

DANIEL F. GAINES, ESQ. SBN 251488
daniel@gaineslawfirm.com
ALEX P. KATOFISKY, ESQ. SBN 202754
alex@gaineslawfirm.com
EVAN S. GAINES, ESQ. SBN 287668
evan@gaineslawfirm.com
GAINES & GAINES, APLC
4550 East Thousand Oaks Boulevard, Suite 100
Westlake Village, California 91362
Telephone: (818) 703-8985
Facsimile: (818) 703-8984

Attorneys for Plaintiff Nicholas Wilkerson
and Proposed Class Counsel

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

NICHOLAS WILKERSON, individually
and on behalf of all similarly situated
individuals,

Plaintiff,

v.

OFFICIAL PEST PREVENTION, INC., a
Delaware corporation, and DOES 1
through 10, inclusive,

Defendants.

CASE NO: 34-2022-00328182

Assigned to the Hon. Laura Damrell, Dept. 28

CLASS ACTION

**DECLARATION OF DANIEL F. GAINES IN
SUPPORT OF UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

DATE: August 18, 2023

TIME: 9:00 a.m.

DEPT.: 28

Reservation # A-328182-001

Action Filed: October 10, 2022

1 I, DANIEL F. GAINES, hereby declare and state as follows:

2 1. I am an attorney duly admitted to the practice of law in the State of California. I am
3 a shareholder of Gaines & Gaines, APLC, counsel for Plaintiff Nicholas Wilkerson ("Wilkerson"
4 or "Plaintiff") and proposed Class Counsel in this action. I have personal knowledge of the facts
5 set forth herein and if called as a witness to testify to them, I could and would do so competently.

6 **Education and Experience:**

7 2. I obtained my BS degree from the University California at Berkeley in 2003. I
8 majored in Business Administration at the Haas School of Business.

9 3. Thereafter, I attended the University of Virginia School of Law. At Virginia, I was
10 a member of the editorial board of the Virginia Tax Review. I was also the recipient of the Lacy
11 Armour Scholarship, awarded to recognize academic excellence. At Virginia, I focused my
12 studies on tax and real estate. I earned my JD and became a member of the California Bar in 2007.

13 4. Since becoming a member of the Bar, and until his recent retirement, I practiced law
14 with my father, Kenneth, at Gaines & Gaines, APLC. Our practice specializes in litigation, with
15 an emphasis in employment disputes like this one. Over 95% of my practice is devoted to complex
16 employment litigation similar to the instant action.

17 5. My firm has represented employees in complex employment matters such as this
18 one, with an emphasis in wage and hour issues. I have participated in and have been certified as
19 class counsel in dozens of class action matters since my admission to the Bar. A partial list of the
20 cases in which I have been appointed as class counsel is attached hereto as **Exhibit A**.

21 **Factual and Procedural Background:**

22 6. On August 4, 2022, Plaintiff exhausted the pre-filing requirements of the Labor
23 Code Private Attorneys General Act of 2004 ("PAGA").

24 7. On October 10, 2022, Plaintiff initiated his Action in the Sacramento County
25 Superior Court by filing a class and representative action complaint, pursuant to PAGA, on behalf
26 of himself and all other similarly situated individuals.

27 8. As set forth in the operative Complaint, the Action assert claims against Defendant
28 for (1) failure to pay all minimum and overtime wages due (Labor Code §§ 510, 1194, and 1194.2

1 and IWC Wage Order 4-2001); (2) failure to pay all wages due (Labor Code §§ 226.7, 246, 510,
2 512, and 1194; IWC Wage order 4-2001); (3) failure to provide rest periods or compensation in
3 lieu thereof (Labor Code § 226.7 and IWC Wage Order 4-2001); (4) knowing and intentional
4 failure to comply with itemized employee wage statement provisions (Labor Code §§ 226(a) and
5 (e)); (5) failure to timely pay wages due at the separation of employment (Labor Code §§ 201-203
6 and 227.3); (7) violation of Business and Professions Code § 17200 for underlying violations of
7 the Labor Code as set forth in the complaint in the Action; and (8) civil penalties pursuant to
8 PAGA for underlying violations of the Labor Code as set forth in the complaint in the Action.

9 9. Defendant sought to compel arbitration of some of Plaintiff's claims, and the Court
10 entered an order compelling Plaintiff's class and PAGA claims to arbitration. Plaintiff
11 subsequently commenced an arbitration with AAA that was dismissed by AAA shortly thereafter
12 due to nonpayment of fees by Defendant. Defendant filed an appeal of the trial court's order, case
13 no. C098019, which was dismissed by the Third Appellate District of the California Court of
14 Appeal because the order was not immediately appealable under California law.

15 10. Defendant denies any liability or wrongdoing of any kind associated with the claims
16 alleged in the Action, and further denies that the Action are appropriate for class treatment for any
17 purpose other than this settlement. Defendant contends that it has complied at all times with the
18 California Labor Code. It is Defendant's position that, if this case were to be litigated, class
19 certification would be inappropriate because Plaintiff is not an adequate Class Representative,
20 Plaintiff's claims are not typical of putative class members, and individual issues predominate
21 over class issues, among other defenses. The Action, the negotiation and execution of the
22 Settlement Agreement, and all acts performed or documents executed pursuant to or in furtherance
23 of this Settlement Agreement (i) shall not be used as an admission, or as evidence of wrongdoing
24 by the Defendant, or for any other purpose whatsoever; (ii) shall not be an admission or evidence
25 of fault on behalf of Defendant in any action before a civil court, criminal court, administrative
26 agency of any type, or other tribunal; and (iii) shall not be deemed to be, and may not be used as,
27 an admission or evidence of the appropriateness of these or similar claims for class certification
28 in the Action or with respect to any other proceeding whatsoever.

1 11. The Class Representative contends that Defendant violated the California Labor
2 Code and Industrial Welfare Commission Wage Order(s), and that this case is appropriate for class
3 certification.

4 **Class Counsel's Assessment of the Fairness of the Settlement and the Risks of Continued**
5 **Litigation:**

6 12. My colleagues and I have conducted a thorough investigation into the facts and law
7 during the prosecution of this class action case, including the exchange of extensive informal
8 discovery and the review and verification of statistical data and other facts and information
9 provided by Defendant. My colleagues and I have investigated the applicable law as applied to the
10 facts discovered regarding the alleged claims of Plaintiff and potential defenses thereto, and the
11 damages and other losses claimed by Plaintiff.

12 13. The Parties agreed to participate in nonbinding mediation of Plaintiff's claims while
13 Defendant's appeal was pending. On May 2, 2023, following their exchange of information and
14 documents regarding the Settlement Class and the claims and defenses asserted by the Parties, the
15 Parties engaged in arm's-length negotiations with the assistance of an experienced wage and hour
16 mediator, Brandon McKelvey, Esq. Mr. McKelvey ended the mediation session with a mediator's
17 proposal, which both Parties accepted to reach the resolution of the Action detailed herein.

18 14. Based on our independent investigation and evaluation, my colleagues and I are of
19 the opinion (and so represent to the Court) that settlement for the consideration and on the terms
20 set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest
21 of the Settlement Class in light of all known facts and circumstances, including the risk of
22 significant delay, the risk the Settlement Class will not be certified by the Court, and the defenses
23 asserted by Defendant.

24 15. The Parties agree that the Settlement Class described herein may be certified for
25 settlement purposes only and that any motion for approval seeking, *inter alia*, certification of the
26 Settlement Class is for purposes of the settlement only. If for any reason the settlement is not
27 approved, the certification will have no force or effect and will immediately be revoked. The
28 Parties further agree that certification for purposes of the settlement is in no way an admission that

1 class certification is proper under the more stringent standard applied for litigation and that
2 evidence of this limited Settlement Agreement for settlement purposes only will not be admissible
3 for any purpose in this or any other proceeding.

4 16. The parties jointly prepared the Settlement Agreement and Release of Claims
5 ("Settlement Agreement", "Settlement", or "Stip."). A true and correct copy of the Settlement is
6 attached hereto as **Exhibit B**.

7 17. Plaintiff contends that Defendant failed to pay Class Members all wages due because
8 it required them to work off-the-clock, without pay, and because it failed to properly compute the
9 regular rate of pay when paying overtime and other forms of wages. Plaintiff argues that Class
10 Members were required to perform work-related activities off-the-clock, resulting in Defendant's
11 failure to pay all minimum and overtime wages earned, in violation of Labor Code §§ 510, 558,
12 1194, and 1194.2. Plaintiff contends that Class Members were only paid for limited time while
13 working from home, including time spent speaking with customers on the phone; other work time
14 was unpaid. While working in an office setting, Class Members were allegedly required to arrive
15 early to work and begin preparing for the day, but were not permitted to clock in until their shift
16 start time.

17 18. Plaintiff also alleges that Class Members were paid bonuses, commissions, and other
18 forms of non-base hourly wages that were not included in their regular rate of pay for purposes of
19 computing the proper meal and rest period premiums and sick pay rates, in violation of Labor
20 Code §§ 226.7, 246, 510, 512, 558, and 1194. Here, when Class Members earned meal period
21 premiums and sick pay, they were allegedly paid at their base rate. Plaintiff calculates classwide
22 damages on his unpaid wages claim at approximately \$650,000, with PAGA civil penalty liability
23 of \$1,517,600.

24 19. Of course, this claim was subject to numerous defenses which had the potential to
25 defeat the claims in their entirety. Defendant argued that all employee time was compensated, that
26 off-the-clock work was forbidden by company policy, that there were no miscalculations of the
27 regular rate because any bonuses paid were discretionary and not required to be computed into the
28 regular rate of pay, and that these claims – particularly the off-the-clock claim – could never be

1 certified based on manageability and typicality concerns. The negotiated settlement amount is a
2 product of compromise here.

3 20. Plaintiff also argues that Defendant failed to permit or authorize Class Members to
4 take timely 30-minute meal periods for shifts greater than 5 hours in length, in violation of Labor
5 Code §§ 226.7, 512, 558, and 1194 and IWC Wage Order 4-2001. Labor Code § 512 provides
6 that employers (like Defendant) may not employ an employee for a work period of more than five
7 hours without providing a 30-minute meal period starting no later than the end of the fifth hour.
8 Class Members were routinely unable to take a proper meal period when they worked shifts in
9 excess of five hours and a second meal period when they worked shifts in excess of ten hours. In
10 advance of mediation, Defendant provided timecards which reflected a meal period violation rate
11 of 12.6%, although some meal period premium payments were made (albeit at a rate Plaintiff
12 contends was too low, as detailed above). Plaintiff calculates maximum class damages on this
13 claim at \$430,000 with PAGA civil penalty liability of \$737,900. Defendant strongly argues that
14 it fully complied at all times with California's meal break laws, and that the high rates of
15 compliance in its payroll records demonstrate that its policies and practices conform with
16 California law. It also argues manageability concerns in certifying this claim. The compromise
17 reached here reflects a fair resolution of the claim in light of the risks of further litigation.

18 21. Plaintiff also argues that Defendant failed to pay Class Members premium wages
19 for missed, denied and unauthorized rest periods in violation of Labor Code § 226.7 and IWC
20 Wage Order 4-2001. These restrictions and requirements contravene California law with respect
21 to rest periods.

22 22. Plaintiff calculates damages on this claim at up to approximately \$2,733,000, with
23 PAGA civil penalty liability of \$1,474,100. This claim was also subject to substantial litigation
24 risk and required a discount for settlement purposes at this juncture of litigation. Defendant argued
25 that its policies were always California compliant, that it never exerted any control over employees
26 during their rest periods, that any rest periods not taken were waived by employees, and that this
27 proffered waiver defense would render class certification unmanageable. The resolution reached
28 reflects a fair compromise of this claim.

