members) have the right to object to the settlement and release of Released Claims other than those arising under PAGA. Objections to the Settlement must be in writing, and must be mailed to the Settlement Administrator, postmarked no later than the Response Deadline, or, in the case of a re-mailed Notice, by the Extended Response Deadline, as defined in Paragraph 42. The postmarked date will be the exclusive means for determining whether the Objection is timely.

45. Objections must state the Settlement Class Member's name, current address, telephone number, dates of employment with Defendant, last four digits of his or her social security number, and the name and number of the case. The Objection must also describe why the Settlement Class Member objects to the Settlement, and state whether the objector wishes to be heard at the Final Approval Hearing. Deficient or untimely Objections will not be considered. Settlement Class Members who fail to submit timely written objections in the manner specified above will be deemed to have waived any objections and will be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement, unless otherwise ordered by the Court. At least ten (10) calendar days (or some other number of days that the Court specifies) before the Final Approval Hearing, Class Counsel and Defendant's Counsel may (but are not required to), file responses to any written objections submitted to the Court.

46. All Objections that are submitted to the Settlement Administrator will be forwarded by the Settlement Administrator to counsel for the Parties within three (3) calendar days of receipt of the Objection.

47. At no time will any of the Parties or their counsel seek to solicit or otherwise encourage Settlement Class Members to submit written objections to the Settlement Agreement or appeal from the Court's final approval order and judgment. Class Counsel will not represent any Settlement Class Members with respect to any such objections.

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NOTICE OF CALCULATION OF PAYMENT AND DISPUTE PROCESS

48. The Notice will apprise each Class Member of his or her total number of workweeks ("Employment Information"). These calculations will be based on Defendant's records, which are presumed to be correct unless a Class Member provides credible and/or persuasive evidence to the contrary.

49. If a Class Member does not wish to dispute the Employment Information set forth in the Notice, then the Class Member need do nothing, and payment will be made based on Defendant's records.

50. If a Class Member wishes to challenge the Employment Information set forth in the Notice, then the Class Member must submit a written, signed dispute, in conformity with any instructions contained in the Notice, along with supporting documents, if any exist, to the Settlement Administrator at the address provided on the Notice. To be timely, any such dispute must be postmarked on or before the Response Deadline, or, in the event of a re-mailed Notice, on or before the Extended Response Deadline.

51. Absent an agreement between Class Counsel and Defendant's Counsel regarding how to address the dispute, the Settlement Administrator will have authority to resolve the dispute and make a final and binding determination without hearing or right of appeal. Defendant agrees to provide the Settlement Administrator with additional documents necessary to assess the dispute, if such documents exist. All disputes will be resolved, either by agreement of Class Counsel and Defendant's Counsel or by decision of the Settlement Administrator as provided herein, prior to submitting the Settlement Administrator's declaration to the Court for final approval.

RELEASES

52. Release of Claims by All Settlement Class Members. Upon the Effective Date, and except as to such rights or claims as may be created by this Settlement Agreement, all members of the Settlement Class fully release and discharge the Released Parties from any and all claims, debts, wages, liabilities, demands, obligations, penalties, guarantees, costs, expenses, attorneys' fees, damages, action or causes of action of whatever kind or nature, that were pled or which could have been pled based on

the factual allegations contained in the Complaint, arising under California law, including, but not limited to, any claims for unpaid wages, unpaid minimum wage or overtime, record-keeping violations, wage statement violations, meal period and rest period violations including claims for premium pay, unreimbursed business-related expenses, interest, “waiting time” penalties, violations of Labor Code sections 510, 1198, 226(a), 226.7, 512, 1194, 1197, 1197.1, 201, 202, 203, 204, 1174(d), 2800, and 2802, other statutory penalties including but not limited to those arising under Labor Code sections 1197, 1197.1, 1198, liquidated damages, restitution (including but not limited to pursuant to Business & Professions Code sections 17200, *et seq.*), costs, and attorneys’ fees, which arose during the period beginning May 6, 2012 and continuing up to and including August 9, 2017 (collectively, the “Released Claims”).

53. PAGA Settlement and Release. Parties acknowledge and agree that, by law, non-party aggrieved employees have no right to opt out of or object to the settlement of PAGA claims, that the settlement of PAGA claims is subject to Court approval, and that a judgment with respect to PAGA claims is binding with respect to non-party aggrieved employees upon Court approval, pursuant to California Labor Code section 2699(l) and *Arias v. Superior Ct.* (2009) 46 Cal. 4th 969. As such, irrespective of whether a PAGA Group Member submits a Request for Exclusion, upon approval of the Settlement he or she will still be have released the Released Claims which arise under California Labor Code sections 2698, *et seq.*, and will still receive his or her *pro rata* portion of the PAGA Payment. Upon the Effective Date, and except as to such rights or claims as may be created by this Settlement Agreement, all PAGA Group Members fully release and discharge the Released Parties from the Released Claims which arise under California Labor Code sections 2698, *et seq.*

54. Release of Claims by Plaintiff. In addition to the release set forth in Paragraphs 52-53, upon final approval by the Court of this Settlement Agreement, Plaintiff fully releases and discharges the Released Parties from any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys’ fees and costs, damages (including general, special, economic, compensatory, punitive), penalties, prejudgment interest, actions or causes of action of whatever kind or nature, whether known or unknown, including all of those arising under state, federal or common law, which

Plaintiff has ever had, or hereafter may claim to have, arising on or before the date that Plaintiff signs this Settlement Agreement, including without limitation: any claims for unpaid wages, unpaid minimum wage or overtime, record-keeping violations, wage statement violations, meal period and rest period violations, unreimbursed business-related expenses, interest, "waiting time" penalties, statutory penalties, restitution, liquidated damages, and civil penalties under the California Labor Code, the California Business and Professions Code, or any state, county or city law or ordinance regarding wages or compensation, any claims for employee benefits, including without limitation, any claims under the Employee Retirement Income Security Act of 1974, any claims of unemployment discrimination on any basis, including without limitation, any claims under Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1866, 42 U.S.C. section 1981, the Civil Rights Act of 1991, the Americans with Disabilities Act of 1991, the Family and Medical Leave Act of 1993, the California Family Rights Act, the California Government Code including the Fair Employment and Housing Act, or any other state, federal, county or city law or ordinance.