1 23. Plaintiff contends that Defendant failed to issue Plaintiff and Class Members
2 accurately itemized wage statements. Because Class Members were not paid all wages due, as
3 Plaintiff argues, the wage statements issued to Class Members fail to accurately state all gross
4 wages earned, in violation of Labor Code § 226(a)(1), and net wages earned, in violation of Labor
5 Code § 226(a)(5). Plaintiff calculates statutory penalties on this claim at \$1,256,900, with PAGA
6 civil penalty liability of \$1,517,600. He also recognizes that this claim had several litigation
7 hurdles which required a discount for settlement at this juncture, including defenses for willfulness
8 and injury, and Defendant's key argument that no wages were ever underpaid, such that there
9 could be no derivative wage statement claim at all. The compromise reached as to this claim
10 reflects a fair discount for litigation risk.

11 24. Plaintiff also argues Defendant failed to pay Class Members all wages due upon
12 separation of employment, in violation of Labor Code §§ 201-203. As Defendant failed to pay
13 them all wages due during the course of their employment, as described above, these wages were
14 due and owing upon separation of employment yet went unpaid. Plaintiff calculates statutory
15 penalties on this claim at \$1,001,532, with PAGA civil penalty liability of \$12,200. Defendant
16 proffered defenses to this claim – specifically, that even if wages were unpaid (which it denies),
17 there would have been a good faith dispute as to whether those wages were ever due, eliminating
18 liability under the statute. The compromise reached represents a fair resolution of the claim in
19 light of the risks involved in prevailing on it and the unpaid wage claims on which it is based.

20 25. A discount on the maximum value of Class members' claims was required (and
21 warranted) to resolve the matter at this stage of the litigation. Defendant always maintained
22 multiple defenses to each claim as to class certification and on the merits. It also argued that
23 Plaintiff and Class Members could not litigate their claims on a classwide basis due to the language
24 in their arbitration agreements, which the Court found to be enforceable (albeit with a different
25 interpretation than Defendant proffered). It argued that it adopted and enforced legally complaint
26 policies and practices which authorized meal and rest periods as required by law, and employees
27 did not voice concern over meal and rest periods being denied.

1 26. The discount negotiated for settlement here is a reasonable compromise, particularly
2 considering that the risk of obtaining class certification on all or any of Plaintiff's claims involves
3 a 50% or higher hurdle, especially with respect to the meal and rest period and off-the-clock
4 claims, to which Defendant maintains strong arguments to defeat class certification (in addition to
5 multiple defenses on the merits of the claims). Class certification is a substantial risk in any class
6 action case. Here, while Plaintiff maintains that the requirements of class certification are met,
7 Defendant proffers various arguments why class treatment is not appropriate, including but not
8 limited to that individualized inquires among class members predominate over common ones. If
9 Defendant was to defeat Plaintiff's class certification motion, there would be no class wide relief
10 whatsoever, and most class members would likely not file individual claims.

11 27. Plaintiff also faced the risk of a loss on the merits on his claims. It is very possible
12 that the Court would agree with Defendant's position that its practices complied with the
13 requirements of California law or could not be certified. In such a case, the value of Plaintiff's
14 claims would be zero.

15 28. Finally, Plaintiff faced the risk that he would not obtain a maximum damage/penalty
16 award on all (or any of) his claims. For example, Plaintiff's wage statement claims and waiting
17 time penalty claim are wholly derivative of his unpaid wage claims. If he did not prevail on those
18 claims, he would not prevail on a claim for deficient wage statements or failure to timely pay
19 wages. In addition, Plaintiff seeks discretionary penalties pursuant to the PAGA. Even if Plaintiff
20 did prevail on his claims, it is possible that the Court would not impose all penalties pursuant to
21 its discretionary power to reduce them.

22 29. Defendant strongly contends that its policies and practices do not violate any laws.
23 It contends that it properly provided for all meal and rest periods and fully compensated its
24 employees for all time worked. It further contends that the wage statements it provides to its
25 employees are fully compliant with California law.

26 30. When the costs and risks of non-certification and loss on the merits are considered,
27 my colleagues and I are of the opinion that the settlement reached is clearly a favorable one.
28

1 31. The settlement for each Class Member is fair, reasonable and adequate, given the
2 inherent risk of litigation, the risk relative to class certification and the costs of pursuing such
3 litigation. The settlement shall finally resolve all claims of the Class Members as alleged in the
4 Action.

5 **Class Certification Requirements:**

6 32. To date, no class has been certified. The Stipulation of Settlement contains a
7 provision pursuant to which we stipulate to the Court's provisional certification of the
8 approximately 818-member Settlement Class, but do so for purposes of this settlement only.

9 33. In this case, the Class Members are identifiable from Defendant's employment and
10 payroll records. Further, the Settlement Class is sufficiently numerous to warrant certification.
11 According to Defendant's records, the Class comprises approximately 818 employees.

12 34. The Class Members' claims all stem from a common source: members of the
13 Settlement Class allege that Defendant violated the same Labor Code provisions in connection
14 with their employment. All members of the Class seek the same relief under the same California
15 laws (related to unpaid wages, meal and rest period premiums, inaccurate or incomplete wage
16 statement, failure to timely pay wages due upon separation, and derivative claims). Under these
17 circumstances, the commonality requirement is satisfied for purposes of certifying the Settlement
18 Class for settlement purposes.

19 35. In this case, the named Plaintiff and proposed Class Representative Nicholas
20 Wilkerson is a former non-exempt employee who worked for Defendant in the State of California
21 during the Class Period. He contends that Defendant failed to pay all wages, failed to provide
22 meal and rest periods, failed to comply with itemized employee wage statement provisions, and
23 failed to timely pay wages at the separation of employment, in violation of Labor Code §§ 201-
24 202, 226(a), 226.3, 226.7, 227.3, 510, 512, 558, 1194, 2698, and 2699. He has the same claims as
25 those that the members of the Settlement Class would reasonably be expected to bring based on
26 the course of conduct alleged herein.

36. Plaintiff has also demonstrated that he will aggressively and competently assert the interests of the proposed Settlement Class; he has taken an active role in this litigation and has no apparent conflicts with other class members.

Settlement of Claims Pursuant to Labor Code § 2699 et seq. (PAGA):

37. Concurrently with the filing of this Motion, my office is transmitting the Settlement Agreement (and these approval documents) to the LWDA, in compliance with Labor Code § 2699(l)(2). Evidence of submission is attached hereto as **Exhibit C**.

I declare, under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed this 25th day of July, 2023 at Westlake Village, California.

Daniel F. Gaines
DANIEL F. GAINES

EXHIBIT A

Adams v. Newell Rubbermaid, USDC – Central District of California (Los Angeles), Case No. EDCV 08-1499 JTM (CTx)

Adams v. Sam's West, Inc., San Bernardino County Superior Court, Case No. CIVDS1403987

Agredano v. GS Brothers, Inc., Los Angeles County Superior Court, Case No. BC445561

Allen v. Toms Sierra Company, Nevada County Superior Court, Case No. CU18-082823

Allen v. Valley Inventory Service, Inc., Solano County Superior Court, Case No. FCS034682

Alvarez v. Pilot Travel Centers, LLC, San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-4605

Alonzo v. Camblin Steel Service, Inc., Placer County Superior Court, Case No. SCV0034165

Amenhotep v. Google, Inc., Santa Clara County Superior Court, Case No. 17CV311528

Anaya v. Progressive Logistics Services, LLC, Riverside County Superior Court, Case No. RIC1308270

Andre v. Newell Rubbermaid, Inc., San Bernardino County Superior Court, Case No. CIVVS1200282

Anduha v. ABC Phones of North Carolina, Inc., Stanislaus County Superior Court, Case No. 2022729

Anslow v. Wellington Energy, Inc., USDC – Northern District of California (San Francisco), Case No. CV11-1596-JCS

Aranda, et al. v. Universal Lumpers of California, Inc., San Joaquin County Superior Court, Case No. STK-UOE-2017-7826

Armendariz v. Integrated Pain Management Medical Group, Inc., Kern County Superior Court, Case No. BCV-19-100267-SDS

Barrow, et al. v. Desmond Foods, L.P., Sacramento County Superior Court, Case No. 34-2015-00187227

Batmanghelich v. Sirius XM Radio Inc., USDC – Central District of California (Los Angeles), Case No. CV 09-9190 VBF (JCx)

Bosser v. Hooked on Solar, Yolo County Superior Court, Case No. CVCV-2016-876

Bourland v. Horizon Personnel Services, Inc., Sacramento County Superior Court, Case No. 34-2014-00161365-CU-OE-GDS

Bowen v. IMI Material Handling Logistics, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-0000192

Branson v. Mladen Buntich Construction, San Bernardino County Superior Court, Case No. CIVDS1609129

Brandt v. Sacramento Auto Insurance Center, Inc., San Joaquin County Superior Court, Case No. 39-2009-00202938-CU-OE-STK

Brown v. 22nd District Agricultural Association, United States District Court, Southern District of California, Case No. 15-cv-2578-DHB

Brown v. Sierra Central Credit Union, Sutter County Superior Court, Case No. CVCS18-0002161

Burgess v. Blue Cross and Blue Shield of South Carolina, San Joaquin County Superior Court, Case No. 39-2012-00277449-CU-BT-STK

Burgess v. Strategic Retail Solutions, LLC, Los Angeles County Superior Court, Case No. BC413791

Calhoun v. Celadon Trucking Services, Inc., USDC – Central District of California (Los Angeles), Case No. 5:16-cv-01351-PSG-FFM

Caporicci v. Owens & Minor Distribution, Inc., San Joaquin County Superior Court, Case No. 39-2013-00295662-CU-OE-STK

Carl v. Advanced Call Center Technologies, LLC, Sacramento County Superior Court, Case No. 34-2013-00148310

Carlisle, et al. v. Professional Technical Security Services, Inc., Case No. CGC18569791

Carrete v. Gamestop, Inc., Imperial County Superior Court, Case No. ECU08501

Carrillo v. Bimbo Bakeries, Inc., San Bernardino County Superior Court, Case No. CIVDS1606813

Caudillo v. Aegis Treatment Centers, LLC, Merced County Superior Court, Case No. 18CV-0744

Cerami v. Metlife, Inc., USDC – Central District of California (Orange County), Case No. 11-CV-00681-CJC (MLGx)

Charles v. Aaron's Inc., Los Angeles County Superior Court, Case No. BC431468

Charles v. Nursefinders, LLC, Imperial County Superior Court, Case No. ECU07422

Cheifer v. JetBlue Airways Corporation, Los Angeles County Superior Court, Case No. BC451887

Cheifer, et al. v. WHGM, Inc., Los Angeles County Superior Court, Case No. LC104900

Chong, et al. v. Crescent Northwoods Inn, Inc., Del Norte County Superior Court, Case No. CVUJ-2018-1133

Church v. GameStop, Inc., et. al., USDC – Central District of California (Los Angeles), Case No. 11-CV-00132-VAP-RZ

Clothier v. Spar Marketing Services, Inc., Alameda County Superior Court, Case No: RG12-639317

Coleman v. Wireless Lifestyle, Inc., USDC – Western District of Missouri, Case No. 4:12-cv-00855-ODS

Colombo-Beyeler, et al. v. Viking River Cruises, Inc., San Bernardino County Superior Court, Case No. CIVDS1611608

Conlee v. Clark Pacific Corporation, Yolo County Superior Court, Case No. CV14-1409

Contreras v. Osmose Utilities Services, Inc., San Bernardino County Superior Court, Case No. CIVDS1513998

Contreras v. West American Service Corporation, Kings County Superior Court, Case No. 14C0280

Corona v. Yosemite Meat & Locker Service, Inc., Stanislaus County Superior Court, Case No. 2006828

Cortellessa v. Dotnext, Inc., Alameda County Superior Court, Case No. RG09429971

County v. Ingram Mirco, Inc., San Bernardino Superior Court, Case No. CIVRS 1304445