55. In addition to the releases set forth in Paragraphs 52-54, Plaintiff expressly waives any rights or benefits afforded by Section 1542 of the Civil Code of the State of California, and does so understanding the significance of that waiver. Section 1542 provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL

56. The Parties will promptly submit this Settlement Agreement to the Court in support of Plaintiff's Motion for Preliminary Approval for determination by the Court as to its fairness, adequacy, and reasonableness. Such motion will seek and apply for the entry of an order:

- a. Scheduling a Final Approval Hearing on the question of whether the Class Settlement should be finally approved as fair, reasonable, and adequate as to the Class;
- b. Approving the proposed Notice;

- c. Preliminarily approving the Class Settlement;
- d. Preliminarily certifying the Settlement Class for purposes of the Settlement only; and
- e. Approving the PAGA Settlement.

DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL

57. Following final approval by the Court of this Settlement Agreement, Class Counsel will submit a proposed final approval order and proposed final judgment:

- a. Approving the Settlement Agreement, adjudging the terms thereof to be fair, reasonable, and adequate, and directing consummation of its terms and provisions;
- b. Approving and awarding Class Counsel's attorneys' fees and litigation costs and expenses, the Settlement Administration Expenses, and the Service Award as set forth in this Settlement Agreement;
- c. Entering final judgment.

NO PUBLICITY

58. The Parties and their counsel agree that they will not issue any press release, initiate any contact with the press, respond to any press inquiry or have any communication with the press about this case and/or the fact, amount, or terms of this Settlement. In addition, the Parties and their counsel agree that they will not engage in any advertising or distribute any marketing materials relating to the settlement of this case, including but not limited to any postings on any website maintained by Class Counsel. The Parties also will refrain from posting any links or information regarding the settlement on any website except as ordered by the Court as may be created by the Settlement Administrator in its discretion. Any communication about the Settlement to Class Members or individuals purporting to act on behalf of a Class Member (other than Plaintiff) prior to the Court-approved mailing will be limited to a statement that a settlement has been reached and the details will be communicated in a forthcoming Court-approved notice. Class Counsel and Plaintiff will, however, be free to disclose the settlement and undertake filings and submissions with the Labor and Workforce Development Agency in conformity with California Labor Code sections 2699 and 2699.3.

PARTIES' AUTHORITY

59. The signatories represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties to its terms and conditions.

MUTUAL FULL COOPERATION

60. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to execution of such documents as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement. As soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of Defendant's Counsel, take all necessary steps to secure the Court's final approval of this Settlement Agreement.

61. Defendant understands that in the course of applying for court approval of the Settlement, the Class Representative and Class Counsel will be required to submit sufficient evidence to support the fairness of the proposed settlement terms. Defendant affirmatively agrees to assist and support the Class Representative and Class Counsel in providing such evidence and, if requested by the Class Representative or Class Counsel, will provide declaration(s) or other admissible evidence reflecting class size, compensation information, and workweeks worked during the Settlement Period.

62. The Parties agree that neither they nor their counsel will solicit or otherwise encourage, directly or indirectly, Class Members to request exclusion from the Settlement Class, object to the Settlement, or appeal the final judgment.

NO ADMISSIONS

63. Each of the Parties has entered into this Settlement Agreement with the intention to avoid further disputes and litigation with the attendant risk, inconvenience and expense. Nothing contained herein, nor the consummation of this Settlement Agreement, is to be construed or deemed an admission to the existence or non-existence of liability, culpability, negligence, or wrongdoing. This Settlement

Agreement is a settlement document and will, pursuant to California Evidence Code Section 1152, be inadmissible as evidence in any proceeding. The preceding sentence shall not apply to an action or proceeding to approve, interpret, or enforce this Settlement Agreement.

NOTICES

64. Unless otherwise specifically provided, all notices, demands, or other communications required of the Parties by this Settlement Agreement will be: (1) in writing; (2) deemed given on the third business day after mailing; and (3) sent via United States registered or certified mail, return receipt requested, addressed as follows:

To Plaintiff:

Edwin Aiwazian, Esq.
Lawyers for Justice, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

To Defendant:

Michael D. Bruno, Esq.
GORDON, REES, SCULLY, MANSUKHANI LLP
275 Battery Street, Suite 2000
San Francisco, California 94111

CONSTRUCTION AND INTERPRETATION

65. The Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arm's-length negotiations between the Parties and that this Settlement Agreement will not be construed in favor of or against any of the Parties by reason of their participation in the drafting of this Settlement Agreement.

66. Paragraph titles are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any of its provisions. Each term of this Settlement Agreement is contractual and not merely a recital.

67. This Agreement will be subject to and governed by the laws of the State of California. The parties acknowledge that they are subject to the continuing jurisdiction of the Court to enforce the terms of the Settlement contained herein.

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MODIFICATION

68. Except for Defendant's right to rescind (provided in Paragraph 30 herein), this Settlement Agreement may not be changed, altered, or modified, except in writing and signed by counsel for the Parties, and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by counsel for the Parties.

INTEGRATION CLAUSE

69. This Settlement Agreement and exhibits attached hereto contain the entire agreement between the Parties relating to any and all matters addressed in the Settlement Agreement, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, with respect to such matters are extinguished. No rights hereunder may be waived or modified except in a writing signed by all Parties.

BINDING ON ASSIGNS

70. This Settlement Agreement will be binding upon and inure to the benefit of the Parties and their respective heirs, trustees, executors, administrators, successors and assigns.

CLASS COUNSEL SIGNATORIES

71. It is agreed that it is impossible or impractical to have each member of the Settlement Class execute this Settlement Agreement. The Notice will advise all Class Members of the binding nature of the release of Released Claims, and the release of Released Claims will have the same force and effect as if each member of the Settlement Class executed this Settlement Agreement.

COUNTERPARTS

72. This Settlement Agreement may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart will be deemed an original, and, when taken together with other signed counterparts, will constitute one Settlement Agreement, which will be binding upon and effective as to all Parties. Copies of the executed agreement will be effective for all purposes as though the signatures contained therein were original signatures.

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IT IS SO AGREED,

CLASS REPRESENTATIVE:

DATED: March 22, 2018 SETH SWAN

By: 
Seth swan (Mar 29, 2018)

SETH SWAN
Plaintiff and Class Representative

DEFENDANT:

DATED: _____, 2018 PACE SUPPLY CORP.