Covarrubias, et al. v. Petersendean Builder Group, Inc., Kern County Superior Court, Case No. BCV-16-101122

Cowen, et al. v. Evergreen Alliance Golf Limited, L.P., d/b/a Arcis Golf, San Bernardino County Superior Court, Case No. CIVDS1719283

Cruz-Garcia v. Lemonade Restaurant Group, LLC, Los Angeles County Superior Court, Case No. BC478205

Cunningham v. Performance Contracting, Inc., Contra Costa County Superior Court, Case No. C16-02157

Dabney v. Coneybeare, LLC, et al., Orange County Superior Court, Case No. 30-2018-00999989-CU-OE-CXC

Dabney, et al. v. Panera, LLC., San Bernardino County Superior Court, Case No. CIVDS1516030

Diaz, et al. v. Seaworld Entertainment, Inc., Imperial County Superior Court, Case No. ECU10046

Diggs v. Western Waterproofing Company, Inc., San Francisco County Superior Court, Case No. CGC-14-539281

Dismuke v. Rhodes Retail Services, Inc., Sacramento County Superior Court, Case No. 34-2011-00105001

Dorsette v. TA Operating, LLC, USDC – Central District of California (Los Angeles), Case No. EDCV 09-1350 PA (RZx)

Duran v. The Image of California, Inc., Kern County Superior Court, Case No. S-1500-CV-284056 DRL

Edwards v. Trans World Entertainment Corp., San Diego County Superior Court, Case No. 37-2010-00095123-CU-OE CTL

Esakhani v. Central Valley Gaming, Stanislaus County Superior Court, Case No. 2020667

Escobar v. SMSSI of California, Inc., San Francisco Superior Court, JCCP No. 4776

Espinosa v. Taltech Construction, et al., Los Angeles County Superior Court, Case No. BC590176

Espinosa v. Bodycote Thermal Processing, Inc., Los Angeles County Superior Court, Case No. BC501617

Espinoza v. Pabco Building Products, LLC, Los Angeles County Superior Court, Case No. VC065660

Estrada v. Net Source Communications, Inc., Los Angeles County Superior Court, Case No. BC431169

Estrada v. OS Restaurant Services, LLC, Santa Clara County Superior Court, Case No. 16CV293249

Estupinan v. Global Development Strategies, Inc., Santa Clara County Superior Court, Case No. 110CV178898

Fadhl. v. Siemens Healthcare Diagnostics Inc., Sacramento County Superior Court, Case No. 34-2017-00209518

Fernandez v. The Regents of the University of California, Los Angeles County Superior Court, Case No. BC656256

Ferrer v. Dish Network Corporation, Los Angeles County Superior Court, Case No. BC441354

Findora v. Barry Callebaut USA LLC, Napa County Superior Court, Case No. 19CV000219

Flores v. Cintas Corporation, Los Angeles County Superior Court, Case No. BC400422

Friel v. Midwest Construction Services, Inc., San Joaquin County Superior Court, Case No. 39-2015-00329204-CU-OE-STK

Gagnon v. Banc of California, Contra Costa County Superior Court, Case No. C 15-00196

Galarza v. Bayou Well Services, LLC, Kern County Superior Court, Case No. S-1500-CV-279372 DRL

Galarza v. C & H Testing Service LLC, Kern County Superior Court, Case No. BCV-15-100008 SPC

Garcia v. Old Dominion Freight Line, Inc., San Bernardino County Superior Court, Case No. CIVDS1404636

Geer v. Applied Aerospace Structures Corp., San Joaquin County Superior Court, Case No. 39-2014-00313702-CU-OE-STK

Getz v. California Cinema Investments, Inc., Ventura County Superior Court, Case No. 56-2013-00437706-CU-MC-VTA

Gibbs v. M. Lehmann Enterprises, Orange County Superior Court, Case No. 30-2013-00678538-CU-OE-CXC

Gilles v. Schaefer Ambulance Service Inc., Imperial County Superior Court, Case No. ECU07970

Goldman, et al. v. Defender's, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-0009973

Gomez v. Low Desert Empire Pizza, Inc., San Bernardino County Superior Court, Case No. CIVVS900392

Gomez v. Pizza Hut of Southeast Kansas, Inc., San Bernardino County Superior Court, Case No. CIVVS900679

Gonzalez v. Harris Farms, Inc., USDC – Eastern District of California (Fresno), Case No. 1:14-cv-00038-LJO-SAB

Guerrero v. Main Electric Supply Company LLC, Ventura County Superior Court, Case No. 56-2019-00525427-CU-OE-VTA

Gutierrez v. Asset Management Specialists, Inc., Fresno County Superior Court, Case No. 12CECG03577

Gutierrez v. Linkus Enterprises, Inc., Madera County Superior Court, Case No. MCV065774

Gutierrez v. Shiekh, LLC, San Bernardino County Superior Court, Case Nos. CIVRS1206525, CIVRS1303408

Hairston v. Stanislaus Surgical Hospital, Stanislaus County Superior Court, Case No. CV-19-000651

Hindman v. Service Quick, Inc., San Bernardino County Superior Court, Case No. CIVDS1724229

Hogan v. iMobile of CA LLC, San Bernardino County Superior Court, Case No. CIVDS1409263

Hogan v. Wireless Evolution Inc., Riverside County Superior Court, Case No. MCC1300669

Hogan v. Wireless That's It! LLC, Riverside County Superior Court, Case No. RIC1201997

Holmes v. Bottling Group, LLC, Stanislaus County Superior Court, Case No. 2022584

Hooper, et al. v. URS Midwest, Inc., et al., San Bernardino Superior Court, Case No. CIVDS1607489

Humphrey v. Freedomroads, LLC, Shasta County Superior Court, Case No. 178228

Hurtado v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC427672

Hyde v. Dent Wizard International Corporation, Sacramento County Superior Court, Case No. 34-2015-00173882

Ibrihim v. Imperfect Foods, Inc., San Joaquin County Superior Court, Case No. STK-VI-UOE-2019-0000846

Id-deen v. Educational Services of America, Solano County Superior Court, Case No. FCS040803

Isherwood v. Mason Dixon Intermodal, Inc., San Joaquin County Superior Court, Case No. 39-2012-00279891-CU-OC-STK

Jahanbin v. Pacific Mercantile Bank, Orange County Superior Court, Case No. 30-2011-00480705CU-OE-CXC

Jenkins v. Sedgwick Claims Management Services, Inc., Los Angeles Superior Court, Case No. LC101648

Job v. California Security Services, Yuba County Superior Court, Case No. 14-0000820

Johnson v. The Goodyear Tire & Rubber Company, USDC – Northern District of California (San Francisco), Case No. 3:13-cv-01069-MMC

Jolin v. Bay Cities Recovery, Inc., El Dorado County Superior Court, Case No. PC20100458

Jordan v. Sutter Memorial Hospital, Stanislaus County Superior Court, Case No. 2023344

Keebaugh v. Mike Thompson Recreational Vehicles, San Bernardino County Superior Court, Case No. CIV-DS-1500718

Kelly v. Robin's Enviro Vac, Inc., Kern County Superior Court, Case No. S-1500-CV-282277
DRL

King v. Levy Premium Foodservice Limited Partnership, Alameda County Superior Court, Case No. HG15786353

Kunsman v. Punch Bowl Sacramento, LLC, et al., Sacramento County Superior Court, Case No. 34-2018-00243175

LaFear v. Encore Education Corporation, San Bernardino County Superior Court, Case No. CIVDS1802251

Lanzarin v. AWI Management Corporation, Solano County Superior Court, Case No. FCS041809

Lee, et al. v. Foster Dairy Farms, Stanislaus County Superior Court, Case Nos. 2006542, 2015679

Lemus, et al. v. Eastridge Workforce Technology, Inc., San Bernardino County Superior Court, Case No. CIV-DS-1611470

Lewis v. American Casino & Entertainment Properties LLC, San Bernardino County Superior Court, Case No. CIVDS1719094

Lemus v. On Assignment Staffing Services, San Bernardino County Superior Court, Case No. CIV-DS-1600497

Leon v. Piercey West Inc., Los Angeles County Superior Court, Case No. BC656874

Lopez v. Creative Communication Technologies, Inc., Imperial County Superior Court, Case No. ECU07851

Lopez v. Go Green Auto Spa Franchise, Inc., et al., Los Angeles County Superior Court, Case No. BC 562212

Lopez v. Truck Accessories Group, LLC, Yolo County Superior Court, Case No. CV13798

Ludlow v. Prince Telecom, LLC, Stanislaus County Superior Court, Case No. 684239

Luna v. Express Locations, LLC, Imperial County Superior Court, Case No. ECU09779

Macias v. American Tire Distributors, Inc., Kern County Superior Court, Case No. BCV-18-101586

Maldonado v. Hardwood Flooring Liquidators, Inc., Los Angeles County Superior Court, Case No. BC642170

Mansfield v. Cambridge Real Estate Services, Inc., Butte County Superior Court, Case No. 160175

Martinez v. DPI Specialty Foods West, San Joaquin County Superior Court, Case No. 39-2015-00327311-CU-OE-STK

Martinez v. Styles For Less, Inc., San Bernardino County Superior Court, Case No. CIVVS1203057

Mayne v. John Muir Behavioral Health, Contra Costa County Superior Court, Case No. C17-00998

Maze v. Bulldog Freightway, Inc., Imperial County Superior Court, Case No. ECU08716

McCormick v. G & O Body Shop, Inc., El Dorado Superior Court, Case No. PC20130291

McCrary v. Campbell Soup Supply Company, San Joaquin County Superior Court, Case No. 39-2013-00297698-CU-OE-STK

McDaniel v. Vancary, Inc., Tulare County Superior Court, Case No. 268036

Melgar-Farela v. Guardian Compliance, Inc., Los Angeles County Superior Court, Case No. BC481865

Mendiola v. Tyco Electronics Corporation, Riverside County Superior Court, Case No. RIC1400721

Mettler v. Les Schwab Tire Centers of California, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-476

Miller v. California Subshine, Inc., Los Angeles County Superior Court, Case No. BC637754

Miller v. Southwest Airlines Co., USDC – Northern District of California (San Francisco), Case No. 3:12-cv-05978-CRB

Mitchell v. Crossmark, Inc., USDC – Central District of California (Los Angeles), Case No. CV 11-2818-JAK (FMOx)

Moghrabi v. Vitaligent, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-1650

Molina v. Berkshire Hathaway Energy Company, et al., Imperial County Superior Court, Case No. ECU000522

Moore v. Horizon Solar Power, Inc., San Bernardino County Superior Court, Case No. CIVDS1410001

Murray v. Select Media Services, LLC, Los Angeles County Superior Court, Case No. BC424506

Myles v. Central Transport LLC, San Bernardino County Superior Court, Case No. CIVDS1401434

Navarro v. Mariana Packing Co., Inc., Solano County Superior Court, Case No. FCS045935

Nehrlich, et al. v. RPM Mortgage, Inc., Orange County Superior Court, Case No. 30-2013-00666783-CU-OE-CXC

Overton v. Hat World, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:11-CV-01645-LKK-KJN

Perez v. Alcatel-Lucent USA Inc., Imperial County Superior Court, Case No. ECU07977

Perez v. Major Gloves and Safety, Inc., San Bernardino County Superior Court, Case No. CIVDS1710445

Perry v. Cardinal Health 200, LLC, Solano County Superior Court, Case No. FCS035303

Phraxayavong-Briones v. RSM, Inc., Sacramento County Superior Court, Case No. 34-2012-00117524

Pugh v. Wi Spa, LLC, Imperial County Superior Court, Case No. ECU07932

Quist v. Knight Transportation, Inc., San Bernardino Superior Court, Case No. CIVDS 1615414

Quitco v. Aviation Fuel Systems Repair, Inc., San Bernardino Superior Court, Case No. CIVRS1302311

Rambeau v. C.C.M. Corporation, et al., Sacramento County Court, Case No. 34-2018-00244842