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM,

CLASS COUNSEL:

DATED: _____, 2018 LAWYERS FOR JUSTICE, PC

By: _____
Edwin Aiwanian
Attorneys for Class Representative and
Proposed Class Counsel

COUNSEL FOR DEFENDANT:

DATED: _____, 2018 GORDON, REES, SCULLY, MANSUKHANI LLP

By: _____
Michael D. Bruno
Sara Church Reese

IT IS SO AGREED,

CLASS REPRESENTATIVE:

DATED: _____, 2018

SETH SWAN

By:

SETH SWAN
Plaintiff and Class Representative

DEFENDANT:

DATED: April 6, 2018

PACE SUPPLY CORP.

By:

Name:

Title:

Kelly R. Hubley
Kelly R Hubley
Officer, Pace Supply Corp

APPROVED AS TO FORM,

CLASS COUNSEL:

DATED: March 30, 2018

LAWYERS FOR JUSTICE, PC

By:

Edwin Alwazian
Edwin Alwazian
Attorneys for Class Representative and
Proposed Class Counsel

COUNSEL FOR DEFENDANT:

DATED: April 11, 2018

GORDON, REES, SCULLY, MANSUKHANI LLP

By:

Michael D. Bruno
Sara Church Reese

EXHIBIT A

NOTICE OF CLASS ACTION SETTLEMENT

Seth Swan v. PACE Supply Corp.
Superior Court of California, County of Sonoma
Case No. SCV258764

To: All current and former hourly-paid or non-exempt employees who directly worked for PACE Supply Corp. within the State of California at any time during the period from May 6, 2012 continuing up to and including August 9, 2017:

Simplurius
[Add address]

- PLEASE READ THIS NOTICE CAREFULLY
- IT MAY AFFECT YOUR LEGAL RIGHTS
- YOU MAY BE ENTITLED TO MONEY FROM THIS SETTLEMENT

I. INTRODUCTION

A proposed class action settlement (the "Settlement") of the above-captioned action (the "Action") filed in the Superior Court of the State of California, in and for the County of Sonoma (the "Court"), has been reached by the parties and been granted preliminary approval by the Court on [PA date].

A settlement of the PAGA portion of the case was granted approval on [PA date]. A hearing will be held on [date/time] to determine whether the class action portion of the Settlement ("Class Settlement") should be granted final approval.

PACE Supply Corp.'s ("PACE Supply" or "Defendant") records show that you were employed by PACE Supply as an hourly-paid or non-exempt employee within the State of California at some time during the period from May 6, 2012 continuing up to and including August 9, 2017 and therefore are a Class Member in this Action. As a Class Member, you may be entitled to money under the Settlement and, if so, unless you request exclusion from the Settlement, your legal rights will be affected. The purpose of this Notice is to

- (1) describe the Action,
- (2) inform you of the terms of the Settlement, and
- (3) inform you of your rights and options in connection with the Settlement.

II. SUMMARY OF THE ACTION

On May 6, 2016, former employee Seth Swan ("Plaintiff") filed a Class Action Complaint for Damages and Enforcement under the Private Attorneys General Act, California Labor Code § 2698, *et seq.* against PACE Supply in the Sonoma County Superior Court (referred to in this Notice as the "Complaint").

Plaintiff alleges that, within the period from May 6, 2012 to August 9, 2017 ("Settlement Period"), PACE Supply failed to pay overtime wages, failed to pay the minimum wages, failed to provide meal periods and pay meal period premiums, failed to provide rest periods and pay rest period premiums, failed to reimburse employees for business expenses, failed to timely pay wages, failed to provide accurate and itemized wage statements, and failed to keep accurate pay records thereby engaging in unfair competition and giving rise to civil penalties under California Labor Code § 2698, *et seq.*, Private Attorneys General Act of 2004 ("PAGA"). Plaintiff alleges that these violations resulted in the underpayment of wages and business expenses to Defendant's hourly-paid or non-exempt employees during the Settlement Period. Plaintiff seeks to maintain a class action for his claims on behalf of himself and all persons who were employed by PACE Supply

within the Settlement Period and worked for PACE Supply as an hourly-paid or non-exempt employee in the State of California.

PACE Supply denies all of Plaintiff's allegations and specifically denies that it violated the law in any way as described in the lawsuit. Nothing in this Notice, or the Settlement itself, or any actions to carry out the terms of the Settlement means that PACE Supply admits any fault, guilt, negligence, wrongdoing or liability whatsoever. There has been no finding of any wrongdoing by PACE Supply. PACE Supply wishes to settle in order to avoid the costs, time, and disruption caused by litigation.

Plaintiff and Defendant participated in a mediation before an experienced wage-and-hour mediator, which has resulted in a settlement of the Action. The Court granted preliminary approval of the Settlement on [date] on behalf of a settlement class defined as:

All current and former hourly-paid or non-exempt employees who directly worked for PACE Supply Corp. within the State of California at any time during the period from May 6, 2012 up to and including August 9, 2017.

At that time, the Court also preliminarily approved Plaintiff Seth Swan to serve as Class Representative, and Edwin Aiwazian, Esq., Arby Aiwazian, Esq., and Joanna Ghosh, Esq. of Lawyers for Justice, PC to serve as Class Counsel.

III. SUMMARY OF SETTLEMENT TERMS

Settlement Amount. PACE Supply has agreed to pay the amount of \$5,000,000 (the "Gross Settlement Fund") to fully resolve the claims in the Action. The Gross Settlement Fund includes all settlement payments to the Class Members who do not timely request exclusion from the Settlement ("Settlement Class" or "Settlement Class Members"), Class Counsel's attorney's fees, litigation costs and expenses, PAGA Payment, the Settlement Administration Expenses, and Service Award to the Class Representative, as outlined below.