Rankins v. Roman Empire Living Skills, Inc., Los Angeles County Superior Court, Case No. BC713399

Rees v. Advantel, Incorporated, Santa Clara County Superior Court, Case No. 16-CV-292219

Renfrow v. Janra Enterprises, Inc., Sacramento County Superior Court, Case No. 3402010-00080471

Reynolds v. Diamond Pet Food Processors of Ripon, San Joaquin County Superior Court, Case No. 39-2014-00310818

Richard v. A-Para Transit Corp., Alameda County Superior Court, Case No. HG17870373

Richardson v. TEC Equipment, Inc., et al., Los Angeles County Superior Court, Case No. VC065536

Robles v. North County Health Project Incorporated, San Diego Superior Court, Case No. 37-2014-00001751-CU-OE-NC

Rodas v. Monetary Management of California, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:14 cv 01389 TLN AC

Rodriguez v. 20/20 Plumbing & Heating, Inc., San Bernardino County Superior Court, Case No. CIVDS1705362

Rodriguez v. Commerce Distribution Company, Los Angeles County Superior Court, Case No. BC656259

Rodriguez v. Valley Oak, San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-7980

Roden v. Service Champions, San Bernardino County Superior Court, Case No. CIVDS1613183

Russell v. Bradshaw International, Imperial County Superior Court, Case No. ECU00853

Rutledge, et al. v. Healthport Technologies, LLC, Alameda County Superior Court, Case No. RG16835813

Sabala v. Econtactlive, Inc., Stanislaus County Superior Court, Case No. 684981

Sabatier v. Picture Perfect Installation, Inc., Riverside County Superior Court, Case No. RIC10004953

Salameh v. Sonomaience OPCO, LLC, Sonoma County Superior Court, Case No. SVC264228

Salazar v. Tag-3 Medical Investment Group, LLC, Los Angeles County Superior Court, Case No. BC527698

Salbeck v. Ingredion Incorporated, San Joaquin County Superior Court, Case No. STK-UOE-2017-0012622

Sampson v. Healthnet of California Inc., Sacramento County Superior Court, Case No. 34-2015-00183785-CU-OE-GDS

Sanchez v. Don Roberto Jewelers, Inc., Imperial County Superior Court, Case No. ECU06819

Sanders v. Lionakis, Sacramento County Superior Court, Case No. 34-2017-00223601

Santana v. United Staffing Associates, LLC, Tulare County Superior Court, Case No. 249338

Schrader v. Adidas Promotional Retail Operations, Inc., Los Angeles County Superior Court, Case No. BC414168

Sebrell v. Pomeroy IT Solutions, San Bernardino County Superior Court, Case No. CIVDS1721560

Seymour v. Quest Service Group, LLC, Sacramento County Superior Court, Case No. 34-2017-00206917

Silva v. Trical, San Benito County Superior Court, Case No. CU-16-00218

Simler v. Polly's Inc., Riverside County Superior Court, Case No. RIC 1117862

Sipin, Scott v. Salesforce.com, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2019-0004629

Skuro v. BMW of North America, LLC, USDC – Central District of California (Los Angeles), Case No.: CV 10-8672-GW (FFMx)

Smith v. Steelcase, Inc., San Bernardino County Superior Court, Case No. CIVDS1725850

Sohal v. Foster Poultry Farms, Stanislaus County Superior Court, Case No. 2026605

Solomon v. City of Los Angeles, Los Angeles County Superior Court, Case No. BC570345

Solano v. Vozzcom, Inc., Imperial County Superior Court, Case No. ECU09519

Smith, et al. v. Sente Development, Inc., Sacramento County Superior Court, Case No. 34-2016-00196614

Solorzano v. FDS Manufacturing Corporation, Los Angeles County Superior Court, Case No. BC542532

Solowitz v. BakeMark USA LLC, Los Angeles County Superior Court, Case No. BC467838

Spampinato v. Wind & Sea Restaurants, Inc., San Bernardino County Superior Court, Case No. CIVVS1205154

Spitzer, et al. v. FRHI Hotels & Resorts (Canada) Inc., San Bernardino County Superior Court, Case No. C IVDS1712220

Stephens v. C.S., Inc., Riverside County Superior Court, Case No. PSC1301224

Stevenson v. Harvest Management Sub LLC, Ventura County Superior Court, Case No. 56-2011-00397420-CU-OE-SIM

Thompson v. Continental Labor Resources, Inc. d/b/a Continental Labor & Staffing Resources, Kern County Superior Court, Case No. S-1500-CV-278751-DRL

Thompson v. Sidhu Truck Line, Inc., Kern County Superior Court, Case No. BCV-15-101308-DRL

Tigas v. Ajilon Communications, Los Angeles County Superior Court, Case No. BC409737

Torres v. Coastal Employment Inc., Los Angeles County Superior Court, Case No. BC529207

Tran v. CSP Fiber Services, San Bernardino County Superior Court, Case No. CIVDS172758

Tripp v. California Guest Services, Inc., Plumas County Superior Court, Case No. CV16-00036

Valdez v. Diamond Landscaping, Inc., Los Angeles County Superior Court, Case No. BC497097

Valencia v. American Team Managers, Inc., Orange County Superior Court, Case No. 30-2016-00857365-CU-CR-CXC

Van Son v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC494747

Vasquez v. Schurman Fine Papers, San Joaquin County Superior Court, Case No. STK-CV-LMC-2015-10035

Velasquez v. Modesto Ventures, LLC, Sacramento County Superior Court, Case No. 32-2012-00126159

Victoria v. Bali Limousines Inc., San Mateo County Superior Court, Case No. CIV507774

Victorian v. Vision X, Inc., Los Angeles County Superior Court, Case No. BC400333

Wade v. Frito Lay, Kern County Superior Court, Case No. BCV-17-102014

Walls v. E. & J. Gallo, Stanislaus County Superior Court, Case No. 2015874

Warner v. Waterdrops Express Car Wash, LLC, Tulare County Superior Court, Case No. 265708

Waybright v. EAH, Inc., Stanislaus County Superior Court, Case No. 2011677

Weiss v. C.A.R. Enterprises, Inc., Riverside County Superior Court, Case No. RIC1113165

White v. Sally Beauty Supply, LLC, Imperial County Superior Court, Case No. ECU08177

Williams v. Dennis Dillon RV, LLC, San Bernardino County Superior Court, Case No. CIVDS 16006879

Williams v. Closet World, Inc., Los Angeles County Superior Court, Case No. BC400178

Williams v. Progress Rail Services Corporation, Kern County Superior Court, Case No. S-1500-CV-280236 DRL

Wing v. Three Group, Inc., Los Angeles County Superior Court, Case No. BC643883

Wilson v. ALSCO, Inc., Imperial County Superior Court, Case No. ECU07406

Wilson v. Michael C. Stead, Inc., Contra Costa Superior Court, Case No. C1400135

Winningham v. Storer Transportation Service, San Joaquin County Superior Court, Case No. 39-2015-00324708-CU-STK

Woody v. WBN Home Design, San Bernardino County Superior Court, Case No. CIVDS1613367

Woods, et al. v. F&B Innovations, LLC, San Bernardino County Superior Court, Case No. CIVDS1717765

Woodyard v. Bellus ALC Acquisition, LLC, USDC – Central District of California (Los Angeles), Case No. 2:13-cv-05285 SJO AGRx

Wright v. Social Vocational Services, Inc., Kern County Superior Court, Case No. BCV-15-101264

Ybarra v. New Legend, Inc., Sutter County Superior Court, Case No. CVCS-16-2097

Zaragoza v. Center Automotive, Inc., Los Angeles Superior Court, Case No. BC505194

EXHIBIT B

1 DANIEL F. GAINES, ESQ. SBN 251488
daniel@gaineslawfirm.com
2 ALEX P. KATOPFSKY, ESQ. SBN 202754
alex@gaineslawfirm.com
3 EVAN S. GAINES, ESQ. SBN 287668
evan@gaineslawfirm.com
4 GAINES & GAINES, APLC
4550 East Thousand Oaks Boulevard, Suite 100
5 Westlake Village, California 91362
Telephone: (818) 703-8985
6 Facsimile: (818) 703-8984

7 Attorneys for Plaintiff Nicholas Wilkerson, individually and on behalf of all similarly situated
8 individuals

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SACRAMENTO**

11 NICHOLAS WILKERSON, individually
12 and on behalf of all similarly situated
individuals,

13 Plaintiff,

14 v.

15 OFFICIAL PEST PREVENTION, INC., a
16 Delaware corporation, and DOES 1 through
17 10, inclusive,

18 Defendants.

CLASS ACTION

CASE NO: 34-2022-00328182

Assigned to the Hon. Laura Damrell, Dept. 28

**SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

Complaint Filed: October 10, 2022

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SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

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1 **SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

2 This Settlement Agreement and Release of Claims ("Settlement Agreement") is made and
3 entered into by and between Plaintiff Nicholas Wilkerson ("Plaintiff" or "Class Representative"),
4 individually and on behalf of all others similarly situated, and Defendant Official Pest Prevention,
5 Inc., a Delaware corporation ("Defendant"), subject to the terms and conditions herein and the
6 Court's approval.

7 **A. Definitions.**

8 1. Plaintiff, the Settlement Class (as defined below), and Defendant are collectively
9 referred to herein as "the Parties."

10 2. Daniel F. Gaines and Alex P. Katofsky of Gaines & Gaines, APLC are counsel of
11 record for Plaintiff Nicholas Wilkerson. For purposes of this Settlement Agreement only, the firm
12 of Gaines & Gaines, APLC shall be designated as "Class Counsel."

13 3. The "Action" means the case of *Nicholas Wilkerson v. Official Pest Prevention, Inc.*,
14 Sacramento County Superior Court Case No. 34-2022-00328182 (the "Action").

15 4. The "Settlement Class" shall be defined as "all non-exempt employees of Defendant
16 in California at any time between October 10, 2018 and the earlier of August 5, 2023 or the date
17 the Court grants preliminary approval of this Settlement" (the "Class Period"). Defendant
18 represents that this Class contains no more than approximately 818 Class Members who worked an
19 estimated 24,000 workweeks during the Class Period through May 2, 2023.

20 5. The "Aggrieved Employees" shall be defined as "all non-exempt employees of
21 Defendant in California at any time between August 4, 2021 and the earlier of August 5, 2023 or
22 the date the Court grants preliminary approval of this Settlement" (the "PAGA Period").

23 6. Members of the Settlement Class shall collectively be referred to as a "Class
24 Member" or "Class Members." Any Class Member who files a timely request for exclusion, as
25 detailed below, will be excluded from the final Settlement Class.

26 7. The "Effective Date" is defined as the date the Court signs an order granting final
27 approval of the settlement and entering judgment thereon (the "Effective Date") If objections to
28 the settlement are filed, the Effective Date of the settlement is the sixty-fifth (65th) day after notice

1 of the final approval order is mailed, unless an appeal is filed, in which case the Effective Date is
2 the day after (1) the settlement is upheld by the Court of Appeals, or (2) all appeals are dismissed.

3 **B. General.**

4 1. On August 4, 2022, Plaintiff exhausted the pre-filing requirements of the Labor
5 Code Private Attorneys General Act of 2004 ("PAGA").

6 2. On October 10, 2022, Plaintiff initiated his Action in the Sacramento County
7 Superior Court by filing a class and representative action complaint, pursuant to PAGA, on behalf
8 of himself and all other similarly situated individuals.

9 3. As set forth in the operative Complaint, the Action assert claims against Defendant
10 for (1) failure to pay all minimum and overtime wages due (Labor Code §§ 510, 1194, and 1194.2
11 and IWC Wage Order 4-2001); (2) failure to pay all wages due (Labor Code §§ 226.7, 246, 510,
12 512, and 1194; IWC Wage order 4-2001); (3) failure to provide rest periods or compensation in
13 lieu thereof (Labor Code § 226.7 and IWC Wage Order 4-2001); (4) knowing and intentional failure
14 to comply with itemized employee wage statement provisions (Labor Code §§ 226(a) and (e)); (5)
15 failure to timely pay wages due at the separation of employment (Labor Code §§ 201-203 and
16 227.3); (7) violation of Business and Professions Code § 17200 for underlying violations of the
17 Labor Code as set forth in the complaint in the Action; and (8) civil penalties pursuant to PAGA
18 for underlying violations of the Labor Code as set forth in the complaint in the Action.

19 4. Defendant denies any liability or wrongdoing of any kind associated with the claims
20 alleged in the Action, and further denies that the Action are appropriate for class treatment for any
21 purpose other than this settlement. Defendant contends that it has complied at all times with the
22 California Labor Code. It is Defendant's position that, if this case were to be litigated, class
23 certification would be inappropriate because Plaintiff is not an adequate Class Representative,
24 Plaintiff's claims are not typical of putative class members, and individual issues predominate over
25 class issues, among other defenses. The Action, the negotiation and execution of this Settlement
26 Agreement, and all acts performed or documents executed pursuant to or in furtherance of this
27 Settlement Agreement (i) shall not be used as an admission, or as evidence of wrongdoing by the
28 Defendant, or for any other purpose whatsoever; (ii) shall not be an admission or evidence of fault

1 on behalf of Defendant in any action before a civil court, criminal court, administrative agency of
2 any type, or other tribunal; and (iii) shall not be deemed to be, and may not be used as, an admission
3 or evidence of the appropriateness of these or similar claims for class certification in the Action or
4 with respect to any other proceeding whatsoever.

5 5. The Class Representative contends that Defendant violated the California Labor
6 Code and Industrial Welfare Commission Wage Order(s), and that this case is appropriate for class
7 certification.

8 6. Class Counsel represent that they have conducted a thorough investigation into the
9 facts and law during the prosecution of this class action case, including the exchange of extensive
10 formal and informal discovery and the review and verification of statistical data and other facts and
11 information provided by Defendant. Counsel for the Parties also represent that they have
12 investigated the applicable law as applied to the facts discovered regarding the alleged claims of
13 Plaintiff and potential defenses thereto, and the damages and other losses claimed by Plaintiff.

14 7. Defendant sought to compel arbitration of some of Plaintiff's claims, and the Court
15 entered an order compelling Plaintiff's class and PAGA claims to arbitration. Plaintiff
16 subsequently commenced an arbitration with AAA that was dismissed by AAA shortly thereafter
17 due to nonpayment of fees by Defendant. Defendant filed an appeal of the trial court's order, case
18 no. C098019, which was dismissed by the Third Appellate District of the California Court of
19 Appeal because the order was not immediately appealable under California law.

20 8. The Parties agreed to participate in nonbinding mediation of Plaintiff's claims. On
21 May 2, 2023, following their exchange of information and documents regarding the Settlement
22 Class and the claims and defenses asserted by the Parties, the Parties engaged in an x's-length
23 negotiations with the assistance of an experienced wage and hour mediator, Brandon McKelvey,
24 Esq.. Mr. McKelvey ended the mediation session with a mediator's proposal, which both Parties
25 accepted to reach the resolution of the Action set forth herein.

26 9. Based on their own independent investigation and evaluation, Class Counsel are of
27 the opinion (and will so represent to the Court) that settlement for the consideration and on the
28 terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best

1 interest of the Settlement Class in light of all known facts and circumstances, including the risk of
2 significant delay, the risk the Settlement Class will not be certified by the Court, and the defenses
3 asserted by Defendant. Defendant and its counsel also agree (and will so represent to the Court)
4 that this settlement is fair and in the best interest of the Settlement Class.

5 10. The Parties agree that the Settlement Class described herein may be certified for
6 settlement purposes only and that any motion for approval seeking, *inter alia*, certification of the
7 Settlement Class is for purposes of the settlement only. If for any reason the settlement is not
8 approved, the certification will have no force or effect and will immediately be revoked. The
9 Parties further agree that certification for purposes of the settlement is in no way an admission that
10 class certification is proper under the more stringent standard applied for litigation and that
11 evidence of this limited Settlement Agreement for settlement purposes only will not be admissible
12 for any purpose in this or any other proceeding.

13 **C. Terms of Settlement.**

14 1. The financial terms of the Settlement Agreement are as follows:

15 (a) **Gross Settlement Amount:** The Parties agree to settle the Action for a Gross
16 Settlement Amount of Nine Hundred Ninety-Four Thousand Five Hundred Dollars (\$994,500) (the
17 "Gross Settlement Amount"), subject to any increase based on the escalator provision in paragraph
18 H(16) herein. The Gross Settlement Amount includes the attorney's fees of Class Counsel;
19 litigation costs and expenses (which includes, without limitation, all such fees and costs incurred
20 to date, as well as such fees and costs to be incurred in documenting the settlement, providing any
21 notices required as part of the settlement, securing Court approval of the settlement, and obtaining
22 judgment in the Action); the Service Payment to the Class Representative, as approved by the
23 Court; the payment to the California Labor and Workforce Development Agency ("LWDA"); and
24 all costs of administration, including, without limitation, settlement administration fees and
25 expenses. All employer payroll tax obligations due on wage payments made from the Net
26 Settlement Proceeds shall be paid by Defendant separate and apart from, and in addition to, the
27 Gross Settlement Amount.

1 (b) Net Settlement Proceeds: "Net Settlement Proceeds" is defined as the
2 Gross Settlement Amount less the amounts approved and awarded by the Court for: attorney's fees
3 and documented litigation costs and expenses incurred or advanced by Class Counsel; the Service
4 Payments to the Class Representative; the payment to the LWDA pursuant to PAGA; and the costs
5 of administering the settlement.

6 (c) Calculation of the Individual Payment Amounts: "Individual Payment
7 Amount" means the portion of the Net Settlement Proceeds distributable to each Class Member
8 who participates in the Class Settlement (i.e., who does not submit a valid request for exclusion
9 form) and each Aggrieved Employee, whether they participate in the Class Settlement or not. As
10 to participating Class Members, the class portion of the Individual Payment Amount will be
11 determined by dividing the Net Settlement Proceeds, less the \$25,000 PAGA allocation, by the
12 total number of weeks worked by the entire Settlement Class in a non-exempt position in California
13 during the Class Period, net of opt outs, resulting in the class workweek value; and then multiplying
14 the class workweek value by the number of weeks worked by each participating Class Member in
15 a non-exempt position in California during the Class Period. As to the Aggrieved Employees, the
16 PAGA portion of the Individual Payment Amount will be determined by dividing the PAGA
17 settlement amount (\$25,000) by the total number of weeks worked by all Aggrieved Employees in
18 a non-exempt position in California during the PAGA Period, resulting in the PAGA workweek
19 value; and then multiplying the PAGA workweek value by the number of weeks worked by each
20 Aggrieved Employee in a non-exempt position in California during the PAGA Period.

21 (d) For tax purposes, the class portion of each Individual Payment Amount will
22 be apportioned (a) 20% as wages (reported on an IRS Form W-2 and subject to applicable
23 withholdings); and (b) 80% equally as penalties and interest (reported on an IRS Form 1099, if
24 required). The PAGA portion of each Individual Payment Amount will be apportioned 100% as
25 penalties (reported on an IRS Form 1099, if required). All Individual Payment Amounts paid to
26 Class Members and Aggrieved Employees will be subject to any applicable wage garnishments,
27 liens, or other legally mandated treatment as required by law.

1 (c) **PAGA Payments:** The Parties agree that One Hundred Thousand Dollars
2 (\$100,000) shall be allocated to settle Plaintiff's claims brought pursuant to PAGA. Of this amount,
3 Seventy-Five percent (75%), or Seventy-Five Thousand Dollars (\$75,000), shall be paid to the
4 LWDA, and the remaining Twenty-Five percent (25%), or Twenty-Five Thousand Dollars
5 (\$25,000), shall be paid to Aggrieved Employees as part of the Net Settlement Proceeds.

6 (f) **Service Payment and General Release Payment to Class Representative:**
7 The amount awarded to the Class Representative as a "Service Payment" and in exchange for a
8 general release, as set forth in Paragraph D(2), below, will be set by the Court in its discretion, not
9 to exceed Twelve Thousand Dollars (\$12,000). This amount will be deducted from the Gross
10 Settlement Amount. An IRS Form 1099 will be issued to the Class Representative for his Service
11 Payment. Defendant agrees not to dispute or otherwise object to the Service Payment if Plaintiff
12 requests \$12,000 or less.

13 (g) **Attorney's fees:** An award to Class Counsel of attorney's fees will be
14 deducted from the Gross Settlement Amount in an amount to be set by the Court taking into account
15 the settlement award that has been made available for the Settlement Class by the efforts of Class
16 Counsel. The amount awarded shall not exceed 33-1/3% of the Gross Settlement Amount (i.e.,
17 Three Hundred Thirty-One Thousand Five Hundred Dollars (\$331,500). An IRS Form 1099 will
18 be issued to Class Counsel with respect to its award of attorney's fees. Defendant agrees not to
19 dispute or otherwise object to the attorneys' fee award requested by Class Counsel so long as the
20 request does not exceed 33-1/3% of the Gross Settlement Amount.

21 (h) **Attorneys' Costs and Expenses:** Class Counsel will be reimbursed from
22 the Gross Settlement Amount in an amount to be set by the Court for documented out-of-pocket
23 litigation costs and expenses, not to exceed Fifteen Thousand Dollars (\$15,000). An IRS Form
24 1099 will be issued to Class Counsel with respect to its award of costs and expenses. Defendant
25 agrees not to dispute or otherwise object to the attorneys' cost award requested by Class Counsel
26 so long as the request does not exceed \$15,000.

27 (i) **Settlement Administration Costs:** The fees and other charges of the
28 Settlement Administrator to administer the Settlement are expected to total no more than Twelve

1 Thousand Dollars (\$12,000) and will be paid from the Gross Settlement Amount. These fees shall
2 include any costs associated with the required tax reporting on any Individual Payment Amounts,
3 and the issuing of any and all W-2 and 1099 forms. Subject to approval of the Court, the Parties
4 have agreed that Phoenix Class Action Administration Solutions will serve as a neutral third-party
5 claims' administrator ("Settlement Administrator") to perform all acts related to providing notice
6 to the Settlement Class. Settlement Administrator shall be responsible for (a) printing and
7 distributing the Court-approved Notice of Class Action Settlement ("Class Notice") to all Class
8 Members; (b) administering the settlement; (c) processing exclusions, objections, and field
9 inquiries from Class Members; (d) resolving disputes; (e) calculating the Individual Payment
10 Amount that each Participating Class Member and Aggrieved Employee is eligible to receive; (f)
11 distributing the Gross Settlement Amount as directed by the Court and set forth herein; (g) tax
12 reporting; (h) providing necessary weekly status reports; and (i) other duties and responsibilities
13 set forth herein.

14 (j) **No Warranty by Defendant:** Plaintiff understands and agrees that
15 Defendant is not providing Plaintiff or Class Members with tax or legal advice and that Defendant
16 makes no representations regarding tax obligations or consequences, if any, related to this
17 Settlement Agreement.

18 **D. Release of Claims.**

19 1. Upon the Effective Date, and subject to Defendant's full payment of the Gross
20 Settlement Amount and all associated employer payroll tax obligations, Plaintiff and all Settlement
21 Class Members who do not timely opt-out of the Settlement will be deemed to have fully released
22 and discharged Defendant Official Pest Prevention, Inc. and its present and former officers,
23 directors, members, owners, managers, shareholders, agents, operators, partners, joint ventures,
24 subsidiaries, parent companies, related entities, consultants, attorneys, successors or assignees
25 ("Released Parties") from any and all Released Class Claims which arose during their employment
26 in a non-exempt position in California during the Class Period.