Settlement Administration and Other Payments. The Court has tentatively approved: certain payments to be made from the Gross Settlement Fund as follows, which will be subject to final Court approval at the Final Approval Hearing:

- Settlement Administration Expenses. Payment to the Settlement Administrator, estimated not to exceed \$16,000, for the expense of notifying the Class Members of the Settlement, processing Requests for Exclusion submitted by Class Members, calculating Individual Settlement Shares and PAGA Settlement Shares, and distributing settlement payments.
- Attorney's Fees and Litigation Costs and Expenses. Payment to Court-approved Class Counsel of reasonable attorney's fees not to exceed \$1,750,000 as reasonable compensation for the work Class Counsel performed in this Action, and will continue to perform through settlement finalization, together with reimbursement for actual litigation expenses and costs actually incurred in connection with the Action not to exceed \$80,000). Class Counsel has been prosecuting the Action on behalf of Plaintiff and the Settlement Class on a contingency fee basis (that is, without being paid any money to date) and has been paying all litigation costs and expenses.
- Service Award to Plaintiff Seth Swan. A service award not to exceed \$6,000 to Plaintiff Seth Swan to compensate him for services on behalf of the Class in initiating and prosecuting the Action. This payment is in addition to whatever payments Plaintiff is otherwise entitled to as a Settlement Class Member.
- Penalties pursuant to the Private Attorneys General Act, California Labor Code § 2698, et seq. ("PAGA"). Under the settlement, \$250,000 is designated as penalties under PAGA ("PAGA Payment"). As required by statute, 75% of this payment (i.e., \$187,500) will be paid to the California Labor and Workforce Development Agency ("LWDA"). The remaining 25% (i.e., \$62,500) will be distributed on a *pro rata* basis to Class Members who worked for Defendant from February 25, 2015 to [PA date] ("PAGA Group Members").

Calculation of Individual Settlement Shares. Settlement Class Members who do not timely request exclusion (or “opt-out”) will be entitled to a *pro rata* portion of the Net Settlement Fund (his/her “Individual Settlement Share”), calculated based upon the number of weeks that each Settlement Class Member worked during the Settlement Period (“workweeks”). Each Settlement Class Member’s workweeks will be divided by the total number of workweeks worked by all Settlement Class Members and multiplied by the Net Settlement Fund.

Calculation of PAGA Settlement Shares. PAGA Group Members, regardless of whether they timely opt out or not, are deemed to have released the Released Claims which arise under California Labor Code sections 2698, *et seq.* and will still receive their *pro rata* share of the PAGA Payment (each a “PAGA Settlement Share”). PAGA Settlement Shares will be calculated by dividing each PAGA Group Member’s workweeks by the total number of workweeks worked by all PAGA Group Members and multiplied by 25% of the PAGA Payment.

Tax Matters. Each Individual Settlement Share is allocated as 33.34% wages, 33.33% interest, and 33.33% penalties. The wage portion of each Settlement Class Member’s Individual Settlement Share will be subject to employee’s share of taxes and withholdings and will be reported on an IRS Form W-2. Settlement Class Members will be issued payment of their Individual Settlement Share subject to reduction for the employee’s share of taxes and withholdings with respect to the wage-portion of each share. Settlement Class Members will be exclusively liable for any and all tax liability. Settlement Class Members may wish to consult their tax advisors concerning the tax consequences of the payments they receive under the Settlement. The employer’s share of payroll and employment taxes and contributions with respect to the wage-portion of each share will be paid separately by Defendant. Each PAGA Settlement Share will be considered 100% penalties and will not be subject to reduction for any employees’ or employer’s share of payroll and employment taxes and contributions.

Releases. Upon final approval by the Court of the Settlement, all Class Members who do not timely request exclusion (“Settlement Class Members”) will fully release and discharge Defendant and Defendant’s present and former parent companies, subsidiaries, as well as their shareholders, officers, directors, employees, successors, and assigns (“Released Parties”) from the “Released Claims.” Released Claims will be any and all claims, debts, wages, liabilities, demands, obligations, penalties, guarantees, costs, expenses, attorney’s fees, damages, actions or causes of action of whatever kind or nature, that were pled in the Complaint or which reasonably could have been pled based on the factual allegations contained in the Complaint, arising under California law, including, but not limited to, any claims for unpaid wages, unpaid minimum wage or overtime, record-keeping violations, wage statement violations, meal period and rest period violations including claims for premium pay, unreimbursed business-related expenses, interest, “waiting time” penalties, other civil and statutory penalties including but not limited to those arising under Labor Code Section 1197, 1197.1, 1198, liquidated damages, which arose during the period beginning May 6, 2012 and continuing up to and including August 9, 2017 (collectively, the “Released Claims”).

All Settlement Class Members are bound by this release. Class Members will be bound by this release unless they formally and timely request exclusion from the settlement.

All PAGA Group Members will be deemed to have released the Released Claims which arise under California Labor Code sections 2698, *et seq.* (the “PAGA Released Claims”) and will receive a PAGA Settlement Share, regardless of whether they submit a timely request for exclusion or not.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order at or following a final approving hearing on the Settlement.

IV. RECEIVING PAYMENT UNDER THE SETTLEMENT

If you do nothing, you will be deemed part of the Settlement Class, you will be issued payment from the Settlement, and you will release all Released Claims, as described in this Notice.

Based on Defendant’s internal records, which will be presumed to be correct unless evidence to the contrary is timely submitted to the Settlement Administrator:

You worked **<<WorkWeeks>>** weeks during the time period from May 6, 2012 to August 9, 2017. Your estimated gross Individual Settlement Share is **<<estAmount>>**. Your estimated PAGA Settlement Share is **<<PAGAestAmount>>**.

If you wish to challenge the number of workweeks attributed to you, then you must submit a written, signed challenge, along with supporting documents, if any exist, to the Settlement Administrator at the below-listed address, which contains the following information: (1) a clear statement of the workweeks you contend to be correct, as well as all supporting documents, if any exist; (2) your name; (3) your current address; (4) your telephone number; (5) the last four digits of your social security number; and (6) the name and number of the case (the case name is *Swan v. PACE Supply Corp.* and the Case Number is SCV258764). The dispute must be postmarked no later than **[Response Deadline]**.

Settlement Administrator
<<Case Name>>
<<Name>>
<<Address1>> <<Address2>>
<<City>>, <<State>> <<Zip Code>>

To ensure receipt of your payment, **it is your responsibility to make sure you keep the Settlement Administrator informed of your current mailing address**, and you may do so by contacting the Settlement Administrator by mail at the address listed above.

V. RIGHT TO REQUEST EXCLUSION

If you do not wish to participate in the Class Settlement, you may exclude yourself from the Settlement. **If you request exclusion from the Settlement, you will not receive an Individual Settlement Share, and you will not be deemed to have released the Released Claims.** To request exclusion, you must submit a written Request for Exclusion to the Settlement Administrator at the address listed above in Section IV, that contains the following information: (1) a clear statement indicating your desire to opt-out of the Settlement, such as: "I do not want to be part of the settlement class in the *Swan v. PACE Supply Corp.* class action"; (2) your name; (3) your current address; (4) your telephone number; (5) the last four digits of your social security number; and (6) the name and number of the case (the case name is *Swan v. PACE Supply Corp.* and the Case Number is SCV258764). The Request for Exclusion must be postmarked no later than **[Response Deadline]**. Requests for Exclusion that do not include all required information or are postmarked after **[Response Deadline]** will be rejected, and those individuals will remain bound by the Settlement and the Release of Released Claims described above.

All PAGA Group Members who submit a timely and valid Request for Exclusion will be excluded from the release of Released Claims and will not receive an Individual Settlement Share but are deemed to have released the PAGA Released Claims and will receive their PAGA Settlement Payment.

VI. RIGHT TO OBJECT

Any Class Member who has not requested exclusion from the Settlement (i.e. any Settlement Class Member) and believes that the Settlement should not be finally approved by the Court for any reason, may object to the proposed Settlement and release of Released Claims other than those arising under PAGA. Objections must be mailed to the Settlement Administrator at the address listed above in Section IV and be postmarked on or before **[Response Deadline]**. All objections must state the Settlement Class Member's (1) name; (2) current address; (3) telephone number; (4) dates of employment with PACE Supply,; (5) last four digits of his or her social security number; (6) the name and number of the case (the case name is *Swan v. PACE Supply Corp.* and the Case Number is SCV258764); and (7) describe why the objector objects to the Settlement and released of Released Claims other than those arising under PAGA and whether the objector wishes to be heard at the Final Approval Hearing. To object to the Settlement, you must remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class Members who do not object. Any Settlement Class Member who does not object in the manner provided in this Notice will have waived any objection to the Settlement, whether by appeal or otherwise.

Settlement Class Members who mail timely notices of objection, which indicate that the Settlement Class Member wishes to be heard at the Final Approval Hearing, will have a right to appear at the Final Approval Hearing and have their objections heard by the Court at the hearing. Said Settlement Class Members have the right to appear either in person or through their own attorney at this hearing. Objections not previously filed in writing in a timely manner as described above will not be considered by the Court.

VII. HEARING ON THE SETTLEMENT ("FINAL APPROVAL HEARING")

The final approval hearing on the adequacy, reasonableness and fairness of the Settlement will be held on [date/time] in Courtroom 18, in the Superior Court of the State of California, in and for the County of Sonoma, located at 3055 Cleveland Avenue, Santa Rosa, CA 95403. The hearing may be continued without further notice.

You are not required to attend the final approval hearing, although any Settlement Class Member is welcome to attend the hearing. If you are objecting, you must comply with the requirements set forth above in Section VI, to have your objection heard by the Court.

VIII. ADDITIONAL INFORMATION

This Notice is only a summary of the Action and the Settlement. Settlement Class Members should contact the Settlement Administrator at Swan v. PACE Supply Corp., c/o [insert name/address of administrator] with any concerns or questions regarding the Settlement. You may also refer to the pleadings, the Settlement Agreement, and other papers filed in the Action, which may be inspected in Room 107J of the Superior Court of the State of California, in and for the County of Sonoma, located at 600 Administration Drive, Santa Rosa, CA 95403, during regular business hours of each court day.

PLEASE DO NOT CONTACT THE CLERK OF THE COURT OR THE JUDGE WITH QUESTIONS.

EXHIBIT B

1 Edwin Aiwazian (SBN 232943)
2 Arby Aiwazian (SBN 269827)
3 Joanna Ghosh (SBN 272479)
4 **LAWYERS for JUSTICE, PC**
5 410 West Arden Avenue, Suite 203
6 Glendale, California 91203
7 Tel: (818) 265-1020 / Fax: (818) 265-1021

8 *Attorneys for Plaintiff*

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SONOMA**

SETH SWAN; individually, and on behalf of
other members of the general public similarly
situated, and on behalf of other aggrieved
employees pursuant to the California Private
Attorneys General Act;

Plaintiff,

vs.

PACE SUPPLY CORP., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: SCV258764

The Honorable René Auguste Chouteau
Courtroom 18

CLASS ACTION

**[PROPOSED]
ORDER GRANTING APPROVAL OF
PAGA SETTLEMENT AND
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Hearing Date: TBD
Hearing Time: TBD
Hearing Place: Courtroom 18

Complaint Filed: May 6, 2016
Jury Trial Date: August 17, 2018

1 This matter has come before the Honorable René Auguste Chouteau in Courtroom 18 of
2 the Superior Court of the State of California, for the County of Sonoma, on [date] 2018, at [time],
3 with Lawyers for Justice, PC appearing as counsel for Representative Plaintiff Seth Swan
4 (“Representative Plaintiff,” “Class Representative,” and/or “Plaintiff”), individually and on
5 behalf of the Putative Class, and Gordon Rees, Scully, Mansukhani LLP appearing as counsel for
6 defendant PACE Supply Corp. (“Defendant”). The Court, having carefully considered the briefs,
7 argument of counsel and all matters presented to the Court and good cause appearing, hereby
8 GRANTS Plaintiff’s Motion for Approval of PAGA Settlement and Preliminary Approval of
9 Class Action Settlement.

10 **IT IS HEREBY ORDERED THAT:**

11 1. The Court preliminarily approves the executed Class Action and PAGA
12 Settlement Agreement (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as
13 “Exhibit 1” to the Declaration of Edwin Aiwarzian in Support of Plaintiff’s Motion for
14 Preliminary Approval of Class Action Settlement, as it relates to the settlement and release of
15 Released Claims which do not arise under California Labor Code section 23698, *et seq.* (“Class
16 Settlement”) and approves the Settlement as it relates to the settlement and release of Released
17 Claims which arise under California Labor Code section 2698, *et seq.* (“PAGA Settlement”).
18 This is based on the Court’s determination that the Settlement falls within the range of possible
19 approval as fair, adequate, and reasonable.

20 2. This Order incorporates by reference the definitions in the Settlement Agreement,
21 *i.e.*, all terms have the same meaning in this Order as in the Settlement Agreement.

22 3. It appears to the Court on a preliminary basis that the Class Settlement is fair,
23 adequate and reasonable. It appears to the Court that extensive investigation and research have
24 been conducted such that counsel for the Parties at this time are able to reasonably evaluate their
25 respective positions. It further appears to the Court that the Settlement, at this time, will avoid
26 substantial additional costs by all Parties, as well as avoid the delay and risks that would be
27 presented by the further prosecution of the Action. It further appears that the Settlement has been
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1 reached as the result of intensive, serious and non-collusive, arms-length negotiations, and was
2 entered into in good faith.