27 2. Upon the Effective Date, and subject to Defendant's full payment of the Gross
28 Settlement Amount and all associated employer payroll tax obligations, Plaintiff and all Aggrieved

1 Employees will be deemed to have fully released and discharged the Released Parties from any and
2 all Released PAGA Claims which arose during their employment in a non-exempt position in
3 California during the PAGA Period.

4 3. "Released Class Claims" means any and all claims and/or causes of action which
5 accrued during the Class Period during employment in a non-exempt position in California, that
6 are alleged, or that could have been alleged in the Action based on the facts set forth in the
7 Complaint including Labor Code §§ 201-203, 226(a), 226.7, 246, 510, 512, 1194, and 1194.2, and
8 Business & Professions Code § 17200 *et seq.* predicated on the underlying Labor Code claims
9 alleged). No PAGA claims are encompassed in the Released Class Claims.

10 4. "Released PAGA Claims" means any and all PAGA claims and/or causes of action
11 which accrued during the PAGA Period during employment in a non-exempt position in
12 California, that are alleged in the operative Complaint on file in the Action, or that could have
13 been alleged in the Action based on the facts set forth in the operative Complaint. No Aggrieved
14 Employee may opt out of the PAGA portion of the Settlement.

15 5. Upon the Effective Date, and subject to Defendant's full payment of the Gross
16 Settlement Amount and all associated employer payroll tax obligations, Plaintiff Wilkerson shall
17 be deemed to have fully, finally, and forever released the Released Parties from any and all claims,
18 obligations, demands, Action, rights, causes of action, and liabilities against the Released Parties,
19 of whatever kind and nature, character, and description, whether in law or equity, whether
20 sounding in tort, contract, federal, state and/or local law, statute, ordinance, regulation, common
21 law, or other source of law, whether known or unknown, and whether anticipated or unanticipated,
22 including unknown claims covered by Civil Code Section 1542, arising through the date of his
23 signature hereon, for any type of relief, including, without limitation, claims for wages, damages,
24 unpaid costs, penalties, liquidated damages, punitive damages, interest, attorney's fees, litigation
25 costs, restitution, or equitable relief. These claims include, but are not limited to, the Released
26 Class Claims and Released PAGA Claims, as well as any other claims under any provision of the
27 California Labor Code or any applicable California Industrial Welfare Commission Wage Orders,
28 and claims under local, state, or federal discrimination statutes, including, without limitation, the

1 California Fair Employment and Housing Act, California Government Code §§ 12940 et seq.; the
2 Unruh Civil Rights Act, California Civil Code §§ 51 et seq.; the California Constitution; Title VII
3 of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000 et seq.; the Americans with Disabilities Act,
4 42 U.S.C. §§ 12101 et seq.; the Employee Retirement Income Security Act of 1974, 29 U.S.C.
5 §§ 1001 et seq.; and all of their implementing regulations and interpretive guidelines. With respect
6 to these Released Claims as described in this Section, Plaintiff Wilkerson shall be deemed to have
7 expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights,
8 and benefits he may otherwise have had pursuant to Section 1542 of the California Civil Code,
9 which provides as follows:

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

14 Notwithstanding Section 1542, Plaintiff understands and agrees that this Agreement shall
15 act as a release of all future claims that may arise from Plaintiff's employment or separation from
16 employment with Defendant, or any other matters that existed between Plaintiff and the Released
17 Parties up to the date of this Agreement, whether such claims are currently known or unknown, and
18 that Plaintiff intentionally waives any rights he may have under the provisions of Section 1542, as
19 well as under any other statutes or common law principles of similar effect in the State of California
20 or in any other state.

21 **E. Notice and Exclusion Process.**

22 1. Within ten (10) calendar days after entry of the order granting preliminary approval
23 of this Settlement, Defendant shall provide to the Settlement Administrator a list of all Class
24 Members, including their last known addresses, telephone numbers, social security numbers, and
25 their dates of employment in a non-exempt position in California during the Class Period
26 ("Settlement Class Information"). The names, addresses, telephone numbers, and Social Security
27 numbers will only be disclosed to the Settlement Administrator and not to Plaintiff's Counsel. All
28 information provided to the Settlement Administrator will be marked CONFIDENTIAL. This
information shall be kept confidential and shall not be disclosed, either in writing or orally, by the

1 Settlement Administrator. The Settlement Administrator shall use due care with respect to the
2 storage, custody, use, and/or dissemination of the confidential information. Such information must
3 be stored in a secure fashion and all persons who access the data must agree to keep it confidential.

4 2. A notice of pendency of class action, proposed settlement, and hearing date for
5 Court approval ("Class Notice") in the form attached hereto as Exhibit 1, and as approved by the
6 Court, shall be sent by the Settlement Administrator to the Class Members, by first class mail,
7 within twenty (20) calendar days after entry of the order granting preliminary approval. Attached
8 to the Class Notice will be a request for exclusion form ("Request for Exclusion Form") in the form
9 attached hereto as Exhibit 2.

10 3. The Settlement Administrator will make reasonable efforts to ensure that the Class
11 Notice and Request for Exclusion Form are sent to all Class Members. It will conclusively be
12 presumed that if an envelope has not been returned within thirty (30) days of the mailing that the
13 Class Member received the Class Notice. In the event of returned or non-deliverable notices, the
14 Settlement Administrator will make reasonable efforts to locate Class Members and re-send the
15 notices.

16 4. Each Class Member will be fully advised of the settlement, the ability to object to
17 the settlement, and the ability to submit a Request for Exclusion Form. The Class Notice will
18 inform the Class Members of the Court-established deadlines for filing objections and a Request
19 for Exclusion Form.

20 5. Each Class Notice will contain personalized information setting forth the number of
21 weeks each Class Member worked for Defendant in California in a non-exempt position during the
22 Class Period and their estimated Individual Payment Amount. To the extent a Class Member
23 disputes any of the information listed on his or her Class Notice, the Class Member may produce
24 evidence to the Settlement Administrator showing such information the Class Member contends
25 should be reflected in the Class Notice. Defendant's records will be presumed determinative,
26 however, and the Settlement Administrator's decision on these matters will be final. The Class
27 Notice will also set forth IRS W-9 information if required.

1 6. All Class Members who do not submit a Request for Exclusion Form will be eligible
2 to receive an Individual Payment Amount and all Aggrieved Employees will be eligible to receive
3 a share of the PAGA allocation from the Net Settlement Proceeds, which shall be mailed to them
4 if and when the Effective Date occurs.

5 7. In order to elect not to participate in the Settlement, a Class Member must submit a
6 Request for Exclusion Form, and mail it to the Settlement Administrator no later than forty-five
7 (45) calendar days after the initial mailing of the Class Notice and Request for Exclusion Form to
8 Class Members, unless the Court requires a longer period, in which case the Court ordered
9 exclusion period will apply. The date of the postmark shall be deemed the date of submission. The
10 timeliness of submitted Request for Exclusion Forms will be determined by valid postmark. If the
11 45th day falls on a Sunday or federal holiday, the time to request exclusion will be extended to the
12 next day on which the U.S. Postal Service is open.

13 8. The deadline for submission of Exclusion Forms shall be extended once by 30 days
14 for those Class Members whose Class Notice and Exclusion Form are returned as "undeliverable."
15 If the 30th day falls on a Sunday or federal holiday, this deadline will be extended to the next day
16 on which the U.S. Postal Service is open.

17 9. The Settlement Administrator will search for additional addresses on returned mail
18 and will re-mail the Class Notice and Exclusion Form to an updated address (if any) within 15 days
19 of receipt of the returned mail. The 30-day extended time limit will run from the date of the second
20 mailing for those Class Members. To the extent a Class Notice from the initial mailing is not
21 returned within 30 days, it shall be deemed to have been sent to a valid address even if it is thereafter
22 returned. It is the intent of the Parties that reasonable, but not extraordinary, efforts be used to
23 locate Class Members. If the initial Class Notice and Request for Exclusion Form is returned, the
24 Settlement Administrator will search using the social security number for a more current address.
25 If no address is found within 10 days, no further action is required.

26 10. The Settlement Administrator will notify the Parties of the total number of valid
27 Request for Exclusion Forms within ten (10) calendar days after the deadline for receipt of the
28

1 Request for Exclusion Forms (fifty-five (55) days following the initial mailing of the Class Notice
2 and Request for Exclusion Forms to Class Members).

3 11. In order to object to the settlement, a Class Member must mail his or her objection
4 to the Settlement Administrator no later than forty-five (45) calendar days after the mailing of the
5 Class Notice and Request for Exclusion Form to Class Members, unless the Court requires a longer
6 period, in which case the Court ordered objection period will apply. If the 45th day falls on a
7 Sunday or federal holiday, the time to object to the settlement will be extended to the next day on
8 which the U.S. Postal Service is open. Under no circumstances shall the objection deadline be
9 extended for any reason.

10 12. The Settlement Administrator shall provide to the Parties, at least twelve (12)
11 calendar days prior to the final approval hearing, or as otherwise ordered by the Court, a declaration
12 of due diligence and proof of mailing with regard to the mailing of the Class Notice and Request
13 for Exclusion Forms. The Settlement Administrator will also provide to the Parties, at least twelve
14 (12) calendar days prior to the final approval hearing, or as otherwise ordered by the Court, a report
15 listing the amount of all payments to be made to each Class Member without names or personal
16 identifying information.

17 13. Defendant shall deposit the Gross Settlement Amount and all employer payroll tax
18 obligations with the Settlement Administrator no later than ten (10) calendar days after the Effective
19 Date.

20 14. The Settlement Administrator shall disburse the Gross Settlement Amount within
21 fifteen (15) calendar days after its receipt thereof. Class Members and Aggrieved Employees must
22 cash each of their Individual Payment Amount checks within one hundred eighty (180) calendar
23 days after they are mailed by the Settlement Administrator. The value of any checks uncashed
24 more than one hundred eighty (180) days after mailing shall be paid to the State of California
25 Controller's Office – Unclaimed Property Fund, to be held in the name of the respective Class
26 Member or Aggrieved Employee.

1 **F. Duties of the Parties Prior to Court Approval.**

2 1. Promptly after execution of this Settlement Agreement, Plaintiff shall move the
3 Court for preliminary approval of this settlement and entry of an order accomplishing the
4 following:

5 (a) scheduling a fairness hearing on the question of whether the proposed
6 settlement should be finally approved as fair, reasonable, and adequate as to the Class Members;

7 (b) approving as to form and content the proposed Class Notice;

8 (c) approving as to form and content the proposed Request for Exclusion
9 Form;

10 (d) preliminarily certifying the Settlement Class for purposes of approving
11 the Settlement Agreement;

12 (e) preliminarily approving the PAGA payment of \$75,000 to the LWDA;

13 (f) preliminarily setting attorney's fees and costs payable to Class Counsel;

14 (g) preliminarily setting the Service Payment to the Class Representative; and

15 (h) preliminarily approving Phoenix Class Action Administration Solutions as
16 the Settlement Administrator and its estimated fees and costs of \$12,000.

17 2. The Parties shall submit this Settlement Agreement to the Court and the LWDA
18 in support of Plaintiff's unopposed motion for preliminary approval of the settlement.

19 **G. Duties of the Parties in Connection with and Following Final Court Approval.**

20 1. In connection with the hearing on final approval of the settlement, the Parties will
21 submit a proposed final order no later than ten (10) calendar days prior to the scheduled date of
22 the hearing on final approval (unless otherwise ordered by the Court):

23 (a) approving the settlement, adjudging the terms thereof to be fair, reasonable
24 and adequate, and directing consummation of its terms and provisions;

25 (b) approving Class Counsel's application for an award of attorney's fees and
26 reimbursement of documented litigation costs and expenses, the service payments to the Class
27 Representative, the PAGA Payment to the LWDA, and the costs of administering the settlement;
28 and

1 (c) Entering judgment in the Action in accordance with this Settlement
2 Agreement, pursuant to Cal. Rules of Court, Rule 3.769(h).

3 2. Class Counsel shall file an application for attorney's fees and reimbursement of
4 costs and expenses no later than ten (10) calendar days prior to the scheduled date of the hearing
5 on final approval (unless otherwise ordered by the Court).

6 **HL Miscellaneous Provisions:**

7 1. **Voiding the Agreement.**

8 A failure of the Court to approve any material condition of this Settlement Agreement which
9 effects "a fundamental change of the Parties' settlement," or if the settlement is reversed or
10 materially modified on appellate review, shall render the entire Settlement Agreement voidable and
11 unenforceable as to all Parties herein at the option of any Party.

12 2. **Parties' Authority.**

13 The signatories hereto represent that they are fully authorized to enter into this Settlement
14 Agreement and bind the Parties hereto to the terms and conditions hereof.

15 3. **Mutual Full Cooperation.**

16 The Parties agree to fully cooperate with each other to accomplish the terms of this
17 Settlement Agreement, including but not limited to, execution of such documents and such other
18 action as may reasonably be necessary to implement the terms of this Settlement Agreement. The
19 Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated
20 by this Settlement Agreement and any other efforts that may become necessary by order of the
21 Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As
22 soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the
23 assistance and cooperation of Defendant and its counsel, take all necessary steps to secure the
24 Court's preliminary and final approval of the settlement.

25 4. **No Prior Assignments.**

26 The Parties hereto represent, covenant, and warrant that they have not directly or indirectly,
27 assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or
28

1 entity any portion of any liability, claim, demand, action, cause of action or rights released and
2 discharged by this Settlement Agreement.

3 **5. No Admission.**

4 Nothing contained herein, nor the consummation of this Settlement Agreement, is to be
5 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part
6 of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this
7 Settlement Agreement with the intention of avoiding further disputes and litigation with the
8 attendant inconvenience and expenses. This Settlement Agreement is a settlement document and
9 shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408
10 and/or any other similar law, be inadmissible in evidence in any proceeding, except an action or
11 proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement.

12 **6. Construction.**

13 The Parties hereto agree that the terms and conditions of this Settlement Agreement are the
14 result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement
15 Agreement shall not be construed in favor of or against any Party by reason of the extent to which
16 any Party or her or its counsel participated in the drafting of this Settlement Agreement.

17 **7. Captions and Interpretations.**

18 Paragraph titles or captions contained herein are inserted as a matter of convenience and for
19 reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement
20 or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a
21 recital.

22 **8. Modification.**

23 This Settlement Agreement may not be changed, altered, or modified, except in writing and
24 signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not be
25 discharged except by performance in accordance with its terms or by a writing signed by each of
26 the Parties hereto on their attorneys.

27 ///

28 ///

1 **9. Integration Clause.**

2 This Settlement Agreement contains the entire agreement between the Parties relating to
3 the settlement and transaction contemplated hereby, and all prior or contemporaneous agreements,
4 understandings, representations, and statements, whether oral or written and whether by a Party or
5 such Party's legal counsel, are merged herein. No rights hereunder may be waived except in
6 writing.

7 **10. Binding on Assigns.**

8 This Settlement Agreement shall be binding upon and insure to the benefit of the Parties
9 hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

10 **11. Governing Law.**

11 All terms of this Settlement Agreement and its exhibits shall be governed by and interpreted
12 according to the laws of the State of California, without giving effect to any conflict of law
13 principles or choice of law principles.

14 **12. Signatures of All Class Members Unnecessary to be Binding.**

15 It is agreed that, because the members of the Settlement Class are numerous, it is impossible
16 or impractical to have each Class Member execute this Settlement Agreement. The Class Notice,
17 attached hereto as Exhibit 1, will advise all Class Members of the binding nature of the release
18 provided herein and such shall have the same force and effect as if this Settlement Agreement was
19 executed by each Class Member.

20 **13. Counterparts.**

21 This Settlement Agreement may be executed in counterparts, and when each Party has
22 signed and delivered at least one such counterpart, each counterpart shall be deemed an original,
23 and when taken together with other signed counterparts, shall constitute one fully-signed Settlement
24 Agreement, which shall be binding upon and effective as to all Parties.

25 **14. Confidentiality**

26 Until Plaintiff files his motion for preliminary approval of the class action settlement of the
27 Action, the Parties and Counsel agree to maintain confidentiality as to the Settlement, including the
28 amount and terms of the Settlement, except as to spouses, tax or financial advisors, attorneys, taxing

1 agencies, or as otherwise required by law.

2 **15. No Publicity**

3 Plaintiff and his Counsel will not contact the media about the Settlement Agreement or
4 respond to any inquiries by the media regarding the Settlement, other than to state that the matter
5 was amicably settled, and the Court did not find Defendant liable. Plaintiff and his Counsel also
6 will not post any information about the Settlement Agreement on social media or their firm's
7 websites.

8 **16. Representation Regarding Class Size.**

9 Defendant has represented that Class Members worked no more than 24,000 workweeks
10 during the Class Period through May 2, 2023. Should this number exceed 31,000 as of the final
11 day of the Class Period, the Gross Settlement Amount will increase proportionately with the
12 increase over 31,000 workweeks. For example, if there are 34,100 workweeks, the Gross
13 Settlement Amount shall increase by 10% (34,100/31,000).

14 **17. Continuing Jurisdiction.**

15 The Parties agree that upon the occurrence of the entry of judgment in this case pursuant to
16 the terms of this Agreement, this Agreement shall be enforceable by the Court pursuant to Code
17 of Civil Procedure Section 664.6 and all other applicable law, and the Court shall retain exclusive
18 and continuing equity jurisdiction of this Action over all Parties and Class Members to interpret
19 and enforce the terms, conditions and obligation of the Agreement.

20 **18. Default; Notice; Cure; Acceleration; Time is of the Essence.**

21 Time is of the essence with respect to all provisions of this Agreement. If Defendant fails
22 to timely make the payment due hereunder, it shall be in default of its obligations. Plaintiff shall
23 thereafter give notice of default and Defendant must cure said default within ten (10) calendar days
24 thereof. In the event of an uncured default, all unpaid amounts shall be due and payable with interest
25 at the legal rate from the date of default.

26 ///

27 ///

28 ///

1 Dated: 06/01/2023

2 By:

3 NICHOLAS WILKERSON
4 Plaintiff and Class Representative

5 Dated: July 7, 2023

6 OFFICIAL PEST PREVENTION, INC.

7 By:

8 Its:

9 **APPROVED AS TO FORM AND CONTENT:**

10 Dated: 6/2/2023

11 GAINES & GAINES, APLC

12 By:

13 Daniel F. Gaines, Esq.
14 Alex P. Katofsky, Esq.
15 Counsel for Plaintiff and Class
16 Representative

17 Dated: July 12, 2023

18 PALMER KAZANJIAN WOHL HODSON
19 LLP

20 By:

21 Larry M. Kazanjian, Esq.
22 Treaver K. Hodson, Esq.
23 Dayra Juarez, Esq.
24 Counsel for Defendant

EXHIBIT 1

Doc ID: 7218f0206277d214769b3e11b9b48d8ffc97a591

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

NICHOLAS WILKERSON, individually and on
behalf of all similarly situated individuals,

Plaintiff,

v.

OFFICIAL PEST PREVENTION, INC., a
Delaware corporation, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO: 34-2022-00328182

Assigned to the Hon. Laura Dumrell, Dept. 28

**NOTICE OF PENDENCY OF PROPOSED
CLASS ACTION SETTLEMENT AND
FINAL HEARING**

**YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A SETTLEMENT
PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED.**

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

- A settlement will provide \$994,500 to pay claims to all individuals who worked for Official Pest Prevention, Inc. ("Defendant") as a non-exempt employee in California at any time between October 10, 2018 and [class period end date].
- The settlement resolves a lawsuit alleging that Defendant failed to pay all wages, including all minimum and overtime wages; provide compliant rest periods or premium compensation in lieu thereof; timely issue final wages upon separation of employment; and issue accurate and complete itemized wage statements. The Settlement avoids costs and risks of continuing the lawsuit, pays money to employees, and releases Defendant from liability from the claims asserted in this lawsuit.
- Lawyers for the employees will ask the Court to award them up to \$331,500 as attorney's fees and \$15,000 as expenses for investigating the facts, litigating the case, and negotiating the settlement. This will be paid from the settlement amount.
- Defendant denies liability and believes all appropriate wages were paid and that it otherwise complied with any Labor Code obligations. The Parties disagree on how much money could have been awarded if employees won at trial.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing	You do not need to take any action if you wish to receive your settlement payment. If the settlement is approved by the Court, you will automatically be mailed a settlement check at the address on file with the Settlement Administrator. If your address has changed, you must notify the Settlement Administrator of your new address. In exchange for the settlement payment, you will release claims against the Defendant, as detailed below.
Exclude Yourself	To exclude yourself, you must send a written Request for Exclusion to the Settlement Administrator by the applicable deadline, as detailed below. If you request exclusion, you will receive no money from the class settlement. This is the only option that allows you to ever be part of any other lawsuit against Official Pest Prevention, Inc. about the legal claims that were brought in this case. Even if you exclude yourself, you will still be an Aggrieved Employee subject to the PAGA settlement.
Object	Write to the Settlement Administrator about why you don't like the settlement by the applicable deadline, as detailed below, and/or appear at the Final Approval Hearing to make an oral objection.
Go to a Hearing	Ask to speak in Court about the fairness of the settlement, as detailed below.

WHY DID YOU RECEIVE THIS NOTICE?

This notice explains a proposed settlement of a class action lawsuit, and informs you of your legal rights under that proposed settlement. You are receiving this notice because you may be a member of the Class on whose behalf this class action lawsuit has been brought.

WHAT IS THIS LAWSUIT ABOUT?

On October 10, 2022, Plaintiff Nicholas Wilkerson ("Plaintiff"), a former employee of Defendant Official Pest Prevention, Inc., filed this lawsuit in the Sacramento County Superior Court. The lawsuits allege violations of the California Labor Code and California Business and Professions Code. The lawsuits seek to certify a class of all current and former non-exempt California employees of Defendant at any time between October 10, 2018 and [class period end date] ("Class Period"). Specifically, the lawsuit alleges that members of the Class were not paid all wages, including all minimum and overtime wages due; provided compliant rest periods or premium compensation in lieu thereof; timely issued final wages upon separation of employment; or issued accurate and complete itemized wage statements. The Settlement seeks recovery of wages, liquidated damages, damages, interest, statutory and civil penalties, restitution, attorney's fees and costs. Defendant denies all of the material allegations in the lawsuit and denies that it owes Class Members any remedies. The Court has not made a ruling on the merits of the case.

The lawyers for the parties are:

Plaintiff's Attorneys

Daniel F. Gaines, Esq.
Alex P. Katofsky, Esq.
Gaines & Gaines, APLC
4550 E. Thousand Oaks Blvd., Suite 100
Westlake Village, CA 91362
Phone: (866) 550-0855

Defendant's Attorneys

Larry M. Kazanjian, Esq.
Treaver K. Hodson, Esq.
Dayra Juarez, Esq.
PALMER KAZANJIAN WOHL HODSON LLP
2277 Fair Oaks Blvd., Suite 455
Sacramento, CA 95825

SUMMARY OF THE SETTLEMENT

A. Why is there a Settlement?

The Court did not decide in favor of Plaintiff or Defendant. Plaintiff believes he would have prevailed on his claims at a trial. Defendant does not believe that Plaintiff would have won anything from a trial. There has been no trial. Instead, both sides agreed to a settlement, which is memorialized in the Settlement Agreement and Release of Claims ("Settlement" or "Settlement Agreement"), in order to avoid the further costs, risks, and uncertainty of a trial. Plaintiff and Plaintiff's Attorneys believe the settlement is fair, reasonable, adequate, and in the best interests of all Class Members.