3 4. The Court preliminarily finds that the Class Settlement, including the amount of
4 the Service Award to the Class Representative, Class Counsel's attorneys' fees and litigation
5 costs and expenses, the Settlement Administration Expenses, and the allocation of payments to
6 the Settlement Class Members provided thereby, appears to be within the range of reasonableness
7 of a settlement that could ultimately be given final approval by this Court. Indeed, the Court has
8 reviewed the monetary recovery that is being granted as part of the Class Settlement and
9 preliminarily finds that the monetary settlement awards made available to the Settlement Class
10 Members are fair, adequate, and reasonable when balanced against the probable outcome of
11 further litigation relating to certification, liability, and damages issues.

12 5. The Court conditionally certifies, for settlement purposes only, the Putative Class,
13 defined as follows:

14 All current and former hourly-paid or non-exempt employees who directly worked for
15 Defendant within the State of California at any time during the period from May 6, 2012
continuing up to and including August 9, 2017.

16 6. The Court concludes that, for settlement purposes only, the Putative Class meets
17 the requirements for certification under section 382 of the California Code of Civil Procedure, in
18 that:

- 19 (a) the Putative Class is ascertainable and so numerous that joinder of all members of
20 the Putative Class is impracticable;
- 21 (b) common questions of law and fact predominate, and there is a well-defined
22 community of interest amongst the members of the Putative Class with respect to
23 the subject matter of the litigation;
- 24 (c) Plaintiff's claims are typical of the claims of the members of the Putative Class;
- 25 (d) the Class Representative will fairly and adequately protect the interests of the
26 members of the Putative Class;
- 27 (e) a class action is superior to other available methods for the efficient adjudication
28 of the controversy; and

1 7. counsel for the Putative Class ("Class Counsel") is qualified to act as counsel for
2 the Class Representative in his individual capacity and as the representative of the Putative
3 Class. The Court preliminarily appoints Edwin Aiwasian, Esq., Arby Aiwasian, Esq., and Joanna
4 Ghosh, Esq., of Lawyers *for* Justice, PC as Class Counsel.

5 8. The Court preliminarily appoints Seth Swan as the Class Representative.

6 9. The Court preliminarily appoints Simpluris, Inc. as the Settlement Administrator.

7 10. The Court approves, both as to form and content, the Notice of Class Action
8 Settlement ("Notice") attached hereto as "**Exhibit 1.**" The Notice will be provided to Class
9 Members in the manner set forth in the Settlement Agreement. The Court finds that the Notice
10 appears to fully and accurately inform the Putative Class Members of all material elements of the
11 proposed Settlement, of the Putative Class Members' right to be excluded from the Class
12 Settlement by submitting a Request for Exclusion, and of each Settlement Class Member's right
13 and opportunity to object to the Class Settlement. The Court further finds that distribution of the
14 Notice substantially in the manner and form set forth in the Settlement and this Order, and that all
15 other dates set forth in the Settlement and this Order, meet the requirements of due process, are
16 the best notice practicable under the circumstances, are in full compliance with the laws of the
17 State of California, and, to the extent applicable, the United States Constitution, and shall
18 constitute due and sufficient notice to all persons entitled thereto. The Court further orders the
19 mailing of the Notice by First-Class U.S. Mail, pursuant to the terms set forth in the Settlement.

20 11. The Court hereby preliminarily approves the proposed procedure for requesting
21 exclusion from the Putative Class. Any Putative Class Member may choose to be excluded from
22 the Class Settlement as provided in the Notice, by submitting a timely Request for Exclusion to
23 the Settlement Administrator postmarked no later than thirty (30) calendar days following the
24 date on which the Settlement Administrator initially mails the Notice to Putative Class Members
25 or, in the case of a re-mailed Notice, not more than ten (10) calendar days after the date on which
26 the Notice is re-mailed (the "Response Deadline"). Any such person who chooses to opt out of,
27 and be excluded from, the Class Settlement will not be entitled to any recovery under the Class
28 Settlement and will not be bound by the Settlement or have any right to object, appeal or

comment thereon. Class Members who have not submitted a timely Request for Exclusion will be bound by all determinations of the Court, the Settlement Agreement, and Judgment. PAGA Group Members who submit a timely and valid Request for Exclusion from the Class Settlement will nonetheless receive their PAGA Settlement Share and are deemed to release their Released Claims arising under PAGA.

12. The schedule for further proceedings is:

Date/Triggering Event:	Event:
[PA Date]	Court orders preliminary approval of Settlement and conditional certification of Putative Class.
[10 calendar days after notice of entry of this Order]:	Deadline for Defendant to provide the Putative Class Data to Settlement Administrator.
[14 calendar days after notice of entry of this Order]:	Deadline for Settlement Administrator to mail the Notice to all Putative Class Members.
[30 calendar days after the Notice is mailed]:	Deadline for Putative Class Members to submit: (1) Requests for Exclusion, and/or (2) objections to the Settlement. (In the case of a re-mailed Notice, this deadline is extended by not more than ten (10) calendar days after the date the Notice is re-mailed.)
[16 court days before final approval hearing]:	Deadline for filing: (1) Motion for Final Approval and (2) Application for Attorney's Fees, Costs, and Expenses.
[7 calendar days before final approval hearing]:	Deadline for filing Settlement Administrator's Declaration of Due Diligence and Proof of Mailing with regard to the Notice.

13. A final approval hearing will be held on _____ at _____ in Courtroom 18 of the Sonoma County Superior Court, 3055 Cleveland Avenue, Santa Rosa, CA 95403, to determine all necessary matters concerning the Settlement, including: whether the proposed settlement of the Action on the terms and conditions provided for in the Class Settlement is fair, adequate and reasonable and should be finally approved by the Court; whether a judgment, as provided in the Settlement, should be entered; whether the plan of allocation contained in the Settlement should be approved as fair, adequate, and reasonable to the Settlement Class Members; and to finally approve the requests for an award of attorneys' fees and reimbursement

1 of litigation costs and expenses, the Class Representative service award, and Settlement
2 Administration Expenses.

3 14. To be heard at the final approval hearing, a Settlement Class Member must submit
4 a timely written objection and written notice of the Settlement Class Member's intention to
5 appear at the final approval hearing, as provided in the Notice and by the Response Deadline.
6 Settlement Class Member will be entitled to be heard at the final approval hearing (whether
7 individually or through separate counsel) to object to the Class Settlement. No written objections
8 or briefs submitted by any Settlement Class Member will be received or considered at the final
9 approval hearing. Settlement Class Members who fail to timely submit written objections in the
10 manner specified in the Notice will be deemed to have waived any objections to the Class
11 Settlement and will be foreclosed from making any objection thereafter (whether by appeal or
12 otherwise).

13 15. The Court finds that Plaintiff has satisfied the prerequisites under California Labor
14 Code § 2699.3(a), including and not limited to providing the California Labor and Workforce
15 Development Agency ("LWDA") and the employer notice of the specific provisions of the
16 California Labor Code alleged to have been violated, and the facts and theories to support the
17 alleged violations.

18 16. Pursuant to California Labor Code § 2699(l), the Court has reviewed the PAGA
19 Settlement and determined that it is fair, just, reasonable, and adequate and hereby approves the
20 PAGA Settlement. All Parties, PAGA Group Members, and the LWDA are hereby bound by the
21 PAGA Settlement and its associated release of Released Claims arising under PAGA.

22 17. The Settlement is not a concession or admission and may not be used against
23 Defendant as an admission or indication with respect to any claim of any fault or omission by
24 Defendant. Whether or not the Settlement is finally approved, neither the Settlement, nor any
25 document, statement, proceeding or conduct related to the Settlement, nor any reports or accounts
26 thereof, may be construed as, offered or admitted into evidence as, received as or deemed to be in
27 evidence for any purpose adverse to the Defendant, including, but not limited to, evidence of a
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1 presumption, concession, indication or admission by Defendant of any liability, fault,
2 wrongdoing, omission, concession or damage.

3 18. If the Settlement does not become effective in accordance with the terms of the
4 Settlement Agreement or is terminated or cancelled, or fails to become effective for any other
5 reason, this Order will be rendered null and void, and will be vacated. The Parties will revert
6 back to their respective positions as of before entering into the Settlement Agreement.

7 19. Pending final determination of whether the Class Settlement should be approved,
8 Class Representatives and all Settlement Class Members are barred and enjoined from
9 commencing or prosecuting, instigating or in any way participating in the commencement or
10 prosecution of any action or other proceeding, in any forum, asserting any claims that are, or
11 relate in any way to, the Settlement Class Members' Released Claims.

12 20. The Court reserves the right to adjourn or continue the date of the final approval
13 hearing and all dates provided for in the Settlement Agreement without further notice to the
14 Settlement Class Members and retains jurisdiction to consider any further applications arising out
15 of or connected with the proposed Settlement.

16 **IT IS SO ORDERED.**

17
18 Dated: _____

By:

The Honorable René Auguste Chouteau
Judge of the Superior Court

EXHIBIT C

Edwin Aiwazian (SBN 232943)
Arby Aiwazian (SBN 269827)
Joanna Ghosh (SBN 272479)
LAWYERS for JUSTICE, PC
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Tel: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SONOMA**

SETH SWAN; individually, and on behalf of
other members of the general public similarly
situated, and on behalf of other aggrieved
employees pursuant to the California Private
Attorneys General Act;

Plaintiff,

vs.

PACE SUPPLY CORP., entity California
Corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: SCV258764

The Honorable René Auguste Chouteau

CLASS ACTION

[PROPOSED]

**FINAL APPROVAL ORDER AND
JUDGMENT**

Hearing Date: **TBD**
Hearing Time: **TBD**
Hearing Place: Courtroom 18

Complaint Filed: May 6, 2016
Jury Trial Date: August 17, 2018

1 The duly noticed motion of plaintiff Seth Swan ("Representative Plaintiff," "Class
2 Representative," and/or "Plaintiff") for an Order Finally Approving the Class Action Settlement
3 Agreement came on for hearing on [REDACTED] before the Honorable René Auguste
4 Chouteau, Judge of the above-entitled Court. Lawyers for Justice, PC appeared on behalf of
5 Plaintiff and the Settlement Class. Gordon Rees Scully Mansukhani, LLP appeared on behalf of
6 Defendant PACE Supply Corp. ("Defendant").

7 **I. FINDINGS**

8 Based on the oral and written argument and evidence presented in connection with the
9 motion, the Court makes the following findings:

10 1. All terms used herein shall have the same meaning as defined in the Agreement.
11 2. This Court has jurisdiction over the subject matter of this litigation pending before
12 the California Superior Court for the County of Sonoma, Case No. SCV258764, entitled *Seth*
13 *Swan, et al. v. PACE Supply Corp.*, and over all Parties to this litigation, including the Settlement
14 Class.

15 3. Based on a review of the papers submitted by Plaintiffs and of the applicable law,
16 the Court finds that the Gross Settlement Fund of **\$5,000,000.00** and the terms set forth in the
17 Agreement are fair, reasonable, and adequate.

18 4. The Court further finds that the Settlement was the result of arm's-length
19 negotiations conducted after Class Counsel had thoroughly and adequately investigated the claims
20 and became familiar with the strengths and weaknesses of those claims. In particular, the amount
21 of monies allocated to the Settlement Class Members, and the assistance of an experienced
22 mediator in the settlement process, among other factors, support the Court's conclusion that the
23 Settlement is fair, reasonable, and adequate.

24 **Preliminary Approval of the Settlement**

25 5. On [REDACTED], the Court granted preliminary approval of the Class Settlement. At this
26 same time, the Court approved certification of a provisional Settlement Class for settlement
27 purposes only. The Court also granted approval of the PAGA Settlement and the allocation of
28 \$250,000 for the PAGA Payment.

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1 a. The settlement was reached through arm's length bargaining between the
2 parties during a mediation before Mark S. Rudy, Esq., a respected mediator of class
3 actions. There has been no collusion between the parties in reaching the proposed
4 settlement.

5 b. Plaintiff's investigation and discovery have been sufficient to allow the
6 Court and counsel to act intelligently.

7 c. Counsel for both parties are experienced in similar employment class action
8 litigation. All counsel recommended approval of the Agreement.

9 d. The percentage of objectors and Requests for Exclusion is small. As of the
10 date of this Order, [REDACTED] objections were received and [REDACTED] Requests for Exclusion were
11 received.

12 9. The consideration to be given to the Settlement Class Members under the terms of
13 the Agreement is fair, reasonable and adequate considering the strengths and weaknesses of the
14 claims asserted in this action and is fair, reasonable and adequate compensation for the release of
15 Settlement Class Members' claims, given the uncertainties and risks of the litigation and the
16 delays which would ensue from continued prosecution of the action.