B. Who is in the Settlement Class? Who is an Aggrieved Employee?

The Settlement encompasses a class composed of all individuals who worked for Official Pest Prevention, Inc. as a non-exempt employee in California at any time between October 10, 2018 and [class period end date]. It encompasses Aggrieved Employees composed of all individuals who worked for Official Pest Prevention, Inc. as a non-exempt employee in California at any time between August 4, 2021 and [class period end date].

C. What does the Settlement provide?

1. Gross Settlement Amount.

The Settlement provides that Defendant will pay \$994,500 (the "Gross Settlement Amount") to settle the lawsuit.

2. Net Settlement Amount.

The "Net Settlement Amount" is the portion of the Gross Settlement Amount that will be available for distribution to Class Members who do not submit timely and valid requests for exclusion in exchange for the release of their class claims. The Net Settlement Amount is the Gross Settlement Amount less the following amounts that will be requested at the Final Approval Hearing and are subject to comment or objection by Participating Class Members. The Court will set these amounts at the Final Approval Hearing.

- (a) **Class Counsel's Attorney's Fees** in an amount set by the Court, not to exceed \$331,500;
- (b) **Class Counsel's Documented Litigation Costs/Expenses** in an amount set by the Court, not to exceed \$15,000;
- (c) **Service Payment to the Class Representative** in an amount set by the Court, not to exceed \$12,000 to Plaintiff for his service in the lawsuit;
- (d) **Settlement Administration Costs** which are currently estimated to not exceed \$15,000, for administering the settlement; and
- (e) **PAGA Payment** in the total amount of \$100,000 for the settlement of claims arising under the California Private Attorneys General Act ("PAGA"). 75% or \$75,000, shall be paid to the California Labor and Workforce Development Agency ("LWDA"). The remaining 25% or \$25,000, shall be included in the Net Settlement Amount for payment to Class Members

3. Individual Payment Amount.

Your share of the Net Settlement Amount will be determined by the formula detailed in section E below.

D. What Are You Giving Up To Get A Payment Or Stay In The Class?

Upon the Effective Date, and subject to Defendant's full payment of the Gross Settlement Amount and all associated employer payroll tax obligations, Plaintiff and all Settlement Class Members who do not timely opt-out of the Settlement will be deemed to have fully released and discharged Defendant Official Pest Prevention, Inc. and its present and former officers, directors, members, owners, managers, shareholders, agents, operators, partners, joint ventures, subsidiaries, patent companies, related entities, consultants, attorneys, successors or assignees ("Released Parties") from any and all Released Class Claims which arose during their employment in a non-exempt position in California during the Class Period. "Released Class Claims" means any and all claims and/or causes of action which accrued during the Class Period during employment in a non-exempt position in California, that are alleged, or that could have been alleged in the Action based on the facts set forth in the Complaint including Labor Code §§ 201-203, 226(a), 226.7, 246, 510, 512, 1194, and 1194.2, and Business & Professions Code § 17200 et seq. predicated on the underlying Labor Code claims alleged). No PAGA claims are encompassed in the Released Class Claims.

Upon the Effective Date, and subject to Defendant's full payment of the Gross Settlement Amount and all associated employer payroll tax obligations, Plaintiff and all Aggrieved Employees will be deemed to have fully released and discharged the Released Parties from any and all Released PAGA Claims which arose during their employment in a non-exempt position in California during the PAGA Period. "Released PAGA Claims" means any and all PAGA claims and/or causes of action which accrued during the PAGA Period during employment in a non-exempt position in California, that are alleged in the operative Complaint on file in the Action, or that could have been alleged in the Action based on the facts set forth in the operative Complaint. No Aggrieved Employee may opt out of the PAGA portion of the Settlement.

E. How Is My Share Of The Settlement Calculated?

Each participating Class Member (those who do not opt out of the Settlement) shall receive an "Individual Payment Amount," which is distributable to each Class Member who participates in the Settlement (i.e., who does not submit a valid request for exclusion form), and a "PAGA Payment

Amount," which is distributable to each Aggrieved Employees regardless of whether they participate in the Settlement (Aggrieved Employees will receive a PAGA Payment Amount even if they exclude themselves from the Settlement).

The Individual Payment Amounts will be calculated by dividing the Net Settlement Proceeds by the total weeks worked by all participating Class Members in California in a non-exempt position in California during the Class Period, which will yield the applicable weekly rate. The weekly rate shall be multiplied by the number of weeks each individual participating Class Member worked for Defendant in California in a non-exempt position during the Class Period to yield their Individual Payment Amount. Each Participating Settlement Class Member who does not opt out will receive an Individual Payment Amount equal to their individual weeks worked in California in a non-exempt position during the Class Period multiplied by the weekly rate.

The PAGA Payment Amounts will be calculated by dividing the PAGA Payment allocated to Aggrieved Employees (25% of the PAGA Payment or \$25,000) by the total weeks worked by all participating Aggrieved Employees in California in a non-exempt position during the PAGA Period, which will yield the applicable weekly rate. The weekly rate shall be multiplied by the number of weeks each individual participating Aggrieved Employees worked for Defendant in California in a non-exempt position during the PAGA Period to yield their PAGA Payment Amount. Each Aggrieved Employee will receive a PAGA Payment Amount equal to their individual weeks worked in California in a non-exempt position during the PAGA Period multiplied by the weekly rate.

For tax purposes, each Individual Payment Amount will be apportioned (a) 20% as wages (reported on an IRS Form W-2 and subject to applicable withholdings); and (b) 80% to penalties and interest. All Individual Payment Amounts paid to Class Members will be subject to any applicable wage garnishments, liens, or other legally mandated treatment as required by law.

Class Payment: According to the records of Defendant, you worked [] weeks while employed as a non-exempt employee in California from October 10, 2018 and [class period end date]. Based on these weeks worked, you are entitled to an Individual Payment Amount of approximately \$[]. This amount is subject to change based on the final ruling of the Court.

PAGA Payment: According to the records of Defendant, you worked [] weeks while employed as a non-exempt employee in California from August 4, 2021 and [class period end date]. Based on these weeks worked, you are entitled to a PAGA Payment Amount of approximately \$[]. This amount is subject to change based on the final ruling of the Court.

Please be advised that the individual data above is presumed to be correct unless you submit documentation proving otherwise. If you disagree with the data, please submit an explanation and evidence in support of your position to the Settlement Administrator no later than 12/31/2023, 2023. In the event of a dispute, the Settlement Administrator will resolve the challenge with input from the Defendant and will make a final and binding determination without a hearing or right of appeal by you.

THE SETTLEMENT HEARING

The Court will conduct a final fairness hearing regarding the proposed settlement (the "Final Settlement Hearing") on 12/15/2023, at 8:30 a.m., in the Courtroom of Judge Laura Damrell of the Sacramento County Superior Court, Department 28, located at 720 9th Street, Sacramento, California 95814. The Court will determine: (i) whether the lawsuit should finally be certified as a class action for settlement purposes; (ii) whether the settlement should be given the Court's final approval as fair, reasonable, adequate and in the best interests of the Settlement Class Members; (iii) whether the Settlement

Class Members should be bound by the terms of the settlement; (iv) the amount of the attorney's fees and costs to be awarded to Plaintiff's Attorneys; and (v) the amount that should be awarded to Plaintiff as a service payment. At the Final Settlement Hearing, the Court will hear all properly filed objections, as well as arguments for and against the proposed settlement. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, or to enter an appearance and represent yourself.

WHAT ARE YOUR OPTIONS?

• **OPTION 1 – DO NOTHING AND PARTICIPATE IN THE SETTLEMENT**

IF YOU TAKE NO ACTION IN RESPONSE TO THIS NOTICE, YOU WILL AUTOMATICALLY RECEIVE YOUR SHARE OF THE SETTLEMENT IF IT IS APPROVED BY THE COURT. YOU ARE NEVER REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE. If you move, you must update your address with the Settlement Administrator. If you disagree with pre-printed data indicated in section E above, you must submit an explanation and/or documentation to the Settlement Administrator to justify your position, postmarked no later than _____. The Settlement Administrator's address is [Settlement Administrator address].

• **OPTION 2 – OBJECT TO THE SETTLEMENT**

If you wish to remain a Settlement Class Member, but you object to the proposed settlement (or any of its terms) and wish the Court to consider your objection at the Final Settlement Hearing, you may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing, either in person or through an attorney at your own expense. All written objections, supporting papers, and/or notices of intent to appear at the Final Approval Hearing must clearly identify the case name and number and be mailed to the Settlement Administrator at [Settlement Administrator address]. Written objections must be postmarked no later than _____.

• **OPTION 3 – EXCLUDE YOURSELF FROM THE SETTLEMENT**

You have a right to exclude yourself ("opt out") from the Settlement Class, but if you choose to do so, you will not receive any benefits from the proposed settlement except you will participate in the PAGA portion thereof and be paid a share of the PAGA settlement. With that exception, you will not be bound by a judgment in this case and you will have the right to file your own lawsuit against the Defendant and pursue your own claims in a separate suit. You can opt out of the Class by completely filling out and mailing the enclosed Request for Exclusion Form to the Settlement Administrator at the above-stated address, such that it is postmarked no later than _____.

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you should review the detailed "Settlement Agreement and Release of Claims" which is on file with the Clerk of the Court. The pleadings and other records in the Lawsuit may be examined at any time during regular business hours at the Office of the Clerk of the Sacramento County Superior Court, located at 720 9th Street, Sacramento, California 95814.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at [address], [telephone number].

PLEASE DO NOT TELEPHONE THE COURT FOR INFORMATION ABOUT THIS SETTLEMENT
OR THE CLAIMS PROCESS.

**BY ORDER OF THE SUPERIOR COURT OF
THE STATE OF CALIFORNIA**

EXHIBIT 2

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REQUEST FOR EXCLUSION

ONLY COMPLETE THIS REQUEST FOR EXCLUSION FORM IF YOU WANT TO OPT OUT OF (NOT PARTICIPATE IN) THE SETTLEMENT OF THE ACTION KNOWN AS *Nicholas Wilkerson v. Official Pest Prevention, Inc.*, Sacramento County Superior Court Case No. 34-2022-00328182. IF YOU OPT OUT OF THE SETTLEMENT, YOU WILL NOT RECEIVE ANY PORTION OF THE SETTLEMENT AMOUNT.

I confirm that I was employed by Defendant Official Pest Prevention, Inc. as a non-exempt employee in California between October 10, 2018 and _____, 2023.

I do not wish to receive any payment under the terms of the proposed class action settlement or to otherwise participate in the proposed settlement.

Date: _____

Signature: _____

Print Name: _____

Residence Street Address: _____

City, State and Zip Code: _____

IN ORDER TO BE VALID, THIS REQUEST FOR EXCLUSION FORM MUST BE COMPLETED, SIGNED, MAILED BY FIRST CLASS MAIL, AND POSTMARKED ON OR BEFORE [45 days after mailing of Notice]. Send this signed request for exclusion form to the Settlement Administrator:

Official Pest Prevention, Inc. Claims Administrator

c/o _____

Title	Wilkerson Decl v1
File name	Wilkerson Decl v1.pdf
Document ID	1901821459daec9aed16f150d54079bd88144b72
Audit trail date format	MM / DD / YYYY
Status	 Signed

Document history

 SENT	07 / 25 / 2023 20:49:04 UTC	Sent for signature to Nicholas Wilkerson [redacted] from office@gaineslawfirm.com [redacted]
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 SIGNED	07 / 25 / 2023 20:52:40 UTC	Signed by Nicholas Wilkerson [redacted] [redacted]
 COMPLETED	07 / 25 / 2023 20:52:40 UTC	The document has been completed.

EXHIBIT C