17 10. The proposed Agreement is approved as fair, adequate and reasonable and in the
18 best interests of the Settlement Class Members.

19 **Attorney's Fees and Costs**

20 11. An award of \$1,750,000 for attorney's fees and \$[REDACTED] for litigation costs and
21 expenses is reasonable, in light of the contingent nature of Class Counsel's fee, the hours worked
22 by Class Counsel, and the results achieved by Class Counsel.

23 **Enhancement Award**

24 12. The Agreement provides for a Service Award of \$6,400 to the Plaintiff, to be paid
25 out of the Gross Settlement Fund. The Court finds that a Service Award of \$6,500 to Plaintiff is
26 reasonable in light of the risks and burdens undertaken by Plaintiff in this Action and for his time
27 and effort in bringing and prosecuting this matter on behalf of the Putative Class.

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1 **Cost of Settlement Administration**

2 13. The Settlement Administrator will calculate and administer the payments to be
3 made to the Settlement Class Members who did not request exclusion from the Class Settlement
4 and will transmit payment for attorneys' fees and costs to Settlement Class Counsel, Service
5 Award to Class Representative, and LWDA's portion of the PAGA Payment. The Settlement
6 Administrator has documented \$[REDACTED] in Settlement Administration Expenses. This amount is
7 reasonable in light of the work performed by the Settlement Administrator.

8 **II. ORDERS**

9 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED,
10 ADJUDGED AND DECREED:

11 1. The Settlement Class is certified for the purposes of settlement only. The
12 Settlement Class is defined to include:

13 All current and former hourly-paid or non-exempt employees who directly worked
14 for Defendant within the State of California at any time during the period from
May 6, 2012 continuing up to and including August 9, 2017.

15 2. All persons who meet the foregoing definition are members of the Settlement
16 Class, except for the [REDACTED] individuals [list names] who filed timely Requests for Exclusion from the
17 Class Settlement.

18 3. The Agreement is hereby finally approved as fair, reasonable, adequate, and in the
19 best interest of the Settlement Class.

20 4. Class Counsel Lawyers for Justice, PC is awarded attorney's fees in the amount of
21 \$1,750,000 and litigation costs and expenses in the amount of \$[REDACTED].

22 5. The payment of a Service Award of \$6,400 for the Plaintiff is approved, to be paid
23 in conformity with the Agreement.

24 6. The payment of \$[REDACTED] to the Settlement Administrator, [insert name], for
25 settlement administration services is approved and shall be paid in conformity with the
26 Agreement.

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1 7. As a result of this final approval by the Court of the Settlement, all members of the
2 Settlement Class fully and finally release and discharge the Released Parties from the Released
3 Claims (as defined below):

4 a. “Released Claims,” includes any and all claims, debts, wages, liabilities,
5 demands, obligations, penalties, guarantees, costs, expenses, attorneys’ fees,
6 damages, action or causes of action of whatever kind or nature, that were pled or
7 which could have been pled based on the factual allegations contained in the
8 Complaint, arising under California law, including, but not limited to, any claims
9 for unpaid wages, unpaid minimum wage or overtime, record-keeping violations,
10 wage statement violations, meal period and rest period violations including claims
11 for premium pay, unreimbursed business-related expenses, interest, “waiting time”
12 penalties, violations of Labor Code sections 510, 1198, 226(a), 226.7, 512, 1194,
13 1197, 1197.1, 201, 202, 203, 204, 1174(d), 2800, and 2802, other statutory
14 penalties including but not limited to those arising under Labor Code sections
15 1197, 1197.1, 1198, liquidated damages, restitution (including but not limited to
16 pursuant to Business & Professions Code sections 17200, *et seq.*), costs, and
17 attorneys’ fees, which arose during the period beginning May 6, 2012 and
18 continuing up to and including August 9, 2017

19 b. In addition, the Class Representative further waives all rights and benefits
20 afforded by section 1542 of the California Civil Code which provides:

21 A general release does not extend to claims which the creditor does
22 not know or suspect to exist in his or her favor at the time of
23 executing the release which if known by him or her must have
materially affected his or her settlement with the debtor.

24 This Final Approval Order and Judgment shall binds each Settlement Class Members, and
25 has *res judicata* effect, and bars all Settlement Class Members from bringing any action asserting
26 their Released Claims under the Agreement.

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1 8. The Agreement and Settlement are not an admission by Defendant, nor is this
2 Final Approval Order and Judgment a finding of the validity of any claims in the Action or of any
3 wrongdoing by any party. Neither this Final Approval Order and Judgment, the Agreement, nor
4 any document referred to herein, nor any action taken to carry out the Agreement may be
5 construed or deemed an admission as to the existence or non-existence of liability, culpability,
6 negligence, or wrongdoing of any party. The entering into or carrying out of the Agreement, and
7 any negotiations or proceedings related thereto, may not be construed as, or deemed to be
8 evidence of, an admission or concession with regard to the denials or defenses by Defendant and
9 may not be offered in evidence in any action or proceeding against Defendant in any court,
10 administrative agency or other tribunal for any purpose whatsoever, other than to enforce the
11 provisions of this Final Approval Order and Judgment, the Agreement, or any related agreement
12 or release.

13 9. It is not necessary to send notice of entry of this Final Approval Order and
14 Judgment to individual Settlement Class Members. Notice of entry of this Final Approval Order
15 and Judgment will be given to the Class Members by posting a copy of the Final Approval Order
16 and Judgment on the Settlement Administrator's website. The time for any appeal will run from
17 the Court's entry of the Final Approval Order and Judgment.

18 10. Pursuant to California Rule of Court 3.769(h), after entry of this Final Approval
19 Order and Judgment, the Court will retain jurisdiction to construe, interpret, implement, and
20 enforce the Agreement, to hear and resolve any contested challenge to a claim for settlement
21 benefits, and to supervise and adjudicate any dispute arising out of or in connection with the
22 distribution of settlement benefits.

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1 11. If the Agreement does not become final and effective in accordance with the terms
2 of the Agreement, then this Final Approval Order and Judgment, and all orders entered in
3 connection herewith shall be rendered null and void and shall be vacated.

4 **IT IS SO ORDERED.**

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6 Dated: _____

By: _____
The Honorable René Auguste Chouteau
Judge of the Superior Court